

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 37, NUMBER 7
SATURDAY, JANUARY 1, 2011

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet January 11, 2011 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 1615-1617 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

ADMINISTRATIVE REGISTER OF KENTUCKY

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, JANUARY 11, 2011, at 1:00 p.m., Room 149 Capitol Annex**

EDUCATION PROFESSIONAL STANDARDS BOARD

Administrative Certificates

16 KAR 3:050. Professional certificate for instructional leadership - school principal, all grades.

**DEPARTMENT OF STATE
Kentucky Registry of Election Finance**

Reports and Forms

32 KAR 1:030 & E. Election finance statement forms; campaign contributions or expenditures in excess of \$3,000. ("E" expires 5/1/2011)
32 KAR 1:190 & E. Forms for gubernatorial slates of candidates and related filers. ("E" expires 5/1/2011)

**FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System**

General Rules

102 KAR 1:225. General compliance with federal tax laws. (Deferred from December)
102 KAR 1:230. Limitations on benefits. (Deferred from December)
102 KAR 1:245. Rollovers and transfers of contributions to other plans. (Deferred from December)

**Department of Revenue
Office of Sales and Excise Taxes**

Forms

103 KAR 3:050. Miscellaneous taxes forms manual. (Not Amended After Comments) (Deferred from November)

**PUBLIC PROTECTION CABINET
Crime Victims Compensation Board**

Sexual Assault Examinations Program

107 KAR 2:010. Payment schedule for sexual assault examinations.

**GENERAL GOVERNMENT CABINET
State Board of Accountancy**

Board

201 KAR 1:065. Individual license renewal and fee.
201 KAR 1:140. Procedures for the reinstatement and reissuance of a license.

Board of Dentistry

Board

201 KAR 8:390E. General anesthesia, deep sedation, and conscious sedation by dentists. ("E" expires 1/11/2011) (Deferred from September)
201 KAR 8:500 & E. Board organization. ("E" expires 1/11/2011) (Deferred from September)
201 KAR 8:530 & E. Licensure of dentists. ("E" expires 2/10/2011) (Not Amended After Comments) (Deferred from November)
201 KAR 8:560 & E. Licensure of dental hygienists. ("E" expires 2/10/2011) (Not Amended After Comments) (Deferred from November)

Board of Examiners and Registration of Landscape Architects

Board

201 KAR 10:050. Fees.

Board of Social Work

Board

201 KAR 23:020. Fees. (Not Amended After Comments)
201 KAR 23:070. Qualifying education and qualifying experience under supervision. (Not Amended After Comments)
201 KAR 23:075. Continuing education. (Amended After Comments)

Board of Examiners of Psychologists

Board

201 KAR 26:115. Definition of psychological testing.
201 KAR 26:121. Scope of practice and dual credentialing.
201 KAR 26:125. Health service provider designation.
201 KAR 26:130. Complaint procedure.
201 KAR 26:155. Licensed psychologist: application procedures and temporary license.
201 KAR 26:171. Requirements for supervision.
201 KAR 26:175. Continuing education.
201 KAR 26:180. Requirements for granting licensure as a psychologist by reciprocity.
201 KAR 26:185. Requirements for granting licensure as a psychologist to an applicant licensed in another state.
201 KAR 26:190. Requirements for supervised professional experience.
201 KAR 26:200. Definitions of terms used by the Board of Examiners of Psychologists for meeting educational requirements for licensure as a licensed psychologist.
201 KAR 26:215. Nonresident status.
201 KAR 26:230. Examinations.
201 KAR 26:270. Change of license status.
201 KAR 26:290. Licensed psychological practitioner: application procedures.
201 KAR 26:310. Telehealth and telepsychology.

Board of Licensure for Private Investigators

Board

201 KAR 41:100. Verification of 240 hour employees. (Deferred from November)

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Board of Licensure for Massage Therapy

Board

- 201 KAR 42:010. Goals for massage therapy sessions. (Amended After Comments)
- 201 KAR 42:020. Fees. (Not Amended After Comments)
- 201 KAR 42:030. Licensee's change of name, home address, or place of business. (Not Amended After Comments)
- 201 KAR 42:035. Application process, exam, and curriculum requirements. (Amended After Comments)
- 201 KAR 42:040. Renewal. (Amended After Comments)
- 201 KAR 42:050. Complaint procedure and disciplinary action. (Amended After Comments)
- 201 KAR 42:060. Code of ethics, and standards of practice for massage therapists. (Amended After Comments)
- 201 KAR 42:070. Endorsement. (Amended After Comments)
- 201 KAR 42:080. Programs of massage therapy instruction. (Amended After Comments)
- 201 KAR 42:110. Continuing education requirements. (Not Amended After Comments)

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management**

Solid Waste Planning

- 401 KAR 49:080. Solid waste grant funds and solid waste collector and recycler registration. (Amended After Comments)

**JUSTICE AND PUBLIC SAFETY CABINET
Office of Drug Policy**

- 500 KAR 20:010. Kentucky Agency for Substance Abuse Policy (KY-ASAP) start-up funding for local boards.
- 500 KAR 20:020. Kentucky agency for substance abuse policy on-going funding for local bands and reporting requirements.

Parole Board

Board

- 501 KAR 1:030. Determining parole eligibility.
- 501 KAR 1:080. Parole board policies and procedures.

Department of State Police

Medical Examiner Protocols

- 502 KAR 12:010. Sexual assault forensic-medical examination protocol.

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers**

- 601 KAR 1:018 & E. Special overweight or overdimensional permits. ("E" expires 2/8/2011) (Deferred from October)

Division

- 601 KAR 1:101. Proof of liability and cargo insurance.

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

Employment Services

- 787 KAR 2:020. Confidentiality of records of the Office of Employment and Training.

**LABOR CABINET
Department of Workers' Claims**

Department

- 803 KAR 25:089. Workers' compensation medical fee schedule for physicians. (Amended After Comments) (Deferred from December)
- 803 KAR 25:091 & E. Workers' compensation hospital fee schedule. ("E" expires 3/14/2011) (Not Amended After Comments) (Deferred from December)

**PUBLIC PROTECTION CABINET
Department of Insurance
Division of Agent Licensing**

Agents, Consultants, Solicitors and Adjusters

- 806 KAR 9:220. Continuing education.

**Department of Insurance
Health and Life Division**

Trade Practices and Frauds

- 806 KAR 12:150. Annuity disclosures. (Amended After Comments)
- 806 KAR 12:170. Life insurance disclosures. (Amended After Comments)

Property and Casualty Division

Rates and Rating Organizations

- 806 KAR 13:120. Workers' Compensation deductible policies.

Mine Subsidence Insurance

- 806 KAR 44:010. Notification of qualified locations.

Kentucky Horse Racing Commission

Thoroughbred Racing

- 810 KAR 1:001. Definitions. (Not Amended After Comments)(Deferred from November)
- 810 KAR 1:011. Pari-mutuel wagering. (Not Amended After Comments) (Deferred from November)
- 810 KAR 1:012. Horses.
- 810 KAR 1:027. Entries, subscriptions, and declarations.
- 810 KAR 1:110 & E. Out-of-competition testing. ("E" expires 3/14/2011) (Amended After Comments)
- 810 KAR 1:120. Exotic wagering. (Not Amended After Comments) (Deferred from November)

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Harness Racing

- 811 KAR 1:005. Definitions. (Not Amended After Comments) (Deferred from November)
- 811 KAR 1:125. Pari-mutuel wagering. (Not Amended After Comments) (Deferred from November)
- 811 KAR 1:240 & E. Out-of-competition testing. ("E" expires 3/14/2011) (Amended After Comments)
- 811 KAR 1:250. Exotic wagering. (Not Amended After Comments) (Deferred from November)

Quarter Horse, Appaloosa and Arabian Racing

- 811 KAR 2:010. Definitions. (Not Amended After Comments) (Deferred from November)
- 811 KAR 2:060. Pari-mutuel wagering. (Not Amended After Comments) (Deferred from November)
- 811 KAR 2:150 & E. Out-of-competition testing. ("E" expires 3/14/2011) (Amended After Comments)
- 811 KAR 2:160. Exotic wagering. (Not Amended After Comments) (Deferred from November)

**Department of Housing, Buildings and Construction
Division of Building Code Enforcement**

Kentucky Building Code

- 815 KAR 7:120. Kentucky building code. (Amended After Comments)
- 815 KAR 7:125. Kentucky residential code. (Amended After Comments)

Division of Plumbing

Plumbing

- 815 KAR 20:034. Requirements for approval of continuing education courses and providers.

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy**

State Health Plan

- 900 KAR 5:020 & E. State health plan for facilities and services. ("E" expires 4/16/2011)

Certificate of Need

- 900 KAR 6:060 & E. Timetable for submission of certificate of need applications. ("E" expires 4/16/2011)
- 900 KAR 6:125. Certificate of Need annual surveys, and registration requirements for new Magnetic Resonance Imaging units.

**Office of Inspector General
Division of Health Care**

Health Services and Facilities

- 902 KAR 20:320 & E. Level I and Level II psychiatric residential treatment facility operation and services. ("E" expires 4/16/2011)
- 902 KAR 20:330 & E. Psychiatric residential treatment facilities. ("E" expires 4/16/2011)
- 902 KAR 20:410 & E. Specialty intermediate care clinics. ("E" expires 3/30/2010) (Amended After Comments)

**Department for Mental Health and Mental Retardation Services
Division of Administration and Financial Management**

Institutional Care

- 908 KAR 3:050. Per diem rates.

REMOVED FROM JANUARY 2011 AGENDA

**ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
Kentucky State Nature Preserves Commission**

Nature Preserves Commission

- 400 KAR 2:090. Management, use, and protection of nature preserves. (Comments Received) (Withdrawn by Agency)

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Medical Management**

Payment and Services

- 907 KAR 3:215 & E. Tobacco cessation coverage and reimbursement. ("E" expires 4/29/2011) (Comments Received, SOC ext)

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, 2010

STATEMENT OF EMERGENCY
501 KAR 1:070E

The Kentucky Supreme Court, in the case of Jones v. Commonwealth, 2007-SC-000922, determined that KRS 532.043(5) relating to sex offender conditional discharge revocation proceedings was unconstitutional in that it violated Sections 27 and 28 of the Kentucky Constitution with respect to separation of powers. Prior to Jones, the judiciary was charged with conducting the aforementioned revocation hearings. Jones held that such hearings could be properly conducted only by the executive branch. In order to comply with this ruling and fully enforce KRS 532.043, a regulation is required to implement the procedures for these revocation hearings under the authority of the Kentucky Parole Board. As such, this emergency regulation is necessary to meet an imminent threat to the public health, safety and welfare. Filing an ordinary administrative regulation will delay the ability of the Commonwealth to conduct sex offender conditional discharge revocation proceedings. As the Jones decision has declared the current revocation process unconstitutional, there is no procedure at present to conduct these hearings and determine whether to revoke the conditional discharge of sex offenders who violate the conditions of discharge. This emergency regulation will allow proceedings to resume until the ordinary administrative regulation can be made effective. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

HON. STEVEN L. BESHEAR, Governor
VERMAN R. WINBURN, Chair, Kentucky Parole Board

JUSTICE AND PUBLIC SAFETY CABINET
Parole Board
(New Emergency Administrative Regulation)

501 KAR 1:070E. Conducting sex offender conditional discharge revocation hearings.

RELATES TO: KRS 532.043, 532.060(3), 439.340(3)
STATUTORY AUTHORITY: KRS 15A.160, 439.340(3), 439.430, Jones v. Commonwealth, 2007-SC-000922
EFFECTIVE DATE: December 1, 2010
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation contains the procedures for the revocation of sex offender conditional discharge and the issuance of warrants.

Section 1. Preliminary Revocation Hearings. Preliminary Sex Offender Conditional Discharge revocation hearings shall be conducted by an administrative law judge of the Parole Board who shall have control over the proceedings and the reception of evidence at these hearings.

(1) Charges of a violation of a condition of sex offender conditional discharge shall be initiated by a parole officer of the Department of Corrections by service of a notice of preliminary hearing which sets forth the alleged violations. This notice may be amended at any time prior to the close of the record of the preliminary hearing, within the discretion of the administrative law judge, if a finding is made that the substantial rights of the offender shall not be prejudiced by the amendment. A continuance of the proceeding may be granted in the event of this amendment, if the interest of justice so requires. Failure to object to any defect in the notice prior to the close of the hearing shall be deemed a waiver of this objection.

(2) Pursuant to SCR 3.700 Sub-rule 3, in the absence of an attorney to represent the Department of Corrections, Division of Probation and Parole, before the board and the administrative law judge, any duly appointed probation and parole officer of the Commonwealth of Kentucky may appear before the board or its administrative law judge as representative of the Department of Corrections in matters relating to the revocation of sex offender conditional discharge.

(3) A preliminary hearing shall not be conducted earlier than five (5) days of service of notice of the hearing. The preliminary hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown. At the request of either party, the administrative law judge may, within his discretion, leave the record open for reception of additional evidence provided that no substantial rights are prejudiced.

(4) All preliminary revocation hearings shall be conducted on the record. The hearing may be recorded and preserved by any means practical, including electronically, mechanically, or stenographically. If requested by the board, the record of the proceedings shall be transcribed.

(5) The administrative law judges may take judicial notice of acts of the Parole Board, including the conditions of sex offender conditional discharge and all other matters which may be judicially noticed in the courts of this Commonwealth pursuant to KRE 201. Witnesses appearing at the preliminary hearing to give testimony shall do so under oath, administered by the administrative law judge, and shall be available for examination by the other party or the administrative law judge, unless good cause dictates otherwise. Hearsay evidence may be presented and admitted into the record, at the discretion of the administrative law judge. The probation and parole officer shall bear the burden of proof in establishing the elements of the violation. The probation and parole officer shall present evidence first and the Offender shall be given the opportunity to present evidence in defense or mitigation. Any further proceedings shall be conducted at the discretion of the administrative law judge. The offender may, within reasonable limits, present evidence solely for the purpose of mitigation of his conduct, including evidence of his mental condition. If presented, this evidence shall be subject to rebuttal by the probation and parole officer.

(6) At the close of the hearing, or within a reasonable time thereafter, the administrative law judge shall make a determination, from the evidence produced at the hearing, as well as any evidence of which judicial notice is taken, whether there exists probable cause to believe that the offender has committed any or all of the violations alleged in the notice of preliminary hearing. If probable cause is found to exist, the case shall then be referred to the Parole Board which shall then issue a sex offender conditional discharge violation warrant which shall cause the offender to be brought before the Parole Board for a final sex offender conditional discharge revocation hearing.

(7) If the administrative law judge finds probable cause to believe that a violation of sex offender conditional discharge has been committed and the case is referred to the Parole Board for the issuance of a sex offender conditional discharge violation warrant, the administrative law judge shall issue a written decision and may issue a recommendation, along with reasons in support of that recommendation, as to what action should be taken concerning the revocation of sex offender conditional discharge and return of the offender as a sex offender conditional discharge violator. This recommendation shall be advisory only and shall not be binding on the board. If the administrative law judge finds that there exist substantial mitigating factors, the administrative law judge may recommend that the offender not be returned as a sex offender conditional discharge violator. If the administrative law judge makes that finding and recommendation, the case shall be referred to the Parole Board for their vote on the issuance of the sex offender conditional discharge violation warrant. If the Parole Board votes to issue the warrant, the offender shall be brought before the Parole Board for a final sex offender conditional discharge revocation hearing in the same manner as provided in subsection (6) of this section. At the final sex offender conditional discharge revocation hearing, the Parole Board shall determine what action should be taken concerning the revocation of sex offender conditional discharge and return of the offender as a sex offender conditional discharge violator. The charges specified in the warrant shall be explained to the offender at the final sex offender conditional discharge revocation hearing, and the offender shall be given the opportunity to admit or deny them. The evidence at the final revocation hearing shall be limited to the administrative record made

before the administrative law judge, except that the Parole Board may, in its discretion, consider any new evidence or information submitted by the offender in advance of the final revocation hearing if the board finds that the new evidence or information is relevant to the proceeding and that the new evidence or information could not have been presented at the preliminary hearing. If the board votes to revoke the sex offender conditional discharge and return the offender as a sex offender conditional discharge violator, the offender shall be returned to the custody of the Department of Corrections for the remaining period of sex offender conditional discharge.

(8) If the alleged violation of sex offender conditional discharge, as set forth in the notice of preliminary hearing, is new criminal conduct which does not also constitute a technical violation of the conditions of supervision, or the conditions of sex offender conditional discharge, the case shall not be referred to the board for revocation consideration unless it is shown that the offender has received a conviction in a court of law or there exists some other form of judicial admission, such as a plea of guilty, concerning the alleged criminal conduct, or it is found that the criminal conduct, or a substantial part of it, was committed in the presence of a duly appointed probation and parole officer of the Commonwealth of Kentucky. Nothing in this subsection shall prevent revocation for a technical violation, which also happens to partially or wholly involve criminal conduct.

(9) Any party appearing before an administrative law judge of the Kentucky Parole Board may be represented by counsel if he so desires. The party may have, upon motion thereof, a continuance for the purpose of obtaining the presence of counsel; except that chronic appearance for hearing without counsel by an offender who is capable of retaining counsel may be deemed an implicit waiver of counsel.

(10) The administrative law judges, in the absence of any specific statutory authorization, shall not consider matters of bail or any other form of release from custody for those persons accused of a violation of a condition of sex offender conditional discharge.

Section 2. Final Hearings, Sex Offender Conditional Discharge Violation Warrants. Sex offender conditional discharge violation warrants shall be issued as set forth below:

(1) If a case is referred to the Parole Board by the administrative law judge under the provisions of Section 1(6) of this administrative regulation for a final hearing and probable cause of a violation of a condition of Sex Offender Conditional Discharge is found to exist, the Parole Board shall issue a Sex Offender Conditional Discharge violation warrant. A vote of the full board shall not be necessary.

(2) If a case is referred to the Parole Board by the administrative law judge with a recommendation that the offender not be returned to the institution for a violation of a condition of sex offender conditional discharge, the board may issue a sex offender conditional discharge violation warrant, if upon review a majority of the board concurs that probable cause exists to believe a sex offender conditional discharge violation has taken place. If the board votes to issue the warrant, the warrant shall be issued.

(3) If it appears that an offender has absconded from sex offender conditional discharge supervision, it otherwise appears that an offender is a fugitive from justice, or a sex offender conditional discharge violation warrant is necessary to effect the return of the Offender to the state of Kentucky, the Parole Board may issue a warrant, if it receives documentation from the supervising probation and parole officer, setting forth facts sufficient to conclude there are reasonable grounds to believe that some violation has occurred, and the commissioner or his designee submits to the board a recommendation that a warrant be issued.

(4) If the offender is being supervised outside the state of Kentucky, a sex offender conditional discharge violation warrant may be issued upon a vote of the Parole Board based upon a written report from the supervising state setting forth facts sufficient to conclude that there are reasonable grounds to believe that a violation of a condition of sex offender conditional discharge has occurred, and the commissioner or his designee submits to the board a recommendation that a warrant be issued.

(5) In all other cases sex offender conditional discharge viola-

tion warrants may be issued only upon majority vote of the board, except as set forth in subsection (7) of this section. If the board votes to issue any warrant, the warrant shall be issued.

(6) The board may decline any request for a sex offender conditional discharge violation warrant made pursuant to any section of this administrative regulation except subsection (1) of this section. Any warrant, issued under any section of this administrative regulation, may be rescinded by majority vote of the board at any time.

(7) If a vote of the board is required to issue a sex offender conditional discharge violation warrant, and if there is no quorum of the board present to concur that probable cause exists and the warrant should be issued, any member of the Parole Board may issue a sex offender conditional discharge violation warrant if he, upon review concurs that probable cause exists to issue said warrant. If a warrant is issued under these circumstances, the board shall vote, as soon as is reasonable, on whether or not to concur in the issuance of the warrant. If a majority of the board does not concur, the warrant shall be voided by the board.

(8) Any member of the Parole Board may sign warrants.

VERMAN WINBURN, Chairman

APPROVED BY AGENCY: December 1, 2010

FILED WITH LRC: December 1, 2010 at 1 p.m.

CONTACT PERSON: John C. Cummings, Counsel for the Kentucky Parole Board, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3620, fax (502) 564-8995.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John C. Cummings (502) 564-3620

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation would give the Executive Branch, through the Parole Board, revocation authority in cases where an individual violates the conditions of his or her sex offender conditional discharge.

(b) The necessity of this administrative regulation: A ruling from the Supreme Court of Kentucky in April 2010 held that KRS 532.043(5) violates the separation of powers doctrine by impermissibly conferring an executive power to the judiciary. This ruling left the Department of Corrections no established procedure for returning an offender to custody for violating the terms of his or her conditional discharge.

(c) How the amendment conforms to the content of the authorizing statutes: The administrative regulation establishes procedures for obtaining determinations of whether individuals alleged to have violated the terms of their conditional discharge should have their conditional discharge revoked in accordance with KRS 532.043 and 532.060. This regulation also conforms with KRS 439.340 and 439.430 as it relates to the powers and authority of the Kentucky Parole Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide a process for seeking revocation of sex offender conditional discharge pursuant to KRS 532.043 and 532.060.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: Not applicable - 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 administrative regulation: The following governmental agencies will be affected by this regulation: Kentucky Department of Corrections, Division of Probation and Parole and the Kentucky Parole Board.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

Other Explanation: None

(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 Corrections, Division of Probation and Parole already has probation and parole officers assigned to supervision of sex offender conditional discharge of offenders. In addition, The Parole Board has personnel in place to implement this regulation. It is not anticipated that any additional staff will be needed to implement this regulation by either agency.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is not anticipated that there will be any additional costs by any of the agencies listed in question 3 to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Department of Corrections will have in place a process by which to revoke the sex offender conditional discharge of offenders via the Kentucky Parole Board.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: It is not anticipated that there will be any additional costs by any of the agencies listed in question 3 to comply with this regulation.

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

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

(9) TIERING: Is tiering applied? No, tiering is not necessary as the regulation only affects the state agencies identified above and is revenue neutral.

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 Corrections, Division of Probation and Parole and the Kentucky Parole Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 439.340, 439.430, 532.043, 532.060.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs associated with implementation or administration of this regulation for the first year are expected.

(d) How much will it cost to administer this program for subsequent years? No additional costs associated with implementation or administration of this regulation are expected 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

Expenditures (+/-): None

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, December 14, 2010)

16 KAR 2:150. Probationary certificate for teachers of engineering and technology education.

RELATES TO: KRS 161.020, 161.028(1)(a), (c), 161.030

STATUTORY AUTHORITY: KRS 161.028(1)(a), (c), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualification for their respective positions~~[position]~~ to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. Pursuant to KRS 161.028, a teacher education institution is required to be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of engineering and technology ~~[education]~~.

Section 1. Definition. "Qualified teacher" means a teacher who holds certification as an engineering and ~~[a]~~ technology ~~[education]~~ teacher unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. Requirements for a Probationary Certificate for Teachers of Engineering and Technology ~~[Education]~~. (1) If a qualified teacher is not available for the position of engineering and technology ~~[education]~~ teacher as attested to by the local superintendent, the superintendent may request, by filing a Form TC-ET with the Education Professional Standards Board, that a one (1) year probationary certificate be issued ~~[for a specific technology education offering]~~ as approved by the Division of Career and Technical Education to a teacher who:

(a) Holds one (1) of the following:

1. A valid classroom teaching certificate for teaching in the middle school or secondary school; or
2. A bachelor's degree in a related area of concentration or major approved by a Division of Career and Technical Education engineering and technology consultant and a designated university teacher educator;

(b)1. Has a cumulative grade point average of 2.5 on a 4.0 scale; or

2. Has a grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

(c) Meets the minimum standards for admission to a teacher education preparation program at an approved institution of higher education;

(d) Develops a continuous plan for curriculum completion with an approved institution for engineering and technology ~~[education]~~; and

(e) Documents 1000 clock hours or six (6) months of full-time employment of work related experience or other exceptional life experience related to teaching engineering and technology ~~[education]~~.

(2) Upon completion of all requirements established in subsection (1) of this section, the candidate shall be issued a probationary certificate for teachers of engineering and technology ~~[education]~~, valid for one (1) year. ~~[The Division of Career and Technical Education, in cooperation with a technology education teacher educator, shall grant approval for each course to be taught by a probationary teacher.]~~

Section 3. Requirements for Renewal of a Probationary Certificate for Teachers of Engineering and Technology ~~[Education]~~. (1) The first renewal of the probationary certificate for teachers of engineering and technology ~~[education]~~ shall be for one (1) year, based upon the successful completion of the following requirements:

(a) Evidence of employment by a participating district;

(b) Completion of eighteen (18) clock hours of orientation and management training provided through the technology education new teacher institute, within the first six (6) weeks of employment;

(c) Completion of at least six (6) semester hours from the continuous curriculum plan; and

(d) Successful completion of the internship program required by KRS 161.030 and 16 KAR 7:010.

(2) The probationary certificate may be renewed a maximum of two (2) times and shall require at the time of application proof of the completion of at least six (6) hours of additional credit from the preapproved continuous curriculum plan.

(3) Upon successful completion of all requirements for an approved teacher preparation program, including successful completion of all required assessments identified in 16 KAR 6:010, a professional certificate for engineering and ~~[industrial]~~ technology shall be issued valid for five (5) years.

~~Section 4. [Approval of Additional Technology Offerings. A teacher with a probationary certificate may be approved to teach additional technology education offerings upon recommendation by the Division of Career and Technical Education and the technology education teacher educator.]~~

~~Section 5.] Upon recommendation by the teacher education institution, teaching experience performed in a full-time position requiring certification for engineering and technology ~~[education]~~ teachers shall be substituted for the student teaching requirement.~~

Section 5. Incorporation~~[Incorporations]~~ by Reference. (1) Form TC-ET, 09/2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: September 20, 2010

FILED WITH LRC: October 1, 2010 at 2 p.m.

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

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, December 14, 2010)

16 KAR 6:020. Written examination prerequisites for occupation-based career and technical education teachers.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(3)(a) requires that all new teachers, including out-of-state teachers with less than two (2) years' experience, successfully complete appropriate written tests prior to initial certification in Kentucky and serve a one (1) year internship. This administrative regulation establishes the tests and passing scores for occupation-based career and technical education teachers certified under 16 KAR 2:020~~[2:220]~~.

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Section 1. (1) All new information technology, industrial education, health science, human ~~service [services-occupation]~~, and public service teacher applicants, and other applicants for occupation-based career and technical education teacher certificates both with and without a teacher preparation degree, and out-of-state applicants for occupation-based career and technical education certification with less than two (2) years of teaching experience shall successfully complete the appropriate written tests prior to initial Kentucky certification.

(2) Each applicant without an educator preparation degree shall successfully complete either the Pre-Professional Skills Test (PPST) or the COMPASS Test for communication skills and general knowledge.

(3) All applicants shall demonstrate subject matter competency via passage of the specialty test in the occupational area for which certification is to be granted or completion of the appropriate state or national industry licensure, certification, or registration as established in this administrative regulation.

(4) The certificates, ~~examinations, or [and examination]~~ prerequisites shall be divided into the following ~~three (3) [four (4)]~~ categories:

(a) Industrial education ~~and information technology~~:

1. National Occupational Competency Testing Institute's (NOCTI) Teacher Occupational Competency Test (TOCT) if one (1) corresponding to the teaching specialty is available;

2. Kentucky Department of Education or Kentucky Department of Workforce Investment developed or identified assessment corresponding to the teaching specialty;

3. Appropriate state or national industry licensure, certification, or registration; or

4. Minimum postsecondary educational attainment in a related area of study;

(b) Health science and human ~~services~~.

1. ~~[services-occupations]~~ The appropriate state or national industry licensure, certification, or registration; or

2. Minimum postsecondary education attainment in a related ~~area of study; or~~

(c) Public-service. The appropriate state or national industry licensure, certification, or registration; ~~or~~

~~(d) Information technology. The appropriate national industry-recognized information technology certification.~~

Section 2. The Education Professional Standards Board shall require the specialty tests and passing scores or other examination prerequisites identified in this section for each new teacher applicant and each teacher seeking an additional certificate.

(1) Preprofessional Skills Test:

(a) Reading - 167;

(b) Mathematics - 166; and

(c) Writing - 167;

(2) In lieu of the Preprofessional Skills Tests identified in subsection (1) of this section, a new teacher applicant may meet the testing requirement by obtaining the following COMPASS Test scores:

(a) Reading - 78;

(b) ~~1.~~ Prealgebra - 48; or

~~2.~~ Algebra - any reported score; and

(c) Writing - 68.

(3) ~~Specialty area tests or other examination prerequisites for industrial education certification:~~

~~(a) Auto body technology and collision repair and refinish:~~

~~1. NOCTI Collision Repair/Refinishing Technology Test - 61; or~~

~~2. Automotive Service Excellence (ASE) certification;~~

~~(b) Automotive technology:~~

~~1. NOCTI Automotive Technology Test - 63; or~~

~~2. Automotive Service Excellence (ASE) certification;~~

~~(c) Aviation flight technician. Federal Aviation Administration certified commercial license with instructor endorsement;~~

~~(d) Aviation maintenance technician. Federal Aviation Administration certified airframe and power plant;~~

~~(e) Building and apartment maintenance. NOCTI Building Trades Maintenance - 52;~~

~~(f) Construction Carpentry. NOCTI Carpentry - 58;~~

~~(g) Computer Aided Drafting and Drafting technology. NOCTI Technical Drafting - 62;~~

~~(h) Diesel technology:~~

~~1. NOCTI Diesel Mechanics - 62; or~~

~~2. Automotive Service Excellence (ASE) certification;~~

~~(i) Digital media. No test identified;~~

~~(j) Electrical technology. NOCTI Electrical Technology Construction - 45;~~

~~(k) Engineering technology. Bachelor's degree in engineering or engineering technology;~~

~~(l) Environmental technology. No test identified;~~

~~(m) HVAC and Air conditioning technology. No test identified;~~

~~(n) Heavy equipment. Commonwealth of Kentucky license for equipment taught;~~

~~(o) Industrial chemical technology. Bachelor's degree in chemistry or related sciences;~~

~~(p) Industrial electronics technology. No test identified;~~

~~(q) Industrial maintenance technology. NOCTI Industrial Maintenance Mechanic - 44;~~

~~(r) Interior finishing and design. No test identified;~~

~~(s) Machine tool technology. NOCTI Precision Machining - 50;~~

~~(t) Major appliance technology. No test identified;~~

~~(u) Manufacturing. NOCTI Industrial Maintenance Mechanic - 44;~~

~~(v) Marine technology. No test identified;~~

~~(w) Masonry - No test identified;~~

~~(x) Metal fabrication. No test identified;~~

~~(y) Multimedia technology:~~

~~1. Macromedia Certified Professional; or~~

~~2. Adobe Certified Expert;~~

~~(z) Plastics technology. No test identified;~~

~~(aa) Plumbing technology. NOCTI Plumbing - 55;~~

~~(bb) Printing technology. No test identified;~~

~~(cc) Small engine and motorcycle repair technology:~~

~~1. NOCTI Small engine technology - 71; or~~

~~2. Equipment and Engine Training Council (EETC) Outdoor Power Equipment Certification;~~

~~(dd) Visual communication art.~~

~~1. NOCTI Advertising and Design - 69; or~~

~~2. Adobe-certified expert in Photoshop or Illustrator;~~

~~(ee) Welding:~~

~~1. NOCTI Welding - 53; or~~

~~2. American Welding Society (AWS) Certified Welder; or~~

~~(ff) Wood manufacturing technology. No test identified;~~

~~(4) Specialty area tests or other examination prerequisites for health science and human service:~~

~~(a) Allied health sciences. Active licensure, certification, or registration by a state or nationally-recognized accrediting agency as a professional health care practitioner following completion of a minimum of an associate degree or technical diploma preparation program;~~

~~(b) Barbering. A license for teacher of barbering issued by the Kentucky Board of Barbering;~~

~~(c) Biomedical sciences. Baccalaureate or higher degree in biomedical or health science area;[f:]~~

~~(d) Culinary arts. In the field of culinary arts, an individual shall provide proof of one (1) of the following prerequisites:~~

~~1. NOCTI Commercial Foods - 55; or~~

~~2. American Culinary Federation Professional Certification;[f:]~~

~~(e) Cosmetology. A license for instructor of cosmetology issued by the Kentucky Board of Hairdressers and Cosmetologists;~~

~~(f) Health science. An active Registered Nurse License in Kentucky and meet applicable accrediting body state and federal requirements; or~~

~~(g) Practical nursing. An active Registered Nurse License in Kentucky and baccalaureate or higher degree in nursing;[f:]~~

~~(5) Specialty area tests or other examination prerequisites for public service:~~

~~(a) EMS training. First Responder Instructor Certification and EMT Instructor Certification by the Kentucky Board of Emergency Medical Services;~~

~~(b) Fire and rescue training. State Fire Commission Instructor Certification;~~

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(c) Law Enforcement. Certification as a police officer or police instructor from the Kentucky Law Enforcement Council; or
 (6) Specialty area tests for information technology:
 (a) Computing Technology Industry Association (CompTIA):
 1. A+ Certification;
 2. Security+ Certification; or
 3. Network+ Certification;
 (b) Cisco Certified Network Associate (CCNA);
 (c) Microsoft Certified Professional (MCP);
 (d) Novell Certified Administrator (CAN); or
 (e) NOCTI Computer Technology Test - 63. [Specialty area tests or other examination prerequisites for occupation-based certification:
 (a) Air conditioning technology. NOCTI Heating, Ventilation and Air Conditioning (#144) – 63;
 (b) Aviation flight technician. Federal Aviation Administration certified commercial license with instructor endorsement;
 (c) Aviation maintenance technician. Federal Aviation Administration certified airframe and power plant;
 (d) Major appliance technology. NOCTI Appliance Repair (#277) – 64;
 (e) Auto body technology:
 1. NOCTI Collision Repair/Refinishing Technology Test (#138) – 61; or
 2. Automotive Service Excellence (ASE) certification;
 (f) Automotive technology:
 1. NOCTI Automotive Technician Test (#303) – 63; or
 2. Automotive Service Excellence (ASE) certification;
 (g) Building and apartment maintenance. NOCTI Building Trades Maintenance (#125) – 52;
 (h) Wood manufacturing technology. NOCTI Cabinetmaking and Millwork (#124) – 49;
 (i) Carpentry. NOCTI Carpentry (#207) – 58;
 (j) Visual communication art. NOCTI Advertising and Design (#136) – 69;
 (k) Diesel technology:
 1. NOCTI Diesel Mechanics (#152) – 62; or
 2. Automotive Service Excellence (ASE) certification;
 (l) Computer-aided drafting. NOCTI Technical Drafting and Design (#039) – 62;
 (m) Electrical technology. NOCTI Electrical Construction (#261) – 45;
 (n) Electronics technology. NOCTI Electronics Technology (#253) – 44;
 (o) Graphic technology. NOCTI Graphic Imaging Technology (#137) – 62;
 (p) Heavy equipment operation. Commonwealth of Kentucky license for equipment taught;
 (q) Industrial maintenance technology. NOCTI Industrial Technology (#076) – 44;
 (r) Interior finishing and design. NOCTI Painting and Decorating (#135) – 44;
 (s) Machine tool technology. NOCTI Precision Machining (#220) – 50;
 (t) Masonry. NOCTI Masonry (#209) – 64;
 (u) Multimedia:
 1. NOCTI Graphic Imaging Technology (#137) – 62;
 2. Macromedia Certified Professional; or
 3. Adobe Certified Expert;
 (v) Plumbing technology. NOCTI Plumbing (#110) – 55;
 (w) Radio and television production. NOCTI Audiovisual Communication Technology (#249) – 52;
 (x) Metal fabrication. NOCTI Sheet Metal (#211) – 60;
 (y) Small engine repair technology:
 1. NOCTI Air-cooled Gas Engine Repair (#256) – 71; or
 2. Equipment and Engine Training Council (EETC) Outdoor Power Equipment Certification;
 (z) Welding:
 1. NOCTI Welding (#121) – 53; or
 2. American Welding Society (AWS) Certified Welder;
 (aa) Industrial chemical technology. Bachelor's degree in chemistry or related sciences;
 (bb) Construction. NOCTI Carpentry (#207) – 58;
 (cc) Engineering technology. Bachelor's degree in engineering;

(dd) Environmental technology. No test identified;
 (ee) Heavy highway construction. No test identified;
 (ff) Manufacturing:
 1. NOCTI Industrial technology (#076) – 44; or
 2. NOCTI Precision Machining (#220) – 50;
 (gg) Marine technology. NOCTI Marine Mechanics (#131) – 78;
 or
 (hh) Plastics technology. No test identified;
 (i) Specialty area tests or other examination prerequisites for health science and human services occupations:
 (a) Barbering. A license for teacher of barbering issued by the Kentucky Board of Barbering;
 (b) Cosmetology. A license for instructor of cosmetology issued by the Kentucky Board of Hairdressers and Cosmetologists;
 (c) Health science. Registered Nurse License in Kentucky and meet applicable accrediting body state and federal requirements;
 (d) Allied health sciences. Active licensure, certification, or registration by a state or nationally recognized accrediting agency as a professional health care practitioner following completion of a minimum of an associate degree or technical diploma preparation program;
 (e) Practical nursing. Practical Nurse License in Kentucky and meet applicable accrediting body state and federal requirements.
 (f) Culinary arts. In the field of culinary arts, an individual shall provide proof of one (1) of the following prerequisites:
 1. NOCTI Quantity Foods (#225) – 55;
 2. NOCTI Quantity Food Preparation (#117) – 39; or
 3. American Culinary Federation Professional Certification.
 (5) Specialty area tests or other examination prerequisites for public service:
 (a) Law Enforcement. Certification as a police officer or police instructor from the Kentucky Law Enforcement Council;
 (b) Fire and rescue training. State Fire Commission Instructor Certification;
 (c) EMS training. First Responder Instructor Certification and EMT Instructor Certification by the Kentucky Board of Emergency Medical Services; or
 (6) Specialty area tests for information technology:
 (a) Computing Technology Industry Association (CompTIA):
 1. A+ Certification;
 2. Net+ Certification;
 3. Server+ Certification; or
 4. Network+ Certification;
 (b) Cisco Certified Network Associate (CCNA);
 (c) Microsoft Certified Professional (MCP);
 (d) Novell Certified Administrator (CAN); or
 (e) NOCTI Computer Technology Test (#226) – 63.]

Section 3. **A teacher applicant**[Teacher applicants] in any occupation-based career and technical education **program**[programs] for which no appropriate specialty test is yet available shall not be required to take a specialty test, except for research and validation purposes. After a new program has been piloted and fully implemented, a test shall be developed or identified and a new teacher applicant shall be required to pass a designated specialty test.

Section 4. (1) **An applicant**[Applicants] for initial certification may take the written tests on any of the dates established by the Kentucky Department of Workforce Investment, with the tests to be administered on a regular basis.

(2) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration as required by the Kentucky Department of Workforce Investment.

(3) An applicant shall seek information regarding the dates and location of the tests and make application to the Kentucky Department of Workforce Investment for the appropriate tests prior to the deadlines established and sufficiently in advance of anticipated employment.

(4) Applicants shall authorize test results to be forwarded to the Education Professional Standards Board.

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Section 5. Applicants shall pay an examination fee directly to the testing agency for the required tests. The testing agency shall publish the examination fee with the publication of testing dates.

Section 6. 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. All retakes shall meet the regularly scheduled testing dates. Initial certification shall not be granted until acceptable scores are achieved in each of the required areas.

Section 7. Assessment Recency. (1) An applicant for initial or additional Kentucky teacher certification shall comply with the assessment recency requirements established in this section.

(2) A test established in this administrative regulation shall be valid for five (5) years from the test administration date.

(3) A passing score on a test established in this administrative regulation and completed on or after January 1, 2002 shall be valid for five (5) years from the test administration date.

(4)(a) A teacher shall complete application for certification to the Education Professional Standards Board within the five (5) year validity period of the test and the passing score.

(b) A teacher who fails to complete application for certification to the Education Professional Standard Board within the five (5) year validity period of the test and the passing score shall retake the appropriate test or tests and achieve the appropriate passing score or scores required for certification at the time of application.

(5) The test administration date shall be established by the National Occupational Competency Testing Institute or other authorized test administrator.

Section 8. The Education Professional Standards Board in conjunction with the Department of Workforce Investment shall collect data and conduct analyses of the impact of these tests as to permit a review of this[these] administrative regulation[regulations] on a regular basis.

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: September 20, 2010

FILED WITH LRC: October 1, 2010 at 2 p.m.

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

FINANCE AND ADMINISTRATION CABINET Kentucky Department of Revenue Office of Income Taxation (As Amended at ARRS, December 14, 2010)

103 KAR 15:180. Kentucky new markets development program tax credit.

RELATES TO: KRS 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, 141.020, 141.040, 141.0401, 141.050, 141.432, 141.433, 141.434, 304.3-270, 26 U.S.C. 45D

STATUTORY AUTHORITY: KRS 141.433(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.434 establishes a nonrefundable tax credit for a person or entity making a qualified equity investment in a qualified community development entity as provided by KRS 141.432(6). KRS 141.433(7) requires the department to~~provides that the department shall~~ promulgate administrative regulations to implement the provisions of KRS 141.432 to KRS 141.434, and to administer the allocation of tax credits issued for qualified equity investments. This administrative regulation establishes guidelines and the filing requirements of a qualified community development entity (CDE) in order for the department to certify qualified equity investments and to allocate tax credits to a person or entity making a qualified equity investment in a qualified community development entity.

Section 1. Definitions. (1) "Applicant" means a CDE that files an application with the department to have an equity investment or

long-term debt security certified as a qualified equity investment eligible for the tax credit authorized ~~provided~~ by KRS 141.434.

(2) "Application" means Form 8874(K), Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit (Revenue Form 41A720-S80), that is filed by a CDE with the department for certification as a qualified equity investment.

(3) "Applications fee" means \$1,000 dollars nonrefundable cashier's check that shall be attached to the application at the time of filing with the department.

(4) "CDE" means a qualified community development entity as defined by KRS 141.432(6).

(5)~~(4)~~ "CDFI Fund" means the U.S. Department of Treasury, Community Development Financial Institutions Fund.

(6)~~(5)~~ "Certified purchase price" means the purchase price of a qualified equity investment contained in the application approved by the department.

(7)~~(6)~~ "Department" means the Kentucky Department of Revenue.

(8)~~(7)~~ "Department's approval" means certified by the department as provided by KRS 141.433(3).

(9)~~(8)~~ "Identification number" means the:

(a) Social Security Number for an individual~~individuals~~;

(b) Federal Employer Identification Number for a general partnership, estate, or trust; or~~general partnerships, estates, and trusts; and~~

(c) Kentucky Corporation/LLET Account Number for a corporation or~~corporations and~~ limited liability pass-through entity~~entities~~.

(10)~~(9)~~ "Long-term debt security" is defined by KRS 141.432(3).

(11)~~(40)~~ "Qualified active low-income community business" is defined by KRS 141.432(5).

(12)~~(44)~~ "Qualified community development entity" is defined by KRS 141.432(6).

(13)~~(42)~~ "Qualified equity investment" is defined by KRS 141.432(7).

(14)~~(43)~~ "Qualified low-income community investment" is defined by KRS 141.432(8).

(15)~~(44)~~ "Tax credit" is defined by KRS 141.432(9).

(16)~~(45)~~ "Taxpayer" is defined by KRS 141.432(10).

Section 2. Application for Certification of Qualified Equity Investments. (1) A CDE that seeks to have an equity investment or long-term debt security certified by the department as a qualified equity investment eligible for the tax credit permitted by KRS 141.434 shall file an application with the department.

(2) The department shall notify the CDE within thirty (30) days after receipt of the application whether the application is approved or denied.~~;~~

(a) If the department intends to deny the application, the CDE shall~~will~~ be notified in writing by the department of the reason for the denial, and the CDE may~~will be allowed to~~ correct the application as provided by KRS 141.433(2).

(b) If the department determines that the application is in compliance with KRS 141.432 to 141.434, a copy of the application shall~~will~~ be returned to the CDE with written notice of the department's approval.

(c)1. The department shall:

a. Accept an application on or after March 1, 2011, if the application is received.~~The department shall accept an application~~ via hand-delivery, mail, express mail, or courier; and

(b) [The department shall] Not accept an application received via facsimile, CD-Rom, CD, or electronic means.

2. The date that the application is stamped received by the Office of Income Taxation, Division of Corporate Tax, Tax Credits Section, shall be the date that the application is~~shall be~~ recorded as received pursuant to the provisions of KRS 141.133.

3. An application received prior to March 1, 2011,~~if the department receives an application or applications prior to March 1, 2011, each application~~ shall be recorded as received on March 1, 2011.

Section 3. Information Required on or Attached to the Applica-

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tion. The following information shall be required on or attached to the application:

(1) The CDE's name, mailing address, identification number, telephone number, and fax number;

(2) The name and identification number of the parent company, if the CDE is included in a consolidated corporation income tax return filed with the Commonwealth of Kentucky;

(3) **The** type of entity of the CDE for Kentucky income tax purposes included in the application;

(4) **The signature of the person completing the application and the date signed**~~(Submission date of application in accordance with Section 2(2) of this administrative regulation);~~

(5) **The** total number of taxpayers making qualified equity investments;

(6) **The** total amount of qualified equity investments for all taxpayers;

(7) A statement that the entity has been certified as a CDE, as required by 26 U.S.C. [Section] 45D(c)[,] ~~– A copy of the certification [shall be attached to the application];~~

(8) A statement that the entity has received a new markets tax credit allocation from the CDFI Fund which includes the Commonwealth of Kentucky within the service area as set forth in **the[such]** allocation, and the date of the allocation agreement. A copy of the new markets tax credit allocation agreement shall be attached to the application;

(9) **Proof of current certification with the CDFI Fund that includes[shall include]** the original application to CDFI and all subsequent updates; ~~[A statement that the entity has certified to the CDFI Fund during the last twelve (12) months that it continues to meet its primary mission and accountability requirements, and the date of the certification; or the CDFI Fund has recertified the entity as a CDE during the last twelve (12) months, and the date of the recertification. A copy of the certification or recertification shall be attached to the application;]~~

(10) ~~[A statement that the entity includes the Commonwealth of Kentucky in its service area;~~

~~(11)~~ (44) A statement of whether the entity's service area is a county, state, multi-state, or national. A map of the service area, articles of organization that describe the service area, bylaws that describe the service area, or other documentation that describes the service area shall be attached to the application;

~~(11)~~ (42) Information regarding the proposed use of the proceeds from the qualified equity investments, including a description of the qualified active low-income community business as provided by KRS 141.432(5); ~~and]~~

(12) ~~The~~ (43) name, identification number, type of investment (whether debt or equity), and purchase price of the qualified equity investment for each taxpayer making a qualified equity investment;[,]

(13) **A signed certification indicating that the application has been**~~(14) The application shall be]~~ executed by the executive officer ~~[director]~~ of the CDE, declaring under the penalty of perjury:

(a) That the applicant's allocation agreement remains in effect and has not been revoked or canceled by the CDFI Fund; and

(b) That the application, including all accompanying documents and statements, is true, correct and complete; **and**

(14)~~(45)~~ The application fee.

Section 4. Proof of Qualified Equity Investments. (1) Within ninety (90) days after the approved application is received by the CDE, the CDE shall issue qualified equity investments in exchange for cash in the amount of the certified purchase prices contained in the application.

(2) The CDE shall provide the department with evidence of the receipt of the cash for each qualified equity investment by filing with the department Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification (Revenue Form 41A720-S81).

(3) If the department is satisfied that the cash amount of the qualified equity investment was received by the CDE, a copy of Form 8874(K)-A **shall**~~will~~ be returned to the CDE and taxpayer with the department's written approval, including a statement of the tax credits available to the taxpayer for each of the next seven (7) years.

(4) If the department is not satisfied that the cash amount of the qualified equity investment was received by the CDE, the department shall notify the CDE in writing of the reason. If the CDE does not agree with the department's written determination, the CDE may file a protest as provided by KRS 131.110.

Section 5. Information Required on or Attached to the Form 8874(K)-A. The following information shall be required on or attached to the Form 8874(K)-A:

(1) **The** CDE's name and identification number;

(2) **For the** taxpayer making the qualified equity investment:

(a) **The taxpayer's name and address; and**

(b) **The identification number of the taxpayer;**

(3) **The**~~Name and address;~~

~~(b) Identifying number;~~

~~(e)]~~ certified purchase price of the qualified equity investment;

(4) **The**~~(d)]~~ date the CDE received cash for the qualified equity investment;

(5) **The**~~(e)]~~ type of taxpayer making the qualified equity investment; and

(6)~~(3)]~~ Certification by the executive director of the CDE, declaring under the penalty of perjury that the form, including all accompanying documents and statements, is true, correct and complete.

Section 6. New Markets Development Program Tax Credit Recapture. (1) If there is an event as provided by KRS 141.433(6) which would result in the recapture of any portion of the tax credit previously approved:

(a) The CDE shall notify the department upon discovery of **the[such]** event; or

(b) The department, upon discovery of **the[such]** event or after receiving notice from the CDE of **the[such]** event, shall provide written notice of the proposed recapture to the CDE as provided by KRS 141.433(6)(b).

(2) If the entity fails or is unable to cure the deficiency within ninety (90) days after receiving the department's notice of proposed recapture as provided by KRS 141.433(6)(b), the department shall notify the CDE and each taxpayer of the amount of recapture or the balance of the tax credit on Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture (Revenue Form 41A720-S82).

(3) If the taxpayer is a pass-through entity, a Form 8874(K)-B **shall**~~will~~ also be sent to each partner, member, or shareholder showing the amount of recapture or the balance of the tax credit.

Section 7. Information Required on the Form 8874(K)-B. The following information shall be required on the Form 8874(K)-B:

(1) **The** CDE's name and identification number;

(2) **For the** taxpayer making the qualified equity investment:

(a) **The taxpayer's name and address; and**

(b) **The identification number of the taxpayer;**

(3) **The**~~Name and address;~~

~~(b) Identifying number;~~

~~(e)]~~ certified purchase price of the qualified equity investment;

(4) **The**~~(d)]~~ date the CDE received cash for the qualified equity investment;

(5) **The**~~(e)]~~ type of taxpayer making the qualified equity investment;

(6) **The**~~(f)]~~ date the **tax credit with respect to a** qualified equity investment was subject to recapture;

(7) **An**~~(g)]~~ explanation of **the** recapture;

(8) **The**~~(h)]~~ recapture amount of tax credit or balance of tax credit; and

(9) **The**~~(i)]~~ signature of **the** authorized department employee and **the** date.

Section 8. Filing Requirements. (1) Form 8874(K)-A.[,]

(a) A taxpayer claiming the tax credit shall attach each tax year a copy of Form 8874(K)-A to the tax return on which the credit is claimed.

(b) A partner, member, or shareholder of a taxpayer claiming the tax credit shall attach each tax year a copy of **the appropriate**

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form listed in this paragraph and ~~(Schedule K-1, Form 720S (Revenue Form 41A720S(K-1))); Schedule K-1, Form 765 (Revenue Form 41A765(K-1)); or Schedule K-1, Form 765-GP (Revenue Form 41A765-GP(K-1))~~] incorporated by reference in 103 KAR 3:040, to the partner's, member's, or shareholder's tax return on which the credit is claimed;

1. Schedule K-1, Form 720S (Revenue Form 41A720S(K-1));
2. Schedule K-1, Form 765 (Revenue Form 41A765(K-1));

or

3. Schedule K-1, Form 765-GP (Revenue Form 41A765-GP(K-1)).

(2) Form 8874(K)-B,[-];

(a) A taxpayer or a partner, member, or shareholder of a taxpayer having a tax credit recapture shall:

1. Attach a copy of Form 8874(K)-B to the tax return for the tax year that includes the tax credit recapture date; and

2. Enter the recapture on the applicable line of the tax return.

(b) A taxpayer or a partner, member, or shareholder of a taxpayer claiming a tax credit shall attach each tax year a copy of Form 8874(K)-B to the tax return on which the credit is claimed.

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

(a) Revenue Form 41A720-S80, Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit, June, 2010;

(b) Revenue Form 41A720-S81, Notice of Kentucky New Markets Development Program Tax Credit and Certification, June 2010; and

(c) Revenue Form 41A720-S82, Notice of Kentucky New Markets Development Program Tax Credit Recapture, June 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: November 15, 2010

FILED WITH LRC: November 15, 2010 at noon

CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

FINANCE AND ADMINISTRATION CABINET Office of the Secretary (As Amended at ARRS, December 14, 2010)

200 KAR 5:400. Kentucky resident bidder reciprocal preference.

RELATES TO: KRS ~~[45A.490 — 45A.494, 176.082,]~~
45A.050(7), 45A.070(1), 45A.090(2), 45A.180(1), 45A.182(1)(c),
45A.365, 45A.370, 45A.375, 45A.695, 45A.745, 45A.825, 45A.853,
160.303, 162.070, 164A.575, 164A.590, 176.010, 176.082.

STATUTORY AUTHORITY: KRS 45A.494

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.494(6) requires that the Finance and Administration Cabinet promulgate administrative regulations to establish the procedure by which a reciprocal preference shall be given to Kentucky resident bidders. This administrative regulation establishes the procedures by which a reciprocal preference shall be given to Kentucky resident bidders.

Section 1. Definitions. (1) "Contract" is defined by KRS 45A.490(1).

(2) "Nonresident bidder" is defined by KRS 45A.494(3).

(3) "Public Agency" is defined by KRS 45A.490(2).

(4) "Resident bidder" is defined by KRS 45A.494(2).

(5) "Response" means any bid or response submitted to a solicitation.

(6) "Solicitation" means an invitation for bid, request for pro-

posal, advertisement for bid, or another formal method of soliciting a contract issued by a public agency.

Section 2. Claiming Resident Bidder Status. (1) Any individual, partnership, association, corporation, or other business entity claiming resident bidder status shall submit along with its response a notarized affidavit that affirms that it meets the criteria to be considered a resident bidder as set forth in KRS 45A.494(2).

(2) If requested, failure to provide documentation to a public agency proving resident bidder status ~~shall~~may result in disqualification of the bidder or contract termination.

Section 3. Determination of Residency for Nonresident Bidders. (1) The state of residency for a nonresident bidder, for purposes of this administrative regulation, shall be ~~[deemed to be]~~ its principal office as identified in the bidder's certificate of authority to transact business in Kentucky as filed with the Commonwealth of Kentucky, Secretary of State.

(2) If the bidder is not required to obtain a certificate of authority to transact business in Kentucky, its state of residency shall be ~~[deemed to be]~~ the mailing address provided in its bid.

Section 4. Applying the Reciprocal Preference. (1) Once all responsible and responsive bidders to a solicitation have been scored and ranked, the residency of each bidder shall be identified.

(2) A preference equal to the preference given or required by the state of the highest evaluated nonresident bidders shall be given to all responsive and responsible resident bidders.

(3) The responses shall then be rescored and re-ranked to account for any applicable preferences.

(4) In awarding a contract, resident bidders shall only receive preference against nonresident bidders residing in a state that gives a preference to bidders from that state. This preference shall not be applied against nonresident bidders residing in states that do not give preference against Kentucky bidders.

(5) If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.

(6) ~~[Nothing in]~~ This administrative regulation shall not result in a nonresident bidder receiving a preference over another nonresident bidder.

JONATHAN MILLER, Secretary

APPROVED BY AGENCY: September 14, 2010

FILED WITH LRC: September 14, 2010 at 4 p.m.

CONTACT PERSON: DeVon Hankins, Policy Advisor, 392 Capital Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

GENERAL GOVERNMENT CABINET Board of Dentistry (As Amended at ARRS, December 14, 2010)

201 KAR 8:510. Advisory opinions.

RELATES TO: KRS 313.021(1)(k)~~[2010 Ky. Acts ch. 85, sec. 3(1)(k)]~~

STATUTORY AUTHORITY: KRS 313.021(1)~~[2010 Ky. Acts ch. 85, sec. 3(1)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.021(1)~~[2010 Ky. Acts ch. 85, sec. 3(1)]~~ authorizes the board to issue advisory opinions. This administrative regulation establishes the procedures for submission, consideration, and disposition of a request for an advisory opinion.

Section 1. Form of Request. (1) The request shall be signed by one (1) or more persons, with each signer's mailing address and telephone number, and if available, fax number and e-mail address, clearly indicated. If a person signs on behalf of a corporation or association, the name of the entity, the address, telephone number, and fax number of the entity shall be included. The signer shall date the request.

(2) The request shall be submitted on the ~~[]~~Advisory Opinion

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Request Form[“].

Section 2. Consideration. (1) The board president or designee may, in writing~~[or his designee in writing, may]~~ schedule an informal meeting between the requester, any interested persons, and a representative of the board, to present information and discuss questions raised. A final decision shall not be made at an informal meeting.

(2) In rendering an advisory opinion, the board shall:

(a) Consider all materials submitted with the request;

(b) Consider any relevant document, data, or other material; and

(c) Consider comments from the board's staff.

(3) The board may:

(a) Consult experts or other individuals~~[as it deems necessary]~~;

(b) Require argument of the question; or

(c) Permit the introduction of evidence.

Section 3. Issuance of Opinion or Refusal to Issue an Opinion. The board shall issue an advisory opinion in response to the request, unless one (1) of the following applies:

(1) The board does not have jurisdiction over the questions presented in the request;

(2) The questions presented are pending in a disciplinary matter,~~or~~ other board, or judicial proceeding that[which] may definitively decide the issues;

(3) The questions presented by the request would be more properly resolved in a different type of proceeding;

(4) The facts or questions presented in the request are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an opinion;

(5) There is no need to issue an opinion because the questions raised in the request have been settled due to a change in circumstances;

(6) The requester is asking the board to determine if[whether] a statute is unconstitutional; or

(7) ~~[The board concludes]~~ An opinion would not be in the public interest.

Section 4. Publication of Advisory Opinions. (1) All advisory opinions shall be published and maintained by the office of the board. Publication shall be made by hard copy and by placing the entire opinion on the board's Web site.

(2) All names or references that[which] allow for the identification of a party[parties] shall be redacted from the final published advisory opinion.

(3) An index of all final published advisory opinions shall be maintained by the office of the board. The index shall include the subject of each opinion, its publication date, and any prospective changes effectuated by the opinion.

Section 5. Reconsideration and Appeals. (1) Any person may request the board to reconsider a published advisory opinion within ten (10) working days of the publication of the opinion.

(2) The request for reconsideration shall be submitted on the “Advisory Opinion Request Form[“].

(3) Requests for reconsideration shall contain:

(a) A clear and concise statement of the grounds for the reconsideration;

(b) The proposed conclusion with a summary of the rationale supporting the proposed conclusion;

(c) Any supportive statute, administrative regulation, document, order, or other statement~~[or other statements]~~ of law or policy, with an explanation of the relevance of the material offered; and

(d) A statement of adverse impact, if any, resulting from the published advisory opinion.

(4) Any notice of appeal to the Franklin Circuit Court filed pursuant to KRS 313.090~~[2010 Ky. Acts ch. 85, sec. 15]~~ shall be served upon the board president, the executive director, and the general counsel for the board.

Section 6. Incorporation by Reference. (1) "Advisory Opinion Request Form", July 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

DR. WILLIAM P. BOGGESE, DMD, Board President

APPROVED BY AGENCY: July 10, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

CONTACT PERSON: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

GENERAL GOVERNMENT CABINET Board of Dentistry (As Amended at ARRS, December 14, 2010)

201 KAR 8:520. Fees and fines.

RELATES TO: KRS 313.022, 313.030, 313.100(2)(c)~~[2010 Ky. Acts ch. 85, sec. 4, 2010 Ky. Acts ch. 85, sec. 5, 16(2)(e)]~~

STATUTORY AUTHORITY: KRS 313.022(1)~~[2010 Ky. Acts ch. 85, sec. 4]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.022(1)~~[2010 Ky. Acts ch. 85, sec. 4]~~ requires the board to promulgate administrative regulations to prescribe a reasonable schedule of fees, charges, and fines. This administrative regulation establishes fees, charges, and fines for the issuance, renewal, and reinstatement of licenses, for services and materials provided by the board, for investigations, and for infractions.

Section 1. Dentists. (1) The initial licensure fee for a general dental license applied for in a nonrenewal year shall be \$325.

(2) The initial licensure fee for a general dental license applied for in a renewal year shall be \$175.

(3) The renewal fee for a general dental license appropriately renewed on or before the expiration of the license shall be \$295.

(4) The renewal reinstatement fee for a general dental license renewed between January 1 and January 15 of the year following the expiration of the license shall be \$280 in addition to the renewal fee.

(5) The renewal reinstatement fee for a general dental license renewed between January 16 and January 31 of the year following the expiration of the license shall be \$560 in addition to the renewal fee.

(6) The renewal reinstatement fee for a general dental license renewed on or after February 1 of the year following the expiration of the license shall be \$1,120 in addition to the renewal fee.

(7) The initial fee for a dental anesthesia or sedation permit shall be \$250.

(8) The renewal fee for a dental anesthesia or sedation permit shall be seventy-five (75) dollars and is in addition to the renewal fee for a general dental license.

(9) The initial fee for an anesthesia or sedation facility certificate shall be \$250.

(10) The renewal fee for an anesthesia or sedation facility certificate shall be seventy-five (75) dollars.

(11) The specialty license application fee shall be \$100.

(12) The specialty license renewal fee shall be fifty (50) dollars and is in addition to the renewal fee for a general dental license.

(13) The fee for reinstatement of a properly retired general dental license shall be \$350.

(14) The fee for reinstatement of a properly retired specialty license shall be fifty (50) dollars and is in addition to the renewal fee for a general dental license.

Section 2. Dental Hygienists. (1) The initial licensure fee for a dental hygiene license applied for in a nonrenewal year shall be \$125.

(2) The initial licensure fee for a dental hygiene license applied for in a renewal year shall be seventy-five (75) dollars.

(3) The renewal fee for a dental hygiene license appropriately

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renewed on or before the expiration of the license shall be \$110.

(4) The renewal reinstatement fee for a dental hygiene license renewed between January 1 and January 15 of the year following the expiration of the license shall be \$130 in addition to the renewal fee.

(5) The renewal reinstatement fee for a dental hygiene license renewed between January 16 and January 31 of the year following the expiration of the license shall be \$260 in addition to the renewal fee.

(6) The renewal reinstatement fee for a dental hygiene license renewed on or after February 1 of the year following the expiration of the license shall be \$520 in addition to the renewal fee.

(7) The initial dental hygiene anesthesia registration fee shall be fifty (50) dollars.

(8) The initial dental hygiene general supervision registration fee shall be fifty (50) dollars.

(9) The initial dental hygiene intravenous access line registration fee shall be fifty (50) dollars.

(10) The initial dental hygiene laser debridement registration fee shall be fifty (50) dollars.

(11) The fee for reinstatement of a properly retired dental hygiene license shall be \$125.

Section 3. ~~[Registered Dental Assistants. The initial registered dental assistant intravenous access line registration fee shall be fifty (50) dollars.~~

Section 4. General Fees. (1) The fee for the verification of a license shall be forty (40) dollars.

(2) The fee for a duplicate license shall be twenty-five (25) dollars.

(3) The fee for a contact list for either currently licensed dentists, currently licensed dental hygienists, or currently registered dental assistants shall be:

(a) \$100 for lists obtained for not-for-profit use; and

(b) \$1,000 for lists obtained for profit use.

(4) The fee for a query of the National Practitioner Data Bank shall be twenty-five (25) dollars.

~~(5) [The fee for a paper copy of the Dental Practice Act shall be fifty (50) dollars.~~

~~(6) [The fee for any returned check or rejected electronic payment shall be twenty-five (25) dollars.~~

Section 4. General Fines. (1) Fines may be agreed to by settlement agreement or as ~~[in addition to the fines]~~ listed in this section.

(2) The costs of a disciplinary action taken as a result of a hearing shall be equal to the amount of all actual and necessary costs associated with the hearing.

(3) If a licensee is found to be deficient on hours following a continuing education audit, the fine shall be \$200 per hour deficient not to exceed \$5,000.

(4) The fine for failure of a follow-up infection control inspection shall be \$500 ~~[\$1,000]~~.

(5) The fine for failure of a follow-up anesthesia and sedation facility inspection, performed no sooner than thirty (30) ~~[twenty (20)]~~ days following an initial failed inspection, shall be \$1,500 ~~[\$2,500]~~.

Section 5. ~~[6.]~~ All fines and fees paid to the board are nonrefundable.

DR. WILLIAM P. BOGGESS, DMD, President

APPROVED BY AGENCY: July 10, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

CONTACT PERSON: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

GENERAL GOVERNMENT CABINET

Board of Dentistry

(As Amended at ARRS, December 14 2010)

201 KAR 8:540. Dental practices.

RELATES TO: KRS 313.060, 313.085, 422.317, 42 U.S.C. 300ee-2 note ~~[42 U.S.C. sec. 300ee-2 note, 2010 Ky. Acts ch. 85, sec. 10]~~

STATUTORY AUTHORITY: KRS 313.060(1) ~~[2010 Ky. Acts ch. 85, sec. 10(1)]~~

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. ~~[Section]~~ 300ee-2 note requires each state to institute the guidelines issued by the United States Centers for Disease Control and Prevention or guidelines that[which] are equivalent to those promulgated by the Centers for Disease Control and Prevention concerning recommendations for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure-prone invasive procedures, and KRS 313.060(1) ~~[2010 Ky. Acts ch. 85, sec. 10(1)]~~ requires the board to promulgate administrative regulations relating to dental practices that[which] shall include minimal requirements for documentation and Centers for Disease Control compliance. This administrative regulation establishes requirements for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure-prone invasive procedures and includes minimal requirements for documentation and Centers for Disease Control compliance ~~[these requirements]~~.

Section 1. Definition ~~[Definitions]~~. "Invasive procedure" means a procedure that ~~[any procedure which]~~ penetrates hard or soft tissue.

Section 2. Minimum Documentation Standards for all Dental Patients. (1) Each patient's dental records shall be kept by the dentist for a minimum of:

(a) Seven (7) years from the date of the patient's last treatment;

(b) Seven (7) years after the patient's eighteenth (18) birthday, if the patient was seen as a minor; or

(c) Two (2) years following the patient's death.

(2) Each dentist shall comply with KRS 422.317 regarding the release of patient records.

(3) Each patient record for a dental patient in the Commonwealth of Kentucky shall include at a minimum:

(a) The patient's name;

(b) The patient's date of birth;

(c) The patient's medical history;

(d) The date of treatment;

(e) The tooth number, surfaces, or areas to be treated;

(f) The material used in treatment;

(g) Local or general anesthetic used, the type, and the amount;

(h) Sleep or sedation dentistry medications used, the type, and the amount; and

(i) A complete list of prescriptions provided to the patient, the amount given, and the number of refills indicated.

Section 3. Infection Control Compliance. (1) Each licensed dentist in the Commonwealth of Kentucky shall:

(a) Adhere to the universal precautions outlined in the [] Guidelines for Infection Control in Dental Health-Care Settings [] published by the Centers for Disease Control and Prevention; and

(b) Ensure that any person under the direction, control, supervision, or employment of a licensee whose activities involve contact with patients, teeth, blood, body fluids, saliva, instruments, equipment, appliances, or intra-oral devices adheres with those same universal precautions.

(2) The board or its designee shall ~~[may]~~ perform an infection control inspection of a dental practice utilizing the [] Infection Control Inspection Checklist [].

(3) Any dentist who is found deficient upon an initial infection control inspection shall have thirty (30) days to be in compliance with the guidelines and submit a written plan of correction to the board. The dentist may receive a second inspection after the thirty

(30) days have passed. If the dentist fails the second inspection he or she[they] shall be immediately temporarily suspended pursuant to KRS 313.085[2010 Ky. Acts ch. 85, sec. 14] until proof of compliance is provided to the board and he or she[they] shall pay the fine as prescribed in 201 KAR 8:520.

(4) Any licensed dentist, licensed dental hygienist, registered dental assistant, or dental assistant in training for registration who performs invasive procedures may seek counsel from the board if he or she tests seropositive for the human immunodeficiency virus or the hepatitis B virus.

(5) Upon the request of a licensee or registrant, the executive director of the board or his designee shall convene a confidential expert review panel to offer counsel regarding under what circumstances, if any, the individual may continue to perform invasive procedures.

Section 4. Termination of a Patient-Doctor Relationship. In order for a licensed dentist to terminate the patient-doctor relationship, the dentist shall:

- (1) Provide written notice to the patient of the termination;
- (2) Provide emergency treatment for the patient for thirty (30) days from the date of termination; and
- (3) Retain a copy of the letter of termination in the patient records.

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

- (a) "Guidelines for Infection Control in Dental Health-Care Settings", December 2003; and
 - (b) "Infection Control Inspection Checklist", July 2010.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

DR. WILLIAM P. BOGGESE, DMD, President

APPROVED BY AGENCY: July 10, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

CONTACT PERSON: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

**GENERAL GOVERNMENT CABINET
Board of Social Work
(As Amended at ARRS, December 14, 2010)**

201 KAR 23:050. Renewal, termination [~~of license~~], reinstatement of license.

RELATES TO: KRS 335.010-335.160, 335.990

STATUTORY AUTHORITY: KRS 335.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070 authorizes the board to promulgate administrative regulations establishing requirements for license renewal. This administrative regulation establishes the requirements for license renewal[This administrative regulation clarifies the provisions of terminating the licenses of individuals who have failed to renew their licenses and sets forth the standard for reinstating an individual whose license has been terminated].

Section 1. **Definition. "Licensee" means a person licensed under KRS 335.010 through 335.160 as:**

- (1) A certified social worker;**
- (2) A licensed social worker; or**
- (3) A licensed clinical social worker.**

Section 2. (1)(a) Pursuant to KRS 335.130(1), a licensee shall renew the licensee's license[Every licensee or certificate holder is required to renew their license or certificate] **on a three (3) year basis in order to continue to practice social work in Kentucky.**

(b) The three year renewal cycle shall be calculated based on the date of the issuance of the initial license [~~or certificate~~].

(2) A Renewal Form shall[~~must~~] **be submitted with the appropriate fee and continuing education requirements as established in 201 KAR 23:020 and**[~~codified in~~] **201 KAR 23:075.**

(3) A licensee shall file the licensee's current mailing address with the board and shall immediately notify the board in writing if the address changes[Every person licensed by the board shall file his proper and current mailing address with the board and shall immediately notify the board of any and all changes of the mailing address]. [A licensee may, within sixty (60) days following the dated expiration of his license, submit the required fees as set forth in KRS 335.130 and renewal application and have his license renewed.]

Section 3. **(1) If a licensee reapplies**[2-] [A licensee may continue to practice for sixty (60) days after the expiration of his license.] [Should a licensee reapply] after the date of expiration [sixty (60) days] and before six (6) months, **the licensee**[~~he~~] shall pay a penalty of fifty (50) dollars.

(2) If a licensee reapplies[1-] [Should a licensee reapply] after six (6) months and before twelve (12) months, **the licensee**[~~he~~] shall pay a penalty of \$100.

(3) If a licensee reapplies[Should a licensee reapply] after twelve (12) months and before the end of eighteen (18) months, **the licensee**[~~he~~] shall pay a penalty of \$200.

Section 4. **If a licensee has not**[3-] [Any licensee who shall not have] renewed **the licensee's**[his] license at the end of eighteen (18) months, **the licensee shall**[~~must~~] submit a new application in accordance with existing requirements **for initial applicants under KRS Chapter 335 and 201 KAR Chapter 23.**

Section 5.[4-] Upon payment of **the renewal fee and the late renewal penalty, the date of the license shall be retroactive to the date of expiration**[penalty and payment of the renewal of license and/or certificate(s), the date of the license and/or certificate(s) shall be retroactive to the date of the immediately prior license and/or certificate(s) expired].

Section 6.[5-] Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "LCSW Application For Renewal", 10/2010;
 - (b) "CSW Application For Renewal", 10/2010; and
 - (c) "LSW Application For Renewal", 10/2010.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON SANDERS, Chair

APPROVED BY AGENCY: October 4, 2010

FILED WITH LRC: October 6, 2010 at 3 p.m.

CONTACT PERSON: Margaret Hazlette, Executive Director, Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-2350, fax (502) 696-8030.

**DEPARTMENT OF AGRICULTURE
Office of State Veterinarian
Division of Animal Health
(As Amended at ARRS, December 14, 2010)**

302 KAR 20:065. Sale and exhibition of Kentucky origin animals in Kentucky.

RELATES TO: KRS Chapter 257, 9 C.F.R. Chapter 1

STATUTORY AUTHORITY: KRS 246.295, 257.030, 257.315, 257.380

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.020(3) requires the board to prevent, control, and eradicate any communicable disease of animals. KRS 257.030(2) authorizes the board to establish necessary quarantines and other measures to control the movement of animals into, through, or within Kentucky.

tucky. This administrative regulation establishes health requirements for the sale, movement, and exhibition of Kentucky animals within Kentucky.

Section 1. General Requirements. (1) All animals moving within Kentucky shall be subject to the requirements as established in 302 KAR 20:020.

(2) All animals offered for sale shall be accompanied by a Certificate of Veterinary Inspection (CVI), or other official movement document except for exemptions listed under each species of this administrative regulation or 302 KAR 20:040 [section]. Examples of an official movement document shall include a way bill with a permit number or Federal Movement Form VS 9-3 or VS 1-27. A CVI for sale purposes shall:

(a) Be valid for thirty (30) days from the date of issuance; and
(b) List a valid destination and be void upon arrival at that destination unless a Reconsignee Certificate for movement from the sale premises to a new destination is executed and attached to the original CVI.

(3) All animals entering venues for exhibition purposes where commingling of animals occurs shall be accompanied by a CVI.

(a) A CVI for Kentucky origin animals for purposes other than sale shall be valid as noted under each individual species.

(b) A CVI written for exhibition purposes shall be void upon change of ownership of the listed animals.

(4) All required tests shall be conducted by a state-federal approved laboratory as defined by 9 C.F.R. Chapter 1.

(5) An animal that originated from a quarantined area or quarantined herd shall not be transported intrastate within Kentucky unless permitted by OSV on VS Form 1-27 or a CVI with a quarantine movement permit obtained from OSV and attached to the CVI.

Section 2. Cattle and Other Bovine Species. (1) General requirements.

(a) Cattle or other bovine species moving intrastate for sale except as provided in paragraph (b) of this section, change of ownership, or exhibition purposes shall meet the requirements established in subsections (2) and (3) of this section.

(b) Cattle and other bovine species moving directly to and for sale by a state-federal approved stockyard or a recognized slaughtering center shall meet the requirements established in subsections (3) and (4) of this section.

(2) Certificate of Veterinary Inspection.

(a) All cattle and other bovine species moving intrastate for sale, exhibition or change of ownership shall be accompanied by a valid CVI as required by 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership and sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or thirty (30) days whichever is greater.

(d) Cattle or other bovine species sold or bartered by private treaty and moving directly from farm to farm shall be exempt from the CVI requirement if the seller or barterer's name and premises of origin information are recorded and maintained for two (2) years by the recipient of the animal.

(3) Specific diseases.

(a) Brucellosis. Testing shall not be required for sale or exhibition if one (1) of the following applies:

1. Kentucky has class free status; or
2. The animals are moving from a brucellosis certified herd. The herd number and last test date shall be recorded on the CVI.

(b) Tuberculosis. Testing shall not be required for sale or exhibition if one of the following applies:

1. Kentucky has class free status; or
2. The animals are from a tuberculosis accredited herd. The herd number and last test date shall be recorded on the CVI.

(c) Cattle or other bovine species infected with warts, ringworm, or any other communicable disease shall not be eligible for exhibition.

(4) The seller's name and address and either the animal's premises of origin or PIN shall be provided for cattle or other bovine species moving to a state-federal approved stockyard or directly to a recognized slaughtering center.

Section 3. Horses and Other Equine Species. (1) General requirements.

(a) Equine moving intrastate for sale, racing, change of ownership, exhibition or into a public stable, fairgrounds, or showgrounds except as provided in paragraphs (b) and (c) of this subsection shall meet the requirements established in subsections (2) and (3) of this section.

(b) Equine moving directly to a state approved horse sale shall meet the requirements established in subsection (4) of this section.

(c) Equine moving farm to farm with no change of ownership or to a veterinary facility shall not be required to meet the requirements established in subsections (2) and (3) of this section.

(2) Certificate of Veterinary Inspection or Equine Interstate Event Permit.

(a) All equine moving intrastate shall be accompanied by a valid ~~[Equine Only]~~ CVI as required by 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership and sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for the duration of the EIA test certificate not to exceed one (1) year.

(d) An Equine Interstate Event Permit issued within the previous twelve (12) months shall be accepted in lieu of a CVI and EIA test report for exhibition purposes.

(e) A CVI or an Equine Interstate Event Permit shall be void upon change of ownership.

(3) Equine Infectious Anemia.

(a) Except as provided in paragraph (b) of this subsection, horses or other equidae shall be negative to an USDA official test, pursuant to 9 C.F.R. 75.4, for EIA within the previous twelve (12) months.

(b) A copy of Form VS 10-11 or EIA test form verifying a negative EIA from a laboratory approved by the USDA, pursuant to 9 C.F.R. Part 75, shall accompany~~(be attached to)~~ the CVI and the laboratory accession number and date of test shall be recorded on the CVI.

(c) Unweaned foals accompanied by their dam shall be exempt from paragraph (a) of this subsection.

(4) Approved Kentucky horse sales.

(a) Horses or other equidae may move directly to an approved Kentucky horse sale without a CVI or negative EIA test certificate.

(b) Approved Kentucky horse sales shall meet the requirements of 302 KAR 20:261.

(c) All horses or other equidae presented without valid negative EIA test certificates shall have a blood sample drawn for EIA testing by the approved market veterinarian at the seller's expense.

Section 4. Swine. (1) General requirements.

(a) Swine moving intrastate for sale, change of ownership, or exhibition shall meet the requirements established in subsections (2) and (3) of this section.

(b) Swine moving directly to and for sale by a state-federal approved stockyard or a recognized slaughtering center shall meet the requirements established in subsections (3) and (4) of this section.

(c) Swine listed in this paragraph shall not be moved for any purpose, except under jurisdiction of the OSV or the USDA APHIS VS:

1. Garbage fed swine; or
2. Wild, captive wild, or feral swine, *Sus scrofa* per definition, including Russian wild boars and Eurasian wild boars.

(2) Certificate of Veterinary Inspection.

(a) All swine moving intrastate for sale, exhibition or change of ownership shall be accompanied by a valid CVI as required by 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership and sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or thirty (30) days whichever is greater.

(d) Swine sold or bartered by private treaty and moving directly from farm to farm shall be exempt from the CVI requirement if the seller or barterer's name and premises of origin information are

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recorded and maintained for two (2) years by the recipient of the animal.

(3) Specific diseases.

(a) Brucellosis. Testing shall not be required for sale or exhibition if one (1) of the following apply:

1. Kentucky is a class free state; or

2. The animal is from a validated brucellosis free herd and the validation number and last test date are recorded on the CVI.

(b) Pseudorabies. Testing shall not be required for sale or exhibition if Kentucky maintains a Stage V Pseudorabies status.

(4) Swine moving to a Kentucky state-federal approved stockyard or directly to a recognized slaughtering center shall be identified with:

(a) Official identification in accordance with 302 KAR 20:020, Section 1(2); and

(b) The seller's name and address and either the animal's premises of origin or PIN.

Section 5. Sheep or Other Ovine Species. (1) General requirements.

(a) Sheep or lambs for sale, except as provided in paragraph (b) of this subsection, exhibition, breeding, or feeding purposes shall meet the requirements established in subsections (2) and (3) of this section.

(b) Sheep ~~moving~~^{moved} directly to and for sale by a state-federal approved stockyard, graded sale, telemarketing sale, or a recognized slaughtering center shall meet the requirements established in subsections (3) and (4) of this section.

(c) Sheep that require a CVI for movement shall be identified with an official USDA Scrapie Program identification tag or other official identification method in accordance with 302 KAR 20:020, Section 1(2).

(2) Certificate of Veterinary Inspection.

(a) All sheep or lambs moving intrastate for sale, exhibition, breeding, or feeding purposes shall be accompanied by a valid CVI required by 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership or sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or thirty (30) days whichever is greater.

(d) Sheep sold or bartered by private treaty and moving directly from farm to farm shall be exempt from the CVI requirement if the seller or barterer's name and premises of origin information are recorded and maintained for two (2) years by the recipient of the animal.

(3) Specific diseases.

(a) Scrapie. Sheep or lambs that originate from known trace, source or infected Scrapie flocks as determined by the USDA APHIS VS in compliance with 9 C.F.R. Part 79 shall not be allowed movement except as permitted by USDA APHIS VS or the OSV.

(b) Scabies. Sheep affected with or exposed to scabies or from an area quarantined because of scabies shall not be eligible for sale or exhibition.

(c) Sore mouth (Contagious Ecthyma). Any sheep or lambs showing lesions of contagious ecthyma shall not be eligible for exhibition or sale.

(4) Other movements. Sheep or lambs moving to state-federal approved stockyards, graded sales, telemarketing sales, or directly to a recognized slaughtering center shall be identified with:

(a) Identification in accordance with 9 C.F.R. Part 79; and

(b) The seller's name and address and either the animal's premises of origin or PIN.

Section 6. Goats or Other Caprine Species. (1) General requirements.

(a) Goats moving for sale, except as provided in paragraph (b) of this subsection, exhibition, breeding, or feeding purposes shall meet the requirements established in subsections (2) and (3) of this section.

(b) Goats moving directly to and for sale by a state-federal approved stockyard, graded sale, telemarketing sale, or a recognized slaughtering center shall meet the requirements established in subsections (3) and (4) of this section.

(c) Goats that require a CVI for movement shall be identified with an official USDA Scrapie program identification tag or other official identification method in accordance with 302 KAR 20:020, Section 1(2).

(2) Certificate of Veterinary Inspection.

(a) All goats moving intrastate for sale, exhibition, breeding, or feeding purposes shall be accompanied by a valid CVI as required by 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership or sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or thirty (30) days whichever is greater.

(d) Goats sold or bartered by private treaty and moving directly from farm to farm shall be exempt from the CVI requirement if the seller or barterer's name and premises of origin information are recorded and maintained for two (2) years by the recipient of the animal.

(3) Specific diseases.

(a) Scrapie. Goats that originate from known trace, source or infected Scrapie flocks as determined by the USDA APHIS VS in compliance with 9 C.F.R. Part 79 shall not be allowed movement except as permitted by USDA APHIS VS or the OSV.

(b) Brucellosis. Any goat that originates from a premises that has been infected with or exposed to *B. melitensis* or other *Brucella* sp. within the previous twelve (12) months shall be negative to a *Brucella* test within thirty (30) days for sale or exhibition.

(c) Tuberculosis. Testing shall not be required for sale or exhibition if Kentucky has class free status.

(d) Goats infected with a communicable disease shall not be eligible for sale or exhibition.

(4) Other movements. Goats moving to state-federal approved stockyards, graded sales, telemarketing sales, or directly to a recognized slaughtering center shall be identified with:

(a) Identification in accordance with 9 C.F.R. Part 79; and

(b) The seller's name and address and either the animal's premises of origin or PIN.

Section 7. Poultry or Farm Raised Upland Game Birds. (1) General requirements.

(a) Birds four (4) months or older for ~~sale or~~ exhibition purposes shall meet the requirements established in subsections (2) and (3) of this section.

(b) Chicks or hatching eggs for sale shall meet the requirements established in subsections (2) and (3)(b) of this section.

(c) Birds moving to an approved slaughter facility or between a commercial company's facilities shall meet the requirements established in subsection (4) of this section.

(2) Certificate of Veterinary Inspection.

(a) A CVI, Non-NPIP Flock Report, or NPIP Flock Certificate ~~(VS Form 9-3)~~ with the flock number shall be required for movement and exhibition.

(b) A CVI or Non-NPIP Flock Report shall be valid for the remainder of the ninety (90) day S. pullorum test period for intrastate exhibition. An NPIP certificate shall be valid for one (1) year from the date issued for intrastate exhibition.

(c) The official individual identification, leg or wing band, shall be recorded on the CVI or Non-NPIP Flock Report.

(3) Salmonella Pullorum.

(a) Birds four (4) months of age or older shall be negative to an official Salmonella pullorum test within ninety (90) days or originate from a NPIP flock. The NPIP flock number or both the test date and the laboratory of test shall be recorded on the CVI.

(b) Chicks or hatching eggs shall originate from a flock as required by KRS 257.400.

(4) Other movements.

(a) Persons moving commercial poultry between company facilities shall maintain a log book or possess a way bill stating the origination of the birds and intended destination with the flock NPIP number.

(b) Persons moving birds directly to slaughter shall provide the name and address for premises of origin.

Section 8. Ratites. (1) General requirements.

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(a) Ratites moving for sale or exhibition purposes shall meet the requirements established in subsections (2) and (3) of this section.

(b) A permit number shall be obtained from OSV prior to the sale of ratites in Kentucky. This permit number shall be recorded on the CVI accompanying the animals.

(c) All ratites shall have a permanent official identification in accordance with 302 KAR 20:020, Section 1(2).

(d) Any ratite with evidence of a communicable disease shall not be eligible for sale or exhibition.

(2) Certificate of Veterinary Inspection.

(a) All ratites moving intrastate for sale or exhibition shall be accompanied by a valid CVI or NPIP certificate as required by 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership and sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for ninety (90) days.

(3) Specific diseases.

(a) Avian Influenza. Ratites shall be negative to an official test as defined by 9 C.F.R. Part 145, within ninety (90) days prior to sale or exhibition or originate from a NPIP AI Clean flock.

(b) Salmonella pullorum. Ratites shall be negative to an official test as defined by 9 C.F.R. Part 145, within ninety (90) days prior to sale or exhibition or originate from a NPIP flock.

Section 9. Dogs, Cats, or Ferrets. General Requirements for exhibition.

(1) All dogs, cats, or ferrets for exhibition shall be accompanied by a Small Animal CVI Form as required by 302 KAR 20:020, Section 1(3)(c).

(2) CVI shall be valid for the duration of the rabies vaccination not to exceed one (1) year.

(3) All dogs, cats or ferrets over four (4) months of age shall be vaccinated against rabies per the "Compendium of Animal Rabies Prevention and Control" prepared by the National Association of State Public Health Veterinarians, Inc.

Section 10. Camelids. (1) General requirements.

(a) Camelids moving for sale or exhibition shall meet the requirements established in subsections (2) and (3) of this section.

(b) All camelids shall be identified with an official identification tag or other official identification method in accordance with 302 KAR 20:020, Section 1(2).

(2) Certificate of Veterinary Inspection.

(a) All camelids moving intrastate for sale or exhibition shall be accompanied by a valid CVI as required by 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership and sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or thirty (30) days whichever is greater.

(3) Specific diseases.

(a) Brucellosis. Testing shall not be required for sale and exhibition if Kentucky has class free status.

(b) Tuberculosis. Testing shall not be required for sale and exhibition if Kentucky has class free status.

Section 11. Cervid. (1) General requirements.

(a) Cervids moving for export, sale or other purposes except as provided in paragraphs (b) and (d) of this subsection shall meet the requirements established in subsections (2) and (3) of this section.

(b) Cervids moving to a recognized slaughtering center or a veterinary clinic shall meet the requirements as required by subsection (4) of this section.

(c) All cervids shall be identified with an official identification tag or other official identification method in accordance with 302 KAR 20:020, Section 1(2).

(d) Cervids moved by wildlife rehabilitators permitted under 301 KAR 2:075 shall be exempt from this section.

(e) All farm held cervids shall meet the requirements established in 302 KAR 20:066.

(2) Certificate of Veterinary Inspection and Movement Permit.

(a) All cervids moving for export, intrastate sale or other purposes shall be accompanied by a valid CVI as required by 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for sale shall include the following:

1. Consignor's name, address, and the Cervid Chronic Wasting Disease Surveillance and Identification program herd number; and
2. Consignee's name, address, and Cervid Chronic Wasting Disease Surveillance and Identification program herd number.

(c) A CVI for change of ownership or sales shall be valid for thirty (30) days.

(d) A permit shall be obtained from OSV prior to the export, sale, or other movement of all cervids in Kentucky. The permit number shall be recorded on the CVI.

(3) Specific diseases.

(a) Brucellosis. Cervids six (6) months of age or older shall:

1. Be negative to an official brucellosis test, as defined in 9 C.F.R. Part 78, within thirty (30) days prior to date of sale;
2. Originate from a brucellosis certified herd; or
3. Be exempt from testing if:
 - a. Kentucky has bovine or cervid brucellosis free status; and
 - b. Brucellosis has not been diagnosed within Kentucky in any class of cervids in the previous five (5) years.

(b) Tuberculosis. Cervids twelve (12) months of age or older shall:

1. Be negative to a single cervical tuberculin (SCT) test within sixty (60) days prior to date of sale;
2. Originate from a tuberculosis accredited herd; or
3. Be exempt from testing if:
 - a. Kentucky has bovine or cervid tuberculosis free status; and

if

- b. Tuberculosis has not been diagnosed within Kentucky in any class of cervids in the previous five (5) years.

(4) Other movement. Cervids from captive cervid premises moving to a recognized slaughtering center or a veterinary clinic shall obtain a movement permit from the OSV prior to movement.

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

(a) "Certificate of Veterinary Inspection Form", Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-72, (Apr. 2005);

(b) "Equine Only Certificate of Veterinary Inspection Form", Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-73, (Sept. 2006);

(c) "Small Animal Certificate of Veterinary Inspection Form", Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-74, (Jan. 2006);

(d) "Equine Infectious Anemia (EIA) Test Form", Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-301, (July 2005);

(e) "EIA Laboratory Test Form", USDA APHIS VS Form 10-11, (May 2003);

(f) "Compendium of Animal Rabies Prevention and Control", (2006);

(g) "Non-NPIP Flock Report, Kentucky Department of Agriculture", Office of State Veterinarian, KYSV-800, (Sept. 2005);

(h) **"NPIP Flock Certificate"** ~~Report of Sales of Hatching Eggs, Chicks and Poults~~, USDA APHIS VS Form 9-3, (June 1998); and

(i) "Permit for movement of restricted animals the USDA APHIS", VS Form 1-27, (June 1989).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, Suite 252, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHE FARMER, Commissioner

APPROVED BY AGENCY: September 15, 2010

FILED WITH LRC: September 15, 2010 at noon

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

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DEPARTMENT OF AGRICULTURE
Office of State Veterinarian
Division of Animal Health
(As Amended at ARRS, December 14, 2010)

302 KAR 20:066. Chronic wasting disease surveillance in farmed cervids.

RELATES TO: KRS 150.720(2), 150.740, Chapter 246, 246.295(2), 257.550, 257.990, 9 C.F.R. Part 55 Chapter 251

STATUTORY AUTHORITY: KRS 150.720(1), 246.295(1), 257.030, 257.550, 257.552

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.720(1) and 246.295(1) require the Department of Agriculture in cooperation with the KDFWR to promulgate administrative regulations pertaining to health requirements, eradication of diseases, and identification of privately-owned and farm-raised cervids maintained for the production of meat and other products. This administrative regulation establishes criteria and health requirements necessary to prevent the introduction of chronic wasting disease into Kentucky, develop a herd monitoring system, and to establish requirements for intrastate movement of cervids.

Section 1. Definitions. (1) "Adjacent herd" means a herd of cervids occupying premises that border a positive[an affected] herd, including herds separated by roads or streams; or a herd of cervids occupying premises that were previously occupied by a positive[an affected] herd within the past five (5) years~~as determined by the designated epidemiologist~~.

(2) "Animal" means any farmed cervid.

(3) "Animal identification" means a device or means of animal identification approved for use under this **administrative regulation**~~part~~ by the State veterinarian.

(4) "APHIS" means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(5) "Approved laboratory" means the National Veterinary Service Laboratory, Ames, Iowa, or any other laboratory approved by the Administrator of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

(6) "Certified" means the status achieved by a herd that has met the standards of the CWD HCP continuously for at least five (5) years.

(7) "Certified CWD cervid herd" means a herd of cervids that has achieved "Certified" status in the Kentucky HCP, the federal Chronic Wasting Disease Herd Certification Program, or a state Chronic Wasting Disease Certification Program approved by APHIS or the Kentucky State veterinarian.

(8) "Cervid" means deer, elk, moose, caribou, reindeer, and related species and hybrids thereof, including all members of the Cervidae family and hybrids thereof.

(9) "Cervid CWD Surveillance and Identification" or "CCWDSI" means a Cervid Management Plan that includes two (2) programs: the CWD Herd Certification Program (HCP) and the CWD Herd Monitoring Program (HMP).

(10) "Chronic wasting disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.

(11) ~~"Commingled" means animals are that have had direct contact with each other, that have had less than ten (10) feet of physical separation, or that have shared equipment, pasture, or water sources/watershed. Animals are considered commingled if they have had contact with a positive animal or contaminated premises within the last five (5) years.~~

~~(12) "CWD exposed animal" means an animal that is part of a CWD-positive herd, or that has been exposed to a CWD-positive animal or contaminated premises within the previous five (5) years.~~

~~(12) "CWD exposed herd" means a herd in which a CWD positive animal has resided within five (5) years prior to that animal's diagnosis as CWD positive, as determined by an APHIS or state representative.~~

~~(13) "CWD Herd Certification Program" or "HCP" means a program established by this administrative regulation to determine the CWD status of farmed cervid herds.~~

~~(14) "CWD Herd Monitoring Program" or "HMP" means a program established by this administrative regulation to monitor~~

~~farmed cervids in harvesting facilities for CWD. [Herd enrolled in this program cannot achieve certified status.]~~

~~(15) "CWD positive animal" means an animal that has had a diagnosis of CWD confirmed by means of two (2) official CWD tests.~~

~~(16) "CWD positive herd" means a herd in which a CWD positive animal resided when it was diagnosed and which has not been released from quarantine.~~

~~(17) "CWD source herd" means a herd that is identified through testing, tracebacks, or epidemiological evaluations to be the source of CWD-positive animals identified in other herds.~~

~~(18) "CWD suspect animal" means an animal for which an APHIS or state representative has determined that unofficial CWD tests results, laboratory evidence, or clinical signs suggest a diagnosis of CWD, but for which official laboratory results are inconclusive or not yet conducted.~~

~~(19) "CWD suspect herd" means a herd for which unofficial CWD test results, laboratory evidence or clinical signs suggest a diagnosis of CWD as determined by an APHIS employee or state representative, but for which official laboratory results have been inconclusive or not yet conducted.~~

~~(20) "Farmed cervid" means cervid livestock that are enrolled in a CCWDSI program and are maintained for propagation, selling, trade, or barter or for taking by any harvest or slaughter method. Farmed cervid shall exclude any cervid that has not originated from and been continuously maintained within a herd that is enrolled in and complies with a CWD certified or monitored program.~~

~~(21) "Harvest" means to take or kill farmed cervids for meat and other products.~~

~~(22) "Herd" means a group of cervids that are:~~

~~(a) Under common ownership or supervision and are grouped on one (1) or more parts of any single premises (lot, farm, or ranch); or;~~

~~(b) [All animals] under common ownership or supervision on two (2) or more premises which are geographically separated but on which animals have been interchanged or had direct or indirect contact with one another.~~

~~(23) "Herd plan" means a written herd agreement or premises management agreement:~~

~~(a) Developed by APHIS in collaboration with the herd owner, state representatives, and other affected parties; and~~

~~(b) Which [A herd plan] sets out the steps to be taken to eradicate CWD from a CWD positive herd, to control the risk of CWD in a CWD-exposed or CWD-suspect herd, or to prevent introduction of CWD into that herd or any other herd.~~

~~(24) "KDFWR" means the Kentucky KDFWR.~~

~~(25) "Licensed and[-] accredited veterinarian" means a veterinarian:~~

~~(a) Approved by the Deputy Administrator of Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, and the State veterinarian, in accordance with 9 C.F.R. Part 161, to perform functions required by cooperative state-federal animal disease control and eradication programs; and~~

~~(b) Who[-that] is licensed to practice in the Commonwealth of Kentucky under KRS Chapter 321.~~

~~(26) "Official animal identification" means a device or means of animal identification approved for use under 9 C.F.R. Part 55[this part] by APHIS and the state veterinarian to uniquely identify individual animals.~~

~~(27) "Official CWD test" means any test for the diagnosis of CWD approved by APHIS and conducted in a laboratory approved by APHIS in accordance with 9 C.F.R. Part 55.~~

~~(28) "Quarantine" means an imposed restriction prohibiting movement of live or dead cervids or parts thereof to any location without specific written approval of the State veterinarian.~~

~~(29) "State" means any state of the United States, the District of Columbia, Puerto Rico, the U. S. Virgin Islands, or Guam.~~

Section 2. CCWDSI Surveillance Programs. ~~(4)~~ All farmed cervid herds shall be enrolled in one (1) of the state CCWDSI programs, either the CWD Herd Certification Program (HCP) or the

CWD Herd Monitoring Program (HMP) maintained by the Office of the State Veterinarian. The HCP and the HMP require annual renewal.

Section 3. HCP Requirements. Herds enrolled in this program shall meet the requirements provided in Sections 3 through 5 of this administrative regulation and the requirements in 9 C.F.R. Part 55, Subpart B.

(1) **Animal identification requirement.** (a) All animals twelve (12) months of age and older shall have at least two (2) forms of animal identification, one of which shall be an official animal identification and one (1) form that is a visual (flop tag) type of identification.

(b) All animals of any age shall have official animal identification before being moved from the premises for any purpose.

(2) The herd premises shall have a valid KDFWR permit and perimeter fencing that is approved by KDFWR pursuant to KRS 150.730 through 150.735.

(3) The herd veterinarian shall be notified within twenty-four (24) hours of observance of an animal with clinical signs suggestive of CWD.

(4) The owner shall report to the Office of State veterinarian all animals that escape or disappear, and all deaths (including animals killed by harvest or slaughter) of animals in the herd aged twelve (12) months or older.

(a) The reporting time frame shall be:

1. For animals that escape or disappear, a report shall be made within forty-eight (48) hours;

2. For animals taken by harvest or slaughter, a report shall be submitted by the last day of each calendar month; and

3. For animals that die from illness or unknown reason, a report shall be submitted within seven (7) days.

(b) The report shall include all animal identification numbers and the estimated time and date of the death, disappearance, escape, slaughter, or killing of the animal.

(c) Animals that die or are killed by harvest or slaughter shall have the required tissue specimens collected for CWD testing except as exempted by 9 C.F.R. Part 55.24.

(d) In accordance with 9 C.F.R. 55.23, an APHIS or state representative shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

(5) The owner shall maintain and provide to the State Veterinarian or APHIS representative upon request the following herd records:

(a) Complete inventory of animals including the official identification number and any other identification, and the age and sex of each animal;

(b) A record for each purchased or natural addition to the herd including:

1. The official identification number, species, age, and sex of the cervid;

2. The name and address of the person from whom the cervid was purchased;

3. The address of the herd from which the cervid was purchased;

4. A copy of the Certificate of Veterinary Inspection that accompanied the animal for intra- or interstate movement;

5. Date the purchased addition entered the herd; and

6. Approximate date of birth if a natural addition;

(c) A record of each cervid leaving the herd including:

1. If the cervid was shipped live other than to slaughter, the date of movement, the name of the person to whom it was shipped, the place to which it was shipped, and a copy of the Certificate of Veterinary Inspection related to the shipment;

2. If the cervid died on the premises, the date of death, the apparent cause of death, the cervid's age, sex, and state-federal official individual animal identification, date and laboratory submitted for CWD testing, if required, and the disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination and recipient;

3. If the cervid was shipped to slaughter, the date of movement, the cervid's age, sex, and state-federal official individual animal identification, and the name and address of

the slaughter establishment;

4. If the cervid was killed by harvest, the date, the name and address of the hunter, and the disposition of the carcass; or

5. If the cervid escaped, the date of escape;

(d) A record of all individual animal tests conducted on cervids in the herd;

(e) Records received from the herd veterinarian related to veterinary services provided to the herd; and

(f) All individual identification numbers (from tags, tattoos, electronic implants, etc.) associated with each animal.

(6) **Animal inventory.** (a) To enroll a herd in the HCP, the owner shall conduct a physical inventory of all animals to establish the baseline herd inventory. The physical inventory shall be conducted by a representative of the office of the State Veterinarian and shall verify all animal identification and records.

(b) An annual herd inventory shall be conducted that reviews all records and includes observation of unrestrained animals in an enclosed area to reconcile all visible identification devices with available records.

(c) The state veterinarian or APHIS representative may request additional physical inventories to verify herd compliance with program standards.

(d) The owner shall be responsible for assembling, handling, and restraining the animals and for all costs incurred to present the animals for inspection.

(7) Maintenance of separate herds by the same owner shall comply with 9 C.F.R. Part 55.23.

(8) The herd enrollment date is the date which is the latter of:

(a) The physical inventory being completed in accordance with subsection (6)(a) of this section; and

(b) The application being approved by the state veterinarian.

(9) **Surveillance procedures for the HCP.** (a) HCP Certified Herds. Cervids twelve (12) months and older that die for any reason except slaughter or harvest shall be made available for tissue sampling and testing in accordance with instructions from the APHIS or state representative.

(b) Non-certified HCP Herds. Cervids twelve (12) months of age or older that die for any reason including slaughter or harvest shall be made available for tissue sampling and testing in accordance with instructions from the APHIS or state representative.

(c) All animals in an enrolled herd shall have official identification before reaching the age of twelve (12) months.

Section 4. HCP Permit. (1) A HCP permit shall be required to participate in the program. A HCP permit is valid for one (1) calendar year from the date of enrollment. The applicant shall submit the following:

(a) A permit application contained in the CCWDSI Herd Certification Program and Herd Monitoring Program application packet;

(b) A written statement by a Kentucky licensed and accredited veterinarian, certifying that the veterinarian and the herd owner have a valid veterinarian-client relationship; and

(c) A fee of \$150.

(2) The department shall grant or deny a permit within thirty (30) days after the department receives the completed application package with the required fee.

(3) After the permit is issued, the participant shall enroll his herd into the HCP as follows:

(a) Conduct the physical inventory required by Section 3(6) of this administrative regulation; and

(b) Provide any records of the animals to the state veterinarian.

(4) **Herd status levels.** (a) When a herd is first enrolled in the HCP, it shall be placed in first-year status, except that if the herd is comprised solely of animals obtained from herds already enrolled in the HCP, the newly enrolled herd shall have the same status as the lowest status of any herd that provided animals for the herd.

(b) If a herd continues to meet the requirements of the HCP, the herd status shall be upgraded by one (1) year on the program enrollment date.

(c) One (1) year from the date a herd is placed in fifth-year status, the herd status shall be changed to "certified". The herd shall remain in "certified" status as long as it is enrolled in the program, if its status is not revoked or suspended in accordance with this administrative regulation or 9 C.F.R. Part 55.24.

(d) Herds currently enrolled in the CCDWSI program shall be aligned to the appropriate status level provided in 9 C.F.R. Part 55.24.

(e) A herd owner shall be issued a certificate of "Certified" status upon complying with the HCP Program, as defined in this administrative regulation.

(f) Renewal of a Certified Cervid Herd. A herd is certified for twelve (12) months. For continuous certification, adherence to the provisions in this administrative regulation and all other state laws and administrative regulations pertaining to holding cervids shall be required.

(g) A herd's certification status shall be immediately revoked and a herd investigation shall be initiated, if CWD positive or exposed animals are found in the herd.

(5) New animals shall only be introduced into the herd from other herds enrolled in the Kentucky HCP or a state Chronic Wasting Disease Certification Program approved by the Kentucky State Veterinarian or the Federal CWD Certification Program.

(a) If animals are introduced from a herd of lower status, the receiving herd status shall revert to the lower status.

(b) If animals are introduced from a herd not participating in a certification program, the receiving herd shall revert to first-year status in the certification program.

Section 5. Annual HCP permit renewal required. (1) To continue in the Program, persons shall:

(a) Submit a permit renewal application thirty (30) days prior to the expiration of the prior year's permit;

(b) Pay a \$150 renewal fee; and

(c) Make all animals and records available to the state veterinarian.

(2) Facilities and herds that have met the requirements in Sections 3 through 5 of this administrative regulation shall receive a renewal permit.

Section 6. CWD Herd Monitoring Program (HMP) Requirements. Herds enrolled in the HMP surveillance program shall meet the requirements in Sections 6 through 8 of this administrative regulation. HMP herds shall not be eligible for "certified" status.

(1) All cervids entering a HMP facility shall originate from a CWD Certified Herd.

(2) A cervid shall not be permitted to leave the HMP facility alive.

(3) Animal identification requirement. (a) All animals greater than twelve (12) months of age shall be identified with an official animal identification and a visual (flop tag) type of animal identification.

(b) Permit holders failing to meet identification requirements shall be subject to compliance plans and penalties as provided in Section 14 of this administrative regulation.

(4) The herd premises shall have a valid KDFWR permit pursuant to KRS 150.730 through 150.735.

(5) The herd veterinarian shall be notified within twenty-four (24) hours of observance of an animal with clinical signs suggestive of CWD.

(6) The owner shall report to the office of state veterinarian all animals that escape or disappear, and all deaths (including animals killed by harvest) of animals in the herd aged twelve (12) months or older.

(a) The reporting time frame shall be:

1. For animals that escape or disappear, a report shall be made within forty-eight (48) hours;

2. For animals taken by harvest, a report shall be submit-

ted by the last day of each calendar month; and

3. For animals that die from illness or unknown reason, a report shall be submitted within seven (7) days.

(b) The report shall include all animal identification numbers and the estimated time and date of the disappearance, escape, or killing of the animal.

(c) Animals twelve (12) months of age or older that die or are killed by harvest shall have the required tissue specimens collected for CWD testing and submitted to an approved laboratory.

(d) In accordance with 9 C.F.R. 55.23, an APHIS or representative of the state veterinarian shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

(7) The owner shall maintain and provide to the state veterinarian or APHIS representative upon request the following herd records:

(a) Census of animals including the official identification number and any other identification, and the age and sex of each animal;

(b) A record for each purchased or natural addition to the herd including:

1. The official identification number, species, age, and sex of the cervid;

2. The name and address of the person from whom the cervid was purchased;

3. The address of the herd from which the cervid was purchased;

4. A copy of the Certificate of Veterinary Inspection that accompanied the animal for intra- or interstate movement;

5. Date the purchased addition entered the herd; and

6. Approximate date of birth if a natural addition;

(c) A record of each cervid leaving the herd including:

1. If the cervid died on the premises, the date of death, the apparent cause of death, the cervid's age, sex, and state-federal official individual animal identification, date and laboratory submitted for CWD testing, if required, and the disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination and recipient; and

2. If the cervid was killed by harvest, the date, name, and address of the hunter, the disposition of the carcass, and CWD testing information;

(d) A record of all CWD individual animal tests conducted on cervids in the herd;

(e) Records received from the herd veterinarian related to veterinary services provided to the herd;

(f) If the animal escaped, the date of escape; and

(g) All individual identification numbers (from tags, tattoos, electronic implants, etc.) associated with each animal.

(8) All removals and deaths shall be reported monthly to the state veterinarian.

(9) All untagged animals that die or are killed shall be identified with an official identification device and shall be tested for CWD and shall be reported to the state veterinarian.

(10) Animal inventory. (a) To enroll a herd in the HMP, the owner shall conduct a physical inventory of all animals to establish the baseline herd inventory. The physical inventory shall be conducted with a representative of the State Veterinarian and shall verify all animal identification and records.

(b) An annual herd census shall be conducted by the owner and a representative of the office of the state veterinarian that reviews all records and includes observation of unrestrained animals in an enclosed area.

(c) The state veterinarian or APHIS representative may request additional physical inventories to verify herd compliance with program standards.

(11) Cervids twelve (12) months and older in the following categories that die shall be made available for tissue sampling and testing in accordance with instructions from the APHIS or state representative:

1. All cervids that are not officially identified;

2. All cervids that die for any reason other than harvest; and

3. The first ten (10) cervids that are harvested within a calendar year.

(12) The owner shall be responsible for assembling, handling, and restraining the animals and for all costs incurred to present the animals for inspection.

Section 7. HMP Permit. (1) A HMP permit shall be required to participate in the program. The applicant shall submit the following:

(a) A permit application contained in the CCWDSI Herd Certification Program and Herd Monitoring Program application packet;

(b) A written statement by a Kentucky licensed and accredited veterinarian, certifying that the veterinarian and the herd owner have a valid veterinarian-client relationship; and

(c) A fee of \$150.

(2) The department shall grant or deny a permit within thirty (30) days after the department receives the completed application package with the required fee.

(3) After the permit is issued, the participant shall enroll his herd into the HMP as follows:

(a) Conduct the physical inventory required by Section 6(10) of this administrative regulation;

(b) Provide origin documentation on all animals in herd; and

(c) Provide identification numbers, sex, age, and species for all animals in herd.

Section 8. Annual HMP permit renewal required. (1) To continue in the HMP Program, persons shall:

(a) Submit a permit renewal application thirty (30) days prior to the expiration of the prior year's permit;

(b) Pay a \$150 renewal fee; and

(c) Make all animals and records available to the State Veterinarian.

(2) Facilities that have met the requirements in Sections 6 through 8 of this administrative regulation shall receive a renewal permit.

Section 9. Intrastate Movement Requirements. (1) All intrastate movements of cervids, other than to a state- federal-inspected slaughter establishment, shall be accompanied by an intrastate movement Certificate of Veterinary Inspection signed by a licensed and accredited veterinarian in accordance with 302 KAR 20:065.

(2) The intrastate movement certificate shall include the following:

(a) Consignor's name, address, and state veterinarian issued farmed cervid permit number;

(b) Consignee's name, address, and state veterinarian issued farmed cervid permit number;

(c) Official individual animal identification for each animal; and

(d) The movement permit number to ship, which may be obtained by telephone, issued by the state veterinarian prior to movement.

Section 10. Requirements for Entry into Kentucky. (1) Only cervids from "Certified CWD Herds" shall enter Kentucky.

(2) All cervids on the CVI shall meet the requirements in 302 KAR 20:040, Section 13.

(3) The following statements shall be included on the CVI:

(a) "All cervids identified on this certificate originate from a Certified herd meeting requirements for certified CWD herd status as determined by the Kentucky State veterinarian."; and

(b) "No cases of CWD in cervids have been diagnosed within a twenty-five (25) mile radius of the consignor premises in the last five (5) years.".

Section 11. Surveillance Testing Procedures. (1) Official CWD tests and approved labs to conduct official CWD testing shall be in accordance with 9 C.F.R. Part 55.

(2) A diagnosis of CWD by an approved laboratory shall be

confirmed by the National Veterinary Service Laboratory.

(3) If required tissues from test eligible cervids are not submitted for laboratory diagnosis, the state veterinarian shall reevaluate the status of the herd.

Section 12. Investigation of Cervid CWD-positive Animals.

(1) An epidemiological investigation in accordance with 9 C.F.R. Part 55 shall be conducted for all animals diagnosed at an approved laboratory as CWD positive or suspect.

(2) All positive herds and all source, exposed, and adjacent herds shall be investigated epidemiologically.

(3) All positive herds and premises and all source, exposed, and adjacent herds and premises shall be quarantined.

Section 13. Duration of Quarantine. Quarantines placed in accordance with this administrative regulation shall be removed as follows:

(1) A premises may be removed from quarantine after completion of the herd plan and five (5) years of compliance with all provisions of the 9 C.F.R. Part 55.

(2) An adjacent or exposed herd/premises may be removed from quarantine only after an epidemiological investigation and by order of the designated epidemiologist.

Section 14. Penalties. (1) Penalties for failure to comply with standards established in this administrative regulation for the CCWDSI HCP or HMP.

(a) The department may, pursuant to KRS Chapter 257, revoke or suspend a herd's permit for the HCP or the HMP if:

1. A person falsifies information on an enrollment application, or falsifies subsequent information required for continued enrollment;

2. A person fails to comply with requirements in this administrative regulation on animal identification, animal inventory, herd records, CWD testing, or animal movement; or

3. A person or facility fails to remain in compliance with KDFWR statutes and administrative regulations.

(b) In accordance with KRS 257.990, a permit holder may be subject to a fine for violation of this administrative regulation.

(c) Any person who violates Section 5(1)(b) or Section 8(1)(b) of this administrative regulation by making an untimely payment of a renewal fee, shall be charged a penalty of ten (10) percent and shall be required to pay this penalty in addition to the original renewal fee.

1. The original renewal fee and penalties shall be compounded by ten (10) percent monthly until paid in full; and

2. Any renewal fee and penalties remaining unpaid for three (3) successive months may result in a permit revocation.

(2) Penalties for failure to comply with Section 10 of this administrative regulation, Requirements for Entry into Kentucky.

(a) In accordance with KRS 150.740(6), a person shall be guilty of a Class D felony upon conviction for violating Section 10 of this administrative regulation.

(b) Upon conviction of a second violation of Section 10 of this administrative regulation and in addition to all other penalties, a person shall be permanently ineligible for renewal of a captive cervid permit.

(3) In accordance with KRS 150.740(7), the KDFWR may seize captive cervids that have been imported into the Commonwealth contrary to this administrative regulation and KRS 150.740 and 257.550.

(4) In accordance with KRS 150.740(8), the KDFWR may seize and destroy captive cervids that are in the process of being imported into the Commonwealth contrary to this administrative regulation and KRS 150.740 and 257.550.

Section 15. Incorporation by Reference. (1) "CCWDSI Herd Certification Program and Herd Monitoring Program application packet," 10/2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Agriculture, Division of Animal Health, 100 Fair Oaks Lane, Frank-

fort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (2) HCP Requirements. Herds enrolled in this program shall meet the requirements provided herein this administrative regulation and the requirements in 9 C.F.R. Part 55, Subpart B.

(a) Animal identification requirement:

1. All animals twelve (12) months of age and older shall be required to have at least two (2) forms of animal identification, one of which shall be an official animal identification approved by APHIS and one (1) form that is a visual (flop tag) type of identification.

2. All animals of any age shall be required to have official animal identification before being moved from the premises for any purpose:

(b) The herd premises shall have a valid KDFWR permit and perimeter fencing that is approved by KDFWR.

(c) The herd veterinarian shall be notified within twenty-four (24) hours of observance of an animal with clinical signs suggestive of CWD.

(d) The owner shall report to the Office of State veterinarian all animals that escape or disappear, and all deaths (including animals killed by harvest or slaughter) of animals in the herd aged twelve (12) months or older.

1. The reporting time frame will be as follows:

a. For animals that escape or disappear a report shall be made within forty-eight (48) hours.

b. For animals taken by harvest or slaughter a report shall be submitted by the last day of each calendar month.

c. For animals that die from illness or unknown reason a report shall be submitted within seven (7) days.

2. The report shall include all animal identification numbers, the estimated time and date of the death, disappearance, escape, slaughter or killing of the animal.

3. Animals that die or are killed by harvest or slaughter shall have the required tissue specimens collected for CWD testing except as exempted by 9 C.F.R. Part 55.24.

4. An APHIS or state representative shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

(e) The owner shall maintain herd records that include the following:

1. Complete inventory of animals that includes the official identification number and other ID, the age, and sex of each animal;

2. A record for each purchased or natural addition to the herd shall include:

a. The official identification number, species, age, and sex of the cervid;

b. The name and address of the person from whom the cervid was purchased;

c. The address of the herd from which the cervid was purchased;

d. A copy of the Certificate of Veterinary Inspection that accompanied the animal for intra- or interstate movement;

e. Date purchased additions entered the herd;

f. Approximate date of birth for natural additions;

3. A record of each cervid leaving the herd shall include the following:

a. If the cervid was shipped live other than to slaughter report the date of movement, the name of the person to whom it was shipped, the place to which it was shipped, and a copy of the Certificate of Veterinary Inspection related to the shipment;

b. If the cervid died on the premises report the date of death, the apparent cause of death, the cervid's age, sex, state federal official individual animal identification, date and laboratory submitted for CWD testing, if required, and the disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination and recipient.

c. If the cervid was shipped to slaughter report the date of movement, the cervid's age, sex, state federal official individual animal identification, and the name and address of the slaughter establishment;

d. If the cervid was killed by harvest report the date, the name and address of the hunter and the disposition of the carcass;

e. The date of death or escape of all animals not removed for sale or by harvest or slaughter;

4. A record of all individual animal tests conducted on cervids in the herd;

5. Records received from the herd veterinarian related to veterinary services provided to the herd;

6. All individual identification numbers (from tags, tattoos, electronic implants, etc.) associated with each animal;

7. Provide records on request to the state veterinarian or APHIS representative for review and at the annual inventory visit.

(f) Animal inventory requirement:

1. A physical inventory verifying all animal identification and records shall be required when a herd is enrolled in the HCP.

2. An annual herd inventory shall be conducted that reviews all records and includes observation of unrestrained animals in an enclosed area to reconcile all visible identification devices with available records.

3. The state veterinarian or APHIS representative may request a physical inventory if they find it necessary to verify herd compliance with program standards.

4. The owner will be responsible for assembling, handling and restraining the animals and for all costs incurred to present the animals for inspection

(g) Maintenance of separate herds by the same owner shall meet the requirements in 9 C.F.R. Part 55.23.

(h) The herd enrollment date shall be the date the physical inventory shall be completed following completion of Section 3(c) of this administrative regulation and the application is approved by the state veterinarian.

(i) Surveillance procedures for the HCP shall include the following:

1. HCP Certified Herds Cervids twelve (12) months and older that die for any reason except slaughter or harvest shall be made available for tissue sampling and testing in accordance with instructions from the APHIS or state representative.

2. Non-certified HCP Herds Cervids twelve (12) months of age or older that die for any reason including slaughter or harvest shall be made available for tissue sampling and testing in accordance with instructions from the APHIS or state representatives.

3. All animals in an enrolled herd shall have official identification before reaching the age of twelve (12) months.

(3) HCP Permit:

(a) A HCP permit shall be required to participate in the program. A HCP permit is valid for one (1) calendar year from the date of enrollment. The applicant shall submit the following:

1. A permit application provided by the department;

2. A written statement by a Kentucky licensed and accredited veterinarian, certifying that the veterinarian and the herd owner have a valid veterinarian-client relationship;

3. A fee of \$150;

(b) The department shall grant or deny a permit under subsection (2) of this section within thirty (30) days after the department receives the completed application package with the required fee.

(c) After the permit is issued, the participant shall enroll his herd into the HCP as follows:

1. Conduct a physical inventory of all animals with a representative of the State veterinarian to establish the baseline herd inventory;

2. Provide records of all animals to the state veterinarian;

(d) Herd status levels:

1. When a herd is first enrolled in the HCP, it shall be placed in first-year status, except that if the herd is comprised solely of animals obtained from herds already enrolled in the HCP, the newly enrolled herd shall have the same status as the lowest status of any herd that provided animals for the herd.

2. If a herd continues to meet the requirements of the HCP, the herd status shall be upgraded by one (1) year on the program enrollment date.

3. One (1) year from the date a herd is placed in fifth-year status, the herd status shall be changed to "certified". The herd shall remain in "certified" status as long as it is enrolled in the program, provided its status is not been revoked or suspended in accordance with this regulation or 9 C.F.R. Part 55.24.

4. Herds currently enrolled in the CCDWSI program shall be aligned to the appropriate status level provided in the C.F.R. Title 9.

5. A herd owner shall be issued a certificate of "Certified" status upon complying with the HCP Program, as defined in this administrative regulation.

6. Renewal of a Certified Cervid Herd. A herd is certified for twelve (12) months. For continuous certification, adherence to the provisions in this administrative regulation and all other state laws and rules pertaining to holding cervids shall be required.

7. A herd's certification status shall be immediately revoked and a herd investigation shall be initiated, if CWD positive or exposed animals are found in the herd.

(e) New animals shall only be introduced into the herd from other herds enrolled in the Kentucky HCP or a state Chronic Wasting Disease Certification Program approved by the Kentucky State Veterinarian or the Federal CWD Certification Program.

1. If animals are introduced from a herd of lower status, the receiving herd status shall revert to the lower status.

2. If animals are introduced from a herd not participating in a certification program, the receiving herd shall revert to first-year status in the certification program.

(4) Annual HCP permit renewal required.

(a) To continue in the Program persons shall comply with the following:

1. Submit a permit renewal application thirty (30) days prior to the expiration of the prior year permit.

2. Pay a \$150 renewal fee.

3. Make all animals and records available to state veterinarian.

(b) Facilities and herds that have met the requirements in Section 2.(2) of this administrative regulation shall receive a renewal permit.

(5) CWD Herd Monitoring Program (HMP) Requirements. Herds enrolled in the HMP surveillance program shall meet the requirements provided herein. HMP herds shall not be eligible for "certified" status.

(a) All cervids entering a HMP facility shall originate from a CWD Certified Herd.

(b) No cervid shall be permitted to leave the HMP facility alive.

(c) Animal identification requirement:

1. All animals greater than twelve (12) months of age shall be required to be identified with an official identification device and to have a visual (flop tag) form of animal identification that is approved by the state veterinarian.

2. Permit holders failing to meet identification requirements shall be subject to compliance plans and penalties as provided in Section 8 of this administrative regulation.

(d) The herd premises shall have a valid KDFWR permit.

(e) The herd veterinarian shall be notified within twenty-four (24) hours of observance of an animal with clinical signs suggestive of CWD.

(f) The owner shall report to the state veterinarian all animals that escape or disappear, and all deaths (including animals killed by harvest) of animals in the herd aged twelve (12) months or older.

1. The reporting time frame shall be:

a. For animals that escape or disappear a report shall be made within forty eight (48) hours.

b. For animals taken by harvest a report shall be submitted by the last day of each calendar month.

c. For animals that die from illness or unknown reason a report shall be submitted within seven (7) days.

2. The report shall include all animal identification numbers, the estimated time and date of the disappearance, escape, or killing of the animal.

3. Animals twelve (12) months of age or older that die or are killed by harvest shall have the required tissue specimens collected for CWD testing and submitted to an approved laboratory.

4. An APHIS or representative of the state veterinarian shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

(g) The owner shall maintain and provide to the state veterinarian or APHIS representative upon request herd records that include the following:

1. Census of animals that includes identification number, the age and sex of each animal;

2. A record for each purchased or natural addition to the herd

shall include:

a. The identification number, species, age, and sex of the cervid;

b. The name and address of the person from whom the cervid was purchased;

c. The address of the herd from which the cervid was purchased;

d. A copy of the Certificate of Veterinary Inspection that accompanied the animal for movement;

e. Date purchased additions entered the herd;

f. Approximate date of birth for natural additions;

3. A record of each cervid leaving the herd shall include the following:

a. If the cervid died on the premises: report the date of death, the apparent cause of death, the cervid's age, sex, state federal official individual animal identification, and the disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination and recipient and provide CWD testing information for test eligible animals;

b. If the cervid was killed by harvest report the date, name, and address of the hunter and the disposition of the carcass and CWD testing information;

c. All removals and deaths shall be reported monthly to the state veterinarian;

d. All untagged animals that die or are killed shall be identified with an official identification device and shall be tested for CWD and shall be reported to the state veterinarian;

4. A record of all CWD individual animal tests conducted on cervids in the herd;

5. Records received from the herd veterinarian related to veterinary services provided to the herd;

6. The date of death or escape of all animals not removed for sale or by harvest;

7. All individual identification numbers (from tags, tattoos, electronic implants, etc.) associated with each animal;

(i) Animal inventory requirements:

1. An initial premises assessment shall include a physical inventory of each animal and associated the herd records to determine baseline inventory;

2. An annual herd census will be conducted that reviews all records and includes observation of unrestrained animals in an enclosed area.

3. The state veterinarian or APHIS representative may request a physical inventory if it is necessary to verify herd compliance with program standards;

(i) Cervids twelve (12) months and older in the following categories that die shall be made available for tissue sampling and testing in accordance with instructions from the APHIS or state representatives:

1. All cervids that are not officially identified;

2. All cervids that die for any reason other than harvest;

3. The first ten (10) cervids that are harvested within a calendar year;

(h) The owner will be responsible for assembling, handling and restraining the animals and for all costs incurred to present the animals for inspection;

(6) HMP Permit:

(a) A HMP permit shall be required for participation in the program. The applicant shall submit the following:

1. A permit application provided by the department;

2. A written statement by a Kentucky licensed and accredited veterinarian, certifying that the veterinarian and the herd owner have a valid veterinarian-client relationship;

3. A fee of \$150;

(b) The department shall grant or deny a permit under subsection (2) of this section within thirty (30) days after the department receives the completed application package with the required fee;

(c) After the permit is issued, the participant shall enroll his herd into the HMP as follows:

1. Conduct a census of all animals with a representative of the state veterinarian to establish the baseline herd inventory;

a. Provide origin documentation on all animals in herd;

b. Provide identification numbers, sex, age, and species for all animals in herd;

~~2. Provide records on animals to the state veterinarian for quarterly reviews.~~

~~(7) Annual HMP permit renewal required.~~

~~(a) To continue in the HMP Program persons shall comply with the following:~~

~~1. Submit a permit renewal application thirty (30) days prior to the expiration of prior year permit.~~

~~2. Pay a \$150 renewal fee.~~

~~(b) Facilities that have met the requirements in subsection (5) of this section shall receive a renewal permit.~~

~~Section 3. Intrastate Movement Requirements. All intrastate movements of cervids, other than to a state federal inspected slaughter establishment, shall be accompanied by an intrastate movement Certificate of Veterinary Inspection signed by a licensed and accredited veterinarian as relates to 302 KAR 20:065. The intrastate movement certificate shall include the following:~~

~~(1) Consignor's name, address, and state veterinarian issued farmed cervid permit number;~~

~~(2) Consignee's name, address, and state veterinarian issued farmed cervid permit number;~~

~~(3) Official individual animal identification for each animal shall be listed;~~

~~(4) The movement permit number to ship, which may be obtained by telephone, issued by the state veterinarian prior to movement.~~

~~Section 4. Requirements for Entry into Kentucky. (1) Only cervids from "Certified CWD Herds" shall enter Kentucky.~~

~~(2) All cervids on the CVI shall meet the requirements in 302 KAR 20:040, Section 13.~~

~~(3) The following statements shall be included on the CVI:~~

~~(a) "All cervids identified on this certificate originate from a Certified herd meeting requirements for certified CWD herd status as determined by the Kentucky State veterinarian."~~

~~(b) "No cases of CWD in cervids have been diagnosed within a twenty five (25) mile radius of the consignor premises in the last five (5) years."~~

~~Section 5. Surveillance Testing Procedures. (1) Official CWD tests and approved labs to conduct official CWD testing shall be in accordance with C.F.R. 9 part 55.~~

~~(2) A diagnosis of CWD by an approved laboratory shall be confirmed by the National Veterinary Service Laboratory.~~

~~(3) If required tissues from test eligible cervids are not submitted for laboratory diagnosis, the state veterinarian shall reevaluate the status of the herd.~~

~~Section 6. Investigation of Cervid CWD positive Animals. An epidemiological investigation in accordance with 9 C.F.R. Part 55 shall be conducted for all animals diagnosed at an approved laboratory as CWD positive or suspect. All positive herds and all source, exposed and adjacent herds shall be investigated epidemiologically. All positive herds and premises and all source, exposed and adjacent herds and premises shall be quarantined.~~

~~Section 7. Duration of Quarantine. Quarantines placed in accordance with this administrative regulation shall be removed in accordance with the following:~~

~~(1) A premises may be removed from quarantine after completion of the herd plan and five (5) years of compliance with all provisions of the 9 C.F.R. Part 55.~~

~~(2) An adjacent or exposed herd/premises may be removed from quarantine only after an epidemiological investigation and by order of the designated epidemiologist.~~

~~Section 8. Penalties. (1) Penalties for failure to comply with standards set forth in this administrative regulation for the CCWDSI HCP or HMP:~~

~~(a) The department may, pursuant to KRS Chapter 257, revoke or suspend a herd's permit for the HCP or the HMP under this section if:~~

~~1. A person falsifies information on an enrollment application, or falsifies subsequent information required for continued enroll-~~

~~ment.~~

~~2. A person fails to comply with requirements in this administrative regulation on animal identification, animal inventory, herd records, CWD testing, or animal movement.~~

~~3. A person or facility fails to remain in compliance with KDEWR KAR Title 301 statutes and regulations.~~

~~(b) In accordance with KRS 257.090, permit holder may be subject to a fine for violation of this administrative regulation.~~

~~1.(a) Any person who violates Section 2(4)(a) or (7)(a) of this administrative regulation involving an untimely payment of an renewal fee, shall be charged a penalty of ten (10) percent and shall be required to pay this penalty in addition to the original renewal fee.~~

~~2. The original renewal fee and penalties shall be compounded by ten (10) percent monthly until paid in full.~~

~~3. Any renewal fee and penalties remaining unpaid for three (3) successive months may result in a permit revocation.~~

~~(2) Penalties for failure to comply with Section 4 of this administrative regulation:~~

~~(a) In accordance with KRS 150.740 a person shall be guilty of a Class D felony upon conviction for violating this Section 4. of this administrative regulation.~~

~~(b) Upon conviction of a second violation of Section 4 of this administrative regulation and in addition to all other penalties, a person shall be permanently ineligible for renewal of a captive cervid permit.~~

~~(3) The KDEWR shall have the authority to immediately, and without compensation to the owner, seize captive cervids that have been imported into the Commonwealth contrary to Section 8 of this administrative regulation. The individual whose cervids were seized may request an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the department's seizure and may appeal the final decision to Franklin Circuit Court in accordance with KRS Chapter 13B. Pending the final outcome of all appeals, the seized cervids may be disposed of by the department without compensation to the owner.~~

~~(4) The KDEWR shall have the authority to immediately, and without compensation to the owner, seize and destroy captive cervids that are in the process of being imported into the Commonwealth contrary to Section 4 of this administrative regulation.~~

~~Section 9. Incorporation by Reference. (1) CCWDSI Herd Certification Program and Herd Monitoring Program application packet, 10/2009, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Agriculture, Division of Animal Health, 100 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.][(2) "Affected cervid herd" means a cervid herd from which any animal has been diagnosed as affected with CWD or is not in compliance with the provisions of the control program for CWD as described in this administrative regulation.~~

~~(3) "Approved laboratory" means the National Veterinary Service Laboratory, Ames, Iowa, or laboratories accredited by the American Association of Veterinary Laboratory Diagnosticians.~~

~~(4) "Certificate of Veterinary Inspection" means an official document issued by the State veterinarian, federal animal health official, or by a licensed, accredited veterinarian at the point of origin that documents the state federal official individual animal identification, the number of animals shipped, the purpose of the movement, the points of origin and destination, and the consignor and consignee.~~

~~(5) "Certified CWD cervid herd" means a herd of cervids that has qualified for and has been issued a certified CWD cervid herd certificate signed by the State veterinarian.~~

~~(6) "Certified monitored CWD cervid herd" means a herd of cervids that has complied with the CCWDSI Program and that has been defined as one (1) year, two (2) year, three (3) year, or four (4) year monitored in accordance with the time in years the herd has complied with the CCWDSI Program.~~

~~(7) "Cervid" means deer, elk, moose, caribou, reindeer, and related species and hybrids thereof, including all members of the cervidae family and hybrids thereof.~~

~~(8) "Cervid herd of origin" means a cervid herd, or any farm or~~

other premises, where the animals were born or where they are kept for at least one (1) year before the date of shipping.

(9) "~~Cervid CWD surveillance identification program~~" or "~~CCWDSI Program~~" means a CWD surveillance program requiring identification and laboratory diagnosis including brain tissue as directed by the State veterinarian, on all deaths, including deaths by slaughter, hunting (including hunting on hunting preserves), illness, and injury, of cervids six (6) months of age or greater or any cervid displaying clinical signs of CWD. The diagnosis as established in Section 3 of this administrative regulation.

(10) "~~Chronic wasting disease~~" or "~~CWD~~" means a transmissible spongiform encephalopathy of cervids.

(11) "~~Closed herd~~" means a cervid herd which has had no imported animals for a period of three (3) years.

(12) "~~CWD exposed~~" or "~~exposed~~" means a designation applied to cervids that are either part of an affected herd or for which epidemiological investigation indicates contact with CWD affected animals or contact with animals from a CWD affected herd in the past five (5) years.

(13) "~~CWD affected~~" means a designation applied to cervids diagnosed as affected with the CWD prion based on laboratory results, clinical signs, or epidemiological investigation.

(14) "~~CWD suspect~~" means a designation applied to cervids for which laboratory evidence or clinical signs suggest a diagnosis of CWD, but for which laboratory results are inconclusive.

(15) "~~Designated epidemiologist~~" means a state or federal veterinarian who is appointed by the State veterinarian, the USDA Area Veterinarian in Charge, and the USDA Animal Plan Health Inspection Service.

(16) "~~Herd~~" means a group of cervids that are under common ownership or supervision.

(17) "~~Humanely harbored cervid~~" means a captive cervid or a group of captive cervids six (6) months of age or older that has required rehabilitation or was abandoned at a young age.

(18) "~~Imported animal~~" means an animal introduced into a herd from any source.

(19) "~~Individual herd plan~~" means a written herd management plan that is designed by the herd owner, the owner's veterinarian, if requested, and a designated epidemiologist to identify and eradicate CWD from a known affected, exposed, or adjacent herd.

(20) "~~KDFWR~~" means the Kentucky KDFWR.

(21) "~~Licensed, accredited veterinarian~~" means a veterinarian approved by the Deputy Administrator of Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, and the State veterinarian, in accordance with 9 C.F.R. Part 161, to perform functions required by cooperative state federal animal disease control and eradication programs, and is licensed to practice in the state of Kentucky.

(22) "~~Monitored CWD herd~~" means a cervid or a herd of cervids that are humanely harbored or a herd permitted by the KDFWR as a shooting/hunting preserve.

(23) "~~99/1 Surveillance Program~~" means a statistical sampling of cervids sixteen (16) months of age or older for any one (1) population of cervids that determines a ninety-nine (99) percent probability of no disease within that population.

(24) "~~Official cervid CWD test~~" means an approved test conducted at an approved laboratory to diagnose CWD.

(25) "~~Quarantine~~" means an imposed restriction prohibiting movement of cervids to any location without specific written permits.

(26) "~~Shooting/hunting preserve~~" means a KDFWR cervid permitted, fenced premises used for commercial shooting and hunting.

(27) "~~State~~" means any state of the United States, the District of Columbia, Puerto Rico, the U. S. Virgin Islands, or Guam.

(28) "~~State federal official individual animal identification~~" means an identification eartag that conforms to the alphanumeric National Uniform Eartagging System as defined in 9 C.F.R. Part 71.1 or other identification as defined in 9 C.F.R. Part 77.20.

(29) "~~Traceback~~" means the process of identifying the herd or origin of CCWDSI Program positive animals, including herds that were sold for slaughter.

Section 2. The State veterinarian shall provide routine supervision of the CCWDSI and the monitored CWD herd programs.

Section 3. Surveillance Procedures. Surveillance procedures for the CCWDSI Program shall include the following:

(1)(a) Upon death, cervids sixteen (16) months of age or older or any cervids less than sixteen (16) months of age showing clinical signs of a central nervous system disease shall have designated brain or retropharyngeal lymphoid tissue submitted to an approved laboratory for CWD surveillance and diagnostic testing.

(b) A diagnosis of CWD by an approved laboratory shall be confirmed by the National Veterinary Service Laboratory.

(c) Surveillance may also include a surveillance of animals which are slaughtered, including animals killed in a shooting/hunting preserve, which would give a 99/1 surveillance probability for CWD.

(d) If tissues associated with a cervid death are not submitted for laboratory diagnosis due to postmortem changes or unavailability, the state veterinarian shall reevaluate the status of the herd.

(2) Surveillance for CWD, as provided in subsection (1) of this section, shall be maintained for all cervid herds.

Section 4. Official Cervid Tests. Official cervid tests for CWD are:

(1) Histopathology;

(2) Immunohistochemistry;

(3) Western Blot;

(4) Negative Strain Electron Microscopy;

(5) Bioassay; and

(6) Any state federal approved test performed by an approved laboratory to confirm the diagnosis of CWD.

Section 5. Investigation of Cervid CWD Surveillance Identification Affected Animals. Traceback shall be performed for all animals diagnosed at an approved laboratory as affected with CWD. All herds of origin and all adjacent herds and herds having contact with affected animals as determined by the CCWDSI Program shall be investigated epidemiologically. All herds of origin, adjacent herds, and herds having contact with affected animals or exposed animals shall be quarantined.

Section 6. Duration of Quarantine. Quarantines placed in accordance with this administrative regulation shall be removed in accordance with the following:

(1) A herd of origin may be removed from quarantine after five (5) years of compliance with all provisions of this administrative regulation.

(2) A herd having contact with affected or earlier if the animals from the affected or exposed herd have been determined not to be infected with CWD by an approved laboratory.

(3) An adjacent herd may be removed from quarantine only after an epidemiological investigation and by order of the designated epidemiologist.

Section 7. CCWDSI Program. (1) General. A person who keeps captive cervids in this state shall enroll the herd in the cervid CWD Surveillance Identification Program.

(2) Application. To enroll a herd in the surveillance program, a person shall complete and submit an application provided by the department. The application shall include all the following:

(a) The name, address, and telephone number of the herd owner, and any trade names under which the herd owner does business.

(b) The name, address, and telephone number of the herd custodian, if other than the herd owner.

(c) The herd location or locations, including the street address and county.

(d) A complete herd census report compiled no more than thirty (30) days prior to the date of application. The applicant shall submit the census report on a form provided by the department. The census report for captive cervids classified as a breeding herd shall include:

1. The number, species, age, and sex of cervids in the herd.

2. The state federal official individual animal identification.

(e) A written statement, by a licensed, accredited veterinarian, that certifies all the following:

1. The veterinarian and the herd owner have a valid veterinarian-client relationship.

2. The veterinarian has access to all herd health records and can document all disease events that have occurred in the herd within the past twelve (12) months.

3. That no cervid in the herd has shown any signs or symptoms of CWD in the past sixteen (16) months.

(3) Action on application. The department shall grant or deny an application under subsection (2) of this section within thirty (30) days after the department receives a complete application. The herd shall be enrolled in the CCWDSI Program on the day that the department accepts the application.

(4) Annual enrollment. To continue in the CCWDSI Program persons shall comply with the following:

(a) For a designated cervid breeding herd and for a designated humanely harbored cervid herd, each cervid six (6) months of age or older shall be identified as defined in Section 1(28) of this administrative regulation. Cervids shall be tagged on or before six (6) months of age.

(b) Upon death, all cervids sixteen (16) months of age or older shall have brain or retropharyngeal lymphoid tissue submitted to an approved laboratory. A positive diagnosis of CWD by an approved laboratory shall be confirmed by the National Veterinary Service Laboratory or other laboratories approved by the National Veterinary Service Laboratory.

(c) The herd veterinarian shall be notified within twenty-four (24) hours of observance of an animal with clinical signs suggestive of CWD.

(d) Complete and file an annual herd census.

(e) Create and maintain complete herd records under subsection (6) of this section.

(f) Provide the department with an annual written statement from the herd veterinarian. A licensed, accredited veterinarian shall sign and submit the statement within thirty (30) days before or after the anniversary of the herd's enrollment under subsection (3) of this section. The statement shall certify all the following:

1. The herd owner and the herd veterinarian have established a veterinarian-client relationship.

2. The veterinarian has access to all herd health records and can document all disease events that have occurred in the herd within the past twelve (12) months.

3. The herd had no clinical signs or symptoms of CWD in the past sixteen (16) months.

(5) Annual herd census. A person shall complete an annual herd census under subsection (4)(d) of this section within thirty (30) days before or after the anniversary date of the herd's enrollment under subsection (3) of this section. The person shall file an annual census report under subsection (4)(d) of this section, on a form provided by the department, within ten (10) days after completing the annual herd census. The report shall include all the following:

(a) The number, species, age, and sex of cervids in the herd.

(b) The state-federal official individual animal identification and all secondary identifications.

(c) The number, species, age, and sex for cervids added to the herd since the last herd census report. The report shall document additions to the herd as natural additions or as a purchased addition. For a purchased addition, the report shall identify the source of purchase, date of purchase, and document that the cervid met all the CWD herd surveillance requirements prior to entry into the herd.

(d) The number, species, age, and sex for cervids that left the herd since the last herd census report. The report shall document the reason for removing from the herd:

1. Cervid died on the premises. For a premises death, the report shall document cervid age, state-federal official individual animal identification, disposition of carcass, and brain or retropharyngeal lymphoid tissue collected for laboratory submission.

2. Cervid sold and moved to a new premises, the report shall document the name and address of purchaser.

3. Cervid was shipped to slaughter, the report shall document the cervid's age, state-federal official individual animal identifica-

tion, the name and address of the slaughter establishment, and documentation that tissue was collected for CWD diagnostics.

(6) Herd records. A person shall keep the following herd records under subsection (4)(e) of this section and shall make all records available to the department upon request.

(a) A record for each purchased addition to the herd shall include:

1. The species, age, and sex of the cervid.

2. The name and address of the person from whom the cervid was purchased.

3. The address of the herd from which the cervid was purchased.

4. A copy of the Certificate of Veterinary Inspection that accompanied the animal for intra- and interstate movement.

(b) A record of each cervid leaving the herd shall include the following:

1. Whether the cervid died on the premises, was shipped to slaughter, or was shipped live other than to slaughter.

2. If the cervid was shipped live other than to slaughter, the name of the person to whom it was shipped, the place to which it was shipped and a copy of the Certificate of Veterinary Inspection related to the shipment.

3. If the cervid died on the premises, the apparent cause of death, the cervid's age, sex, state-federal official individual animal identification, and the disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination or recipient.

4. If the cervid was shipped to slaughter, the cervid's age, sex, state-federal official individual animal identification, and the name and address of the slaughter establishment.

(c) A record of all CWD individual animal tests conducted on cervids in the herd.

(d) Records received from the herd veterinarian related to veterinary services provided to the herd.

(7)(a) Humanely harbored cervids shall not be designated as a breeding unit and shall not be eligible for sale or exhibition.

(b) Humanely harbored cervids shall not be removed from a permitted premises except for disposition of the carcass or slaughter.

(c) Humanely harbored cervids shall comply with the record-keeping requirements of subsection (6) of this section.

(8) Suspending enrollment.

(a) The department may, pursuant to KRS Chapter 13B, suspend a herd's enrollment in the CCWDSI Program or herd monitoring program under this section if any of the following apply:

1. A person falsifies information on an enrollment application, or falsifies subsequent information required for continued enrollment.

2. A person fails to comply with requirements under subsection (4) of this section for continued enrollment.

(b) The State veterinarian or designee may issue a suspension order under paragraph (a) of this subsection.

Section 8. Identification and Disposition Requirements. CWD affected and exposed cervids shall be quarantined and remain under quarantine. Movement from the premises and disposition of cervids shall be in compliance with requirements of KRS 257.160.

Section 9. Methods of Obtaining Certified CWD Cervid Herd Status. Certified CWD cervid herd status shall include all cervids in the cervid herd. They shall not be commingled with other cervids that are not certified or commingled with cervids of a lesser certification. A herd may qualify for status as a certified CWD cervid herd as follows:

(1) Purchasing a certified CWD cervid herd: Upon request and with proof of purchase, the State veterinarian shall issue a new certified CWD cervid herd certificate in the new owner's name. The anniversary date and the herd number, as assigned by the department, shall remain the same. If part or all of the purchased herd is moved directly to premises that have no other cervids, the herd may retain certified CWD status, and the State veterinarian shall issue a new certification number. The anniversary date of the new herd is the date of the most recent herd certification status certificate.

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(2) Upon request and with proof of records, a herd owner shall be issued a certified CWD cervid herd certificate by complying with the CCWDSI Program, as defined in Section 4 of this administrative regulation, for a period of five (5) years.

~~Section 10. Recertification of a Certified CWD Cervid Herd. A herd is certified for twelve (12) months. For continuous certification, adherence to the provisions in this administrative regulation and all other state laws and rules pertaining to raising cervids is required. A herd's certification status is immediately terminated and a herd investigation shall be initiated when CWD affected or exposed animals are found in the herd.~~

~~Section 11. Movement Into a Certified CWD or Monitored CWD Herd. (1) Animals originating from a certified CWD cervid herd may move into another certified CWD cervid herd. Animals originating from a herd not certified as a CWD cervid herd shall not be certified until the animals remain in a certified CWD cervid herd for five (5) years. Animals originating from a CWD monitored herd shall not be certified until the combination of the CWD monitored status and the years present in the certified CWD herd total five (5) years.~~

~~(2) Animals originating from a monitored CWD herd may move into another monitored CWD herd of the same status. Animals originating from a herd which is not a monitored CWD herd or from a lower status monitored CWD herd shall not be assigned a monitored status until the cervids have been in the monitored herd for a number of years equal to the designated herd's monitored status at time of entry.~~

~~Section 12. Recognition of Monitored CWD Herds. The State veterinarian shall issue a monitored CWD herd certificate indicating CWD monitored herd status as CWD monitored one (1), CWD monitored two (2), CWD monitored three (3), or CWD monitored four (4), according to the number of years the herd has qualified for the status.~~

~~Section 13. Recognition of Certified CWD Cervid Herds. The State veterinarian shall issue a certified CWD cervid herd certificate when the herd first qualifies. For recertification, the State veterinarian shall issue a renewal form annually.~~

~~Section 14. Intrastate Movement Requirements. All intrastate movements of cervids, other than to a state or federally inspected slaughter establishment, shall be accompanied by an intrastate movement Certificate of Veterinary Inspection signed by a licensed, accredited veterinarian. The intrastate movement certificate shall include the following:~~

~~(1) Consignor's name, address, and State veterinarian issued permit number;~~

~~(2) Consignee's name, address, and State veterinarian issued permit number; and~~

~~(3) The permit number to ship, which may be obtained by telephone, issued by the State veterinarian prior to movement and one of the following statements:~~

~~(a) "All cervids identified on this certificate are from a closed herd as defined in Section 4 of 302 KAR 20:066";~~

~~(b) "All cervids identified on this certificate originate from a herd with a minimum of a three (3) year monitored status"; or~~

~~(c) "All cervids identified on this certificate originate from a certified CWD cervid herd".~~

~~Section 15. Requirements for Entry into Kentucky. All cervids entering Kentucky shall be accompanied by a Certificate of Veterinary Inspection, issued by a licensed, accredited veterinarian, and a telephone entry permit number requested by the licensed, accredited veterinarian signing the certificate and issued by the State veterinarian before movement. One (1) of the following statements shall appear on the certificate:~~

~~(1) "All cervids identified on this certificate originate from a herd in which all cervids have been kept for at least three (3) years or into which they were born. There has been no exposure to or additions from any other source in the past three (3) years. There have been no diagnoses, signs, or epidemiological evidence of CWD in this state for the past five (5) years. Records and causes of death~~

~~for the past three (3) years in the herd of origin are available to the animal health official of the state of origin";~~

~~(2) "All cervids identified on this certificate originate from a herd which has been determined to have a minimum of a three (3) year monitored status by the animal health official of the State of Kentucky"; or~~

~~(3) "All cervids identified on this certificate originate from a herd meeting requirements for a certified CWD herd status as determined by the State veterinarian.~~

~~Section 16. For cervid herds in existence prior to the effective date of this administrative regulation, eligibility for closed herd status shall commence on the date of the last import into the herd or the last herd mortality not tested for CWD, whichever occurs last.~~

~~Section 17. KDFWR Cervid Permitted Shooting/Hunting Preserves. (1) A shooting/hunting preserve shall be enrolled in an official CWD monitoring program. The CWD monitoring program requirements shall include:~~

~~(a) An annual statistical herd census;~~

~~(b) All additions to the shooting/hunting preserve shall originate from a three (3) year or greater CCWDSI Program cervid herd; and~~

~~(c) All additions prior to entry into the preserve shall be identified in accordance with 9 C.F.R. Part 77.20.~~

~~(2) A CWD surveillance program shall be established that will give a 99/1 surveillance probability that CWD does not exist within the preserve's cervid population.~~

~~(a) A 99/1 surveillance program shall be established for the hunter kill removal of animals from the shooting/hunting preserve or may be documented by the preserve owner kill of animals or by a combination of both.~~

~~(b) The preserve owners shall be responsible for documenting cervid removal and for the collection of brain tissue or retropharyngeal lymphoid tissue.~~

~~(c) All records shall document:~~

~~1. Date cervid removed;~~

~~2. Age and sex of cervid;~~

~~3. Cervid identification in accordance with 9 C.F.R. Part 77.20;~~

~~4. Approved personnel designated for the collection of tissue sample. Approved personnel shall be trained by Animal Plant Health Inspection Service in the identification and proper removal of tissue. Approved personnel shall submit documentation of training to the Office of the State veterinarian;~~

~~5. Tissue collection date and type of tissue collected;~~

~~6. Laboratory responsible for testing and date of submission; and~~

~~7. Laboratory CWD report.~~

~~(d) All records shall be made available to an agent of the State Board of Agriculture upon request.~~

~~(e) Purchased additions shall comply with 302 KAR 20:065 and 302 KAR 20:040 before entry into shooting/hunting preserves.~~

~~Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Monitoring Program Application Packet, 8/14/02"; and~~

~~(b) "Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Monitoring Annual Census Report, 8/14/02".~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Agriculture, Division of Animal Health, 100 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

RITCHIE FARMER, Commissioner

APPROVED BY AGENCY: September 15, 2010

FILED WITH LRC: September 15, 2010 at noon

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, December 14, 2010)

704 KAR 3:305. Minimum requirements for high school graduation.

RELATES TO: KRS 156.160(1)(a), ~~(d)(e)~~, 158.645, 158.6451
STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), ~~(d)(e)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. The content standards for the courses of study are established in the Kentucky core academic standards [program of studies], 704 KAR 3:303. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma ~~including the requirements beginning with the graduating class of 2012~~.

Section 1. Until the graduating class of 2012, each student in a common school shall complete an individual learning plan which incorporates emphasis on career development and shall have a total of at least twenty-two (22) credits for high school graduation. Those credits shall include the following minimum requirements:

- (1) Language arts: Four (4) credits (including English I, II, III, and IV);
- (2) Social studies: three (3) credits (to incorporate U.S. History, Economic, Government, World Geography, and World Civilization);
- (3) Mathematics: three (3) credits (including Algebra I, Geometry, and one (1) elective as provided in the Kentucky core academic standards [program of studies], 704 KAR 3:303);
- (4) Science: three (3) credits (including life science, physical science, and earth and space science as provided in the Kentucky core academic standards [program of studies], 704 KAR 3:303);
- (5) Health: one-half (1/2) credit;
- (6) Physical education: one-half (1/2) credit;
- (7) History and appreciation of visual and performing arts (or another arts course which incorporates this content): one (1) credit; and
- (8) Electives: seven (7) credits.

Section 2. Beginning with the graduating class of 2012, each student in a common school shall have a total of at least twenty-two (22) credits for high school graduation. Those credits shall include the content standards as provided in the Kentucky core academic standards [program of studies], 704 KAR 3:303. Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content. The required credits and demonstrated competencies shall include the following minimum requirements:

- (1) Language arts - four (4) credits (English I, II, III, and IV) to include the content contained in the Kentucky core academic standards for English and language [English/language] arts [strands of reading, writing, speaking, listening, observing, inquiry, conventions, analysis, and using technology as a communication tool].

(a) Language arts shall be taken each year of high school.[:]

(b) If a student does [students do] not meet the college readiness benchmarks for English and language [English/language] arts as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take an English and language [an English/language] arts transitional course or intervention, which is [shall be] monitored to address remediation needs, [shall be required] before exiting high school;

- (2) Social studies - three (3) credits to include the content contained in the Kentucky core academic standards for social studies [strands of historical perspective, including U.S. History, geography, economics, government and civics, and cultures and societies];

- (3) Mathematics - four (4) courses of mathematics, including three (3) credits that shall [to] include the content contained in the Kentucky core academic standards for mathematics [strands of

number property and operation, measurement, geometry, data analysis and probability, and algebraic thinking.] and include [including] the following minimum requirements:

(a) ~~One (1) mathematics course taken each year of high school to ensure readiness for postsecondary education or the workforce based on the student's individual learning plan;~~

(b) ~~Required courses shall include~~ Algebra I, Geometry, and Algebra II. An integrated, applied, interdisciplinary, occupational, or technical course that prepares a student for a career path based on the student's individual learning plan may be substituted for a traditional Algebra I, Geometry, or Algebra II course on an individual student basis if the course meets the content standards in the Kentucky core academic standards [program of studies], 704 KAR 3:303;

(b) A mathematics course or its equivalent as determined by the district shall be taken each year of high school to ensure readiness for postsecondary education or the workforce; and[:]

(c) If a student does [students do] not meet the college readiness benchmarks for mathematics as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take a mathematics transitional course or intervention, which is [shall be] monitored to address remediation needs, [shall be required] before exiting high school; and

(d) [and

(e)] Prealgebra shall not be counted as one (1) of the three (3) required mathematics credits for high school graduation but may be counted as an elective;

- (4) Science - three (3) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky core academic standards for health [strands of biological science, physical science, earth and space science, and unifying concepts];

- (5) Health - one-half (1/2) credit to include the content contained in the Kentucky core academic standards for health [strands of individual well-being, consumer decision, personal wellness, mental wellness, and community services];

- (6) Physical education - one-half (1/2) credit to include the content contained in the Kentucky core academic standards for physical education [strands of personal wellness, psychomotor, and lifetime activity];

- (7) History and appreciation of visual and performing arts (or another arts course which incorporates this content) - one (1) credit to include the content contained in the Kentucky core academic standards for arts and humanities [strands of arts, dance, music, theatre, and visual arts,] or a standards-based specialized arts course based on the student's individual learning plan;

- (8) Academic and career interest standards-based learning experiences - seven (7) credits including four (4) standards-based learning experiences in an academic or career interest based on the student's individual learning plan; and

- (9) Demonstrated performance-based competency in technology.

Section 3. (1) A local board of education may substitute an integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4:060.

(2) For students with disabilities, a local board of education may substitute a functional, integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4:060. These shall be based on grade-level content standards and may be modified to allow for a narrower breadth, depth, or complexity of the general grade-level content standards.

Section 4. (1) A district shall implement an advising and guidance process throughout the middle and high schools to provide support for the development and implementation of an individual learning plan for each student. The plan shall include career development and awareness and specifically address Vocational Studies Academic Expectations 2.36-2.38 as established in Academic expectations, 703 KAR 4:060.

(2) A district shall develop a method to evaluate the effectiveness and results of the individual learning plan process. The evaluation method shall include input from students, parents, and school staff. As part of the evaluation criteria, the district shall include indicators related to the status of the student in the twelve (12) months following the date of graduation.

(3) A feeder middle school and a high school shall work cooperatively to ensure that each student and parent shall receive information and advising regarding the relationship between education and career opportunities. Advising and guidance shall include information about financial planning for postsecondary education.

(4) A school shall maintain each student's individual learning plan. The individual learning plan shall be readily available to the student and parent and reviewed and approved at least annually by the student, parents, and school officials.

(5) Beginning with a student's eighth grade year, the individual learning plan shall set learning goals for the student based on academic and career interests and shall identify required academic courses, electives, and extracurricular opportunities aligned to the student's postsecondary goals. The school shall use information from the individual learning plans about student needs for academic and elective courses to plan academic and elective offerings.

(6) Beginning with the graduating class of 2013, the development of the individual learning plan for each student shall begin by the end of the sixth grade year and shall be focused on career exploration and related postsecondary education and training needs.

Section 5. (1) A board of education may award credit toward high school graduation for satisfactory demonstration of learning based on content standards described in the Kentucky core academic standards~~[program of studies]~~, 704 KAR 3:303, and a rigorous performance standards policy established by the board of education. A school shall establish performance descriptors and evaluation procedures to determine if the content and performance standards have been met.

(2) A board of education shall award credit toward high school graduation based on:

(a) A standards-based Carnegie unit credit that shall consist of at least 120 hours of instructional time in one subject; or

(b) A standards-based performance-based credit, regardless of the number of instructional hours in one (1) subject.

(3) A local board of education which has chosen to award standards-based performance-based credit shall award a standards-based credit earned by a student enrolled in grade 5, 6, 7 or 8 if:

(a) The content of the course is the same that is established in the Kentucky core academic standards~~[Program of studies]~~, 704 KAR 3:303; and

(b) The district has criteria in place to make a reasonable determination that the middle level student is capable of success in the high school course.

(4) A board of education which has chosen to award standards-based performance-based credit shall establish a policy for a performance-based credit system that includes~~[-, at least]~~:

(a) The procedures for developing performance-based credit systems and for amending the system;

(b) The conditions under which each high school may grant performance-based credits and the related performance descriptors and assessments;

(c) Objective grading and reporting procedures;

(d) Content standards as addressed in 704 KAR 3:303, Kentucky core academic standards~~[Program of studies]~~, and 703 KAR 4:060, Academic expectations;

(e) The extent to which state-provided assessments will be used in the local performance-based credit system;

(f) The ability for students to demonstrate proficiency and earn credit for learning acquired outside of school or in prior learning; and

(g) Criteria to ensure that internships, cooperative learning experiences, and other learning experiences in the school and community are:

1. Designed to further student progress towards the individual learning plan;

2. Supervised by qualified instructors; and

3. Aligned with state and local content and performance standards.

(5) A board of education may award standards-based, performance-based credit toward high school graduation for:

(a) Standards-based course work that constitutes satisfactory demonstration of learning in any high school course, consistent with Section 1 or 2 of this administrative regulation;

(b) Standards-based course work that constitutes satisfactory demonstration of learning in a course for which the student failed to earn credit when the course was taken previously;

(c) Standards-based portfolios, senior year or capstone projects;

(d) Standards-based online or other technology mediated courses;

(e) Standards-based dual credit or other equivalency courses; ~~or [and]~~

(f) Standards-based internship, cooperative learning experience, or other supervised experience in the school and the community.

(6) Each local board of education shall maintain a copy of its policy on high school graduation requirements. This policy shall include a description of how the requirements address KRS 158.6451(1)(b) and 703 KAR 4:060.

Section 6. (1) A student who satisfactorily completes the requirements of this administrative regulation and additional requirements as may be imposed by a local board of education shall be awarded a graduation diploma.

(2) The local board of education shall award the diploma.

Section 7. This administrative regulation shall not be interpreted as prohibiting a local governing board, superintendent, principal or teacher from awarding special recognition to a student.

Section 8. (1) Until the graduating class of 2012, if the severity of an exceptional student's disability precludes a course of study leading to receipt of a diploma, an alternative program shall be offered.

(a) This program shall be based upon student needs, as specified in the individual educational plan, and shall be reviewed at least annually.

(b) A student who completes this course of study shall be recognized for achievement.

(c) This may be accomplished by the local board of education awarding a certificate.

(2) Beginning with the graduating class of 2012, if the severity of an exceptional student's disability precludes a course of study that meets the high school graduation requirements established in Section 2 of this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be offered.

(a) This course of study shall be based upon student needs and the provisions specified in 704 KAR 3:303, Kentucky core academic standards~~[Program of studies]~~, and shall be reviewed at least annually.

(b) A student who completes this course of study shall receive a certificate of attainment to be awarded by the local board of education consistent with the graduation practices for all students.

TERRY HOLLIDAY, PH.D., Commissioner

JOE BROTHERS, Chairperson

APPROVED BY AGENCY: June 15, 2010

FILED WITH LRC: June 15, 2010 at noon

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.

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PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, October 12, 2010, and December 14, 2010)

810 KAR 1:009. Jockeys and apprentices.

RELATES TO: KRS 230.215[~~EO 2009-535~~][~~2008-668~~]

STATUTORY AUTHORITY: KRS 230.215(2), 230.260[~~EO 2009-535~~][~~2008-668~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the ~~commission~~[~~authority~~] to promulgate administrative regulations prescribing conditions under which all horse racing is conducted. KRS 230.260 authorizes the ~~commission~~[~~authority~~] to promulgate administrative regulations that regulate conditions under which thoroughbred racing shall be conducted in Kentucky and to establish safety standards for jockeys. [~~EO 2009-535~~][~~2008-668~~], ~~effective June 12, 2009~~[~~July 3, 2008~~], established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the commission. This administrative regulation establishes the requirements for jockeys and apprentice jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a jockey, who has not ridden in a race previously, may ride in three (3) races before applying for a license as a jockey or apprentice jockey if:

- (1) The person is a licensed stable employee, assistant trainer, or trainer with at least one (1) year of service with a racing stable;
- (2) A licensed trainer certifies in writing to the stewards that the person has demonstrated sufficient horsemanship, as evidenced by his control of the animal while mounting, riding, and dismounting in race and nonrace conditions, to be permitted the probationary mounts;
- (3) The starter has schooled the person in breaking from the starting gate with other horses and approves the person as capable of starting a horse properly from the starting gate in a race;
- (4) The stewards determine that the person:
 - (a) Intends to become a licensed jockey;
 - (b) Possesses the physical ability to be a jockey; and
 - (c) Has demonstrated his ability to ride in a race without jeopardizing the safety of horses or other jockeys in the race; and
- (5) The person has prior oral or written approval of the stewards.

Section 2. Qualifications for License. In addition to the requirements applicable to licensees under 810 KAR 1:025, a holder of a license as a jockey or apprentice jockey:

- (1) Shall be sixteen (16) years of age or older and licensed under his legal name which shall be listed in the daily race program;
- (2) Shall have served at least one (1) year with a racing stable;
- (3) Shall have ridden in at least three (3) races; and
- (4) Shall, if required by the stewards, to protect the health and safety of the jockey, other jockeys, the horses, and the welfare of the betting public provide a medical affidavit certifying the person is physically and mentally capable of performing the activities and duties of a licensed jockey.

Section 3. Amateur or Provisional Jockey. (1) An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefore, shall:

- (a) Be approved by the stewards as to competency of horsemanship, as demonstrated by meeting the requirements in Section 1(2), (3), and (4)(b) and (c) of this administrative regulation;
 - (b) Be granted an amateur jockey's license; and
 - (c) Have his amateur status duly noted on the daily race program.
- (2) A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey's license to ride his own horse or horse registered in his care as trainer.

Section 4. Apprentice Allowance. (1) Any person sixteen (16)

years of age or older, who has not been licensed previously as a jockey in any jurisdiction, and who is qualified under Section 2 of this administrative regulation, may claim in all purse races except handicaps the following weight allowances:

- (a) Ten (10) pounds until he has ridden five (5) winners;
- (b) Seven (7) pounds until he has ridden an additional thirty-five (35) winners;
- (c) If he has ridden a total of forty (40) winners prior to the end of one (1) year from the date of riding his fifth winner, he shall have an allowance of five (5) pounds until the end of that year; and
- (d) If after one (1) year from the date of the fifth winner, the apprentice jockey has not ridden forty (40) winners, the applicable weight allowance shall continue for one (1) additional year, or until the 40th winning mount whichever occurs first.

(2)(a) After the completion of conditions in subsection (1) of this section, a contracted apprentice may claim three (3) pounds for one (1) year if riding horses owned or trained by his original contract employer if his contract has not been transferred or sold since his first winner.

(b) The original contract employer shall be the party to the contract who was the employer at the time of the apprentice jockey's first winner.

(c) Apprentice allowance shall not be claimed for a period in excess of two (2) years from the date of the rider's fifth winner unless an extension has been granted in accordance with subsection (4) of this section.

(3) An apprentice jockey may enter into a contract with a licensed owner or licensed trainer qualified under Section 5 of this administrative regulation for a period not to exceed five (5) years.

(a) These contracts shall be:

1. Approved by the stewards;
2. Filed with the commission; and
3. Binding in all respects on the parties to the contract.

(b) An apprentice who has not entered into a contract pursuant to this subsection shall be given an apprentice jockey certificate.

(4) If an apprentice jockey is unable to ride for a period of seven (7) consecutive days or more because of service in the armed forces of the United States, physical disablement, attendance in an institution of secondary or higher education, restrictions on racing, or other valid reason, the commission, upon recommendation of the stewards and after consultation with the racing entity which approved the original apprentice contract, may extend the time during which the apprentice weight allowance may be claimed for a period no longer than the period the apprentice rider was unable to ride.

(5) After completion of conditions in subsection (1) of this section, the rider shall be issued a license as a jockey before accepting subsequent mounts. Under these circumstances, the commission may waive collection of an additional license fee.

Section 5. Rider Contracts. (1) All contracts between an employer owner or trainer and employee rider shall be subject to 810 KAR Chapter 1.

(2) All riding contracts for terms longer than thirty (30) days, and any amendments, cancellation, or transfer, shall be in writing with the signatures of the parties notarized, and shall be approved by the stewards and filed with the commission.

(3) The stewards shall approve a riding contract and permit parties to participate in racing in this state if the stewards find that:

(a) The contract employer is a licensed owner or licensed trainer who owns or trains at least three (3) horses eligible to race at the time of the execution of the contract;

(b) The contract employer possesses the character, ability, facilities, and financial responsibility conducive to developing a competent race rider; and

(c) If it is a contract for an apprentice jockey, the contract provides for fair remuneration, adequate medical care, and an option equally available to both employer and apprentice jockey to cancel the contract after two (2) years from the date of execution.

Section 6. Restrictions as to Contract Riders. A rider shall not:

(1) Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his contract employer;

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(2) Ride or agree to ride any horse in a race without consent of his contract employer;

(3) Share any money earned from riding with his contract employer; and

(4) Accept any present, money, or reward of any kind in connection with his riding of any race except through his contract employer.

Section 7. Calls and Engagements. (1) Any rider not prohibited by prior contract may agree to give first or second call on his race-riding services to any licensed owner or trainer.

(2) These agreements, if for terms of more than thirty (30) days, shall be in writing, approved by the stewards, and filed with the commission.

(3) Any rider employed by a racing stable on a regular salaried basis shall not ride against the stable which employs him.

(4) An owner or trainer shall not employ or engage a rider to prevent him from riding another horse.

Section 8. Jockey Fee. (1) The fee to a jockey, in the absence of special agreement to the contrary, shall be as follows:

(a) Purse \$599 and under: winning mount, \$33; second place mount, \$33; third place mount, \$33; losing mount, \$33.

(b) Purse \$600 to \$699: winning mount \$36; second place mount, \$33; third place mount, \$33; losing mount, \$33.

(c) Purse \$700 to \$1,499: winning mount, ten (10) percent of win purse; second place mount, \$33; third place mount, \$33; losing mount, \$33.

(d) Purse \$1,500 to \$1,999: winning mount, ten (10) percent of win purse; second place mount, \$35; third place mount, \$33; losing mount \$33.

(e) Purse \$2,000 to \$3,499: winning mount, ten (10) percent of win purse; second place mount, \$45; third place mount, \$40; losing mount, \$38.

(f) Purse \$3,500 to \$4,999: winning mount, ten (10) percent of win purse; second place mount, \$55; third place mount, \$45; losing mount, \$40.

(g) Purse \$5,000 to \$9,999: winning mount, ten (10) percent of win purse; second place mount, \$65; third place mount, \$50; losing mount, \$45.

(h) Purse, \$10,000 to \$14,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, \$50.

(i) Purse, \$15,000 to \$24,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, \$55.

(j) Purse, \$25,000 to \$49,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, \$65.

(k) Purse, \$50,000 to \$99,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, \$80.

(l) Purse, \$100,000 and up: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, \$105.

(2) A jockey fee shall be considered earned by a rider if he is weighed out by the clerk of scales, with the following exceptions:

(a) If a rider does not weigh out and ride in a race for which he has been engaged because an owner or trainer engaged more than one (1) rider for the same race, the owner or trainer shall pay an appropriate fee to each rider engaged for the race;

(b) If a rider capable of riding elects to take himself off the mount without, in the opinion of the stewards, reasonable cause; or

(c) If a rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by the rider during the time between weighing out and start of the race.

Section 9. Revised Order of Finish After Race is Declared Official. If a winning purse is forfeited through subsequent ruling of

the stewards or the commission, after the result has originally been made official, the winning fee shall be paid to the jockey whose mount is ultimately adjudged the winner, and the original winner shall be credited only with a losing mount.

Section 10. Duty to Fulfill Engagements. Every rider shall fulfill his duly scheduled riding engagements, unless excused by the stewards due to circumstances under which a jockey could not reasonably be expected to be physically present at the required time. A rider shall not be required to ride a horse he believes to be unsound, nor over a racing strip he believes to be unsafe, but if the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, the rider may be subject to disciplinary action.

Section 11. Presence in Jockey Room. (1) Each rider who has been engaged to ride in a race shall be physically present in the jockey room no later than one (1) hour prior to post time for the first race on the day he is scheduled to ride, unless excused by the stewards or the clerk of scales due to circumstances under which a jockey could not reasonably be expected to ride; and upon arrival shall report to the clerk of scales his engagements. If a rider fails for any reason to arrive in the jockey room no later than one (1) hour before post time of a race in which he is scheduled to ride, the clerk of scales shall so advise the stewards who may name a substitute rider and shall cause a public announcement to be made of the rider substitution prior to opening of wagering on the race.

(2) Each rider reporting to the jockey room shall remain in the jockey room until he has fulfilled all his riding engagements for the day, except to ride in a race, or except to view the running of a race from a location approved by the stewards. While a rider is outside of the jockey room, a rider shall not have contact or communication with any person other than an owner or trainer for whom he is riding, a racing official, or a representative of the regular news media, until the rider has fulfilled all his riding engagements for the day.

(3) The association shall be responsible for security of the jockey room to conduct specific business previously approved by the stewards so as to exclude all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, duly accredited members of the news media, and persons having special permission of the stewards to enter the jockey room.

(4) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall notify the stewards of his intent to depart after fulfilling his final riding engagement of the day.

Section 12. Weighing Out. (1) Each rider engaged to ride in a race shall report to the clerk of scales for weighing out not more than one (1) hour and not less than fifteen (15) minutes before post time for each race in which he is engaged to ride, and when weighing out, the rider shall declare overweight, if any.

(2)(a) A rider shall not pass the scale with more than one (1) pound overweight, without consent of the owner or trainer of the horse he is engaged to ride; and

(b) A rider shall not pass the scale with more than five (5) pounds overweight.

(3) A horse shall not be disqualified because of overweight carried.

(4) Whip, blinkers, number cloth, bridle, goggles, rider's safety helmet, and rider's safety vest shall not be included in a rider's weight.

Section 13. Wagering. A rider shall not place a wager, cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race except on his own mount, and except through the owner or trainer of the horse he is riding. The owner or trainer placing wagers for his rider shall maintain a precise and complete record of all of these wagers, and the record shall be available for examination by the stewards at all times.

Section 14. Attire. (1) Upon leaving the jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional jockey costume with all jacket buttons and

catches fastened.

(2) Each jockey shall wear:

(a) The cap and jacket racing colors registered in the name of the owner of the horse he is to ride;

(b) Stock tie;

(c) White or light breeches;

(d) Top boots;

(e) A safety vest and safety helmet that ~~meet~~meets the standards set forth in subsections (4) and (5) of this section~~(4) and (5) below, respectively~~["Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, ASTM F1937-04"]; and

(f) A number on his right shoulder corresponding to his mount's number as shown on the saddle cloth and daily racing program.

(3) ~~A safety vest shall not weigh more than two (2) pounds.~~

(4) The clerk of scales and attending valet shall be held jointly responsible with a rider for his neat and clean appearance and proper attire.

~~(4)(5)~~ A jockey mounted on a horse or stable pony at a location under the jurisdiction of the commission shall wear a properly secured safety helmet at all times. If requested by a commission official, the jockey shall provide sufficient evidence that his helmet has a tag, stamp, or similar identifying marker indicat-~~ing~~indicating that it meets one of the following safety standards:

(a) ASTM International Standard, ASTM F1163-04a;

(b) British Standards, BS EN 1384:1997 or PAS 015:1999; or

(c) Australian/New Zealand Standard, AS/NZS 3838:2006.

(5) A jockey mounted on a horse or stable pony at~~on~~ any location under the jurisdiction of the commission shall wear a safety vest at all times. ~~The safety vest shall not weigh more than two (2) pounds.~~ If requested by a commission official, the jockey shall provide sufficient evidence that his safety vest has a tag, stamp, or similar identifying marker indicating that it meets or exceeds one (1) of the following safety standards~~and must comply with one (1) of the following minimum standards~~:

(a) British Equestrian Trade Association (BETA):2000 Level 1;

(b) Euro Norm (EN) 13158:2000 Level 1;

(c) ASTM International Standard, ASTM~~American Society for Testing and Materials (ASTM)~~ F2681-08;

(d) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3; or

(e) Australian Racing Board (ARB) Standard 1.1998.

Section 15. Advertising. (1) A jockey shall not wear advertising or promotional material of any kind (whether for a nonprofit or for-profit entity) on clothing within one (1) hour ~~before or after~~before or after ~~of or during~~ a race, unless:

(a) ~~1.(a)~~ The material advertises or promotes the Jockey's Guild in the form of the picture of a jockey's boot or the picture of a wheelchair, with no additional picture or logo;

~~2.(b)~~ The material advertises or promotes the ~~is the National Thoroughbred Racing Association (NTRA)~~ Permanently Disabled Jockey's Fund in the form of the pictures of its logo, with no additional picture or logo; or

~~3.(c)~~ The picture or logo has previously been approved by the current owner, association, and the stewards under the process set forth in this administrative regulation, and this approval is reflected in the commission's official records;~~and~~

~~(b)(2)~~ The material complies with the size restrictions of subsection (2)(b) of this section;~~or~~

~~(b)~~ The following criteria are met:

~~(c)(4)~~ The material meets the advertising standards listed in subsection (2) of this section;~~and~~

~~(d)(2)~~ Written approval by the following is submitted to the commission:~~as provided herein~~:

1.(a) The managing owner of the horse, or authorized agent of the managing owner who acts with actual authority and has been specifically authorized in writing to sign the written approval on behalf of the managing owner. Written authorization shall be evidenced by completion and return to the commission of the "Authorized Agent License Application" form. If the owner is a business entity, in lieu of filing the "Authorized Agent License Application" form, the owner may file duly adopted resolutions of the business entity authorizing the agent to act on its behalf and remit the

twenty-five (25) dollar license application fee;

~~2.(b)~~ The jockey riding the horse or the authorized agent of the jockey who acts with actual authority and has been specifically authorized in writing to sign the written approval on behalf of the jockey. Written authorization shall be evidenced by completion and return to the commission of the "Authorized Agent License Application" form;

~~3.(e)~~ The licensed racing association, which shall grant approval if it reasonably determines the material meets the standards in subsection (2)(a) of this section; and

~~4.(d)~~ The stewards, who shall grant approval if they reasonably determine the material meets the standards in subsections (2)(b) and (3) of this section; and:

~~(e)(3)~~ Written approval required pursuant to subsection~~sub~~section (1)(d) ~~is~~shall be evidenced by completion and return to the commission of the "Request to Wear Advertising and Promotional Materials" form. The form shall be completed and submitted to the stewards not later than 5 p.m. two (2) days prior to the day of the race in which the advertising and promotional materials will be worn. No other form of approval shall be accepted by the commission.~~The jockey obtains the written approval established in subsection (4) of this section.~~

(2) Advertising or promotional material displayed on jockey clothing shall:

(a) Not compete with, conflict with, or infringe upon sponsorship agreements applicable to the racing association race or to the race meet in progress; and

(b) Comply with the following size restrictions:;

1. A maximum of thirty-two (32) square inches on each thigh of the pants on the outer side between the hip and knee and ten (10) square inches on the rear of the pant at the waistline at the base of the spine;

2. A maximum of twenty-four (24) square inches on boots and leggings on the outside of each nearest the top of the boot; and

3. A maximum of six (6) square inches on the front center of the neck area (on a turtleneck or other undergarment).

(3) A sponsorship shall not be permitted by a person or entity whose message, business reputation, or ongoing business activity may be considered as obscene or indecent to a reasonable person.

~~(4)(a)~~ The party presenting the advertising or promotional opportunity to the owner and jockey (including without limitation, the owner and jockey) shall disclose in writing all material terms, including financial, regarding the advertising or promotional opportunity to the owner, and the jockey;

~~(b)(jockey, and the commission)~~ The division of proceeds from any advertising or promotional material placed in accordance with this administrative regulation is subject to agreement between the owner and the jockey;

~~(c)(f)~~ The agreement between the owner and jockey shall be made in writing on the "Owner/Jockey Advertising and~~for~~ Promotional Materials Agreement"~~and submitted to the commission~~ not later than 5 p.m. two (2) days prior to the day of the race in which the advertising and promotional materials will be worn;

~~(d) Other forms~~. No other form of agreement or contract shall not be used; and

~~(e)(f)~~ Any party who fails to comply with this or any other provision provided in this administrative regulation may be subject to penalties by the commission in accordance with KRS Chapter 230 and 810 KAR Chapter 1~~810 KAR 1:025, 810 KAR 1:028, and as otherwise permitted by law~~. For advertising or promotional material addressed in subsection (1)(b) of this section, approval in writing of all three (3) of the following shall be required:

1. The managing owner of the horse, or the owner's duly authorized agent;

2. The licensed racing association, which shall grant approval if it reasonably determines the material meets the standards in subsection (2)(a) of this section; and

3. The stewards, who shall grant approval if they reasonably determine the material meets the standards in subsections 2(b) and (3) of this section.

~~(b)~~ Written approval shall be evidenced by completion and return of the "Request to Wear Advertising and Promotional Materials." The form shall be completed and submitted to the stewards

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~~not later than the time of entry of the subject race.]~~

(5) As a condition for approval of advertising or promotional material, either the owners, the stewards, or the licensed racing association may require a personal viewing of the proposed material as it is to be displayed, to determine that the requirements of this section are met.

(6)~~[This administrative regulation shall not prohibit]~~ The sponsor of a licensed racing association race or race meeting may display~~[from displaying]~~ advertising or promotional material on an association saddlecloth if it does not interfere with the clear visibility of the number of the horse.

(7) Advertising content other than that approved in this administrative regulation shall not be permitted.

(8) This administrative regulation shall not infringe upon or limit the common law rights of a racing association to eject or exclude persons, licensed or unlicensed, from association grounds, or to apply the association's internal rules regarding other forms of advertising not addressed in this or any other applicable statute or administrative regulation, if the~~[provided such]~~ internal rules have been previously filed with and approved by the commission or its duly~~authorized representative~~ or to apply the association's internal rules regarding advertising.

Section 16. Viewing Films or Tapes of Races. (1) Every rider shall check~~[be responsible for checking]~~ the film list posted by the stewards in the jockey room the day after riding in a race.

(2) The posting of the film list shall be considered as notice to all riders whose names are listed to present themselves when~~[at the time]~~ designated by the stewards to view the patrol films or video tapes of races.

(3) Any rider may be accompanied by a representative of the jockey organization of which he is a member in viewing the films, or with the stewards' permission, be represented at the viewing by his designated representative.

Section 17. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) ~~["Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, ASTM [F1937-04]"; and]~~

~~[(b)]~~ "Request to Wear Advertising and Promotional Material", KHRC 009-01, 10/10/5/10~~[March 2005]~~.

~~[(b)]~~~~[(c)]~~ "Authorized Agent License Application", KHRC 009-02, 5/10; and

~~[(c)]~~~~[(d)]~~ "Owner/Jockey Advertising or Promotional Materials Agreement", KHRC 009-03, 5/10.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Kentucky Horse Racing Commission ~~Authority~~ Web site at <http://www.khrc.ky.gov/>.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 8, 2010

FILED WITH LRC: June 15, 2010 at 11 a.m.

CONTACT PERSON: Susan Bryson Speckert, General Counsel, 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
(As Amended at ARRS, October 12, 2010, and
December 14, 2010)

810 KAR 1:026. Racing associations.

RELATES TO: KRS 230.215(2), 230.225(1), 230.260(8)~~[-EO 2009-535][2008-668]~~

STATUTORY AUTHORITY: KRS 230.215(2), 230.225(1), 230.260(8)~~[-EO 2009-535][2008-668]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.225(1), and 230.260(8) require the ~~commission~~~~[authority]~~ to promulgate administrative regulations establishing conditions governing horse racing. ~~[EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the commission.][EO 2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the commission.]~~ This administrative regulation establishes the requirements for racing associations.

Section 1. Maintenance of Grounds, Facilities and Uniform Track. (1) The grounds and facilities of an association shall be maintained in a manner that provides for the:

(a) Comfort and safety of patrons, employees, and other persons whose business requires their attendance; and

(b) Health and safety of horses that are stabled, or exercise, or entered to race at the association.

(2) The grounds and facilities of an association shall be:

(a) Neat and clean;

(b) Painted; and

(c) In good repair.

(3) An association shall have implements adequate to maintain a uniform track, weather conditions permitting.

Section 2. Results Boards, Totalizators Required. An association shall provide and maintain mechanically operated totalizators and electronic boards that show odds, results, and other race information located in plain view of patrons.

Section 3. Starting Gate. (1) An association shall provide and maintain a working starting gate on every day horses are permitted to exercise on its racing strip.

(2) An association shall have in attendance one (1) or more persons qualified to keep the starting gates in good working order whenever the gates are in use.

(3) An association shall provide for periodic inspections of the starting gates.

Section 4. Stabling. (1) An association barn and stall shall be:

(a) Constructed of fire-resistant material;

(b) Clean, sanitary, and equipped for adequate drainage; and

(c) Maintained in good repair.

(2)(a) Prior to the opening of a race meeting, the commission shall submit to the racing secretary a list of locations of approved off-track stabling facilities from which horses shall be permitted to race.

(b) The locations shall be considered association grounds.

Section 5. Stands for Officials. (1) An association shall provide and maintain stands commanding an uninterrupted view of the entire racing strip for racing officials.

(2) The stands and their locations shall be approved by the commission.

(3) The floor of patrol judge stands shall be at least six (6) feet higher than the track rail.

Section 6. Distance Pole Markings. An association shall have:

(1) Red and white quarter poles;

(2) Green and white eighth poles; and

(3) Black and white 16th poles.

Section 7. Lighting. (1) An association shall provide and maintain flood lights that provide adequate illumination in the stable area and parking area.

(2) If an association conducts night racing, it shall provide adequate track lighting.

Section 8. Facilities for Stable Employees. (1) An association shall provide and maintain in good repair adequate living quarters and conveniently located sanitary facilities, which shall include showers, toilets, and wash basins for stable employees.

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(2) Personnel shall not be permitted to sleep in a stall or barn loft.

Section 9. Facilities for Jockeys. (1) An association shall provide and maintain adequate facilities for jockeys scheduled to ride each day.

(2) The facilities shall include accommodations for rest and recreation of jockeys on racing days, showers, toilets, wash basins, mirrors, arrangements for safekeeping of apparel and personal effects, and snack bar.

Section 10. Facilities for Commission. (1) An association shall provide adequate office space for the commission on its grounds.

(2) An association shall provide the following to the commission:

(a) A season box, marked "Kentucky Horse Racing Commission", of six (6) to eight (8) seats; and

(b) A number of parking places sufficient for the commission and commission staff.

(3) An association shall honor for access to preferred parking facilities and other areas on its grounds a commission or Association of Racing Commissioners International ring, lapel button, or automobile emblem.

Section 11. Sanitary Facilities for Patrons. An association shall, on every racing day, provide sanitary toilets and wash rooms, and free drinking water adequate for the number of patrons and persons having business at the association that comply with applicable statutes, administrative regulations, codes or ordinances.

Section 12. Manure Removal. (1) An association shall provide and maintain manure pits of the size and construction adequate to handle refuse from stalls.

(2) The contents of the manure pits shall be removed from the stable area as promptly as is possible.

Section 13. Photo Finish Cameras. (1) An association shall provide and maintain at the finish line two (2) photo finish cameras for photographing the finish of races.

(2) One (1) of the photo finish cameras shall be held in reserve. The photo finish photographer shall promptly furnish to the stewards and placing judges the number of prints of finishes requested.

(3) An association shall maintain a one (1) year file of all photo finishes.

Section 14. Patrol Films or Video Tapes. (1) During a race meeting, an association shall provide and maintain personnel and equipment necessary to record and produce motion pictures or video tapes that clearly record each race from start to finish.

(2) Projection or viewing equipment shall be adequate to permit simultaneous showing of head-on and side-angle views of the running of each race.

(3)(a) A film and video tape shall be:

1. Retained and secured by an association for at least one (1) year; and

2. Made available to the commission and stewards upon demand.

(b) Upon order of the stewards, a visual record of a race that has raised a question, dispute, or controversy shall be filed with the commission.

(4) Films and video tapes shall be made available:

(a) For viewing at the track by licensees who owned, trained, or rode a horse in the race requested to be viewed; and

(b) To members of the press.

Section 15. Ambulances. (1) An association shall provide and maintain at least one (1) man-ambulance and one (1) horse-ambulance whenever horses are permitted to exercise or race.

(2) An ambulance shall be:

(a) Equipped;

(b) Manned;

(c) Ready for immediate duty; and

(d) Located at an entrance to the racing strip.

Section 16. (1) Except as provided by subsection (2) of this section, an association shall equip and maintain a first aid facility that is:

(a) Equipped with at least two (2) beds; and

(b) Attended by a licensed physician and registered nurse during race hours.

(2) An association shall not be required to maintain a first aid facility, if the association:

(a) Has an ambulance on standby on its premises during race hours; and

(b) Can transport an injured individual to a fully-equipped hospital emergency room in:

1. Five (5) minutes or less; and

2. An ambulance manned by a certified paramedic and certified emergency medical technician.

(3) A paramedic provided pursuant to subsection (2) of this section shall be equipped with:

(a) Heart monitor and defibrillator;

(b) Cellular phone; and

(c) Airways intubation equipment.

Section 17. Track Kitchen. An association shall provide a track kitchen within the stable area, maintained in a clean and sanitary manner that complies with applicable statutes, administrative regulations, codes, or ordinances at all times horses are stabled on association grounds.

Section 18. Communication System. An association shall install and maintain in good working service a communication system between the stewards' stand and:

(1) Patrol judges;

(2) Parimutuel department;

(3) Starting gate;

(4) Public address announcer; and

(5) Clerk of the scales.

Section 19. Fire Prevention. (1) An association shall have a fire prevention and suppression program.

(2) The commission shall not approve the commencement of a race meeting, unless, within fifteen (15) days before commencement of the race meeting, the state or local fire marshal:

(a) Has inspected the association; and

(b) Certified that the association plant and stable area meets fire safety requirements.

(3) An association shall maintain a firefighting unit of trained personnel that has high-expansion foam fire extinguishers, and other equipment required by the local fire inspection authority.

(4) An association shall prohibit:

(a) Smoking in stalls, under shed rows, and in feed rooms;

(b) Open fires and oil or gas lamps in the stable area; and

(c) Locking of stalls occupied by horses.

Section 20. Association Security. (1) An association shall provide and maintain security services, night and day, in and about association grounds.

(2) An association shall furnish to the commission a report on any disturbances, drunkenness, or disorderly conduct committed by a person on association grounds.

Section 21. Security. (1) An association shall exclude from association grounds a person designated to be excluded by order of the commission or stewards.

(2) An association shall implement security measures to protect a horse on association ~~grounds~~grounds from being injured by being frightened or tampered with.

(3) An association shall exclude from the paddock area, race strip, and winner's entrance a person who:

(a) Does not have an immediate connection with the horses entered; and

(b) Is not a commission member, racing official, or accredited member of the news media.

Section 22. Vendors and Suppliers. (1) A vendor shall comply with procedures and requirements established by an association.

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(2) An association shall not attempt to control or monopolize sales to owners, trainers, or stable employees.

(3) An association shall not grant a concession to a vendor of feed, racing supplies, or racing services.

(4) A vendor of horse feeds or medications shall file with the commission veterinarian a list of products which he proposes to sell, including a new preparation or medication.

(5) An association shall not permit the sale of an alcoholic beverage except beer within the stable area.

Section 23. Ejection or Exclusion From Association Grounds.

(1)(a) An association shall for probable cause eject or exclude from association grounds a person:

1. Believed to be engaged in:

- a. A bookmaking activity;
- b. Solicitation of bets; or
- c. Touting;

2. Who as a business or for compensation, either directly or indirectly:

a. Accepted anything of value to be wagered, transmitted, or delivered for wager to a pari-mutuel wagering enterprise; or

b. Participated in the transaction; or

3. Who attempted to use tax exempt admissions credentials not issued to him by the association.

(b) An association shall immediately submit a report on the ejection or exclusion from association grounds of a person who engaged in activity prohibited by paragraph (a) of this subsection to the:

1. Commission;
2. Stewards; and
3. Police.

(2) An association shall eject or exclude from its stable area a person who is not:

(a) Licensed to conduct an activity which requires his presence in the stable area;

(b) An accredited member of the news media;

(c) A guest of a licensed owner or trainer accompanied by the owner or trainer; or

(d) Accompanied by, and under the control and supervision of a:

1. Racing official;
2. Association security guard; or
3. Association public relations department representative.

(3)(a) A report of an ejection or exclusion from association grounds for any reason shall be made immediately to the commission and the stewards.

(b) A report shall state the:

1. Name of person ejected or excluded;
2. Reasons for the ejection or exclusion; and
3. Facts relating to the ejection or exclusion.

Section 24. Ownership of Associations. An association shall file with the commission a revised list of persons whose identity is required by 810 KAR 1:025 immediately upon transfer of a beneficial interest or control in the association.

Section 25. Plan of Association Grounds. (1) An association shall file with the commission maps and plans of association grounds, showing:

- (a) Structures;
- (b) Piping;
- (c) Fire hydrants;
- (d) Fixed equipment;
- (e) Racing strip, noting elevation as filled, drained, and

gapped; and

(f) Composition of track base and cushion.

(2) An association shall file revised maps or plans of association grounds upon any material change.

Section 26. Attendance Report and Badge List Report; Tax Exempt Credentials. (1) An association shall file with the commission a copy of the form required by KRS 137.180 and 138.480, "Race Track Pari-mutuel and Admissions Report," Revenue Form 73A100, incorporated by reference in 103 KAR 3:050.

(2) A tax exempt admission credential shall not be transferable.

Section 27. Financial Report. Within sixty (60) days after the close of its fiscal year, an association shall file:

- (1) Three (3) copies of its balance sheet; and
- (2) A comparison to the prior year.

Section 28. Horseman's Account and Horseman's Bookkeeper.

(1) An association shall maintain a bank account that shall:

- (a) Be separate from its other accounts;
- (b) Be Entitled "horsemen's account"; and
- (c) Contain sufficient funds to pay money owing to horsemen

for:

1. Purses;
2. Stakes;
3. Rewards;
4. Claims; and
5. Deposits.

(2) Withdrawals from the horsemen's account shall be subject to audit by the commission at any time.

(3)(a) For all races, purse money shall be available to earners after the result of the race in which the money was earned has been declared official; and:

1. For race dates where all samples are reported by the commission laboratory as passed at the screening level, within twenty-four (24) hours after receipt of the report by the commission; or

2. For race dates where one (1) or more sample is reported by the commission laboratory as suspicious at the screening level, within twenty-four (24) hours after receipt of the final report by the commission.

(b) ~~If in cases where~~ a horse is disqualified and an appeal has been filed, purse money shall be available to other participants entitled to purse money in the amount they would have earned had a horse not been disqualified. The purse money to which the disqualified participant would be entitled shall be held in escrow by the association until final adjudication of a dispute over which persons are entitled to money. ~~Except as provided by paragraph (b) of this subsection, purse money shall be available to earners within forty-eight (48) hours, dark days excluded, after the result of the race in which the money was earned has been declared official.~~

~~(b) The stewards shall order money withheld until final adjudication of a dispute over which persons are entitled to money.~~

(4)(a) Except for jockey fees, a deduction from purse money shall not be made, unless the deduction has been requested in writing by the:

1. Person to whom purse money is payable; or
2. Authorized representative of the person to whom purse money is payable.

(b) Whether or not a deduction request is made, at the close of a race meeting, the horsemen's bookkeeper in charge of the horsemen's account shall mail to an owner a duplicate of each record of a deposit, withdrawal, or transfer of funds that affects his racing account.

(5) The horsemen's bookkeeper in charge of the horsemen's account shall be bonded.

Section 29. Outriders. (1) An association shall employ at least two (2) outriders.

(2) An outrider shall:

(a) Escort starters to the post; and

(b) Assist in the returning of all horses to the unsaddling area.

(3) An outrider shall:

(a) Only lead a horse that has demonstrated unruliness; and

(b) Assist in the control of a horse that might cause injury to a jockey or others.

(4) Whenever horses are permitted on the racing strip for exercising or racing, an outrider shall be:

- (a) Present on the racing strip;
- (b) Mounted; and
- (c) Ready to assist in the:

1. Control of an unruly horse; or

2. Recapture of a loose horse. ~~(5) When a person exercises a horse during training hours, or accompanies a horse to the starting gate during racing hours, he shall wear a safety vest that meets the~~

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~~"Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, ASTM F1937-04," incorporated by reference in 810 KAR 1:009.]~~

Section 30. A person mounted on a horse or stable pony at a location under the jurisdiction of the commission shall wear a properly secured safety helmet at all times. If requested by a commission official, the person shall provide sufficient evidence that his helmet has a tag, stamp, or similar identifying marker indicating that it meets one of the following safety standards:

- ~~(1)(a)~~ ASTM International Standard, ASTM F1163-04a;
- ~~(2)(b)~~ British Standards, BS EN 1384:1997 or PAS 015:1999;
- or
- ~~(3)(e)~~ Australian/New Zealand Standard, AS/NZS 3838:2006.

Section 31. Any person mounted on a horse or stable pony on any location under the jurisdiction of the commission, all assistant starters, and any person handling a horse in a starting gate shall wear a safety vest at all times. If requested by a commission official, the person shall provide sufficient evidence that his safety vest has a tag, stamp, or similar identifying marker indicating that it meets or exceeds one (1) of the following safety standards:~~(3) [The safety vest shall comply with one (1) of the following minimum standards:]~~

- ~~(1)(a)~~ British Equestrian Trade Association (BETA):2000 Level 1;
- ~~(2)(b)~~ Euro Norm (EN) 13158:2000 Level 1;
- ~~(3) ASTM International Standard, ASTM~~~~(e) American Society for Testing and Materials (ASTM) F2681-08;~~
- ~~(4)(d)~~ Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3; or
- ~~(5)(e)~~ Australian Racing Board (ARB) Standard 1.1998.

Section 32. Valets. (1) An association shall employ a number of licensed valets sufficient to attend each rider on a day's racing program.

(2) A valet shall be under the immediate supervision and control of the clerk of scales.

(3) A rider shall not employ a valet or be attended by a person other than the valet assigned to him by the clerk of scales.

(4) A valet shall not be assigned to the same rider for more than two (2) consecutive racing days.

(5) A valet shall:

(a) Be responsible for the care and cleaning up of the apparel and equipment of his assigned rider;

(b) Ensure his rider has the proper equipment and colors for a race;

(c) Present the proper equipment and attend the saddling of his rider's mount; and

(d) Attend the weighing out of his rider.

(6) A valet or other jockey room attendant shall not place a wager, directly or indirectly, on races run while he serves as a valet for himself or another.

(7)(a) An association shall provide uniform attire for valets.

(b) A valet shall wear the attire provided by an association whenever he performs his duty within public view.

Section 33.~~[32.]~~ Minimum Purse and Stakes Values. (1) An association shall not program or run any race for which the purse is less than \$2,000 in cash, without special permission of the commission.

(2) An association shall not program or run a stakes race the added value of which is less than \$10,000 in cash added by the association to stakes fees paid by owners.

(3) The minimum cash amounts paid by the association shall be exclusive of:

- (a) Nomination;
- (b) Eligibility;
- (c) Entrance;
- (d) Starting fees;
- (e) Cash awards;
- (f) Premiums;
- (g) Prizes; or
- (h) Objects of value.

Section 34.~~[33.]~~ Maximum Number of Races. An association shall not program or run more than nine (9) races on a racing day without permission of the commission.

Section 35.~~[34.]~~ Two (2) Year Old Races. Beginning on March 1 of each year, an association shall program in the conditions book at least four (4) two (2) year old races each week.

Section 36.~~[35.]~~ (1)(a) Exculpatory clauses. Stall applications, entry forms, condition books, and other agreements between persons or entities licensed by the Kentucky Horse Racing Commission regarding the stabling of horses, the racing of horses, the training of horses or other activities at tracks owned or operated by licensed associations, and conditions of racing established by licensed associations, shall not contain provisions which absolve or hold harmless a licensee from liability, or limit the liability of a licensee, for loss, loss of use, injury or damage caused or contributed to by the acts or omissions of any licensee or its agents or employees, except for:

1. Ordinary negligence which causes or contributes to loss, injury or damage to horses while on the premises of a licensed association; and

2. Ordinary negligence which causes or contributes to personal injury or property damage, including loss, loss of use, injury or damage to horses arising from the use of grass fields or gallops owned or controlled by the licensed association.

(b) Subject to the exception in paragraph (a) of this subsection, all licensees participating in the stabling of horses, the racing of horses, the training of horses, and related activities at tracks owned or operated by licensed associations shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law. A licensee shall not attempt to limit liability of any person or entity for gross negligence or intentional wrongdoing.

(2) Constructive notice to and consent of licensees. All persons licensed by the Kentucky Horse Racing Commission shall be deemed, as a condition of licensure, to have notice of and to have consented to exculpatory provisions, which comply with the limitations set forth in this administrative regulation, included in agreements between licensees and in conditions of racing established by a licensed association. Exculpatory provisions which exceed the limitations set forth in this administrative regulation shall be void and unenforceable in their entirety.

(3) Model provision. The following provision shall be deemed to comply with the limitations set forth in this administrative regulation: All Kentucky Horse Racing Commission licensees, including but not limited to the host association, owners, trainers, jockeys, and grooms ("licensees"), participating in stabling, racing, training, and related activities at (name of licensed association) recognize that hazards and risks inherent in these activities may cause the injury or death of horses. Therefore, in consideration of participating in stabling, racing, training, and related activities at (name of licensed association), all licensees assume the risks of, and release, hold harmless and covenant not to sue all other licensees so participating for:

(a) Ordinary negligence which causes or contributes to loss, loss of use, injury or damage to horses while on the premises of (name of licensed association); and

(b) Ordinary negligence which causes or contributes to personal injury or property damage, including but not limited to loss, loss of use, injury, or damage to horses arising from the use of grass fields or gallops owned or controlled by (name of licensed association), whether arising from alleged acts or omissions of a licensee and its agents or employees, the condition of the premises of (name of licensed association) or any other cause. Except as provided above, all licensees participating in racing, training, and related activities at (name of licensed association) shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law.

Section 37. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, ASTM,

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~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky, 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 at www.khrc.ky.gov.~~

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 8, 2010

FILED WITH LRC: June 15, 2010 at 11 a.m.

CONTACT PERSON: Susan Bryson Speckert, General Counsel, 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
(As Amended at ARRS, December 14, 2010)**

810 KAR 1:130. Post-race sampling and testing procedures.

RELATES TO: 230.215, 230.240, 230.260, 230.265(2), 230.290(2), 230.320(1)

STATUTORY AUTHORITY: KRS 230.215, 230.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission 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 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. This administrative regulation establishes requirements and controls in post-race sampling and testing to ensure that prohibited substances are not used.

Section 1. Definitions. (1) "Commission laboratory" is defined in 810 KAR 1:018, Section 1(3).

(2) "Gold sample" means that part of a specimen that shall be tested by the commission laboratory.

(3) "Positive finding" is defined in 810 KAR 1:018, Section 1(6).

(4) "Red sample" means that part of a specimen that may be tested by the commission laboratory.

(5) "Sampling" means the act of collecting a specimen from a horse.

(6) "Specimen" means a sample of blood, urine, or other biologic matter taken or drawn from a horse for chemical testing.

(7) "Test barn" is defined in 810 KAR 1:018, Section 1(9).

Section 2. Test Barn. In addition to the procedures set forth in 810 KAR 1:018, the commission shall require the following procedures:

(1) A security guard employed by a licensed association shall regulate access to the test barn during and immediately following each race; and

(2) All individuals who wish to enter the test barn ~~shall~~**[must]** be currently licensed by the commission, display their commission identification badge, and have the permission of the commission veterinarian or his or her designee to be in the test barn.

Section 3. Pari-Mutuel Races with Purses of \$2,500 or Less. For races with purses of \$2,500 or less:

(1) The horse finishing first shall be sampled and a portion of the specimen shall be designated as a gold sample; and

(2) The chief state steward, or his or her designee, may select one or more other horses to be sampled and shall designate a portion of each specimen as a red sample or a gold sample **in accordance with Section 6 of this administrative regulation.**

Section 4. Pari-Mutuel Races with Purses Greater than \$2,500 and \$100,000. For races with purses that exceed \$2500 but are

less than \$100,000:

(1) The horse finishing first and at least one (1) other horse shall be sampled;

(2) The chief state steward, or his or her designee, shall designate a portion of each specimen as a red sample or a gold sample **in accordance with Section 6 of this administrative regulation;** and

(3) A portion of at least one (1) specimen from each race shall be designated as a gold sample.

Section 5. Pari-Mutuel Races with Purses of \$100,000 or More. For races with purses of \$100,000 or more:

(1) The horses finishing first, second, and third shall be sampled;

(2) The chief state steward, or his or her designee, may select one or more other horses to be sampled and shall designate a portion of each specimen as a red sample or a gold sample **in accordance with Section 6 of this administrative regulation;** and

(3) Portions of at least three (3) specimens shall be designated as gold samples.

Section 6. Selection of Horses and Designation of Samples. (1) In selecting horses for sampling, and in designating portions of specimens as gold samples or red samples, the chief state steward, or his or her designee, shall consider all information available, including:

(a) The performance of a horse favored to win the race by the wagering patrons;

(b) The performance of horses considered to be long-shots to win the race by the wagering patrons;

(c) The betting patterns of wagering patrons;

(d) A trainer's recent statistical performance in relation to his or her historical statistical performance; and

(e) Security intelligence.

(2) The chief state steward or his or her designee shall notify the test barn promptly upon completion of a race as to which horse or horses shall be sampled;

(3) Prior to the close of business on the date of sampling, the chief state steward or his or her designee shall notify the test barn in writing regarding which samples are designated as gold samples and which samples are designated as red samples.

Section 7. Sampling. (1) A horse designated for sampling by the stewards shall proceed immediately to the test barn following each race to have a specimen collected under the direction of the commission veterinarian.

(2) ~~If [in the event that]~~ an adequate specimen cannot be obtained from a horse designated for sampling within sixty (60) minutes after arrival at the testing barn, the commission veterinarian may require an individual employed by the commission to accompany the horse from the test barn to its stall and remain with the horse until an adequate specimen is obtained.

(3) All sampling shall be performed in accordance with 810 KAR 1:018.

(4) Split samples shall be subject to the provisions and procedures set forth in 810 KAR 1:018, Section 12, and the chain of custody of any split sample shall be maintained in accordance with the procedures set forth in 810 KAR 1:018, Section 13.

Section 8. Shipment and Testing. (1) All gold samples and red samples shall be labeled and sent to the commission laboratory for testing in accordance with the procedures set forth in 810 KAR 1:018, Section 11.

(2) A technician at the commission laboratory shall create a log of each sample received and enter the color code into the Laboratory Information Management System or other information management system approved by the commission.

(3) All gold samples shall be tested.

(4) Fifty (50) percent of all red samples shall be randomly selected by the Lab Information Management System, or other information management system approved by the commission, and tested.

(5) All red samples that are not selected for testing shall be

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frozen or refrigerated and retained pursuant to a contract between the commission and the commission laboratory.

(6) If a sample tests positive for a substance prohibited by **810 KAR Chapter 1** ~~[these administrative regulations]~~, all **specimen or specimens** ~~[specimen(s)]~~ collected from horses who competed in the same race shall be tested.

(7) All testing and reports shall be completed in accordance with 810 KAR 1:018 and 1:028.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 14, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

CONTACT PERSON: Timothy A. West, Assistant General Counsel, 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 (As Amended at ARRS, December 14, 2010)

811 KAR 1:220. Harness racing at county fairs.

RELATES TO: KRS 230.215~~[(4)]~~, 230.260~~[(4)]~~, 230.280, 230.290, 230.300, 230.310, 230.398

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.398~~[(3)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8)~~[230.260(3)]~~ authorize the commission~~[Authority]~~ to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.398 authorizes the commission to promulgate administrative regulations as may be necessary for the conduct of county fair races. This administrative regulation establishes conditions, races, purses, and payments in races conducted at county fairs in which funds for purses are provided by the commission~~[Authority]~~, and regulates eligibility for participation in harness racing at county fairs.

Section 1. ~~[Definition. "Person domiciled in Kentucky" means:~~

~~(1) A person who has his permanent home in Kentucky, to which he has an intention of returning whenever he is absent; and~~

~~(2) Corporations wholly owned by a person domiciled in Kentucky.~~

Section 2. ~~(1) The Authority shall determine all questions of domicile.~~

~~(2) In determining questions of domicile, the Authority shall weigh:~~

~~(a) The eligibility factors set forth in Section 3 of this administrative regulation; and~~

~~(b) Factors which indicate domicile and intent, including:~~

~~1. The amount of time a person spends in Kentucky each year as compared to the amount of time spent elsewhere;~~

~~2. Whether the person or corporation owns real estate in Kentucky;~~

~~3. Whether the person is registered to vote in Kentucky, or whether the corporation was organized under Kentucky law;~~

~~4. The permanent residence of the person, as indicated by the records of the Authority and the United States Trotting Association; and~~

~~5. Whether the person has a Kentucky automobile driver's license.~~

Section 3. ~~[Eligibility. (1)(a)]~~ In order to qualify to participate in a stake race at a county fair:

(1)(a) The participating horse shall be either a two (2) or three (3) year old standardbred that is the product of the mating of a mare with a Kentucky Standardbred Development Fund registered stallion;

(2)(b) An owner of the participating horse shall be a current member of the Kentucky Colt Racing Association, Inc.;

(3)(e) An owner of the participating horse shall be currently licensed by the commission; and

(4)(d) The trainer and driver of the participating horse shall be currently licensed by the commission.

Section 2. ~~[A horse is eligible to participate in a stake race at a county fair if:~~

~~(1) The horse is either:~~

~~(a) A two (2) or three (3) old that is sired by a stallion that was registered with the Kentucky Standardbred Development Fund at the time of conception; or~~

~~(b) A two (2) or three (3) year old whose dam was partially or wholly owned by a person domiciled in Kentucky at the time of conception;~~

~~(2) An owner of the participating horse is a current member of the Kentucky Colt Racing Association, Inc.;~~

~~(3) An owner of the participating horse holds a current license with the Authority; and~~

~~(4) The trainer and driver of the participating horse hold a current license with the Authority.]~~

Section 4. ~~(1) A fair shall have a safe and adequate track, and the entire track, including start and finish lines, shall be visible to judges and spectators.~~

~~(2) The track shall be inspected and approved by a representative of the~~ commission~~[Authority]~~.

Section 3. ~~[6.]~~ A track shall have a hub rail or pylons approved by the commission~~[Authority]~~.

Section 4. ~~[6.]~~ (1) A fair shall have safe and adequate stalls for participating horses.

(2) If permanent stalls are not available, either on or off the fairgrounds, tents or other tie-in type stalls may be used.

(3) A county fair shall not charge stall rent for horses racing at the county fairs with the exception of state-owned property.

Section 5. ~~[7.]~~ (1) The Kentucky Colt Racing Association county fair fee shall be as follows:

(a) A nomination fee of fifty (50) dollars per horse due before February 15 of the year in which the fair is being conducted;

(b) A sustaining fee of \$200 per horse due before April 15;

(c) A starting fee of fifty (50) dollars per horse, per fair, due at the time of entry to the fair; and

(d) A twenty-five (25) dollar fee per horse for starting in an overnight race, due at the time of entry to the fair.

(2) A \$200 payment shall be due at the time of entry for a horse eligible for the fair finals.

Section 6. ~~[8.]~~ Officials at county fairs. (1) The Kentucky Colt Racing Association shall submit to the commission~~[Authority]~~, at least sixty (60) days prior to the opening of a race meeting, a written list of racing officials and applicable employees.

(2) At a county fair, there shall be at least one (1) presiding judge approved by the commission~~[Authority]~~ in the judges' stand. In addition, at a meeting in which races are charted, the association member shall provide both a licensed charter and licensed clerk of the course.

(3) A fair shall use licensed United States Trotting Association judges to preside over the racing.

(4) The judges shall review the ownership of any horse that is entered in order to ensure that it is eligible to race.

(5) The judges may determine the validity for racing purposes of any lease, transfer, or agreement pertaining to ownership of a horse and may call for adequate evidence of ownership at any time.

(6) The judges may declare a horse ineligible to race if the ownership or control of the horse is in question.

Section 7. ~~[9.]~~ A fair shall use a licensed starter with adequate equipment.

Section 8. ~~[10.]~~ (1) The entry fees established in Section 5~~[7]~~ of this administrative regulation shall be collected by a fair and used:

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- (a) To pay racing officials;
- (b) To provide purses for overnight racing events; and
- (c) To promote fair racing as otherwise needed.

(2) A fair shall, upon request, make a full accounting of the entry fees to the ~~commission~~Authority.

Section ~~9~~9.44 A fair shall apply to the ~~commission~~Authority for a license to ~~conduct a harness racing event~~(race) and for approval of funds by December 15 of the year prior to the ~~(racing)~~ year of the event. At the time of application, the request for pari-mutuel wagering shall be included.

Section ~~10~~10.42 A fair shall have the right to change the order of its program and to postpone or cancel an event due to bad weather or unavoidable cause. If a race is canceled ~~[because of lack of entries]~~, entry fees shall be refunded.

Section ~~11~~11.43 An early closing event, and all divisions of that event, shall race a single heat at a distance of one (1) mile and shall be contested for a purse ~~approved~~determined by the ~~commission~~Authority annually.

Section ~~12~~12.44 There shall ~~not~~ be ~~(no)~~ more than nine (9) starters in any race. If a race is divided into divisions, the purse shall be divided so that each division races for an equal portion ~~of the purse~~thereof. The purses shall be divided as follows:

- (1) Five (5) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;
- (2) Four (4) starters - fifty (50) percent, twenty-five (25) percent, fifteen (15) percent, and ten (10) percent;
- (3) Three (3) starters - fifty-five (55) percent, thirty (30) percent, and fifteen (15) percent;
- (4) Two (2) starters - sixty-five (65) percent and thirty-five (35) percent; and
- (5) One (1) starter - 100 percent.

Section ~~13~~13.45 (1) Points shall be awarded in an early closing race, and any division of an early closing race, as follows:

- (a) First place finisher - fifty (50) points;
 - (b) Second place finisher - twenty-five (25) points;
 - (c) Third place finisher - twelve (12) points;
 - (d) Fourth place finisher - eight (8) points;
 - (e) Fifth place finisher - five (5) points; and
 - (f) Each starter that finishes out of the money - one (1) point.
- (2) If two (2) horses dead-heat for any position, they shall each receive one-half (1/2) of the points awarded for that position and one-half (1/2) the points awarded for the next lower position. The same procedure shall be used for the allocation of points ~~if there is~~in the event of a dead-heat of three (3) or more horses.
- (3) A horse that is declared in and then is the subject of a judge's scratch shall be awarded one (1) point based upon the decision of the presiding judge. This decision shall be final.
- (4) A horse that starts in a Kentucky Sires Stake race within three (3) days of a scheduled county fair race of the same class shall be awarded a county fair start and one (1) point.
- (5) If there is a tie among two (2) or more horses with the same number of points, the tie shall be resolved in favor of the horse with the higher earnings in the early closing fair events in which the horses have competed.

Section ~~14~~14.46 A horse shall not be allowed to compete in more than one (1) race at any fair.

Section ~~15~~15.47 ~~In order for a horse, for whom the nomination fee has been paid, to remain eligible to race at a county fair after there has been a transfer of ownership, the following payments shall be required:~~

- ~~(1) \$300 the first time ownership is transferred from the owner at the time of nomination; and~~
- ~~(2) An additional \$600 thereafter if the same horse is transferred.~~

~~Section 18~~ (1) The winning horse at a fair race and any other horse or horses as selected by the judges may be subjected to a

drug test as set forth in 811 KAR 1:090 and 811 KAR 1:260, ~~if necessary to determine if there has been a violation of 811 KAR 1:090~~.

(2) A fair shall provide two (2) enclosed stalls and bedding to be used by the ~~commission~~state veterinarian for drug testing.

(3) The stalls required by subsection (2) of this section shall be located as close to the race track as possible.

(4) The stalls shall be positioned so as to allow the track announcer to be heard.

Section ~~16~~16.49 A current negative Coggins test shall be required for each horse racing at a fair.

Section ~~17~~17.20 A driver shall wear full colors, white pants, an approved vest, and an approved helmet ~~if~~when on the track less than one (1) hour before the start of a fair racing program.

Section ~~18~~18.24 A fair shall provide a trophy or blanket to the winner of a race. If a race is contested in heats or divisions, the trophy shall be presented to the winner of the fastest heat or division.

Section ~~19~~19.22 An early closing race shall be contested regardless of the number of entries. However, a fair may cancel an overnight race with less than five (5) entries.

Section ~~20~~20.23 The deadline for entries at a fair shall be set by the Kentucky Colt Racing Association at its annual October meeting preceding the racing year.

Section ~~21~~21.24 A county fair track holding races for purses shall provide a printed program available to the public containing the following information for:

- (1) Nonpari-mutuel tracks:
 - (a) Horse's name and sex;
 - (b) Color and age of horse;
 - (c) Sire and dam of horse;
 - (d) Owner's name and colors;
 - (e) Driver's name;
 - (f) Trainer's name; and
 - (g) Summary of starts in purse races, earnings, and the best win time for the current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race; and
- (2) Pari-mutuel tracks:
 - (a) Horse's name and sex;
 - (b) Color and age of horse;
 - (c) Sire and dam of horse;
 - (d) Owner's name;
 - (e) Driver's name and colors;
 - (f) Trainer's name;
 - (g) Summary of starts in purse races, earnings, and best win time for the current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race; and
- (h) At least the last six (6) performance and accurate chart lines. An accurate chart line shall include:
 - 1. Date of race;
 - 2. Location of race;
 - 3. Size of track if other than a one-half (1/2) mile track;
 - 4. Symbol for free-legged pacers;
 - 5. Track condition;
 - 6. Type of race;
 - 7. Distance;
 - 8. The fractional times of the leading horse including race times;
 - 9. Post position;
 - 10. Position of the one-quarter (1/4), the one-half (1/2), and the three-quarters (3/4);
 - 11. Stretch with lengths behind leader;
 - 12. Finish with lengths behind leader;
 - 13. Individual time of the horse;
 - 14. Closing dollar odds;
 - 15. Name of the driver;
 - 16. Names of the horses that placed first, second, and third by the judges; and

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17. The standard symbols for breaks and park-outs shall be used if applicable;

- (i) Indicate drivers racing with a provisional license; and
- (j) Indicate pacers that are racing without hobbles.

Section ~~22.[25-]~~ Payments. Nomination and sustaining payments shall be made to the Kentucky Colt Racing Association. Entry fees shall be paid to the fair for which the entry is taken.

Section ~~23.[26-]~~ A person or association that violates a provision of this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:095, Section 4(1).

~~[Section 24. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.]~~

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 14, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

CONTACT PERSON: Timothy A. West, Assistant General Counsel, 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 (As Amended at ARRS, December 14, 2010)

811 KAR 1:260. Post-race sampling and testing procedures.

RELATES TO: 230.215, 230.240, 230.260, 230.265(2), 230.290(2), 230.320(1)

STATUTORY AUTHORITY: KRS 230.215, 230.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission 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 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. This administrative regulation establishes requirements and controls in post-race sampling and testing to ensure that prohibited substances are not used.

Section 1. Definitions. (1) "Commission laboratory" is defined in 811 KAR 1:090, Section 1(3).

(2) "Gold sample" means that part of a specimen that shall be tested by the commission laboratory.

(3) "Positive finding" is defined in 811 KAR 1:090, Section 1(6).

(4) "Red sample" means that part of a specimen that may be tested by the commission laboratory.

(5) "Sampling" means the act of collecting a specimen from a horse.

(6) "Specimen" means a sample of blood, urine, or other biologic matter taken or drawn from a horse for chemical testing.

(7) "Test barn" is defined in 811 KAR 1:090, Section 1(9).

Section 2. Test Barn. In addition to the procedures set forth in 811 KAR 1:090, the commission shall require the following procedures:

(1) A security guard employed by a licensed association shall regulate access to the test barn during and immediately following each race; and

(2) All individuals who wish to enter the test barn ~~shall~~**[must]** be currently licensed by the commission, display their commission

identification badge, and have the permission of the commission veterinarian or his or her designee to be in the test barn.

Section 3. Pari-Mutuel Races with Purses of \$2,500 or Less. For races with purses of \$2,500 or less:

(1) The horse finishing first shall be sampled and a portion of the specimen shall be designated as a gold sample; and

(2) The presiding judge, or his or her designee, may select one or more other horses to be sampled and shall designate a portion of each specimen as a red sample or a gold sample **in accordance with Section 6 of this administrative regulation.**

Section 4. Pari-Mutuel Races with Purses Greater Than \$2,500 and Less Than \$100,000. For races with purses that exceed \$2,500 but are less than \$100,000:

(1) The horse finishing first and at least one other horse shall be sampled;

(2) The presiding judge, or his or her designee, shall designate a portion of each specimen as a red sample or a gold sample **in accordance with Section 6 of this administrative regulation;** and

(3) A portion of at least one (1) specimen from each race shall be designated as a gold sample.

Section 5. Pari-Mutuel Races with Purses Of \$100,000 or More. For races with purses of \$100,000 or more:

(1) The horses finishing first, second, and third shall be sampled;

(2) The presiding judge, or his or her designee, may select one or more other horses to be sampled and shall designate a portion of each specimen as a red sample or a gold sample **in accordance with Section 6 of this administrative regulation;** and

(3) Portions of at least three (3) specimens shall be designated as gold samples.

Section 6. Selection of Horses and Designation of Samples. (1) In selecting horses for sampling, and in designating portions of specimens as gold samples or red samples, the presiding judge, or his or her designee, shall consider all information available, including:

(a) The performance of a horse favored to win the race by the wagering patrons;

(b) The performance of horses considered to be long-shots to win the race by the wagering patrons;

(c) The betting patterns of wagering patrons;

(d) A trainer's recent statistical performance in relation to his or her historical statistical performance; and

(e) Security intelligence.

(2) The presiding judge or his or her designee shall notify the test barn promptly upon completion of a race as to which horse(s) shall be sampled;

(3) Prior to the close of business on the date of sampling, the presiding judge or his or her designee shall notify the test barn in writing regarding which samples are designated as gold samples and which samples are designated as red samples.

Section 7. Sampling. (1) A horse designated for sampling by the judges shall proceed immediately to the test barn following each race to have a specimen collected under the direction of the commission veterinarian.

(2) ~~If [in the event that]~~ an adequate specimen cannot be obtained from a horse designated for sampling within sixty (60) minutes after arrival at the testing barn, the commission veterinarian may require an individual employed by the commission to accompany the horse from the test barn to its stall and remain with the horse until an adequate specimen is obtained.

(3) All sampling shall be performed in accordance with 811 KAR 1:090, Section 11.

(4) Split samples shall be subject to the provisions and procedures set forth in 811 KAR 1:090, Section 12, and the chain of custody of any split sample shall be maintained in accordance with the procedures set forth in 811 KAR 1:090, Section 13.

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samples shall be labeled and sent to the commission laboratory for testing in accordance with the procedures set forth in 811 KAR 1:090, Section 11.

(2) A technician at the commission laboratory shall create a log of each sample received and enter the color code into the Laboratory Information Management System or other information management system approved by the commission.

(3) All gold samples shall be tested.

(4) Fifty (50) percent of all red samples shall be randomly selected by the Lab Information Management System, or other information management system approved by the commission, and tested.

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(6) If a sample tests positive for a substance prohibited by 811 KAR Chapter 1 [these administrative regulations], all specimen or specimens [specimen(s)] collected from horses who competed in the same race shall be tested.

(7) All testing and reports shall be completed in accordance with 811 KAR 1:090 and 1:095.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 14, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

CONTACT PERSON: Timothy A. West, Assistant General Counsel, 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 (As Amended at ARRS, December 14, 2010)

811 KAR 2:170. Post-race sampling and testing procedures.

RELATES TO: 230.215, 230.240, 230.260, 230.265(2), 230.290(2), 230.320(1)

STATUTORY AUTHORITY: KRS 230.215, 230.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission 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 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. This administrative regulation establishes requirements and controls in post-race sampling and testing to ensure that prohibited substances are not used.

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Section 2. Test barn. In addition to the procedures set forth in 810 KAR 1:018, the commission shall require the following procedures:

(1) A security guard employed by a licensed association shall regulate access to the test barn during and immediately following each race; and

(2) All individuals who wish to enter the test barn shall~~[must]~~

be currently licensed by the commission, display their commission identification badge, and have the permission of the commission veterinarian or his or her designee to be in the test barn.

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(2) The chief state steward, or his or her designee, may select one or more other horses to be sampled and shall designate a portion of each specimen as a red sample or a gold sample in accordance with Section 6 of this administrative regulation.

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Section 5. Pari-Mutuel Races with Purses of \$100,000 or More. For races with purses of \$100,000 or more:

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(2) The chief state steward, or his or her designee, may select one (1) or more other horses to be sampled and shall designate a portion of each specimen as a red sample or a gold sample in accordance with Section 6 of this administrative regulation; and

(3) Portions of at least three (3) specimens shall be designated as gold samples.

Section 6. Selection of Horses and Designation of Samples. (1) In selecting horses for sampling, and in designating portions of specimens as gold samples or red samples, the chief state steward, or his or her designee, shall consider all information available, including:

(a) The performance of a horse favored to win the race by the wagering patrons;

(b) The performance of horses considered to be long-shots to win the race by the wagering patrons;

(c) The betting patterns of wagering patrons;

(d) A trainer's recent statistical performance in relation to his or her historical statistical performance; and

(e) Security intelligence.

(2) The chief state steward or his or her designee shall notify the test barn promptly upon completion of a race as to which horse or horses shall be sampled;

(3) Prior to the close of business on the date of sampling, the chief state steward or his or her designee shall notify the test barn in writing regarding which samples are designated as gold samples and which samples are designated as red samples.

Section 7. Sampling. (1) A horse designated for sampling by the stewards shall proceed immediately to the test barn following each race to have a specimen collected under the direction of the commission veterinarian.

(2) ~~If [in the event that]~~ an adequate specimen cannot be obtained from a horse designated for sampling within sixty (60) minutes after arrival at the testing barn, the commission veterinarian may require an individual employed by the commission to accompany the horse from the test barn to its stall and remain with the horse until an adequate specimen is obtained.

(3) All sampling shall be performed in accordance with 810 KAR 1:018, Section 11.

(4) Split samples shall be subject to the provisions and procedures set forth in 810 KAR 1:018, Section 12, and the chain of custody of any split sample shall be maintained in accordance with the procedures set forth in 810 KAR 1:018, Section 13.

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Section 8. Shipment and Testing. (1) All gold samples and red samples shall be labeled and sent to the commission laboratory for testing in accordance with the procedures set forth in 810 KAR 1:018, Section 11.

(2) A technician at the commission laboratory shall create a log of each sample received and enter the color code into the Laboratory Information Management System or other information management system approved by the commission.

(3) All gold samples shall be tested.

(4) Fifty (50) percent of all red samples shall be randomly selected by the Lab Information Management System, or other information management system approved by the commission, and tested.

(5) All red samples that are not selected for testing shall be frozen or refrigerated and retained pursuant to a contract between the commission and the commission laboratory.

(6) If a sample tests positive for a substance prohibited by **811 KAR Chapter 2** ~~[these administrative regulations]~~, all **specimen or specimens** ~~[specimen(s)]~~ collected from horses who competed in the same race shall be tested.

(7) All testing and reports shall be completed in accordance with 810 KAR 1:018 and 1:028.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 14, 2010

FILED WITH LRC: September 15, 2010 at 11 a.m.

CONTACT PERSON: Timothy A. West, Assistant General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Code Enforcement (As Amended at ARRS, December 14, 2010)

815 KAR 35:100. Electrical continuing education procedure.

RELATES TO: KRS 227A.100(7), (9) ~~[, EO 2009-535]~~

STATUTORY AUTHORITY: KRS 227A.040(8), 227A.100(7) ~~[, EO 2009-535]~~

NECESSITY, FUNCTION AND CONFORMITY: KRS 227A.040(8) authorizes the Department [Office] of Housing, Buildings and Construction to promulgate administrative regulations to establish procedures to govern the licensure of electricians and electrical contractors. KRS 227A.100(7) requires the department [office] to promulgate an administrative regulation to establish requirements relating to continuing education, including program content and qualifications of providers. ~~[program content, including qualifications for providers. EO 2009-535, effective June 12, 2009, 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 continuing education procedures for master electricians, electricians, and electrical contractors.

Section 1. Proof of Continuing Education Requirements. (1) Prior to license renewal, each licensee shall present proof on Form BCE-EL-1, Electrical License Renewal Proof of Continuing Education, or its electronic equivalent, of completion of at least six (6) hours of continuing education for each license held during the immediately preceding twelve (12) months.

(2) The proof shall be signed by the licensee and certified by the provider of the continuing education course ~~[on Form SFM-ECEC-1, Electrical License Renewal Proof of Continuing Education, or its electronic equivalent].~~

Section 2. Continuing Education Course Requirements. (1) Continuing education for master electrician and electrician licensees shall relate to the electrical code ~~[National Electric Code~~

~~(NFPA-70) or other electrical codes]~~ incorporated by reference into 815 KAR 7:120, Kentucky Building Code; ~~[or]~~ 815 KAR 7:125, Kentucky Residential Code; and 815 KAR 10:060, Standards of Safety; or to safety practices and procedures.

(2) Continuing education for electrical contractors shall relate to business and employment law, business practices, and safety practices and procedures.

(3) A maximum of ~~[Only]~~ two (2) of the six (6) hours of continuing education required for electricians, master electricians, and electrical contractors may ~~[shall]~~ be safety practices and procedures.

Section 3. Continuing Education Providers. (1) Continuing education shall be provided by:

(a) One (1) of the organizations listed in KRS 227A.100(7); or

(b) ~~[by]~~ An individual or organization recommended by the Electrical Advisory Committee and approved by the Department of Housing, Buildings and Construction pursuant to subsection (7) of this section.

(2) Each continuing education course provider shall register with the department. Registration shall be valid for two (2) years from the date of issuance.

(3) To register, an applicant shall complete and submit Form BCE-EL-8, Electrical License Continuing Education Provider Registration ~~[, which is incorporated by reference].~~

(4) The department shall maintain a list of approved continuing education providers.

(5) A course provider ~~[Course providers]~~ shall report to the department any change in registration information within thirty (30) days of the change taking effect.

(6) In addition to the provider registration requirements, an applicant for certification as a continuing education provider shall submit the following information to the Department of Housing, Buildings and Construction:

- (a) Syllabus of courses to be offered;
- (b) Times and dates that courses will be offered;
- (c) Location where courses will be offered;
- (d) Availability of courses to the general public;
- (e) Fees to be charged for the courses;
- (f) Identity and qualifications of teachers; and
- (g) Attendance verification procedures.

~~[7](4)]~~ The Department of Housing, Buildings and Construction shall certify the applicant ~~if it determines that:~~

- (a) The applicant can reliably provide continuing education;
- (b) The applicant has verified that ~~[shall provide]~~ an accurate certification of attendance at all courses offered shall be provided to the department.

1. If provided by e-mail or fax, certification shall be received by the department within five (5) business days of completion of the class.

2. If submitted by first class mail, certification shall be postmarked within five (5) business days of completion of the class; and

(c) All courses offered by the applicant shall be taught by a person ~~[persons]~~ with sufficient technical knowledge of the subject matter.

~~[8](4)]~~ Certification shall be denied, suspended, or revoked if the Department of Housing, Buildings and Construction determines, after an opportunity to be heard pursuant to KRS Chapter 13B, that the individual or organization no longer meets the requirements of ~~[subsection (3) of]~~ this section.

~~[9](6)]~~ A continuing education provider ~~[All continuing education providers]~~ shall notify the Department of Housing, Buildings and Construction of all courses to be offered at least thirty (30) days prior to the courses' scheduled dates ~~[courses]~~.

(a) The notice shall include the date, time, location and topic of the course and the fee to be charged, if any.

(b) The Department of Housing, Buildings and Construction shall maintain a list of all courses to be offered and make the list available to the public.

~~[10](6)]~~ For classes open to the public, continuing education providers shall not establish a minimum number of attendees required to hold a class.

~~[11](7)]~~ (a) Except as provided in paragraph (b) of this subsection

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tion, a provider shall notify the Department of Housing, Buildings and Construction, as well as those who have registered to attend, a minimum of one (1) week prior to the cancellation of any class.

(b) A class may be cancelled within one (1) week of the scheduled class date if necessary due to a natural disaster or inclement weather. Reasonable steps shall be taken to inform the registered attendees and the department of the cancellation and reason for the cancellation.

~~(12)(8)~~ Upon~~On~~ written request by a licensee, the Department of Housing, Buildings and Construction shall recognize continuing education credit~~may recognize for continuing education credit~~ courses attended in another state if the material covered complies with Section 2 of this administrative regulation.

Section 4. Certified Electrical Inspectors. A certified electrical inspector holding an inactive master electrician or electrician license may apply six (6) hours of the continuing education required by 815 KAR 35:015, Section 8(1), to the required six (6) hours for a master electrician or electrician's license if the hours are not used to satisfy the continuing education requirement for electrical contractors.

Section 5. Inactive License. As a condition of reactivation of an inactive license, a licensee shall present proof of completion of at least six (6) hours of continuing education from the prior twelve (12) months. Prior to activating an inactive license, the license holder shall provide proof that the license holder has completed six (6) hours of continuing education for each year the license has been inactive.

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

(a) "Electrical License Renewal Proof of Continuing Education", Form BCE-EL-1, December 2010; and

(b) "Electrical License Continuing Education Provider Registration", Form BCE-EL-8, December 2010~~Form BCE-EL-1, Electrical License Renewal Proof of Continuing Education, October 2010; and~~

~~(b) Form BCE-EL-8, Electrical License Continuing Education Provider Registration, October 2010, [Form SFM-ECEC-1, Electrical License Renewal Proof of Continuing Education, March 2005, is incorporated by reference.]~~

(2) This material may be inspected, copied, or obtained, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5404, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD MOLONEY, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: October 10, 2010

FILED WITH LRC: October 14, 2010 at 10 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, fax (502) 573-1057.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Adult and Child Health Improvement (As Amended at ARRS, December 14, 2010)

902 KAR 30:001. ~~[Kentucky Early Intervention Program]~~ Definitions for 902 KAR Chapter 30.

RELATES TO: KRS 200.650-200.676, 20 U.S.C. 1431-1444, 34 C.F.R. Part 303 [1471-1485]

STATUTORY AUTHORITY: KRS 194A.050, 200.660~~[200.650-676]~~

NECESSITY, FUNCTION, AND CONFORMITY: ~~[The Cabinet for Health Services is directed by]~~ KRS 200.660~~[200.650 to 200.676]~~ requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administra-

tive regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation establishes the definitions for 902 KAR Chapter 30~~[sets forth definitions of terms used by the cabinet in administrative regulation]~~ pertaining to First Steps, Kentucky's Early Intervention Program.

Section 1. Definitions. (1) "Assessment" means the ongoing procedures used by appropriate qualified service providers~~[personnel] throughout the child's period of [a child's] eligibility in First Steps to identify:~~

(a) The child's unique strengths and needs, and the services appropriate to meet those needs;

(b)~~and~~ The resources, priorities, and concerns of the family; and

(c) The supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's ~~[their] infant or toddler with a disability. [activities completed to develop a service plan for an eligible child and his family;]~~

(2) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is needed to increase, maintain, or improve the functional capabilities of a child with a disability and which is necessary to implement the individualized family service plan.~~[;]~~

(3) "Assistive Technology Service" means a service that directly assists the child with a disability in the selection, acquisition, or use of an assistive technology device in accordance with 20 U.S.C. 1401(2).

(4) "Cabinet-approved criterion referenced instrument" means any of the three (3) assessments, incorporated by reference in 902 KAR 30:120, used to assess children from birth to three (3) years of age.

(5) "Cabinet-approved screening protocol" means a screening protocol that is:

(a) Designed to evaluate the developmental status of children; and

(b) Used by the cabinet.

(6) "Child find" ~~is~~~~[means as]~~ defined by~~[in]~~ KRS 200.654(3).~~[;]~~

(4) "Developmental quotient" or "DQ" means a specific designation described in and determined using the examiners manual of a norm referenced test. It is not an extrapolated score based on a screening test;~~[;]~~

~~(7)(6)~~ "Direct supervision" means the continuous, on-site observation and guidance as activities are implemented with children and families.~~[;]~~

~~(8)(6)~~ "Disciplines" means those professionals recognized by First Steps to practice in early intervention services.~~[;]~~

~~(7)~~ "District Early Intervention Committee" or "DEIC" is~~[means as]~~ defined by~~[in]~~ KRS 200.654(6).~~[;]~~

~~(9)(8)~~ "District technical assistance team" means a professional and a parent of a child with a disability combined staffing unit for the purpose of providing technical assistance, training, and support to families and providers in the local community;

~~(9)~~ "Early intervention services" is~~[means as]~~ defined by~~[in]~~ KRS 200.654(7).~~[;]~~

~~(9)~~~~[;]~~

~~(10)~~ "Early intervention team" means two (2) or more disciplines providing services to a child and family which employ any one (1) of the team models that include a multidisciplinary team.~~[;]~~

(10) "Established risk" means a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay.~~[;]~~

(11) "Evaluation" means the use of [standardized norm-referenced] procedures to determine eligibility for First Steps services in accordance with 902 KAR 30:120.~~[;]~~

(12) "Family-centered" means practices that:

(a) Are driven by the family's~~[families]~~ priorities and concerns;

(b) Support the family's role as~~[the recognition that the family is] the constant in a child's life;~~

(c) Complement a family's natural activity settings and daily routines;~~[;]~~ and

(d)~~[that services and personnel must]~~ Support, respect, encourage, and enhance the strengths~~[strength and]~~ competence, and confidence of the family.~~[;]~~

(13) ~~["Family directed" means the recognition that a family has choices and that services are provided in accordance with the family's priorities, concerns, and values;~~

(44) ~~"First Steps" means Kentucky's early intervention system, which and is defined by [as defined in] KRS 200.654(8).~~

(14) **"First Steps data management system" means the online data system that consists of each child's early intervention record and financial management data.**

(15) **"Homeless child" means a child who meets the federal definition of homeless children and youths established in 42 U.S.C. 11434a(2).**

(16) ~~"Homeless child" is defined by Pub.L. 107-110 Section 725(2) and (6) of the McKinney-Vento Homeless Assistance Act.[:]~~

(15) ~~"Interdisciplinary team" means professionals of one (1) or more disciplines working together with an integrated approach to [cooperatively in] [both planning and delivering services to the eligible child in accordance with the IFSP.] [Emphasis is upon teamwork and interaction among team members who help and rely upon each other to provide well coordinated services, although each discipline ultimately delivers the services in its own domain.]~~

(16) ~~"Image Consistency Kit" means the guidelines developed by the Interagency Coordinating Council Public Awareness committee for the purpose of ensuring that any use of the First Steps logo and other public awareness materials shall be consistent and in conformity with exact specifications set forth by the committee.[:]~~

(17) ~~"Indirect supervision" means the regular, periodic, on-site observation and guidance as activities are implemented with children and families.[:]~~

(17) ~~(48) "Individualized family service[services] plan" or "IFSP" means an individual family service plan as [is] [means as] defined by [in] KRS 200.654(9).[:]~~

(18) **"Kentucky Early Childhood Data System" or "KEDS" means a web-based data collection system to provide data for analysis to determine the degree to which Kentucky's children are meeting the major child outcomes and learning standards required by the Office of Special Education Programs (OSEP) in the United States Department of Education and the state early childhood standards.**

(19) ~~"Kentucky High Risk Hearing Registry" is [means as] [defined by] [in] [KRS 213.046(16)].[:]~~

(20) ~~"Mentorship" is [means] [a limited period of one (1) year of indirect supervision.[:]~~

(24) ~~"Multidisciplinary team" is [means as] defined by [in] KRS 200.654(11).[:]~~

(20) ~~(22) "Natural environments" means settings, such as the home and the community, in which the child's same age peers who have no disability normally participate.[:]~~

(21) ~~(23) "Parent" means:~~

(a) ~~A natural, adoptive, or foster parent of a child [(unless a foster parent is prohibited by state law from serving as a parent)];~~

(b) ~~A guardian (but not the state if the child is a ward of the state);~~

(c) ~~An individual acting in the place of a natural or adoptive parent including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the child's welfare; or~~

(d) **An individual assigned as a surrogate parent pursuant to 20 U.S.C. 1415(b)(2) or 1439(a)(5).**

(22) **"Part C Coordinator" means the individual designated by the cabinet to be Kentucky's liaison with the federal Department of Education, Office of Special Education Programs (OSEP) to oversee the state's implementation of the early intervention system.**

(23) ~~Except as used in sections 615(b)(2) and 639(a)(5) of Pub.L. 108-446, an individual assigned under either of those sections to be a surrogate parent.~~

(24) ~~"Period of eligibility" means the time from referral to First Steps to termination of services due to:~~

(a) ~~Failure to meet initial program eligibility requirements;~~

(b) ~~Attainment of age three (3);~~

(c) ~~Documented refusal of service by the child's parent or legal guardian inclusive of disappearance; or~~

(d) ~~Change of residence to another [out of] state.~~

(24) ~~(25) [;]~~

(24) ~~"Point of entry" or "POE" is [means as] defined by [in] KRS 200.654(12).~~

(25) ~~[and is also called the local lead agency;~~

(26) ~~(26) "Prematurity" means [shall mean] a gestational age, at birth, of less than thirty-seven (37) weeks.~~

(26) ~~(27) [;]~~

(26) ~~"Primary referral source" means those in the community who have the greatest opportunity, by virtue of their work, their relationship to children] [of this age,] [or their special knowledge] [to refer a child to First Steps.~~

(28) **"Primary service provider" means a [one (1)] professional who is a member of the IFSP team and is selected by the parent as the team lead to provide [selected as the team lead who provides] regular support to the family.**

(27) ~~(29) [;]~~

(27) ~~"Primary service coordinator" or "PSC" means the person responsible for coordination of services after the POE initial service coordinator has completed his responsibilities for IFSP development;~~

(28) ~~"Provider action" means actions or decisions by the First Steps staff, and actions or decisions made by service providers relating to the identification, evaluation, and placement of the child or the provision] [provisions] [of appropriate early intervention services.~~

(30) ~~(29) "Qualified service provider" is [means as] defined by [in] KRS 200.654(13).~~

(28) **"Record review team" means a group of early intervention experts representing each discipline of early intervention providers as listed in 902 KAR 30:150, Section 2(1)(a)-(s), who are utilized by the state lead agency to review complex cases for eligibility and service provision, and make recommendations to IFSP teams.**

(29) ~~(34) "Referral" means a child identified between birth and three (3) years of age who is:~~

(a) ~~A Kentucky resident or a homeless child within the boundaries of the Commonwealth; and~~

(b) ~~[is] Suspected of having an established risk diagnosis or a developmental delay as confirmed by the cabinet approved screening protocol.~~

(30) ~~(32) "State Technical Assistance Team" means a team consisting of early intervention professionals and at least one (1) parent of a child with a disability who assist the State Lead Agency by providing technical assistance, training, and support to the Points of Entry and families to assure that the early intervention system is meeting performance indicators and the needs of families.~~

(33) ~~"State Lead Agency" means the designated staff in the Department for Public Health who are responsible for implementing the First Steps Program in accordance with 34 C.F.R. Part 303, 20 U.S.C. 1431 to 1444, [Part C of Individuals with Disabilities Education Improvement Act (IDEA)] and KRS 200.650 to 200.676.~~

(31) ~~(34) [;] (30) "Teratogen" means an agent causing fetal malformations.~~

(34) ~~"Transdisciplinary team" means professionals from various disciplines working together cooperatively by educating one another in the skills and practices of their disciplines and a commitment to work together across traditional discipline boundaries being consistent with the training and expertise of the individual team members.~~

(32) **"Ward of the state" means a child declared by a circuit court judge to be a ward of the state pursuant to KRS 625.043(2) or 625.100(2) [(35) "Ward of the state" means a child who] [as determined by the state where the child resides,] [is a foster child or is in the custody of a public child welfare agency because all persons with parental rights to the child have had their rights terminated voluntarily or involuntarily, but does not include a foster child who has a foster parent who meets the definition of a parent in subsection (23) of this section].**

WILLIAM D. HACKER, MD, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 15, 2010 at 10 a.m.

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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 Public Health
Division of Adult and Child Health Improvement
(As Amended at ARRS, December 14, 2010)

**902 KAR 30:110. ~~[Kentucky Early Intervention Program]~~
Point of Entry and service coordination.**

RELATES TO: KRS 200.662, 200.664, 200.668, 200.670, 20 U.S.C. 1435, 34 C.F.R. 303.164, 303.165, 303.167, 303.344, and 303.403 [200.660-200.276, 20 U.S.C. 1431-1444, 34 C.F.R. Part 393] [4474-4486]

STATUTORY AUTHORITY: KRS 194A.050, 200.660(8); ~~EO 2004-726~~

NECESSITY, FUNCTION, AND CONFORMITY: ~~[EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.]~~ KRS 250.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation establishes ~~[sets forth]~~ the point of entry and service coordination provisions pertaining to First Steps, Kentucky's Early Intervention Program.

Section 1. Point of Entry. (1)(a) The point of entry (POE) staff shall serve as the local lead agency and shall coordinate child find efforts with:

1. Local education agencies in order to insure compliance with child find mandates by each entity; and

2. Other state and federal programs serving this population.

(b) The primary referral sources described in paragraph (a) of this subsection may include ~~[These include, but are not limited to:]~~

1. ~~[(a)]~~ Maternal and child health programs;

2. ~~[(b)]~~ Early and periodic screenings, diagnosis, and treatment (EPSDT) programs;

3. ~~[(c)]~~ Head Start;

4. ~~[(d)]~~ Homeless shelters;

5. ~~[(e)]~~ Supplemental Security Income (SSI) programs; ~~[and]~~

6. ~~[(f)]~~ The local Department for Community Based Services (DCBS) office for cases with a sustained or negligent complaint; and

7. ~~[(g)]~~ Programs authorized through 42 U.S.C 15001 to 15009, the Developmental Disabilities Assistance and Bill of Rights Act.

(2) Each ~~[The POE staff shall develop a child find activity plan approved by the Part C Coordinator to be conducted in each district.]~~

~~[(3)]~~ The POE staff shall maintain accessibility and provide public awareness activities in each of their districts ~~[district as required by the cabinet].~~

~~[(3)]~~ [(4)] The POE staff shall maintain communication with the District Early Intervention ~~Committee~~ Council (DEIC) and the ~~[state lead agency, and state technical assistance staff]~~ on matters of child find, service options, and other issues relevant to the First Steps Program.

~~[(4)]~~ [(5)] The POE staff shall accept all inquiries for First Steps services to determine eligibility for programs.

(a) Upon receiving a telephone or written inquiry, POE staff shall determine if:

1. The family is aware that an inquiry is being made; and

2. The referral is appropriate based on:

a. The child's age, **which** shall be between birth and three (3) years old;

b. The family's residence within the assigned district or ~~[that]~~ the family **being** [is] homeless; and

c. An established risk diagnosis or a developmental concern that is confirmed by administration of the cabinet approved screen-

ing protocol.

(b) If the initial screening finds the child does not meet the criteria established in paragraph (a)2. of this subsection ~~[referral to be inappropriate], the POE shall:~~

1. Provide to the referral source appropriate resources for the child and family for services that meet that child's needs. These resources may include:

a. Public schools;

b. The Department for Community Based Services;

c. Medical services; ~~[or]~~

d. Other appropriate community services; or ~~[and]~~

e. Another POE if residency alone is the reason for an inappropriate referral; and ~~[.]~~

2. Provide a parent with a First Steps Notice of Action or a First Steps Notice of Action and Consent ~~[refused]~~ in accordance with 34 C.F.R. 303.403(b).

(c) If it is determined that the child meets the criteria established in paragraph (a)2. of this subsection ~~[referral is appropriate], POE staff shall contact the family by telephone or letter within five (5) working days of receipt of the referral to determine if the family would like more information and an initial visit scheduled.~~

(d) If the family is interested in early intervention services, the POE staff shall assign a service coordinator and continue with the intake process.

(e) If the ~~[a]~~ family is not interested in participating, the family shall be provided contact information for the POE and other community resources. The POE staff shall:

1. document in the child's record the refusal of services.

~~[(f)]~~ and

2. Send a letter to the referral source explaining refusal of services by the family.

~~[(f)]~~ If efforts to contact the family by telephone or in writing fail, the POE staff shall send a follow up letter to the family within ten (10) working days of the referral.

~~[(g)]~~ Within fifteen (15) working days of the referral, the POE staff shall send, in writing, an acknowledgment to the referral source that the referral was received and the status of the processing of the referral, if known at that time.

~~[(5)]~~ [(6)] All children who are two (2) years and ten and one-half (10 1/2) months old to age three (3) years when first referred to First Steps shall not be eligible for First Steps. The POE shall notify the parent or guardian in writing that due to the child's age at the time of referral, the First Steps Program will not provide an evaluation to determine eligibility for First Steps, but will connect the parent or guardian with the local education agency ~~[.]~~ or other community resource.

~~[(6)]~~ [(7)] The POE staff shall maintain a complete record on all children referred through the POE and provide data to the state lead agency as requested. **A complete record shall include:**

(a) A hard copy of all documents that include a parent signature;

(b) Any correspondence generated by the POE; and

(c) The data entered into the child's electronic early intervention record in the First Steps data management system.

(7) The POE staff shall provide data as requested by the DEIC. ~~[(8)]~~ The POE staff shall provide a written monthly data report as defined by the state lead agency to the DEIC.

(9) The POE staff shall collect and maintain the District Service Provider Directory and shall provide information to the cabinet on a regular basis.

Section 2. Service Coordination. (1) The service coordinator shall:

~~[(a)]~~ serve as the main point of contact in helping families obtain the services and assistance they need;

~~[(b)]~~ Complete the core service coordination training prior to the initiation of service delivery; and

~~[(c)]~~ Complete all training as required by the Cabinet for Health and Family Services within the specified timeline].

(2) During the initial visit to the family, the service coordinator shall:

(a) Identify the purpose of the visit;

(b) Explain the First Steps service delivery system;

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(c) Explain the family rights by reviewing the Family Rights Handbook and the Statement of Assurances – **Procedural Safeguards**;

(d) Obtain the signature of a parent or guardian on the Statement of Assurances – **Procedural Safeguards**;

(e) **Obtain consent for an initial evaluation as required by 902 KAR 30:180, Section 2(3);**

(f) **Request the First Steps Consent to Release/Obtain Information form be completed by**~~Request the Release of Information from~~ a parent or guardian for medical or developmental information, risk indicators, ~~or other diagnostic~~, or hearing test results;

(g)~~(f)~~ Determine the willingness of the family to participate in First Steps services or refusal of services;

(h)~~(g)~~ Interview the family and ~~other individuals identified by the parents who are significant in the child's life and~~ document findings relating to:

1. The child's developmental status;

2. The pregnancy, birth, and health information;

3. Social relationships; ~~and~~

4. Context for learning, including the family's history, resources, priorities, and concerns; **and**

5. The family's;

~~(h) Conduct the routines-based interview to determine~~ daily routines and activities, the family's satisfaction level with these routines, and the family's desired outcomes;~~;~~

(i) Determine the next action needed with the family to determine eligibility of the child;

(j) Discuss evaluation and service options;

(k) Establish the potential date for developing an Individual Family Service Plan (IFSP);

(l) Discuss the role of the service coordinator; **and**

(m) Collect insurance information and data necessary for billing.

(3) The service coordinator **shall**~~must~~:

(a) Notify parents, in accordance with the parental prior notice requirements of 34 C.F.R. 303.403, and all the IFSP team members in writing of **the date, time, and location of the meetings for the initial and annual Individual Family Service Plan (IFSP), the six (6) month review, and any other IFSP team meeting or the transition conference** ~~[date and location]~~ no less than seven (7) ~~fourteen (14)]~~ calendar days prior to the IFSP, review, or transition conference date.

~~(b)[4-]~~ If there is a cancellation of an IFSP meeting, notify the IFSP members in writing of the rescheduling of the IFSP meeting within five (5) working days of the cancelled meeting **date; and**

~~(c)[(b)]~~ Facilitate the initial, annual and~~;~~ six (6) month review IFSP meetings and **any** IFSP meetings requested to address revisions. **The service coordinator shall**~~;~~~~and~~

1. Enter all IFSP data into the First Steps data management system;

2. Finalize the plan within five (5) days of the date of the meeting;

3. Provide a written copy to the parent or guardian within five (5) days of the meeting and provide copies to persons identified and consented to by the family;

4. Refer the family to appropriate agencies for service identified on the IFSP in accordance with 902 KAR 30:130, Section 2(5)~~(7)]~~(i); **and**

5. Ensure that transition steps and services are discussed with the family during each IFSP meeting.

(4) The service coordinator shall inform the family of **the family's**~~their~~ rights and procedural safeguards by:

(a) Summarizing the Family Rights Handbook at the initial IFSP, at each subsequent IFSP, and at any time the family requests;

(b) Familiarizing the family with the procedural safeguards and due process rules, and ensuring that the family reviews and signs the Statement of Assurances – **Procedural Safeguards**~~found in the Family Rights Handbook~~ at every IFSP review;

(c) Ensuring that all materials are given to the family in a format **the family**~~they~~ can understand in **the family's**~~their~~ native language; **and**

(d) Assisting the family, at **the family's**~~their~~ request, with

resolving conflicts among service providers.

(5) The service coordinator shall assist the family in identifying available service providers by:

(a) Keeping current on all available services in the district; **and**~~including recent rules regarding funding sources;~~

(b) Having available to the families a list of all eligible First Steps services providers in each district. If the family chooses a service provider outside the First Steps approved provider list, the service coordinator shall inform the family that the provider is not approved through First Steps and may result in a cost to the family;

~~(c) Making the family aware of community activities that would benefit from their participation, such as becoming a member of the District Early Intervention Committee; and~~

~~(d) Assisting the Point Of Entry (POE) in establishing new service providers by consistently educating the public on the benefits of early identification and intervention].~~

(6) The service coordinator shall ensure that service coordination is available to families during normal business hours and at the family's request.

(7) The service coordinator shall contact the child's family at a minimum of one (1) time per plan to discuss service coordination needs, unless otherwise stipulated in the IFSP.

(8) The service coordinator shall give the family a business address and phone number and any other information needed to contact the service coordinator.

(9) If a family desires a change in **the family's**~~their~~ service coordinator, **the family**~~they~~ shall contact the POE and the POE shall seek to resolve the situation.

(10) The service coordinator shall facilitate the development of a transition plan by:

(a) Knowing the transition procedures as **established**~~outlined~~ in 902 KAR 30:130, Section 2(8)~~(1)]~~2(8)~~(k)]~~;

~~(b)[, and]~~ Ensuring that all potential agencies and programs that could provide service to a particular child after the age of three (3) are included when introducing the parents to future program possibilities;

~~(c)[(b)]~~ Holding a transition conference at least ninety (90) days and, at the discretion of all parties, not more than nine (9) months prior to the child's third birthday. The transition conference shall involve the family, IFSP team, the **special education**~~Part B]~~ local school district representative, and staff from potential next placement options; **and**

~~(d)[(e)]~~ Including at least one transition outcome as a part of every IFSP that is **consistent with 34 C.F.R. 303.344(h)** ~~supported by steps].~~

(11) The service coordinator shall ensure that all contacts with the family or other service providers are documented in the child's record in the First Steps data management system. This documentation shall occur within seven (7) days of the date of service and include:

(a) The date of contact;

(b) Amount of time spent;

(c) Reason for contact;

(d) Type of contact whether by telephone or face to face;

(e) Result of contact; **and**

(f) Plan for further action.

(12) **The** service coordinator shall document **as** notes on the First Steps data management system all contacts attempted but not made, and the reason if services were not delivered in a timely manner.

(13) The service coordinator shall encourage the family to access all services identified on the individualized family service plan.

(14) If the family wants to voluntarily terminate a service or all services, the service coordinator shall:

(a) Document in the child's record which services are ending and the date of termination; **and**

(b) Send a follow-up letter that meets the requirements for prior written notice as specified in 34 C.F.R. 303.403 to the family which includes what services are terminating, and the date services will terminate, within seven (7) working days after notice from the family of **the family's**~~their~~ choice to end services.

(15) If the family is absent from a scheduled service with no

prior notice for at least three (3) consecutive visits, the service provider shall notify the service coordinator within seven (7) working days after the last absence. If the service coordinator receives notice of no show from a provider, the service coordinator shall:

(a) Document the service provider's contact and try to make contact with the family to discuss the circumstances. The service coordinator shall:

1. If contact is made, notify each provider~~[the provider(s)]~~ ~~[send a letter]~~ within seven (7) working days of ~~[to the providers with]~~ the result of the discussion; or

2. If no contact is made, send the family a letter within seven (7) working days:

a. Requesting direction as to the choice of the family in continuation of services;

b. Stating that the service will be discontinued until a choice is made by the family by contacting the service coordinator; and

c. Stating that if no contact is made by the family, services will be terminated fifteen (15) working days from the date of the letter; and

(b) Notify the service provider, in writing, if services are terminated and the date of termination.

(16) The service coordinator shall be responsible for securing any Release of Information necessary to send or secure information, upon request from other service providers, including non First Steps providers involved in the care of the child.

(17) The service coordinator shall provide data to the cabinet upon request.

(18) The service coordinator shall limit practice in First Steps to service coordination only.

Section 3. Determination of Child's Hearing Status. (1) If the referral is~~[All children referred to First Steps will have a verbal risk assessment performed for suspected hearing impairments prior to the initial IFSP meeting.]~~ for a birth to three (3) year old child who:

(a) Is "at risk" as~~[indicated in Kentucky CHLD and]~~ confirmed by the Early Hearing Detection and Intervention Data Base and the "at risk" indicator is the only reason the child was~~[they were]~~ referred to First Steps, and no audiological evaluation has been performed, the family or guardian shall be notified to contact the child's primary health care provider, pediatrician, or an Approved Infant Audiological~~[Audiologic]~~ Assessment and Diagnostic Center as specified by KRS 211.647 and 216.2970 for an audiological evaluation to determine hearing status.

(2) If the referral is for a birth to three (3) year old child who~~(b)~~ is suspected of having a hearing problem, but not suspected of having any developmental problems, the family or guardian shall be notified to contact the child's primary health care provider, pediatrician, or an Approved Infant Audiological~~[Audiologic]~~ Assessment and Diagnostic Center as specified by KRS 211.647 and 216.2970 for an audiological evaluation to determine hearing status.

(3) If the referral is for a birth to three (3) year old child who~~(c)~~ has a diagnosis of significant hearing loss, as specified by KRS 200.654(10)(b), the child shall be considered to have an "established risk" diagnosis and be eligible for First Steps services and the referral process shall continue.

(4) If the referral is for~~(d) if~~ a birth to three (3) year old child who is suspected of having a hearing loss, with no verification of degree of loss or diagnosis, and who is suspected of having delays in developmental areas, the POE staff shall initiate the evaluation for First Steps, which shall include an audiological evaluation at an Approved Infant Audiological~~[Audiologic]~~ Assessment and Diagnostic Center as specified by KRS 211.647 and 216.2970.

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

(a) "Family Rights Handbook", December 2010;

(b) "First Steps Notice of Action", December 2010;

(c) "First Steps Notice of Action and Consent", December 2010;

(d) "First Steps Consent to Release/Obtain Information", December 2010; and

(e) "Statement of Assurances – Procedural Safeguards", December 2010.~~[The following materials are incorporated by reference:~~

~~(1) "Family Rights Handbook", July 2010 edition;~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. The point of entry (POE) staff shall coordinate child find efforts with local education agencies in order to insure compliance with child find mandates with each party.~~

~~(2) The POE staff shall coordinate child find efforts with other state and federal programs serving this population, including maternal and child health programs, early and periodic screening, diagonal sic, and treatment programs, Head Start, Supplemental Security Income Program, and programs authorized through 42 U.S.C. 15004 to 15009, the Developmental Disabilities Assistance and Bill of Rights Act.~~

~~(3) The POE staff shall develop a child find activity plan to be conducted in each district that includes:~~

~~(a) Completing a minimum of two (2) face to face contacts per month to potential referral sources in the district to explain First Steps services;~~

~~(b) Utilizing the materials developed by the Interagency Coordinating Council Public Awareness Committee by making them available to the community upon request in cooperation with the district technical assistance team and the district early intervention committee (DEIC);~~

~~(4) The POE staff shall maintain accessibility and provide public awareness activities in each district by:~~

~~(a) Having a district toll free telephone number;~~

~~(b) Having a dedicated local telephone number to be answered by person or machine twenty-four (24) hours a day, seven (7) days a week as First Steps; and~~

~~(c) Utilizing the Image Consistency Kit developed by the Interagency Coordinating Council Public Awareness Committee.~~

~~(5) The POE staff shall maintain communication with the DEIC, district technical assistance team and lead agency on matters of child find, service options and other issues relevant to the First Steps Program, by completing the following activities:~~

~~(a) Presenting a report at each DEIC meeting that includes the following information:~~

~~1. Number of referrals and referral sources since last DEIC meeting;~~

~~2. List of current service providers including deletions and additions from last meeting;~~

~~3. Report on identified gaps related to services and location; and~~

~~4. A highlight of the month's activities that include the public awareness activities; and~~

~~(b) Soliciting advice from the DEIC, district technical assistance teams, and lead agency on child find, service options and other issues relevant to the First Steps Program.~~

~~(6) The POE staff shall act on all referrals for First Steps services.~~

~~(a) Upon receiving a telephone or written referral, POE staff shall:~~

~~1. Determine if the family is aware that a referral is being made; and~~

~~2. Do an initial screening to determine if the referral is appropriate based on:~~

~~a. Establishing that the child's age is between birth and three (3) years old;~~

~~b. Ensuring the family's residence is within the assigned district; and~~

~~c. Confirming that there is a developmental concern or a suspected established risk diagnosis.~~

~~(b) If the initial screening finds the referral to be inappropriate, the POE shall give the referral source the appropriate resource to refer the child and family to the services that meet that child's needs. These resources include:~~

~~1. Public schools;~~

~~2. The Department for Community-Based Services;~~

~~3. Medical services; or~~

4. Another POE.

(c) If it is determined that the referral is appropriate, POE staff shall contact the family by telephone or letter within five (5) working days for the purpose of:

1. Briefly informing them of First Steps' services;
2. Advising them that all services are voluntary; and
3. Ascertaining whether the family would like more information and an initial visit scheduled; and

4. Administer the Department for Public Health approved screening test.

(d) If a family is interested, the POE staff shall schedule a visit and send the family a letter to confirm the date, time and location of the visit.

(e) If a family is not interested, the family shall be informed by the POE staff that they can contact the POE at any time to reinstate the referral and the POE staff shall:

1. Document in the child's record, the refusal of services; and
2. Send a letter to the referral source explaining refusal of services by the family.

(f) If efforts to contact the family by telephone and in writing fail, in order to bring closure to the referral the POE staff shall send a follow-up letter within ten (10) working days of the referral encouraging the family to contact the POE at anytime to:

1. Initiate services; or
2. To ask further questions.

(g) Within fifteen (15) working days, the POE staff shall send, in writing, an acknowledgment to the referral source that the referral was received and the status of the processing of the referral, if known at the time.

(7) At the initial visit to the family, the POE staff shall:

- (a) Identify the purpose of the visit;
- (b) Explain the First Steps services;
- (c) Explain the family rights by giving the family the "Family Rights Handbook" and review the statement of assurances;
- (d) Obtain the signature of a parent on the statement of assurance;

(e) Obtain release of information for medical or developmental information from parent;

(f) Determine the willingness to participate in First Steps services or refusal of services;

(g) Interview family and other individuals identified by the parents who are significant in the child's life and record findings to help record the child's developmental status, social relationships and contexts for learning, including the family's history, resources, priorities, concerns, patterns, daily routines and activities;

(h) Determine the next action needed with the family to the determine eligibility of the child;

(i) Discuss evaluation and service options that include:

1. Family convenience and preference;
2. Funding sources; and
3. Natural environments;

(j) Establish the potential date for developing an Individualized Family Service Plan (IFSP);

(k) Discuss options for a primary service coordinator; and

(l) Collect data necessary for billing.

(8) All children referred to First Steps because of suspected developmental delay or established risk condition shall have the hearing checklist completed prior to the initial IFSP meeting.

(9) The POE staff shall use the following to assist in the determination of hearing status:

(a) If the referral is a birth to three (3) year old child who is "at risk" as indicated on the Kentucky High Risk Hearing Registry and the "at risk" indicator is the only reason they were referred to First Steps, and no audiological screen has been done, the child and family shall be notified to contact their pediatrician or a clinic for an audiological screen to determine hearing status.

(b) If the referral is a birth to three (3) year old child who is suspected of having a hearing problem, but not suspected of having any developmental problems, the family shall be notified to contact their pediatrician or a clinic for an audiological screen to determine hearing status.

(c) If the referral is a birth to three (3) year old child with a diagnosis of significant hearing loss, as specified by KRS 200.654(10)(b), the child shall be considered to have an "estab-

lished-risk" diagnosis and be eligible for First Steps services and the referral process shall continue.

(d) If a birth to three (3) year old child who is suspected of having a hearing loss, with no verification of degree of loss or diagnosis, and suspected of having delays in developmental areas, POE staff shall initiate the evaluation for First Steps, which shall include an audiological evaluation.

(e) If a birth to three (3) year old child is referred because of suspected developmental delay or established risk condition, but no apparent hearing problems, the POE shall complete the hearing checklist prior to the IFSP meeting.

(10) POE staff shall coordinate the evaluation process for eligibility determination within the federally mandated time line of forty-five (45) days from receipt of the referral.

The POE staff shall:

(a) Gather existing documentation that will be used to determine eligibility; and

(b) ensure that all releases are completed and on file.

(11) The POE staff shall make appropriate referrals to secure needed evaluations of the child's medical and developmental status.

(12) The POE staff shall ensure that referrals for needed assessments are made, the assessments are completed and that those reports shall be made available prior to the initial IFSP.

(a) The POE staff shall make the appropriate referrals for needed assessments prior to the initial IFSP.

(b) The POE staff shall request copies of the completed assessment reports to be included in the child's record and used in the development of initial IFSP.

(c) The POE staff shall send all future assessment reports to the primary service coordinator.

(13) The POE staff shall coordinate and ensure completion of the initial individualized family service plan (IFSP) meeting within the federally mandated time line of forty-five (45) calendar days from receipt of referral.

(a) The POE staff shall assist the family in identifying the IFSP team members and discuss a potential primary service coordinator.

(b) Once a potential primary service coordinator has been suggested, the POE staff shall contact that person and confirm his willingness to function as the primary service coordinator.

(c) After releases of information signed by the parent have been obtained, the POE staff shall send copies of the following information to the requested primary service coordinator:

1. Initial referral information;
2. Developmental and social history;
3. Any available evaluation reports; and
4. Any available assessment reports.

(d) The POE staff shall send notices to all identified IFSP team members of the upcoming IFSP meeting date, time, and location.

(e) If a telephone is available, the POE staff shall call the family at least three (3) working days prior to the IFSP meeting to:

1. Confirm the time and place of the meeting;
2. Determine whether transportation is needed;
3. To reiterate the purpose of meeting; and
4. To answer questions.

(f) If the developmental and medical evaluators, family, and POE agree that the child is not eligible prior to the IFSP meeting, a meeting shall not be held. If any one (1) member disagrees or still has concerns, a meeting shall be held.

(g) The POE staff shall facilitate the initial IFSP meeting by:

1. Leading introductions;
2. Reviewing the purpose of the meeting;
3. Explaining the family rights and responsibilities for participation, the array of services currently available, and the service delivery approaches which include family centeredness, natural environments and transdisciplinary services; and
4. Discussing and leading the IFSP team to verify eligibility based on collected documentation.

a. If the child is not eligible, the POE staff shall discuss other options and make the family aware they can recontact the POE anytime.

b. If the child is eligible but the family is not interested in services, the POE staff shall document the refusal of services and make the family aware they can recontact the POE any time for

reevaluation.

e. If the child is eligible and the family is interested in services, the POE staff shall:

(i) Develop an IFSP ensuring that all IFSP components are included; and

(ii) Introduce the primary service coordinator.

(h) The POE staff shall ensure that the written IFSP is developed and recorded at the meeting.

(i) The POE staff shall send the completed IFSP to the family within five (5) working days of the IFSP meeting;

(j) The POE staff shall, within five (5) working days of the IFSP meeting, make available, through appropriate releases, to the primary service coordinator the following:

1. The completed IFSP;

2. Any evaluation reports not previously sent; and

3. Any assessment reports not previously sent.

(k) The identified primary service coordinator shall send copies of the IFSP to other IFSP team members and to the parties requested by the family within ten (10) working days of the IFSP meeting.

(l) The POE staff shall send the necessary documentation of service decisions to the billing agent within five (5) working days after the IFSP meeting.

(m) The identified primary service coordinator shall be responsible for referrals to services identified on the IFSP.

(14) The POE staff shall:

(a) Provide consultation and support to the primary service coordinator as requested;

(b) Keep on file copies of all IFSP and reviews sent from the primary service coordinator;

(c) Assist primary service coordinators in transition of children from First Steps services to future services; and

(d) Track and notify the primary service coordinator that a transition conference shall be completed within the federal time frame of no less than ninety (90) days prior to the child's third (3) birthday by:

1. Sending notification, no later than the child's 30th month of age, to the primary service coordinator that the transition conference is due and the date by which it shall be held; and

2. Receiving from the primary service coordinator the revised IFSP which incorporates the transition plan no later than one (1) week, five (5) working days, after the meeting has been held. This plan shall include at least:

a. Basic demographic information;

b. A listing of family priorities;

c. Family resources and concerns; and

d. Documentation of the transition meeting and outcomes.

(15) The POE staff shall function as the primary service coordinator to ensure that the transition conference and plan are completed if the primary service coordinator resigns and no other primary service coordinator can be assigned in time, or the referral is received within forty-five (45) days of the child's third birthday.

(a) The POE staff shall be responsible for knowing the following transition procedure that shall include:

1. Ensuring all potential agencies and programs that could provide services to a particular child after the age of three (3), are included.

2. Processing the referrals of all children who are less than the age of two (2) years ten and one-half (10 1/2) months for evaluation and First Steps services.

(b) For all children who are two (2) years and ten and one-half (10 1/2) months old to age three (3), the POE shall facilitate the transition conference which would include representatives of available next referrals.

(c) The POE staff shall be responsible for conducting the transition conference and development of the plan when assuming the role of primary service coordinator.

(16) If the family refuses service coordination, the POE shall coordinate and facilitate all IFSP meetings.

(17) The POE staff shall maintain a complete record on all children referred through the POE by:

(a) Keeping on file all records generated by the POE or sent to the POE from all other service providers;

(b) Ensuring that all POE contacts shall be documented in the

child's record;

(c) Notifying the billing agent of all changes in the status of the child or family within seven (7) working days of notification of changes to the POE or at least every six (6) months in conjunction with IFSP six (6) month reviews; and

(d) Providing data to the lead agency as requested.

(18) The POE shall provide a written data report to the DEIC. The POE shall complete the district data report monthly. The information to be included in the report shall be the:

(a) Number of referrals per quarter;

(b) Sources of referrals;

(c) Number of eligible children;

(d) Eligibility categories and number of children in each category;

(e) Number of children not eligible;

(f) Number of children or families refusing services;

(g) Number of IFSP's completed;

(h) Number of children who received primary, intensive and tertiary evaluations; and

(i) Age of each child at the time of referral.

(19) The POE shall collect and maintain the District Service Provider Directory.

The POE shall:

(a) Collect data on all available First Steps service providers, maintain that data, and have the current services in a printable form, upon request from the community; and

(b) Send a compiled list of changes to their district technical assistance team quarterly.

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

(a) Hearing Checklist, 1999; and

(b) Family Rights Handbook, January 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m.]

WILLIAM D. HACKER, MD, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 15, 2010 at 10 a.m.

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 Public Health

Division of Adult and Child Health Improvement

(As Amended at ARRS, December 14, 2010)

902 KAR 30:120. [Kentucky Early Intervention Program] Evaluation and eligibility.

RELATES TO: KRS 200.654, 200.668, 34 C.F.R. 303.11, 303.300, 303.322, 20 U.S.C. 1434[1431-1444] [1471-1476]

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050, 200.660(7), [200.650-676,] 34 C.F.R. 303.322, 20 U.S.C. 1434 [1474, 1475(a)(10)][EO 2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-726 reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.] KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the evaluation, and eligibility, and redetermination of eligibility requirements for First Steps, Kentucky's Early Intervention Program.

Section 1. Eligibility. (1) A child shall be eligible for First Steps service if the child:

(a) Is age birth up to three (3) [through two (2)] years;

(b) Is a resident of Kentucky at the time of referral and resides in Kentucky while receiving early intervention services; and

(c) 1. Has a documented established risk condition that has a high probability of resulting in developmental delay; ~~and~~ or

2. Is determined to have a significant developmental delay based on the evaluation and assessment process.

(2) A determination of initial eligibility, assessments, and the initial IFSP team meeting shall occur within forty-five (45) calendar days after a point of entry receives an initial referral **for a child who meets the requirements established in [that meets the criteria of] subsection (1) of this section.**

(3) Eligibility by established risk conditions:

(a) In accordance with KRS 200.654(10)(b), a child meeting the criteria **established** in subsection (1)(a) and (b) of this section with a suspected established risk condition shall be eligible **once when** the diagnosis is confirmed by a physician and documented in the medical records provided to the First Steps Program.

(b) A list of approved established risk diagnoses shall be maintained by the First Steps Program and made available in policies and procedures.

1. A child with an established risk shall have a five (5) area assessment, **assessing the five (5) areas listed in subsection (4)(a) of this section**, completed by a developmental evaluator using a cabinet-approved criterion referenced assessment instrument in lieu of a primary level evaluation.

2. If the established risk condition relates to hearing loss, the five (5) area assessment shall be performed by a speech therapist or a teacher of the deaf and hard of hearing who is approved as a developmental evaluator.

(4) Eligibility by developmental delay:

(a) A child meeting the criteria **established** in subsection (1)(a) and (b) of this section shall be eligible for First Steps services if the child is determined to have fallen significantly behind in development, based on the evaluation and assessment process, in one (1) or more of the following domains of development:

1. Total cognitive development;

2. Total communication area through speech and language development, which shall include expressive and receptive language;

3. Total physical development including motor development, vision, hearing, and general health status;

4. Total social and emotional development; or

5. Total adaptive skills development. ~~and~~

(b) Evidence of falling significantly behind in developmental norms shall be determined on a norm referenced test by the child's score that is:

1. Two (2) standard deviations below the mean in one (1) skill area; or

2. At least one and one-half (1 1/2) standard deviations below the mean in two (2) skill areas.

(c) 1. If a norm-referenced test reveals a delay in one (1) of the five (5) skill areas but does not meet the eligibility criteria required by **paragraph (b) of this subsection**, ~~[(4)(b) of this section]~~:

4. a more in-depth standardized test in that area of development may be administered if the following is evident:

a. The primary level evaluator and a parent or guardian have a concern or suspect that the child's delay ~~is~~ ~~[may be]~~ greater than the testing revealed;

b. A different norm-referenced test tool reveals a standardized score which would meet eligibility criteria; and

c. There is one (1) area of development that is of concern.

2. The results of ~~the [this]~~ alternate testing **required by subparagraph 1. of this paragraph** shall determine the child's eligibility if the standardized scores indicate a delay of greater than two (2) standard deviations.

(5) Eligibility by professional judgment. ~~and~~ A child may be determined eligible by informed clinical opinion by the following multidisciplinary evaluation teams of professionals:

(a) An approved neonatal follow-up program team;

(b) An approved intensive level evaluation team; or

(c) The designated record review team, ~~if [when]~~ reviewing for eligibility.

(6) To be an approved neonatal follow-up program team, a university-based program shall:

(a) Submit to the cabinet the credentials and documentation of experience in conducting assessments for the birth to three (3) age population for each proposed team member; and

(b) Contract with the cabinet to conduct neuro-developmental follow-up of high risk infants.

(7) To be an approved intensive level evaluation team, two (2) or more professionals who meet the criteria established in Section 2(9) of this administrative regulation shall:

(a) Submit to the cabinet their credentials and documentation of experience in conducting assessments for the birth to three (3) age population for each proposed team member; and

(b) Contract with the cabinet to conduct intensive level evaluations.

Section 2. Child Evaluation. (1) A child referred to the First Steps Program who meets the criteria **established** in Section 1(1)(a) and (b) of this administrative regulation shall receive an evaluation to determine eligibility if:

(a) There is a suspected developmental delay as confirmed by the cabinet-approved screening protocol; and

(b) The child does not have an established risk diagnosis.

(2) For a child without an established risk diagnosis, the primary level evaluation shall be used to:

(a) Determine eligibility;

(b) Determine developmental status;

(c) Establish the baselines for progress monitoring; and

(d) Make recommendations for the Individual Family Service Plan (IFSP) outcomes.

(3)(a) Primary level evaluations shall include the five (5) developmental areas identified in Section 1(4)(a) of this administrative regulation using norm-referenced standardized instruments that provide a standard deviation score in the total domain for the five (5) areas and shall include a cabinet-approved criterion referenced assessment instrument.

(b) The primary level evaluation shall include:

1. ~~(a)~~ A medical component completed by a physician or nurse practitioner that includes a:

a. ~~1.~~ History and physical examination;

b. ~~2.~~ Hearing and vision screening; and

c. ~~3.~~ Recent medical evaluation in accordance with the timelines established in **subsection (5) of this section; and** ~~[(4) of this administrative regulation]~~

2. ~~(b)~~ A developmental component completed by a cabinet-approved primary level evaluator that includes:

a. ~~1.~~ A review of pertinent health and medical information;

b. ~~2.~~ Completion of **each** appropriate **instrument needed** ~~instrument(s)]~~ to determine the child's unique strengths and needs; and

c. ~~3.~~ A recommendation of eligibility.

(c) Results of the evaluation ~~shall~~ ~~should~~ be explained to the family.

(d) An evaluation report shall be written:

1. **Within ten (10) calendar days of the completion of the evaluation; and**

2. ~~[in accordance with established timelines and shall be written]~~ In clear, concise language that is easily understood by the family.

(4) Child records of evaluations transferred from a developmental evaluator outside the Kentucky Early Intervention System shall be reviewed by the Point of Entry staff and shall be used for eligibility determination if:

(a) The records meet evaluation timelines established in subsection (5) of this section; and

(b) The records contain the developmental evaluation information required by subsection **(3)(b)** ~~[(3)(a) and (b)]~~ of this section.

(5) If there is a recent medical or developmental evaluation available, **as required by subsection (3)(b)** ~~[described in subsection (3)(a) and (b)]~~ of this section, it shall be used to determine eligibility **if the evaluation was performed within** ~~[for children]~~:

(a) ~~Under twelve (12) months of age, the evaluation was performed within]~~ Three (3) months prior to referral to First Steps, **for a child under twelve (12) months of age; or**

~~(b) [Twelve (12) months to three (3) years of age, the evaluation was performed within] Six (6) months prior to referral to First Steps, for a child between twelve (12) months of age and three (3) years of age.~~

~~(6)(a) A child referred to the First Steps program who[that] was born at less than thirty-seven (37) weeks gestational age shall be evaluated and assessed using an adjusted gestational age to correct for prematurity.~~

~~(b)[(a)] For a child who is less than six (6) months corrected age, the primary evaluation shall be done by an approved intensive level evaluation team or an approved neonatal follow-up program team, in accordance with Section 1(5) of this administrative regulation[at an approved Intensive Level Clinic and preferably the approved Neonatal Intensive Care Unit follow-up clinic].~~

~~(7) If the child does not have an established risk diagnosis and is determined not eligible, the POE staff shall discuss available community resources, such as Medicaid, EPSDT, the Department for Public Health's and the Commission for Children with Special Health Care Need's (CCSHCN's) Title V programs, and other third-party payors.~~

~~(8) A review of the child's First Steps record by the record review team shall be the second level in the First Steps evaluation system that shall be utilized to determine eligibility for cases which are complex or have contradictory information from testing.~~

~~(a) Upon obtaining a written consent by the parent or guardian, a service coordinator shall submit a child's record to the Department for Public Health or the designee for a record review if:~~

~~1. The child does not meet eligibility guidelines at the primary level;~~

~~2.[, but] The primary level evaluator and a parent or guardian have concerns that the child is developing atypically; and~~

~~3. A determination of eligibility based on professional judgment is needed.~~

~~(b) Upon receiving a referral, a record review team shall conduct a record review and issue findings within ten (10) calendar days of receipt of the request.~~

~~(9) If[Should] the record review team requests[request] an intensive level clinical evaluation, this shall be conducted by a team of early intervention professionals approved by the Part C Coordinator that shall include the following:~~

~~(a)1. A board certified medical professional with expertise in early childhood development;~~

~~2.[(b)] A board certified developmental pediatrician;~~

~~3.[(c)] A pediatrician who has training and experience in the area of early childhood development;~~

~~4.[(d)] A board certified pediatric psychiatrist; or~~

~~5.[(e)] A board certified pediatric neurologist; and~~

~~(b)[(4)] One (1) or more developmental professionals identified in 902 KAR 30:150, Section 2(1)(a)-(s).~~

~~Section 3. Annual Redetermination of Eligibility. (1) A redetermination[Redeterminations] of eligibility shall not be used to address concerns that are medical in nature.~~

~~(2) A child shall have continuing program eligibility for First Steps services if:~~

~~(a) The child is:~~

~~1. Under three (3) years old; and~~

~~2.[, is] A resident of Kentucky;[,] and~~

~~(b) The result of the most recent semi-annual progress review demonstrates:~~

~~1.[(a)] An ongoing delay or failure to attain an expected level of development in one or more developmental areas; and~~

~~2.[(b)] Continued First Steps services are required in order to support continuing developmental progress by consensus of the IFSP team.~~

~~(3) Based on the results of the redetermination of eligibility, the IFSP team shall:~~

~~(a) Continue with the same outcomes and services;~~

~~(b) Continue with modified outcomes and services; or~~

~~(c) Transition the child from First Steps services.~~

~~(4) Redetermination of eligibility shall occur at least annually.~~

~~(a) The annual redetermination shall be part of the child's ongoing assessment and shall include an assessment in all five (5)~~

~~areas by the Primary Service Provider (PSP) using a cabinet-approved criterion referenced instrument.~~

~~(b) If a person [or persons] directly involved in conducting the evaluation and assessments is[are] unable to attend an IFSP meeting, arrangements shall be made for that person's[their] involvement by other means including participating in a telephone conference call, having a representative attend the meeting, or making pertinent records and reports available at the meeting.~~

~~Section 4. Incorporation by Reference. (1) "The Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) Periodicity Schedule", August 2003 edition, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.[Evaluation. (1)(a) A child referred to the First Steps Program shall be initially evaluated to determine eligibility if:~~

~~1.a. The screen indicates a developmental delay; or~~

~~b. The screen does not indicate a delay, but the family still has concerns; and~~

~~2. The child does not have an established risk condition.~~

~~(b) A child with established risk as listed in Section 2(3)(b) of this administrative regulation shall receive a five (5) area assessment done by a primary level evaluator in lieu of a primary level evaluation. If a child is eligible due to an established risk condition of hearing loss, the five (5) area assessment shall be performed by a speech therapist or a teacher of the deaf and hard of hearing who is approved as a primary level evaluator.~~

~~(2)(a) A determination of initial eligibility pursuant to Section 2 of this administrative regulation, assessments in the identified area of delay, in accordance with 911 KAR 2:130, and the initial IFSP team meeting shall occur within forty-five (45) calendar days after a point of entry receives an initial referral.~~

~~(b) If a determination of initial eligibility, assessments and initial IFSP team meeting does not occur within forty-five (45) calendar days due to illness of the child or a request by the parent, the delay circumstances shall be documented.~~

~~(c) If a family is referred for a determination of initial eligibility and the family is under court order or a social services directive to enroll their child in First Steps, the court or social service agency shall be informed within three (3) working days by the initial service coordinator, if the family refuses the determination of eligibility.~~

~~(3) Child records of evaluations transferred from an in-state or out-of-state developmental evaluator shall be reviewed by the initial service coordinator and shall be utilized for eligibility determination if:~~

~~(a) The records meet First Steps evaluation time lines established in subsection (4)(a) of this section; and~~

~~(b) The records contain the developmental evaluation information established in subsection (11)(a) and (b) of this section.~~

~~(4) The primary level evaluation shall be utilized to determine eligibility of children without established risk, developmental status and recommendations for further assessment to determine program planning.~~

~~(a) If there is a previous primary level evaluation available, it shall be used to determine eligibility if:~~

~~1.a. For children under twelve (12) months of age, the evaluation was performed within three (3) months prior to referral to First Steps; or~~

~~b. For children twelve (12) months to three (3) years of age, the evaluation was performed within six (6) months prior to referral to First Steps; and~~

~~2. There is no additional information or the family has not expressed new concerns that would render the previous evaluation no longer valid.~~

~~(b) If there is a previous primary level evaluation available that was performed within the timeframes established in paragraph (a)1 of this subsection but there are new concerns that render the evaluation no longer valid, the initial service coordinator shall request a new primary level evaluation.~~

~~(c) Primary level evaluations shall provide evaluation in the five (5) developmental areas identified in Section 2(1)(c)1 through 5 of this administrative regulation using norm-referenced standardized~~

instruments that provide a standard deviation score in the total domain for the five (5) areas:

(d) The primary level evaluation shall be provided by:

1. A physician or nurse practitioner; and
2. A primary evaluator approved by the cabinet.

(e) A primary level evaluation shall include:

1. A medical component completed by a physician or a nurse practitioner that shall include:
 - a. A history and physical examination;
 - b. A hearing and vision screening; and
 - c. A child's medical evaluation that shall be current in accordance with the EPSDT Periodicity Schedule; and
2. A developmental component completed by a cabinet-approved primary level evaluator that utilizes norm-referenced standardized instruments, the results of which shall:

a. Include the recommendation of a determination of eligibility or possible referral for a record review; and

b. Be interpreted to the family prior to the discussion required by subsection (5) of this section.

(5)(a) Prior to the initial IFSP team meeting, the initial service coordinator shall contact the family and primary level evaluator to discuss the child's eligibility in accordance with subsection (4)(e)2b of this section. If the child is determined eligible, the service coordinator shall:

1. Make appropriate arrangements to select a primary service coordinator;
2. Arrange assessments in the areas identified in Section 2(1)(c) of this administrative regulation found to be delayed; and
3. Assist the family in selecting service providers in accordance with 911 KAR 2:110. If the child is receiving therapeutic services from a provider outside of the First Steps Program, the service coordinator shall:

- a. Invite the current provider to be a part of the IFSP team;
- b. Request that the provider supply the team with his assessment and progress reports; and
- c. If the current provider does not want to participate, have the First Steps provider consult with the current provider if assessing the area being treated by the current provider.

(b) If the child does not have an established risk condition identified in Section 2(1)(c) of this administrative regulation, and is determined not eligible, the team shall discuss available community resources, such as Medicaid, EPSDT, the Department for Public Health's and the Commission for Children with Special Health Care Need's (CCSHCN's) Title V programs, and other third-party payers.

(6) At the initial IFSP team meeting, the IFSP team shall:

(a) Include the following members at a minimum:

1. The parent of the child;
2. Other family members, as requested by the parent, if feasible to do so;
3. An advocate or person outside of the family, if the family requests that the person participate;
4. The initial service coordinator;
5. The primary service coordinator;
6. A provider who performed an assessment on the child; and
7. If appropriate, a First Steps provider who shall provide services to the child or family;

(b) Verify the child's eligibility;

(c) Review the evaluation information identified in subsection (4) of this section;

(d) Review the assessment reports in accordance with 911 KAR 2:130;

(e) Determine the family's outcomes, strategies and activities to meet those outcomes as determined by the family's priorities and concerns; and

(f) Determine the services the child shall receive in order for the family to learn the strategies and activities identified on the IFSP. This shall include identifying:

1. The discipline;
2. The professional, paraprofessional, or both;
3. The method in which services shall be delivered, such as individual, group, or both;
4. The payor source for the service; and
5. The frequency of the service.

(7)(a) Reevaluations shall be provided if the IFSP team determines a child's eligibility warrants review and the child does not have an established risk condition:

(b) Primary level reevaluations shall not be used to:

1. Address concerns that are medical in nature; or
2. Provide periodic, ongoing follow-up services for post-testing or testing for transition.

(c) Based on the result of the reevaluation or annual evaluation, the IFSP team shall:

1. Continue with the same level of services;
2. Continue with modified services; or
3. Transition the child from First Steps services.

(8) Beginning January 1, 2005, an annual IFSP meeting shall be held in accordance with KRS 200.664(7), to determine continuing program eligibility and the effectiveness of services provided to the child. A delay ranking by developmental domain shall be assigned in the progress review report by each therapeutic interventionist using the delay ranking scale. (9) A review of the child's First Steps record by the Record Review Team shall be the second level in the First Steps evaluation system that shall be utilized to determine eligibility, medical or mental diagnosis, program planning, or plan evaluation.

(a) Upon obtaining a written consent by the parent, a service coordinator shall submit a child's record to the Department for Public Health for a record review if:

1. A primary evaluator identifies a need for further developmental testing necessary to clarify a diagnosis to further define the child's developmental status in terms of a child's strengths and areas of need;

2. A child does not meet eligibility guidelines at the primary level, but an IFSP team member and the family still have concerns that the child is developing atypically and a determination of eligibility based on professional judgment is needed; or

3. The IFSP team requests an intensive level evaluation for the purposes of obtaining a medical diagnosis or to make specific program planning and evaluation recommendations for the individual child.

(b)1. If a service coordinator sends a child's record for a record review, the following shall be submitted to the Record Review Team, Department for Public Health, at the address indicated by the Department for Public Health:

- a. A cover letter from the service coordinator or primary evaluator justifying the referral for a record review;
- b. Primary level evaluation information specified in subsection (11) of this section;
- c. Available assessment reports required in 911 KAR 2:130;
- d. Available IFSPs and amendments;
- e. Most recent progress reports from the IFSP team members. Reports older than three (3) months shall include an addendum reflecting current progress;
- f. Therapeutic staff notes from the previous two (2) months; and
- g. If requesting a record review for a child who is receiving speech therapy, a hearing evaluation performed by an audiologist within six (6) months of the request.

2. The service coordinator requesting the record review shall attempt to procure and submit the following information, if available:

- a. Birth records, if neonatal or perinatal complications occurred;
- b. General pediatric records from the primary pediatrician;
- c. Medical records from hospitalizations; and
- d. Records from medical subspecialty consultations, such as neurology, orthopedic, gastroenterology or ophthalmology.

(c)1. Upon receiving a referral, a Record Review Team shall conduct a record review.

2. After conducting the record review, Record Review Team shall:

a. Determine whether there are at least sixty (60) calendar days from the date of the review before the child turns three (3) years of age;

b. Determine that the child meets or does not meet the eligibility criteria established in Section 2(1) of this administrative regulation; and

e. Provide the IFSP team with recommendations for service planning.

3. If there are at least sixty (60) calendar days from the date of the review before the child turns three (3) years of age, Record Review Team shall:

a. Determine if further developmental testing, diagnostics or additional professional judgment are required in order to adequately ascertain the child's developmental needs; and

b. Refer:

(i) The child for an intensive level evaluation, the third level in the First Steps evaluation system; or

(ii) The family to local community resources.

4. If there are not at least sixty (60) calendar days from the date of the review before the child turns three (3) years of age, Record Review Team shall provide the IFSP team with a recommendation for transition planning.

5. Upon the record review team reviewing the child's record, the team shall provide the family and service coordinator with a letter, within fourteen (14) calendar days of the review, informing them of the information described in this paragraph.

(d) Intensive level evaluations shall be conducted by one (1) or more of the following as determined by the Department for Public Health approved Record Review Team:

1. A board certified developmental pediatrician;

2. A pediatrician who has experience in the area of early childhood development;

3. A pediatric psychiatrist;

4. A pediatric neurologist;

5. One (1) or more developmental professionals identified in 911 KAR 2:150, Section 4; or

6. If an IFSP is currently in place, a developmental professional representing at least one (1) discipline that is currently on the IFSP in addition to a professional whose scope of work addresses additional concerns expressed by the Record Review Team.

(10) Family rights shall be respected and procedural safeguards followed in providing evaluation services.

(a) Written parental consent shall be obtained before conducting an evaluation or assessment by the evaluator or assessor respectively.

(b) If a parent or guardian refuses to allow a child to undergo a physical or medical examination for eligibility because of religious beliefs:

1. Documentation shall be obtained in the form of a notarized statement. The notarized statement shall be signed by the parent or guardian to the effect that the physical examination or evaluation is in conflict with the practice of a recognized church or religious denomination to which they belong;

2. If a child is determined to be eligible, First Steps shall provide, at the parent's request, services that do not require, by statute, proper physical or medical evaluations; and

3. The initial service coordinator shall explain to the family that refusal due to religious beliefs may result in a denial of services which require a medical assessment on which to base treatment protocols.

(11) A report shall be written in accordance with the time frames established in paragraph (c)1 of this subsection upon completion of each primary level and intensive level evaluation.

(a) A report resulting from a primary level evaluation or an intensive level evaluation shall include the following components:

1. Date of evaluation;

2. Names of evaluators and those present during the evaluation, professional degree, and discipline;

3. The setting of the evaluation;

4. Name and telephone number of the contact person;

5. Identifying information that includes the:

a. Child's Central Billing and Information System (CBIS) identification number;

b. Child's name and address;

c. Child's chronological age (and gestational age, if premature-born) at the time of the evaluation;

d. Health of the child during the evaluation;

e. Date of birth;

g. Reason for referral or presenting problems;

6. Tests administered or evaluation procedures utilized and the purpose of the instrument. One (1) method of evaluation shall not be used, but a combination of tests and methods shall be used;

7. Test results and interpretation of strengths and needs of the child;

8.a. Test results reported in standard deviation pursuant to subsection (4)(c)2 of this section; and

b. A rank on the delay ranking scale for each of the five (5) developmental areas identified in Section 2(1)(c)1 through 5 of this administrative regulation;

9. Factors that may have influenced the test conclusion;

10. Eligibility;

11. Developmental status or diagnosis;

12. Suggestions regarding how services may be provided in a natural environment that address the child's holistic needs based on the evaluation;

13. Parent's assessment of the child's performance in comparison to abilities demonstrated by the child in more familiar circumstances;

14. A narrative description of the five (5) areas of the child's developmental status;

15. Social history;

16. Progress reports, if any, on the submitted information; and

17. A statement that results of the evaluation were discussed with the child's parent.

(b) The report required by paragraph (a) of this subsection shall be written in clear, concise language that is easily understood by the family.

(c)1. The reports and notification of need for further evaluation shall be made available to the current IFSP team and family within fourteen (14) calendar days from the date the evaluator received the complete evaluation referral.

2. In addition to the requirements established in this section, an intensive level evaluation site shall:

a. Provide to the Record Review Team a copy of the evaluation report within fourteen (14) calendar days from the date the evaluator received the evaluation referral; and

b. If an IFSP is currently in place:

(i) Focus recommendations on areas that are specified on the IFSP as being of concern to the family;

(ii) Identify strategies and activities that would help achieve the outcomes identified on the IFSP; and

(iii) Provide suggestions for the discipline most appropriate to transfer the therapeutic skills to the parents.

3. If it is not possible to provide the report and notification required in this paragraph by the established time frame due to illness of the child or a request by the parent, the delay circumstances shall be documented and the report shall be provided within five (5) calendar days of completing the evaluation.

Section 2. Eligibility. (1) Except as provided in subsection (2) or (3) of this section, a child shall be eligible for First Steps services if he is:

(a) Aged birth through two (2) years;

(b) A resident of Kentucky at the time of referral and while receiving a service;

(c) Through the evaluation process determined to have fallen significantly behind developmental norms in the following skill areas:

1. Total cognitive development;

2. Total communication area through speech and language development, which shall include expressive and receptive;

3. Total physical development including growth, vision and hearing;

4. Total social and emotional development; or

5. Total adaptive skills development; and

(d) Significantly behind in developmental norms as evidenced by the child's score being:

1. Two (2) standard deviations below the mean in one (1) skill area; or

2. At least one and one half (1 1/2) standard deviations below the mean in two (2) skill areas.

(2)(a) If a norm-referenced testing reveals a delay in one (1) of the five (5) skill areas but does not meet the eligibility criteria re-

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quired by subsection (1)(d) of this section, a more in-depth standardized test in that area of development may be administered if the following is evident:

1. The primary level evaluator, service coordinator or the family has a concern or suspects that the child's delay may be greater than the testing revealed;

2. A more sensitive norm referenced test tool may reveal a standardized score which would meet eligibility criteria; and

3. There is one (1) area of development that is of concern.

(b) Upon completion of the testing required by paragraph (a) of this subsection, the results and information required by Section 1(9)(b) of this administrative regulation shall be submitted by the service coordinator to the record review team for a determination of eligibility.

(3) A child shall be eligible for First Steps services if the child:

(a) Is being cared for by a neonatal follow-up program and its staff determine that the child meets the eligibility requirements established in subsection (1) or (4) of this section; or

(b) In accordance with KRS 200.654(10)(b), has one (1) of the following conditions diagnosed by a physician or advanced registered nurse practitioner (ARNP):

Aase-Smith syndrome
Aase syndrome
Acrocallosal syndrome
Acrodysostosis
Acro-Fronto-Facio-Nasal Dysostosis
Adrenoleukodystrophy
Agenesis of the Corpus Callosum
Agyria
Aicardi syndrome
Alexander's Disease
Alper's syndrome
Amelia
Angelman syndrome
Aniridia
Anophthalmia/Microphthalmia
Antley-Bixler syndrome
Apert syndrome
Arachnoid cyst with neuro-developmental delay
Arhinencephaly
Arthrogryposis
Ataxia
Atelosteogenesis
Autism
Baller-Gerold syndrome
Bannayan-Riley-Ruvalcaba syndrome
Bardet-Biedl syndrome
Bartsocas-Papas syndrome
Beals syndrome (congenital contractural arachnodactyly)
Biotinidase Deficiency
Bixler syndrome
Blackfan-Diamond syndrome
Bobble Head Doll syndrome
Borjeson-Forssman-Lehmann syndrome
Brachial Plexopathy
Brancio-Oto-Renal (BOR) syndrome
Campomelic Dysplasia
Canavan Disease
Carbohydrate Deficient Glycoprotein syndrome
Cardio-Facio-Cutaneous syndrome

Carpenter syndrome
Cataracts - Congenital
Caudal Dysplasia
Cerebro-Costo-Mandibular syndrome
Cerebellar Aplasia/Hypoplasia/Degeneration
Cerebral Atrophy
Cerebral Palsy
Cerebro-oculo-facial-skeletal syndrome
Charge Association
Chediak Higashi syndrome
Chondrodysplasia Punctata
Christian syndrome
Chromosome Abnormality
-a. unbalanced numerical (autosomal)
-b. numerical trisomy (chromosomes 1-22)
-c. sex chromosomes XXX; XXXX; XXXXX; XXXY; XXXXY
CNS Aneurysm with Neuro-Developmental Delay
CNS Tumor with Neuro-Developmental Delay
Cockayne syndrome
Coffin Lowry syndrome
Coffin Siris syndrome
Cohen syndrome
Cone Dystrophy
Congenital Cytomegalovirus
Congenital Herpes
Congenital Rubella
Congenital Syphilis
Congenital Toxoplasmosis
Cortical Blindness
Costello syndrome
Cri du chat syndrome
Cryptophthalmos
Cutis Laxa
Cytochrome-c Oxidase Deficiency
Dandy Walker syndrome
DeBary syndrome
DeBuquois syndrome
Dejerine-Sottas syndrome
DeLange syndrome
DeSanctis-Cacchione syndrome
Diastrophic Dysplasia
DiGeorge syndrome (22q11.2 deletion)
Distal Arthrogryposis
Donohue syndrome
Down syndrome
Dubowitz syndrome
Dyggve-Melchor-Clausen syndrome
Dyssegmental Dysplasia
Dystonia
EEC (Ectrodactyly-ectodermal dysplasia-clefting) syndrome
Encephalocele
Encephalo-Cranio-Cutaneous syndrome
Encephalomalacia
Exencephaly
Facio-Auriculo-Radial dysplasia

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Facio-Cardio-Renal (Eastman-Bixler) syndrome
Familial Dysautonomia (Riley-Day syndrome)
Fanconi Anemia
Farber syndrome
Fatty Acid Oxidation Disorder (SCAD, ICAD, LCHAD)
Femoral Hypoplasia
Fetal Alcohol syndrome/Effects
Fetal Dyskinesia
Fetal Hydantoin syndrome
Fetal Valproate syndrome
Fetal Varicella syndrome
FG syndrome
Fibrochondrogenesis
Floating Harbor syndrome
Fragile X syndrome
Fretman-Sholdon (Whistling-Facies) syndrome
Fryns syndrome
Fucosidosis
Glaucoma - Congenital
Glutaric Aciduria Type I and II
Glycogen Storage Disease
Goldberg-Shprintzen syndrome
Grebe syndrome
Hallermann-Streiff syndrome
Hays-Wells syndrome
Head Trauma with Neurological Sequelae/Developmental Delay
Hearing Loss (30dB or greater in better ear as determined by ABR audiometry or audiometric behavioral measurements)
Hemimegalencephaly
Hemiplegia/Hemiparesis
Hemorrhage Intraventricular Grade III, IV
Hereditary Sensory & Autonomic Neuropathy
Hereditary Sensory Motor Neuropathy (Charcot-Marie-Tooth Disease)
Herrmann syndrome
Heterotopias
Holoprosencephaly (Aprosencephaly)
Holt-Oram syndrome
Homocystinuria
Hunter syndrome (MPSII)
Huntington Disease
Hurler syndrome (MPSI)
Hyalanosis
Hydranencephaly
Hydrocephalus
Hyperpipecolic Acidemia
Hypomelanosis of ITO
Hypophosphatasia Infantile
Hypoxic-Ischemic encephalopathy
I-Cell (mucopolidosis II) Disease
Incontinentia Pigmenti
Infantile spasms
Iniencephaly
Isovaleric Acidemia
Jarcho-Levin syndrome

Jervell syndrome
Johanson-Blizzard syndrome
Joubert syndrome
Kabuki syndrome
KBG syndrome
Kenny-Caffey syndrome
Klee-Blattschadel
Klippel-Feil Sequence
Landau-Kleffner syndrome
Lange-Nielsen syndrome
Langer-Giedion syndrome
Larsen syndrome
Laurin-Sandrow syndrome
Leber's Amaurosis
Legal blindness (bilateral visual acuity of 20/200 or worse corrected vision in better eye)
Leigh Disease
Lennox-Gastaut syndrome
Lenz Majewski syndrome
Lenz Microphthalmia syndrome
Levy-Hollister (LADD) syndrome
Lesch-Nyhan syndrome
Leukodystrophy
Lissencephaly
Lowe syndrome
Lowry-Maclean syndrome
Maffucci syndrome
Mannosidosis
Maple Syrup Urine Disease
Marden-Walker syndrome
Marshall syndrome
Marshall-Smith syndrome
Maroteaux-Lamy syndrome (MPS-VI)
Maternal PKU Effects
Megalencephaly
MELAS
Meningocele (cervical)
MERRF
Metachromatic Leukodystrophy
Metatropic Dysplasia
Methylmalonic Acidemia
Microcephaly
Microtia-Bilateral
Midas syndrome
Miller (postaxial acrofacial Dysostosis) syndrome
Miller-Dieker syndrome
Mitochondrial Disorder
Moebius syndrome
Morquio syndrome (MPS-IV)
Moya-Moya Disease
Mucopolidosis II, III
Multiple congenital anomalies (major organ birth defects)
Multiple Pterygium syndrome
Muscular Dystrophy
Myasthenia Gravis – Congenital

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Myelocystocele
Myopathy - Congenital
Myotonic Dystrophy
Nager (Acrofacial Dysostosis) syndrome
Nance-Horan syndrome
NARP
Neonatal Meningitis/Encephalitis
Neuronal Ceroid Lipofuscinoses
Neuronal Migration Disorder
Nonketotic Hyperglycinemia
Noonan syndrome
Ocular Albinism
Oculocerebrocutaneous syndrome
Oculo-Cutaneous Albinism
Optic Atrophy
Optic Nerve Hypoplasia
Oral-Facial-Digital syndrome Type I-VII
Osteogenesis Imperfecta Type III-IV
Osteopetrosis (Autosomal Recessive)
Oto-Palato-Digital Syndrome Type I-II
Pachygyria
Pallister-Mosaic syndrome
Pallister-Hall syndrome
Pelizaeus-Merzbacher Disease
Pendred's syndrome
Periventricular Leukomalacia
Pervasive Developmental Disorder
Peters Anomaly
Phocomelia
Pierre Robin Sequence
Poland Sequence
Polymicrogyria
Popliteal Pterygium syndrome
Porencephaly
Prader-Willi syndrome
Progeria
Propionic Acidemia
Proteus syndrome
Pyruvate carboxylase Deficiency
Pyruvate Dehydrogenase Deficiency
Radial Aplasia/Hypoplasia
Refsum Disease
Retinoblastoma
Retinoic Acid Embryopathy
Retinopathy of Prematurity Stages III, IV
Rott syndrome
Rickets
Rieger syndrome
Roberts SC Phocomelia
Robinow syndrome
Rubinstein-Taybi syndrome
Sanfilippo syndrome (MPS III)
Schinz-Giedion syndrome
Schimmelpenning syndrome (Epidermal Nevus syndrome)

Schizencephaly
Schwartz-Jampel syndrome
Seckel syndrome
Septo-Optic Dysplasia
Shaken-Baby syndrome
Short syndrome
Sialidosis
Simpson-Golabi-Beckwith syndrome
Sly syndrome (MPS VII)
Smith-Fineman-Myers syndrome
Smith-Limitz-Opitz syndrome
Smith-Magenis syndrome
Sotos syndrome
Spina Bifida (Meningomyelocele)
Spinal Muscular Atrophy
Spondyloepiphyseal Dysplasia Congenita
Spondylometaphyseal Dysplasia
Stroke
Sturge-Weber syndrome
TAR (Thrombocytopenia-Absent Radii syndrome)
Thanatophoric Dysplasia
Tibial Aplasia (Hypoplasia)
Toriello-Carey syndrome
Townes-Brooks syndrome
Treacher-Collins syndrome
Trisomy 13
Trisomy 18
Tuberous Sclerosis
Urea Cycle Defect
Velocardiofacial syndrome (22q11.2 deletion)
Wildervanck syndrome
Walker-Warburg syndrome
Weaver syndrome
Wiedemann-Rautenstrauch syndrome
Williams syndrome
Winchester syndrome
Wolf-Hirschhorn syndrome
Yunis-Varon syndrome
Zellweger syndrome

(4) A child shall have continuing program eligibility for First Steps services if the child is under three (3) years old, is a resident of Kentucky, and the results of the semiannual progress review:

(a) Meet the initial eligibility requirements of subsections (1) to (3) of this section; or

(b) Indicate a continued delay on the semiannual progress review's delay ranking scale.

(5) If a child referred to the First Steps Program was born at less than thirty-seven (37) weeks gestational age, the following shall be considered:

(a) The chronological age of infants and toddlers who are less than twenty-four (24) months old shall be corrected to account for premature birth. The evaluator shall ensure that the instrument being used allows for the adjustment for prematurity. If it does not, another instrument shall be used.

(b) Correction for prematurity shall not be appropriate for children born prematurely whose chronological age is twenty-four (24) months or greater.

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(c) Documentation of prematurity shall include a physician's or nurse practitioner's written report of gestational age and a brief medical history.

(d) Evaluation reports on premature infants and toddlers shall include test scores calculated with the use of both corrected and chronological ages.

Section 3. Incorporation by Reference. (1) The Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) Periodicity Schedule, August 2003 edition, is incorporated by reference.

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

WILLIAM D. HACKER, MD, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 15, 2010 at 10 a.m.

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 Public Health Division of Adult and Child Health Improvement (As Amended at ARRS, December 14, 2010)

902 KAR 30:130. ~~[Kentucky Early Intervention Program]~~ Assessment, ~~[and]~~ service planning, and assistive technology.

RELATES TO: KRS 200.660(6), 200.664, 34 C.F.R. 303.322, 303.340-303.346, 20 U.S.C. 1435, 1436, 1437~~[1431-1444]~~ [4471-4476]

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050, 200.660~~(8)~~~~(7)~~, 34 C.F.R. 303.500, 20 U.S.C. 1436 ~~[4476]~~~~[EO 2004-726]~~

NECESSITY, FUNCTION, AND CONFORMITY: ~~[EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.]~~ KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the requirements for~~[provisions of]~~ assessment, ~~[and]~~ the Individualized Family Service Plans used in First Steps, ~~[and the provisions for]~~ assistive technology~~[Kentucky's Early Intervention Program]~~.

Section 1. Assessment. (1) ~~[Initial assessment activities for children without established risk conditions shall occur after the establishment of a child's eligibility for First Steps and prior to the initial IFSP in accordance with 911 KAR 2:120, Section 1.~~

(a) ~~An initial assessment shall occur within the areas of development that were determined to be below the normal range, a score greater than -1.0, as identified in the primary level evaluation.~~

(b) ~~The following shall complete an assessment:~~

1. ~~A discipline most appropriate to assess the area of documented delay and of which the family has the greatest concern; and~~

2. ~~The fewest additional disciplines as needed to assess the other areas identified as delayed.~~

(2) ~~Assessment shall be an~~~~[the]~~ on-going procedure used by personnel meeting the qualifications established in 902 KAR 30:150~~[911 KAR 2:150]~~ throughout the child's period of ~~[a child's]~~ eligibility for First Steps. An assessment shall reflect:

(a) The child's unique strengths and needs;

(b) The services appropriate to meet those needs;

(c) The family's resources, priorities and concerns which shall be:

1. Voluntary on the part of the family;

2. Family-directed; and

3. Based on information provided by the family through personal interview; and

(d) The supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's~~[their]~~ child.

(2)~~(3)~~~~(a)~~ Assessments shall be ecologically valid and reflect appropriate multisource and multimeasures. One (1) source or one (1) measure shall not be used as the sole criterion for determining an intervention program.

(a) Assessment methods shall include direct assessment and at least one (1) of the following:

1. Observations;~~[which shall:~~

a. ~~Take place over several days if possible;~~

b. ~~Occur in natural settings;~~

c. ~~Include play and functional activities of the child's day; and~~

d. ~~Be recorded in a factual manner;]~~

2. Interview and parent reports; ~~or~~~~[and]~~~~[which shall:~~

a. ~~Involve the use of open-ended questioning after the assessor establishes rapport;~~

b. ~~Be provided by parents and other primary caregivers; and~~

c. ~~Include the effect and impact of the child's disability on participation in natural environments; and]~~

3. Behavioral checklist and inventories~~[which shall:~~

a. ~~Be completed by caregivers by mail, phone or through face-to-face interview; and~~

b. ~~Allow for comparison across settings].~~

(b) Direct assessment shall include one (1) or more instruments that are:

1. ~~[That are]~~ Appropriate for an infant or toddler and allow~~[that allows]~~ for adaptations for a disability as needed; and

2. ~~[That are]~~ Criterion-referenced, which compares the child's level of development with skills listed in a chronological sequence of typical development.

(3)~~(4)~~ If, after the initial evaluation and assessments are completed, the IFSP team determines that a subsequent assessment is warranted, the following shall be documented on the IFSP:

(a) The IFSP team's~~team]~~ reasons for an additional~~[parent has a documented concern that would necessitate another]~~ assessment;

(b) ~~Whether~~~~[Why there is not]~~ a current provider on the IFSP team ~~[that]~~ can assess the area or areas of concern; and

(c) ~~Circumstances relating to~~~~[What has changed in]~~ the child's ability or the family's capacity to address the~~[their]~~ child's developmental needs that~~[to]~~ warrant the subsequent assessment.

(4)~~(5)~~ A service coordinator shall obtain a physician's or advanced practice registered nurse's~~nurse]~~ [APRN's]~~[ARNP's]~~ written approval~~[consent]~~ in order to complete an assessment on a child deemed medically fragile. The approval~~[consent]~~ shall be specific as to the modifications needed to accommodate the child's medical status~~[skill areas that may be assessed]~~.

(5) A formal, direct assessment shall include a written report if~~[when]~~ performed for initial assessment, the annual assessment, or exit progress monitoring, or if~~[when]~~ authorized by the IFSP in accordance with subsection (3) of this section ~~[1(3) of this administrative regulation]~~. This report shall include:~~(6) An assessment shall have a written report that shall include:]~~

(a) A description of the assessment instruments used in accordance with subsection (2)~~(3)~~(b) of this section;

(b) A description of the assessment activities and the information obtained, including information gathered from the family;

(c) **Identifying information, including:**

1. The child's First Steps identification number;~~Identifying information, including:~~

1. ~~The central billing and information identification number;]~~

2. ~~The child's Social Security number, if available;~~

3. ~~The name of the child;~~

3. ~~The child's age at the date of the assessment;~~

4. ~~The name of the service provider and discipline;~~

5. ~~The date of the assessment;~~

6. ~~The setting of the assessment;~~

7. ~~The state of health of the child during the assessment;~~

8.[9-] The parent's assessment of the child's performance in comparison to abilities demonstrated by the child in more familiar circumstances;

9.[40-] The medical diagnosis if the child has an established risk condition;

10.[44-] The formal and informal instruments and assessment methods and activities used; and

11.[42-] Who was present for the assessment;[3]-and

13. The signature of the assessor;]

(d) A profile of the child's level of performance, in a narrative form which shall indicate the:

1. Concerns and priorities;
2. Child's unique strengths, needs, and preferences;
3. Skills achieved since the last report, if applicable;
4. Current and emerging skills, including skills performed independently and with assistance; and
5. Recommended direction ~~for[off]~~ future service delivery; and

(e) Recommendations that address the family's priorities as well as the child's holistic needs based on the review of pertinent medical, social, and developmental information, the evaluation, and the assessment.

(6) A copy of the cabinet-approved criterion referenced assessment protocol shall be submitted electronically to the Kentucky Early Childhood Data System within ten (10) calendar[~~data collection site designated by the state lead agency within ten (10) working~~] days of the completion of the assessment.[Suggestions for strategies, materials, settings, equipment or adaptations that shall support the child's development in natural environments; and

(f) Information that shall be helpful to the family and other providers in building on the team's focus for the child and family.]

(7)(a) The initial or[and] other formal assessments, with written reports,~~assessment, other formal assessments and their resulting report]~~ shall be completed and recorded in the child's record using the First Steps data management system within ten (10) calendar days of the provider completing the assessment[on the online data management system][sent to the service coordinator] ~~[within ten (10) working days of the provider receiving the] [complete written assessment] [referral from the POE staff][service coordinator. The complete assessment referral request shall include:~~

1. The point of entry's intake and child history documentation;
2. The primary level evaluation report;
3. The current IFSP; and
4. Authorizing CBIS billing forms].

(b) The provider who performed the assessment shall:

1. Verbally share the assessment report with the family and shall document the contact in the assessor's notes;
2. Provide the written report to the family and the service coordinator within the time frame established in paragraph (a) of this subsection; and
3. Write the report in family-appropriate language that the child's family can easily understand.

(c) If the time frame established in paragraph (a) of this subsection is not met due to illness of the child or a request by the parent, the assessor shall document the delay circumstances in [his] staff notes with supportive documentation made in the child's record by the service coordinator, and the report shall be provided to the service coordinator within five (5) calendar days of completing the assessment.

(8)(a)[~~Information gathered in the assessment shall be used to determine the service decisions included in the IFSP.~~

(9)(a) A child enrolled in First Steps shall receive an assessment as an integral part of service delivery.

(b) Assessment shall be ongoing in the First Steps Program to ensure concerns and strategies are focused to meet the child and family's ~~current needs.~~ An assessment provided as a general practice of a discipline, not due to the child or family's needs, shall be considered early[therapeutic] intervention, not an assessment.

(b)(c) Ongoing assessment shall ensure that the IFSP and services are flexible and accessible.

(9)(40) Ten (10) calendar days prior to either the ~~[earlier of]~~ [the] annual or six (6) month review of the IFSP or the expiration

date of the IFSP, a service provider shall supply progress reports to the primary service coordinator and family.

(10)(a) Within 120 days prior to exiting the First Steps program at age three (3), each child shall receive an assessment in all five (5) developmental domains by the Primary Service Provider (PSP) using a cabinet-approved criterion referenced instrument.

(b) The assessment used for annual redetermination of eligibility may be used to meet the assessment required by paragraph (a) of this subsection if[the requirement as long as] it is completed within 120 days prior to the child's exit from the First Steps Program.

Section 2. Individualized Family Service Plan (IFSP). (1) The signed IFSP shall be a contract ~~between[with]~~ the family and service providers. A service included on the IFSP shall be provided as authorized, unless the family chooses not to receive the service and this choice is documented in the child's record.

(2) The [First Steps] IFSP [Form] shall be ~~[used to record the IFSP. Items on the IFSP form shall be]~~ completed within five (5) calendar days of the meeting[according to instructions] and~~[as instructed on the form. The accompanying initial IFSP documentation]~~ shall include:

(a) Appropriate evaluation and assessment reports in accordance with 902 KAR 30:120, Section 2[944 KAR 2:120, Section 4 and assessments reports in accordance with this section];

(b) A statement of the specific early intervention services, founded on scientifically based research to the extent practicable, necessary to meet the unique needs of the child and the family to achieve the outcomes identified, including the frequency, intensity, and method of delivering the services.~~[Identification of covered services and early intervention approaches;]~~

(c) Service delivery settings; and

(d) A list of IFSP team members and how they participated in the meeting.~~[Signed approval by the IFSP team that shall include all individuals identified in the responsible party column of the IFSP including each parent or guardian present].~~

(3)(a) ~~[With the exception of a situation established in paragraphs (b) or (c) of this subsection,]~~ An authorized IFSP shall be valid for a period not to exceed six (6) months ~~[in length]~~. An amendment that is made[occurs] to the IFSP shall be valid for the remaining period of the plan.

(b) A parent or guardian's signature on the IFSP shall constitute written consent for early intervention services.

(4) If the family or service provider is unable to keep a[the] scheduled appointment due to illness or any other reason, the service provider shall document the circumstances in staff notes.

(5)~~[If an IFSP is expected to expire within twenty-one (21) calendar days of a child turning age three (3), an extension of the current IFSP shall be granted if the service coordinator provides the payment authorization coordinator at the Department for Public Health office with the following information:~~

1. A copy of the transition plan developed at the transition conference held at least ninety (90) calendar days prior to the child turning three (3);

2. A list of who attended the transition conference;

3. A copy of the IFSP that is expiring or has expired; and

4. A letter indicating that the:

a. IFSP team agrees with the decision to extend the IFSP; and

b. Parents are aware that they have the option of:

(i) Having an IFSP team meeting; or

(ii) Waiving their right to meet as an IFSP team.

(c) If an IFSP team meeting cannot be scheduled and convened prior to the current IFSP expiring, an extension may be authorized if the service coordinator provides the following information to the Department for Public Health office:

1. A letter requesting an extension of the current IFSP, including the dates the extension is to cover;

2. A detailed description of attempts made to hold an IFSP meeting and the reasons why the meeting cannot be held prior to the expiration of the current IFSP;

3. The scheduled date that the next IFSP meeting shall take place;

4. A copy of the current IFSP that has expired or is expiring, with amendments; and

5. Copies of the current progress reports from the IFSP team.
~~(d) If a family chooses not to receive a service included on the IFSP, for reasons such as illness or an inability to keep an appointment, the service provider shall document the circumstances in his staff notes.~~

~~(4)] [The following shall be adhered to]~~ In the development and implementation of the IFSP, ~~[.]~~ IFSP team members shall:

(a) Provide a family-centered approach to early intervention;
 (b) Honor the racial, ethnic, cultural, and socioeconomic diversity of families;

(c) Show respect for and acceptance of the diversity of family-centered early intervention;

(d) Allow families to choose the level and nature of their involvement in early intervention services~~[intervention's involvement in their lives];~~

(e) Facilitate and promote family and professional collaboration and partnerships, which are the keys to family-centered early intervention and to successful implementation of the IFSP process;

(f) Plan and implement the IFSP using a team approach;

(g) Reexamine their traditional roles and practices and develop new practices as appropriate that promote mutual respect and partnerships which may include a transdisciplinary approach;

(h) Ensure that First Steps services are flexible, accessible, founded on scientifically based research to the extent practicable, and are necessary to meet the unique needs of the child and family to achieve the outcomes identified, including the frequency, intensity, and method of delivery of the services ~~[and responsive to family-identified needs];~~ and

(i) Ensure that families have access and knowledge of services that shall:

1. Be provided in as normal a fashion and environment as possible; ~~[and]~~

2. Promote the integration of the child and family within the community;

3. Be embedded in the family's normal routines and activities; and

4. Be conducted in the family's natural environment, if possible, and in a way that services promote integration into a community ~~setting~~[atmosphere] which includes children without disabilities.

~~(6)](6)(a)]~~ For a child who has been evaluated for the first time and determined eligible in accordance with 902 KAR 30:120~~[944 KAR 2:120]~~, a meeting to develop the initial IFSP shall be conducted within forty-five (45) days after the point of entry receives the referral.

~~(7)](b) If the initial IFSP meeting does not occur within forty-five (45) days due to illness of the child or approval to delay by the parent, the delay circumstances shall be documented on the IFSP.~~

~~(6)]~~ The IFSP shall be reviewed ~~[for a child and the child's family]~~ by convening a ~~[face-to-face]~~ meeting at least every six (6) months. An IFSP team meeting shall be convened more frequently if:

(a) A periodic IFSP review meeting is requested by:

1. The family; or

2. The family ~~and~~[or] a team member; ~~or~~[requests a periodic IFSP review meeting;]

(b) An early~~[A therapeutic]~~ intervention service is added or increased.

~~(8)](7)(a) The service coordinator shall obtain written approval or verified verbal approval from team members and shall document the means of obtaining that approval on the IFSP. The team members shall document the contact and approval in their staff notes. The contact and approval shall occur if:~~

1. A child is discharged from:

a. A service due to achieving developmental milestones in that area; or

b. The First Steps Program;

2. A service provider recommends a decrease in the frequency, intensity or duration of the service provided by that service provider;

3. The frequency of a service increases but not the number of units, such as changing from once a week for one (1) hour to twice a week for thirty (30) minutes;

4. A member of the IFSP team determines that an additional assessment is needed;

5. The family requests transportation services;

6.a. A service provider is being replaced;

b. The replacement provider does not change the outcomes identified on the current IFSP; and

c. The family agrees;

7. A team member changes provider numbers and the family wishes to retain that team member's services; or

8. ~~An assistive technology device is ordered after an IFSP meeting was held at which the team members agreed that a specific assistive technology device was needed and strategies and activities were identified in the plan to meet the outcomes.~~

~~(b) The family shall be given prior written notice of any changes to the IFSP.~~

~~(8) With the approval of the family, the primary service coordinator shall arrange an IFSP conference to discuss the transition of the family from the program. The conference shall be conducted at least ninety (90) days and up to six (6) months before the child's third birthday and shall include:~~

~~(a) The family;~~

~~(b) A representative of the local education agency and representatives of other potential settings;~~

~~(c) The primary service coordinator as a representative of the First Steps Program;~~

~~(d) Others identified by the family; and~~

~~(e) Current service providers.~~

~~(9)]~~ The IFSP shall include:

(a) 1. A summary of the Family Rights Handbook;

2. A signed Statement of Assurances – Procedural Safeguards by the family; and

3. A statement signed by the parent that complies with KRS 200.664(6);

(b) Information about the child's present level of developmental functioning. Information shall cover the following domains:

1. Physical development that includes fine and gross motor skills, vision, hearing, and general health status~~;~~]

2. Cognitive development that ~~includes~~[include] skills related to a child's mental development and includes basic sensorimotor skills, as well as preacademic skills;

3. Communication development that includes skills related to exchanging information or feelings, including receptive and expressive communication and communication with peers and adults;

4. Social and emotional development that includes skills related to the ability of infants and toddlers to successfully and appropriately select and carry out their interpersonal goals; and~~;~~]

~~[These include:~~

a. Attachment with caregivers or family members;;

b. Interactions with nondisabled peers and adults;

c. Play skills; and

d. Self-concept development;]

5. Adaptive development that includes self-help skills and the ability of the child's sensory systems to integrate successfully for independent functions~~;~~]

~~[that include:~~

a. Self-feeding;

b. Toileting;

c. Dressing and grooming; and

d. Meaningful interaction with the environment;

6. ~~Physical development that shall be documented annually and that shall include:~~

a. Vision;

b. Hearing;

c. Health status; and

d. ~~If present, the established risk condition;]~~

(c) Performance levels to determine strengths which can be used to enhance functional skills in daily routines when planning instructional strategies to teach skills;

(d) A description of:

1. Underlying factors that may affect the child's development including the established risk condition; and

2. What motivates the child, as determined on the basis of observation in appropriate natural settings, during child interaction, and through parent report;

(e) With concurrence of the family, a statement of the family's resources, priorities and concerns related to enhancing the development of the child;

(f)[4-] A statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and time lines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary. Outcome ~~[and strategy]~~ statements shall:

1.[a-] Be functionally stated;
2.[b-] Be representative of the family's own priorities;
3.[c-] Fit naturally into the family's routines or schedules;
4.[d-] Reflect the use of the family's own resources and social support network; and

5.[e-] Be flexible to meet the child and family's needs in expanded current and possible future environments; ~~[and]~~ ~~[2-Strategy and activity statements that shall be practical suggestions that assist the family and other team members in achieving the family's desired outcome for the child and family.]~~

a. ~~Typically strategies shall refer to the steps or methods a family and team will use to accomplish the outcomes;~~

b. ~~Activities shall refer to the routines or regular events that occur in the child's natural environment; and~~

c. ~~The strategies and activities area shall include how strategies will be embedded into activities, the criteria of how the outcomes shall be measured to determine mastery or progress and shall be developmentally appropriate, functional, valued by others, realistic and achievable and promote generalized use of skill;]~~

(g)[4-] The specific First Step services necessary to meet the unique needs of the child and family to achieve the outcomes.

1. Service documentation shall be stated in frequency, intensity, duration, location, and method of delivering services, and shall include payment arrangements, if any; **and**

2. ~~[A student in a field experience with an approved First Steps provider who provides therapeutic intervention shall complete and sign staff notes and the First Steps provider shall also complete and sign a staff note for each session in which the student facilitates intervention, including a statement in the note that direct one-on-one supervision was provided during the intervention session.]~~

3-] With the exception of group intervention, and unless prior authorization is granted in accordance with 902 KAR 30:200[944 KAR 2:200], Section 4, based on individual needs of the child, the frequency and intensity for early[therapeutic] intervention for each child shall not exceed one (1) hour per discipline per day[week][day] for the following disciplines:

- a. Audiologist;
- b. RN or LPN;
- c. Nutritionist or dietician;
- d. Occupational therapist or occupational therapist assistant;
- e. Orientation and mobility specialist;
- f. ~~[Physician];~~
- g-] Physical therapist or physical therapist assistant;

g.[h-] Psychologist, psychological practitioner, certified psychologist with autonomous functioning, ~~[certified psychologist with autonomous functioning]~~, psychological associate, family therapist, ~~[or]~~ licensed social worker, or licensed professional clinical counselor;

h.[i-] Speech language pathologist ~~[or speech language pathologist assistant];~~

i.[j-] Vision specialist including a teacher of the visually impaired ~~[, optometrist, and ophthalmologist];~~

j.[k-] Teacher of the deaf and hard of hearing; or

k.[l-] Developmental interventionist ~~[or developmental associate];~~

(h)1.[3-][4-]a. A description of the natural environment, which includes natural settings and service delivery systems, in which the early intervention service is to be provided;

2.[b-] How the skills shall be transferred to a caregiver so that the caregiver can incorporate the strategies and activities into the child's natural environment;

3. ~~[and~~

e-] How the child's services may be integrated into a setting in which other children without disabilities participate; and

4.[5-] If the service cannot be provided in a natural environment, ~~[the IFSP shall be documented with]~~ the reason, including:

a. Why the early intervention service cannot be achieved satisfactorily in a natural environment;

b. How the service is supported by the peer reviewed research;
c. How the service provided in this location or using this approach will support the child's ability to function in his or her natural environment; and

d. A timeline as to when the service might be expected to be delivered in a natural environment approach;[;]

(j)[(h-)] The projected dates for initiation of the services, and the anticipated length, duration, and frequency of those services;

(j)[(i-)] Other services that the child needs that are not early intervention services, such as medical services or housing for the family ~~[, that are not early intervention services]~~. The funding sources and providers to be used for those services or the steps that will be taken to secure those services through public or private resources shall be identified;

(k)[(j-)] The name of the ~~[primary]~~ service coordinator representing ~~[chosen to represent]~~ the child's or family's needs and the primary service provider. The ~~[primary]~~ service coordinator shall be responsible for the implementation of the IFSP and coordination with other agencies and persons in accordance with 902 KAR 30:110, Section 2[944 KAR 2:140, Section 4(6)];

(l)[(k-)] ~~[Include]~~ At least one (1) transition outcome that addresses transition to preschool services to the extent that those are appropriate or to other services that may be available, if appropriate, as a part of every IFSP and is supported by steps that may include:

1. A description of types of information the family might need in relation to future placements;

2. Activities to be used to help prepare the child for changes in the service delivery;

3. Specific steps that will help the child adjust to and function in the new setting;

4. How and when assistive technology equipment will be returned and how it will be replaced in the next setting, if appropriate; and

5. A description of information that will be shared with the new setting, timelines to share the information, and ways to secure the necessary releases to refer and transmit records to the next placement; and;] ~~[The steps to be taken to support the transition of the child to preschool services provided by the public educational agency, to the extent that those services are considered appropriate, or to other services that may be available, if appropriate.]~~

4. ~~With approval of the family, an IFSP transition conference shall occur at least ninety (90) days and up to six (6) months prior to the child's third birthday;~~

2. ~~The IFSP transition conference shall involve:~~

a. ~~IFSP team members;~~

b. ~~Staff from the local public educational agency; and~~

c. ~~Other agencies at the family's request that could be potential service agencies after the child turns three (3); and~~

3. ~~The conference shall be held to review program options for the child at age three (3) and to write a plan, through the IFSP, for transition. The service coordinator shall chair this meeting; and]~~

(m)[(h)] Documentation substantiating the following if the child is being provided group intervention:

1. If the child is enrolled in day care or attending a group during normal routines, why the early[therapeutic] intervention cannot be provided in the child's current group setting; and

2. Early[Therapeutic] intervention during group shall be directly related to the child's individualized strategies and activities as identified on the IFSP.

(9)[(40)] If the IFSP team determines that an early[a-therapeutic] intervention service shall be provided using a transdisciplinary team approach, the IFSP, provider notes and progress documentation shall include:

(a) Which disciplines are providing the therapy using this approach;

(b) Evidence of transdisciplinary planning and practice, including documentation of how role-release is occurring;

(c) How the skills are being transferred so that one (1) provider is capable of providing the services previously provided by the team;

(d) Statements showing that the service is individualized to the particular family and child's needs; and

(e) If more than one (1) provider is present and providing early[therapeutic] intervention services at the same time using a co-treatment approach:

1. Why this approach is being used;
2. The outcomes and activities;
3. Who is performing what activities; and
4. That the service providers involved are providing or learning about the early[therapeutic] intervention at the same time.

(10)[(44)] The family shall be encouraged to discuss the family's[their] child's activities, strengths, and likes and dislikes[.] exhibited at home.

(11)[(42)] The IFSP shall highlight the child's abilities and strengths, rather than focusing just on the child's deficits.

(12)[(43)] Every attempt shall be made to explain the child assessment process by using language the family uses and understands.

(13)[(44)] The family[families] may agree, disagree, or refute the assessment information.

(14)[(45)] The family interpretation and perception of the assessment results shall be ascertained and the family's wishes and desires shall be documented as appropriate.

(15)[(46)] If an agency or professional not participating on the IFSP team but active in the child's life makes a recommendation for an early intervention service, it shall not be provided as a First Steps service unless the IFSP team:

- (a) Considers the recommendation;
- (b)[.] Determines[verifies] that it relates to a chosen outcome, and family priority; and
- (c)[-and] Agrees that it is a necessary service[to it].

Section 3. Assistive Technology. (1) To assess assistive technology services and devices, the child shall:

- (a) Be eligible for First Steps; and
- (b) Have a need for and use of assistive technology devices and services documented in the IFSP.

(2) To be an approved assistive technology review team, an assistive technology center shall:

- (a) Submit to the cabinet the credentials and documentation of experience in providing services to the birth to three (3) age population for each proposed team member; and
- (b) Contract with the cabinet to conduct reviews of re-requests for assistive technology devices in accordance with this section.

(3) The First Steps assistive technology review team shall review:

- (a) Each equipment request for which the purchase price exceeds \$100; or
- (b) A request submitted by the service coordinator, other POE staff, or state lead agency staff.

(3) A request shall be processed within ten (10) calendar days of the receipt of required information. The required information shall include[The cost of an assistive technology device shall be reimbursed if the device is approved by the Part C Coordinator.]

(2) To access assistive technology service and devices, the child shall:

- (a) Be eligible for First Steps;
- (b) Have a need for assistive technology devices and services documented by appropriate assessment procedures; and
- (c) Have a need for and use of assistive technology devices and services documented in the IFSP.

(3) The First Steps assistive technology review process shall be utilized for the following:

- (a) All equipment requests which exceed \$100; and
- (b) All equipment that is deemed questionable by the service coordinator or other POE staff, state lead agency staff, or cannot be determined by the IFSP team as appropriate.

(4) Request will be processed within ten (10) days of receipt of required information. The required information includes[.]

- (a) A current IFSP;
- (b) Assessments with recommendations;
- (c) Justification statement for each device[of specific devices] based on needs, including documentation of attempts to find alternative funding sources;

(d) Information regarding the equipment or device request, including information regarding the training of the family on the use of equipment; and

(e) Documentation of safety and approved uses in the birth to three (3) age population.

(4)[(5)] The decision made through the review process may be appealed to the Part C Coordinator who shall:

- (a) Consult with the monitoring assistive technology review team[committee]; and
- (b) Issue the final decision.

(5) If the IFSP team is not in agreement with the decision of the Part C Coordinator:

(a) The child's IFSP team shall reconvene for an IFSP meeting with a representative from the assistive technology review team and a representative of the state lead agency; and

(b) If the IFSP team concludes at that IFSP meeting that the assistive technology device is still needed, payment for the device shall be authorized for the duration of the current IFSP. [(6) The decision of the Part C Coordinator may be appealed pursuant to 902 KAR 30:180.]

Section 4. Incorporation by Reference. (1) The "Individualized Family Service Plan", December 2008, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "IFSP Extension Request form RF 11", May 2010 edition; and

(b) The "IFSP Extension Request form RF 11A", May 2010 edition.[The First Steps Individualized Family Service Plan (IFSP), January 2006, is incorporated by reference.](2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]

WILLIAM D. HACKER, MD, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 15, 2010 at 10 a.m.

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 Public Health
Division of Adult and Child Health Improvement
(As Amended at ARRS, December 14, 2010)

902 KAR 30:150. [Kentucky Early Intervention Program] Personnel qualifications.

RELATES TO: **KRS 200.666, 20 U.S.C. 1431, 34 C.F.R. 303.22, 303.23(d), 303.360, 303.361, 303.526**[20 U.S.C. **1431-1444**] [1471-1485]

STATUTORY AUTHORITY: KRS 194A.050, **200.660**[200.650-676][, EO 2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.] KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions of KRS 200.650 to 20.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation **establishes the provider qualifications for participation in**[sets forth the provisions for provider][of personnel] [qualifications for the participation in the][as they relate to] First Steps, Kentucky's Early Intervention Program.

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Section 1. Enrollment Process for Provider Participation. (1) The program shall enroll ~~efficient~~ providers to carry out the early intervention services according to the ~~provisions~~provision of KRS 200.650 to 200.676.

(2) The program shall contract only with an individual or agency who meets the qualifications ~~established~~set forth in Section 2 of this administrative regulation.

(3) The program shall reserve the right to contract or not contract with any potential provider or agency.

(4) Any provider or agency that wishes to participate as a provider in the First Steps program shall:

(a) Submit an application packet to the cabinet. The application packet shall include:

1. A copy of the provider's professional license, registration, or certificate;

2. A completed Provider Enrollment Form; and

3. A signed First Steps Provider Code of Ethical Conduct;

(b) Have a background check performed by the Administrative Office of the Courts, the Division of Protection and Permanency, and the Sex Offender Registry, with those agencies submitting the results of each background check directly to the cabinet;

(c) [Complete and submit an application to the program that shall include:

1. A valid professional license, registration, or certificate;

2. A provider enrollment form;

3. A code of ethical conduct; and

4. An individual provider agreement.

(b) Adhere to the background check policy and submit, prior to final approval:

1. Administrative Office of the Courts, PT 49 Criminal Background Check form; and

2. Central Registry Check form, DPP 156.

(e) Agree to provide service within the ~~individual's~~individuals or agency's scope of practice and in accordance with ~~[First Steps policy and]~~ state and federal regulations and laws relating to First Steps; and.]

(d) Be enrolled as a participating provider prior to being eligible to receive reimbursement in accordance with federal and state laws.

(5) The application ~~shall~~will not be considered complete and ~~shall~~will not be processed until all information and any subsequent documentation requested by the program is provided.

(6) The program shall make an enrollment determination within ninety (90) days of receipt of ~~the information required by subsections (4) and (5) of this section~~a completed application.

(7) If the applicant is approved for enrollment, the ~~Service Provider Agreement~~contract shall be executed and the provider shall be issued a contract number that shall be used by the provider solely for identification purposes. ~~[The provider number is a unique identifier and shall not be shared with any other provider.]~~

(8) A provider's participation shall begin and end on the dates specified in the executed ~~Service Provider Agreement~~contract.

(9) If an agency is the enrolled provider, the agency ~~shall be~~is responsible for ensuring that all staff ~~from that agency~~ providing First Steps services meet the First Steps personnel qualifications.

(10) Provider enrollment shall be renewed every even-numbered year. An individual or agency wishing to renew a Service Provider Agreement shall submit the documentation required by subsections (4) and (5) of this section prior to the end date specified in the Service Provider Agreement.

(11) If a provider agency is enrolling to provide group services, the agency shall submit:

(a) A copy of a valid child care licensure that meets the requirements stated in 922 KAR 2:090; or

(b) Approval as a contractor for group instruction through the Kentucky Department of Education~~[applications and contracts must be renewed every even-numbered year, and the individual or agency wishing to renew a contract must resubmit the required documentation to continue the contract]~~.

Section 2. Personnel Qualifications. (1) Minimum~~Minimal~~ qualifications for professionals or disciplines providing services in

First Steps shall be as established in this subsection.[:]

(a) An audiologist shall have ~~[in accordance with KRS 334A.030]:~~

1. A master's degree; and

2. A license from the Kentucky Board of Speech-Language Pathology and Audiology.

(b) A licensed marriage and family therapist shall have ~~[in accordance with KRS 335.300]:~~

1. A master's degree; and

2. A license from the Kentucky Board of Licensure of Marriage and Family Therapists.

(c) A developmental interventionist shall have ~~[in accordance with KRS 161.028]:~~

1. A bachelor's degree; and

2.a. An interdisciplinary early childhood education (IECE) certificate by the Kentucky Education Professional Standards Board, Division of Certification ~~or be able to obtain a probationary or emergency IECE certificate issued by the Educational Professional Standards Board; or~~[:]

b. ~~[Be working toward the IECE certificate by:~~

~~(i) Being enrolled in an approved preparation program in IECE at a university or college; or~~

~~(ii) Having an individual professional development plan approved by the Department for Public Health for developing the skills in the teacher performance standards for IECE as stated in 16 KAR 2:040, Section 9; or~~

c. ~~Hold~~ A valid out-of-state certificate for the teacher of children ~~ages~~ages birth to three (3) years with disabilities.

(d) A nurse shall have ~~[in accordance with KRS 314.044]:~~

1. An associate degree or diploma from a registered program; and

2. A license from the Kentucky Board of Nursing.

(e) A nutritionist shall have ~~[in accordance with KRS 310.031]:~~

1. A master's degree; and

2. A certificate from the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists.

(f) A dietitian shall have ~~[in accordance with KRS 310.024]:~~

1. A bachelor's degree; and

2. A license from the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists.

(g) An occupational therapist shall have ~~[in accordance with KRS 319A.110]:~~

1. A bachelor's degree; and

2. A license from the Kentucky Board of Licensure for Occupational Therapy.

(h) An orientation and mobility (O and M) specialist shall have in accordance with ~~[KRS 161.020 and with]~~ the Division of Exceptional Children Services, Kentucky Department of Education a bachelor's degree in Special Education with emphasis on visual impairment and O and M[:].

(i) A physician shall have ~~[in accordance with KRS 311.574]:~~

1. A doctor of medicine degree or doctor of osteopathy degree; and

2. A license from the Kentucky Board of Medical Licensure.

(j) A physical therapist shall have ~~[in accordance with KRS 327.020]:~~

1. A bachelor's degree; and

2. A license from the Kentucky Board of Physical Therapy.

(k) A licensed psychologist~~[certified psychologist with autonomous functioning or a licensed psychological practitioner]~~ shall have ~~[in accordance with KRS 319.050] [319.032]:~~

1. A doctoral degree; and

2. A license from ~~the~~ Kentucky Board of Examiners of Psychology.

(l) A certified psychologist with autonomous functioning, a licensed psychological practitioner, a certified psychologist~~[psychological practitioner]~~~~[certified psychologist with autonomous functioning]~~ or licensed psychological associate shall have ~~[in accordance with KRS 319.056 or 319.064]:~~

1. A master's degree; and

2. A license or a certificate from the Kentucky Board of Examiners of Psychology.

(m) A social worker shall have ~~[in accordance with KRS 335.090]:~~

1. A bachelor's degree; and
 2. A license from the Kentucky Board of Social Work.
 (n) A speech-language pathologist shall have ~~[in accordance with KRS 334A.050]:~~

1. A master's degree; and
 2.a. A license from the Kentucky Board of Speech-Language Pathology and Audiology; or

b. ~~A temporary~~~~[An interim]~~ license from the Kentucky Board of Speech-Language Pathology and Audiology and be under the supervision of a currently-enrolled First Steps speech-language pathologist~~[pathology provider]~~.

(o) A teacher of children who are deaf and hard of hearing shall have ~~[in accordance with KRS 161.030]:~~

1. A bachelor's degree; and
 2. A certificate for teaching the hard of hearing, deaf, or hearing impaired, or a certificate for teaching the hearing impaired, grades P-12, K-12 issued by the Kentucky Education Professional Standards Board, Division of Certification.

(p) A teacher of the visually impaired shall have ~~[in accordance with KRS 161.030]:~~

1. A bachelor's degree; and
 2. A certificate for teaching of the visually impaired, grades P-12, or a certificate for teaching the partially seeing, blind, or visually impaired, K-12 issued by the Kentucky Education Professional Standards Board, Division of Certification.

(q) A licensed professional clinical counselor shall have ~~[in accordance with KRS 335.525(1)]:~~

1. A master's degree; and
 2. A license from the Kentucky Board of Licensed Professional Counselors ~~[License]~~.

(r) An optometrist shall have ~~[in accordance with KRS 320.220] [320.290]:~~

1. A degree from an accredited school or college of optometry; ~~and~~
 2. A license from the Kentucky Board of Optometric Examiners ~~[License]~~.

(s) An ophthalmologist shall have ~~[in accordance with KRS 341.674]:~~

1. A doctor of medicine degree or doctor of osteopathy degree; ~~and~~
 2. A license from the Kentucky Board of Medical Licensure; ~~and~~
 3. Certification from the American Board of Ophthalmology.

(2) The minimum qualification for paraprofessionals providing ~~[early interventions]~~ services in First Steps shall be **as established in this subsection.[-]**

(a) A developmental associate shall:

1. ~~[a.]~~ Have an associate degree in the area of interdisciplinary early childhood education (IECE); ~~and~~
 2. ~~[b.]]~~ Have a child development associate certificate for infant and toddlers caregiver or home visitor;
 c. Have a postsecondary vocational education diploma in child development or child care; or
 d. Be employed in the developmental associate role in an approved program by October 1, 1997, and have a high school diploma or GED and be working toward one (1) of the qualifications stated in clauses a, b, or c of this subparagraph by:

(i) Being enrolled in an approved program granting one (1) of the above stated qualifications; or
 (ii) Having an individual professional development plan approved by the Department for Public Health for developing the skills necessary to acquire one (1) of the above stated qualifications; and

2. Be ~~directly~~~~[indirectly]~~ supervised by a developmental interventionist.

(b) [A developmental assistant shall:

1. Have:

a. A high school diploma; or

b. A GED; and

2. Be ~~directly~~ supervised by a developmental interventionist or developmental associate.

(c) An occupational therapy assistant shall have ~~[in accordance with KRS 319A.110]:~~

1. An associate's degree in occupational therapy~~[OTA degree]~~; and

2. A license from the Kentucky Board of Licensure for Occupational Therapy.

~~(c)[d)]~~ A physical therapist's~~[therapy]~~ assistant shall have ~~[in accordance with KRS 327.040(13)]:~~

1. An associate degree in physical therapy assistance; and

2. A license from the Kentucky Board of Physical Therapy.

~~(d)[e)]~~ A licensed practical nurse shall have ~~[in accordance with KRS 344.054]:~~

1. A high school diploma or a GED;

2. ~~[Have]~~ Completed a state approved LPN education program; and

3. A license from the Kentucky Board of Nursing.

(3) The minimum qualifications for recognized service positions providing services in First Steps shall be **as established in this subsection.[-]**

(a) ~~A~~~~[An initial]~~ service coordinator shall~~[be approved by the cabinet based on the following qualifications]:~~

1. Meet the~~[Meeting]~~ minimum highest entry-level requirement for one (1) of the professions delineated in this administrative regulation; or

2. Have a bachelor's degree and the equivalency of two (2) years' experience in working with young children ages birth through five (5) years, or have a bachelor's degree and two (2) years' experience working with families with young children ages birth through five (5) years, in a position in which the following skills and competencies have been demonstrated:

a. Communication skills in interviewing, negotiating and mediating, and providing informal support;

b. Problem-solving by finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;

c. Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and

d. Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships with service providers.

(b) ~~A primary service coordinator shall be approved by the cabinet based on the following qualifications:~~

1. ~~Meeting minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation;~~

2. ~~Meeting requirements for one (1) of the paraprofessionals delineated in this administrative regulation; or~~

3. ~~Having a bachelor's degree and the equivalency of two (2) years' experience in working with young children ages birth through five (5) years in a position in which the following skills and competencies have been demonstrated:~~

a. ~~Communication skills in interviewing, negotiating and mediating, and providing informal support;~~

b. ~~Problem solving: finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;~~

c. ~~Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and~~

d. ~~Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships with service providers.~~

(c) A primary level~~[developmental]~~ evaluator shall~~[be approved by the cabinet by]:~~

1. Meet the~~[Meeting]~~ minimum highest entry-level requirements for one (1) of the professions~~[professionals]~~ delineated in this administrative regulation;

2. ~~Have~~~~[Having a bachelor's degree in a related field];~~

3. ~~Having~~ two (2) years experience working directly with young children birth through two (2) years of age, including children with disabilities or atypical development;

3. ~~Have~~~~[and 4. Having had]~~ one (1) year of experience in using standardized instruments and procedures to evaluate infants and toddlers birth through two (2) years of age, completed as part of formal training or in supervised practice~~[, or completing a mentorship during the first year of providing services in First Steps as~~

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approved by the cabinet]; and

4. Be approved by the cabinet in accordance with KRS 200.666(1).

(c)(4) An assistive technology specialists shall be approved by the cabinet based on the following qualifications:

1. a. (i) Meet the [Meeting] minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation; and

(ii) [2-] Have [Having] extensive knowledge, training, and experience in the field of assistive technologies for infants and toddlers with disabilities; or

b. (i) Meet the qualifications established in clause a. (ii) of this paragraph; and

(ii) Be employed by an agency that currently provides assistive technology service in First Steps; and

2. Be approved by the cabinet in accordance with KRS 200.666(1) [3- Meet] [Meeting] [the qualifications in subparagraph 2 of this paragraph and be employed by an agency that currently provides assistive technology services in First Steps; and] [c- and be approved by the cabinet].

[4- Be approved by the cabinet.]

(d)(e) A respite provider shall:

1. Meet all license, administrative regulations, and other requirements applicable to the setting in which respite is provided; and

2. Be approved by the individualized family service planning team.

Section 3. [2-] Field Experiences - Intervention services implemented by a student.

(1) With family consent, a student [Students] may provide early [therapeutic] intervention [and] services under the direct one-to-one supervision of a provider qualified [personnel employed] in accordance with Sections [Section] 1 and 2 of this administrative regulation.

(2) A student who provides early intervention services shall complete and sign staff notes for each session in which the student facilitates or provides intervention.

(3) The approved First Steps provider shall also include a staff note for each session involving a student.

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

(a) "Form 6, Provider Enrollment Form", April 2008 edition;

(b) "First Steps Provider [The] Code of Ethical Conduct", April 2010 edition; and

(c) "Form 5A, Service Provider Agreement", April 2010 edition;

(d) "Administrative Office of the Courts RU-004", January 2010 edition; and

(e) "Central Registry Check, DPP 156", December 2005 edition.

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

WILLIAM D. HACKER, MD, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 15, 2010 at 10 a.m.

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 Public Health
Division of Adult and Child Health Improvement
(As Amended at ARRS, December 14, 2010)

902 KAR 30:160. [Kentucky Early Intervention Program] Covered services.

RELATES TO: KRS 200.656, 20 U.S.C. 1435, 34 C.F.R. 303.12 [20 U.S.C. 1431-1444] [1471-1485]

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 200.660 [200.650-676]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health Services [is directed by KRS 200.650 to 200.676] to administer all funds appropriated to implement provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes [sets forth] the provisions of covered services under First Steps, Kentucky's Early Intervention Program.

Section 1. Covered Services. (1) Services shall be covered if the services are [when] included and authorized through parent signature [or verified approval] on the Individualized [individual] Family Service Plan (IFSP) [individual's IFSP] developed by an IFSP team which shall include, at a minimum [least], the family and two (2):

(a) Professionals as identified in 902 KAR 30:150, Section 2(1);

(b) Paraprofessionals as identified in 902 KAR 30:150, Section 2(2); or

(c) Service positions as identified in 902 KAR 30:150, Section 2(3). [professionals as required] [identified] [in 902 KAR 30:150] [911 KAR 2:150] [Section 2(1)(a)-(c)] [1(1)(a)-(p)] [paraprofessionals as identified in 902 KAR 30:150] [911 KAR 2:150] [Section 2(2)(a)-(d)] [1(2)(a)-(f)] or service positions as identified in 902 KAR 30:150] [911 KAR 2:160] [Section 2(3)(a)-(d)] [1(3)(a)-(d)] [At least two (2) professionals, paraprofessionals, or service positions shall be from separate agencies or represent different approved providers; and

(b) One (1) discipline shall be a licensed medical professional as identified in 911 KAR 2:200, Section 3(2)(e), with the exception of Section 3(2)(e)13 and 14 of 911 KAR 2:200.]

(2) Services covered shall include [be]:

(a) Service coordination as provided in accordance with 902 KAR 30:110, Section 2, and this paragraph [911 KAR 2:140 and 911 KAR 2:140]:

1. A child shall have only one (1) designated service coordinator at a given time;

2. Service coordination shall be provided by qualified professionals in accordance with 902 KAR 30:150, Section 2(1) [2(a)] [those identified in 911 KAR 2:150]; and

3. Service coordination shall be provided under the limitations of 902 KAR 30:200, Sections 2(2)(a) and 2(3)(b); [3(b)] [911 KAR 2:200, Section 4] [;]

(b) Primary evaluation as provided in accordance with 902 KAR 30:120 and this paragraph. Primary evaluation shall be [911 KAR 2:120]:

1. [Primary evaluation shall be] Considered the first level of a two (2) tier system of evaluation; and

2. [Primary evaluation shall be] Provided by qualified professionals in accordance with 902 KAR 30:150, Section 2(3)(b) [those identified in 911 KAR 2:120 and 911 KAR 2:150];

(c) Intensive team evaluation as provided in accordance with 902 KAR 30:120, Section 1(4), and this paragraph. Intensive team evaluation shall be [Sections 1(4) and 2(a)(12)] [911 KAR 2:120]:

1. [Intensive team evaluation shall be] Considered the second level of a two (2) tier system of evaluation; and

2. [Intensive team evaluation shall be] Provided by qualified professionals in accordance with 902 KAR 30:120, Section 2(9) [2(a)] [those identified in 911 KAR 2:120 and 911 KAR 2:150];

(d) Assessment of the child [Service assessment] as provided in accordance with 902 KAR 30:130, Section 1, and 902 KAR 30:200, Section 3(1) [911 KAR 2:130];

(e) Early [Therapeutic] intervention.

1. Except as provided in subparagraph 2. of this paragraph, early [Therapeutic] intervention, which is [defined as] face-to-face intervention with the child and caregivers within the context of the environment, shall include [includes] three (3) types of service:

a. Individual home or community service [services] which shall include [includes] intervention provided [to the child] by a First Steps qualified professional to an eligible child at the child's home

or other natural setting in which children under three (3) years of age are typically found (including non-First Steps provider day care centers ~~or~~~~and~~ family day care homes) under the limitations of 902 KAR 30:200, Section 3(2)[944 KAR 2:200, Section 4]; ~~or~~

b. Individual office or center-based service which **shall include**~~[includes]~~ intervention provided by First Steps qualified professionals to an eligible child at the professional's~~[professionals]~~ office or center site under the limitations of 902 KAR 30:200, Section 3(2)[944 KAR 2:200, Section 4]; ~~or~~

c.~~[(d)]~~ Group intervention which **shall include**~~[includes]~~ the provision of early intervention services by First Steps qualified personnel in a group, ~~with~~~~[defined as the presence of]~~ two (2) or more eligible children, at an early intervention professional's site, office, center, ~~[home]~~ or other community-based setting where children under three (3) years of age are typically found.

~~(i) [(iii)]~~ The group may also include children without disabilities as long as a three (3) to one (1) ratio of children to staff is maintained.

~~(ii) [(iii)]~~ Group intervention shall be provided under the limitations of 902 KAR 30:200, Section 3(2)(b)[944 KAR 2:200, Section 4].

2. If early intervention services are provided by a psychologist, counselor, marriage and family therapist, or social worker, the child shall not be required to attend the intervention. The reason the child's presence is clinically contraindicated shall be documented in the service note.

3. Disciplines providing early~~[therapeutic]~~ intervention shall be qualified ~~professionals~~ in accordance with 902 KAR 30:150, Section 2(1)~~[2(1)(a)-(e)]~~, or qualified paraprofessionals in accordance with 902 KAR 30:150, Section 2(2)~~[2(2)(a)-(d)]~~[944 KAR 2:150.] and shall include the following:

- a. An audiologist;
- b. A **marriage and family therapist**;
- c. A developmental interventionist;
- d. A developmental associate;
- e. A nurse;
- f. **An**~~[A]~~ LPN;
- g. A nutritionist;
- h. A dietitian;
- i. An occupational therapist;
- j. An occupational therapy assistant;
- k. An orientation and mobility specialist;
- l. A physical therapist;
- m. A physical **therapist's**~~[therapist]~~ assistant;
- n. A **licensed psychologist**, a certified psychologist with autonomous functioning, a licensed psychological practitioner, certified psychologist, or licensed psychological associate;

- o. A speech-language pathologist;
- p. A licensed social worker;
- q. A licensed professional **clinical** counselor (LPCC);
- r. A teacher of the visually impaired; ~~or~~
- s. A teacher of the deaf and hard of hearing;
- t. **A physician**;
- u. **An optometrist; or**
- v. **An ophthalmologist**; ~~[a. An audiologist; or~~
- b. A family therapist; or
- c. A developmental interventionist; or
- d. A developmental associate; or
- e. A developmental assistant; or
- f. A nurse; or
- g. A LPN; or
- h. A health aide; or
- i. A nutritionist; or
- j. A dietitian; or
- k. An occupational therapist; or
- l. An occupational therapy assistant; or
- m. An orientation and mobility specialist; or
- n. A physical therapist; or
- o. A physical therapist assistant; or
- p. A psychologist; or
- q. A speech language pathologist; or
- r. A speech language pathologist assistant; or
- s. A licensed social worker; or
- t. A teacher of the visually impaired; or

u. ~~A teacher of the deaf and hard of hearing;~~

(f) Integrated disciplines center-based service shall be ~~[an intervention]~~ provided by an agency that is approved by the ~~Department for Public Health~~~~[Commission for Children with Special Health Care Needs]~~ to be qualified to offer services:

1. By at least three (3) of the following disciplines working together in a group setting who qualify in accordance with 902 KAR 30:150, Section 2(1)(c), (g), (i), **and** (n)[944 KAR 2:150]:

- a. Developmental interventionist ~~[or developmental interventionist associate]; or~~
- b. Occupational therapist; ~~or~~
- c. Physical therapist; or
- d. Speech **language pathologist**; ~~[therapist; and]~~

2. ~~At least~~~~[Where all]~~ three (3) disciplines shall be scheduled and present, except in routine absences due to sickness or other conflicts;

3. The ~~providers~~~~[disciplines]~~ shall give evidence of transdisciplinary planning and practice;

4. If integrated discipline center-based service is ~~[Where children have identified]~~ in the IFSP ~~[multiple disciplines]~~, with the majority of the group make-up being children who need three (3) or more disciplines, except ~~if~~~~[when]~~ approved by the ~~Department for Public Health~~~~[Commission for Children with Special Health Care Needs]~~; **and** ~~[then]~~

5. ~~[Where]~~ Each child's record shall have a staff note from each discipline, except a staff note shall not be required from a discipline ~~if~~~~[for those children where]~~ the discipline is not identified in the IFSP as a needed service;

(g) Collateral service as provided in accordance with 902 KAR 30:200, Section 3(4)~~[shall be the provision of consultation and planning directed toward the needs of the child with professionals while attending the IFSP meeting, and consultation by and with the child's physician]~~;

(h) Assistive technology in accordance with 902 KAR 30:001[944 KAR 2:100] and 30:130[944 KAR 2:140];

(i) Respite **which** shall be a service provided to the family of an eligible child for the purpose of providing relief from the care of the child in order to strengthen the family's ability to attend to the child's developmental needs under the limitations of 902 KAR 30:200, Section 3(3)[944 KAR 2:200, Section 4];

(j) Transportation and related cost **which** shall be the costs of travel that are necessary to enable an eligible child to receive early intervention services; **and**

(k) ~~[All families, at a minimum, shall be provided]~~ Language access services **for all families** consistent with the provisions of the Individuals with Disabilities Education Improvement Act (IDEA), **34 C.F.R. 303.403, that, at a minimum, assists**~~[interpreters shall be used when necessary] [to assist]~~ the family in understanding the purpose of First Steps and the family's procedural safeguards during referral, eligibility determination activities, and IFSP meetings.~~[services and procedures and shall be reimbursed when:~~

- 1. The service is identified on the IFSP;
 - 2. The PSC has identified the vendor and established a link with the billing agent;
 - 3. The vendor meets the qualifications generally accepted for that role in the community and meets all requirements of the agency who hires the interpreter for that role if an agency is involved.
- (3) Rates for covered services shall be negotiated rates based on reasonable and customary rates for same services or comparable services provided in the community.]

WILLIAM D. HACKER, MD, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 15, 2010 at 10 a.m.

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 Public Health
Division of Adult and Child Health Improvement
(As Amended at ARRS, December 14, 2010)

902 KAR 30:180. Procedural safeguards~~[Kentucky Early Intervention Program mediation].~~

RELATES TO: **KRS 200.672, 20 U.S.C. 1439, 34 C.F.R. 303.400 to 303.460**~~[20 U.S.C. 1431-1444] [4471-1485]~~

STATUTORY AUTHORITY: KRS **194A.050, 200.660**~~[194A.050, 200.650-676]~~

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes**~~The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement administrative regulations. This administrative regulation sets forth the provisions for procedural safeguards for facilities participating in First Steps, Kentucky's Early Intervention System.~~

Section 1. **Definitions. (1) "Consent" means:**

~~(a) [Parental Rights. (1) Definitions of consent, native language, and personally identifiable information.~~

~~(a) Consent means:~~

~~4-] The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;~~

~~(b)[2-] The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and~~

~~(c)[3-] The parent understands that the granting of consent is voluntary and may be revoked at any time.[:]~~

~~(2)[(b)] "Native language"[, where used in reference to persons with limited English proficiency,] means the language or mode of communication normally used by the parent of a child eligible for or participating in First Steps.[:]~~

~~(3)[(c)] "Personally identifiable" means that information includes:~~

~~(a)[4-] The name of the child, the child's parent, or other family member;~~

~~(b)[2-] The address of the child;~~

~~(c)[3] A personal identifier, such as the child's or parent's Social Security Number; or~~

~~(d)[4-] A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.~~

Section 2. (1)[(2)] In accordance with 34 C.F.R. **303.400 through 303.460**~~[300.560 through 300.576]~~, the parents of a child eligible for the Kentucky Early Intervention Program shall be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, the development and implementation of IFSPs, individual complaints dealing with the child, and any other records maintained by First Steps staff about the child and the child's family.

(2)[(3)] Prior written notice.[:]

(a) Prior written notice shall be given to the parents of an eligible child **at least**~~[no less than]~~ seven (7) days before the Point of Entry (POE) staff or service provider proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) The notice shall be in sufficient detail to inform the parents about:

1. The action that is being proposed or refused;
2. The reasons for taking the action;
3. All procedural safeguards that are available to the parent;

and

4. The complaint procedures under ~~[Part C regulations]~~ 34 C.F.R. 303.510-303.512, including a description of how to file a complaint and the required timelines under those procedures.

(c) The written prior notice shall be:

1. Written in language understandable to the general public; and

2. Provided in the native language of the parents, unless it is clearly not feasible to do so.

(d) If the native language or other mode of communication of the parent is not a written language, the POE staff, or designated service provider, shall take steps to ensure that:

1. The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

2. The parent understands the notice; and

3. There is written evidence that the requirements of this paragraph have been met.

(e) If a parent is deaf or blind, or has no written language, the mode of communication **shall**~~[must]~~ be that normally used by the parent (**which may include**~~[such as]~~ sign language, Braille, or oral communication).

~~(3)[(4)]~~ Parent consent.

(a) Written parental consent **shall**~~[must]~~ be obtained before:

1. Conducting the initial evaluation and assessment of a child; and

2. Initiating the provision of early intervention services.

(b) If consent is not given, the POE shall make reasonable efforts to ensure that the parent understands:

1. The nature of the evaluation and assessment or the services available; and

2. That the child will not receive the evaluation and assessment or services unless consent is given.

(5) The parents of an eligible child may determine if they, their child, or other family members will accept or decline any early intervention service, and may decline a service after first accepting it, without jeopardizing other early intervention services.

Section 3.~~[2-]~~ Representation of Children and Surrogate Parents. (1) Each POE shall ensure that the rights of an eligible child are protected if:

(a) ~~A~~~~[No]~~ parent, as defined in 902 KAR 30:001, **Section 1(21)**, ~~cannot~~~~[100][23, can]~~ be identified;

(b) The POE, after reasonable efforts, cannot discover the whereabouts of a parent; or

(c) The child is a ward of the state ~~[under the laws of the state]~~.

(2) If the child is a foster child and does not reside with the child's parents, the POE shall make reasonable efforts to obtain the informed consent of the parent for an initial evaluation. The POE shall not be required to obtain parental consent if:

(a) Despite reasonable efforts, the POE cannot discover the whereabouts of the parent;

(b) The rights of the parents have been terminated ~~[in accordance with state law]~~; or

(c) The rights of the parents to make educational decisions have been subrogated by a court ~~[in accordance with state law]~~ and the consent for initial evaluation has been given by someone appointed by the judge to represent the child.

(3)(a) If more than one (1) party meets the definition of parent under 902 KAR 30:001, Section 1(21), the biological or adoptive parent shall be presumed to be the parent unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child.

(b) If there is a judicial order that identifies a specific person~~The biological or adoptive parent, when attempting to act as the parent and when more than one (1) party meets the definition of parent under 902 KAR 30:001(23), shall be presumed to be the parent unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child. If there is a judicial order that identifies a specific person or persons who meets the definition of "parent" in 902 KAR 30:001, Section 1(23)(a) through 1-(d)]~~ to act as the parent of a child or to make educational decisions on behalf of a child, the order shall prevail.

(4)(a) A POE shall determine ~~if [whether]~~ a child needs a surrogate parent and, ~~if so, shall~~ assign a surrogate parent to the child.

(b) The surrogate parent of the child shall have all the rights afforded parents under ~~[Part C of IDEA,] 34 C.F.R. Part 303[.]~~ to make decisions about early intervention issues for a child.

(c) A POE shall ensure the rights of a child are protected by appointing a surrogate parent to make educational decisions for the child if:

1. ~~An individual cannot[.]~~ ~~(a) No individual can~~ be identified as a parent ~~[as defined in 902 KAR 30:001(23)]~~;

2. ~~(b)~~ The POE, after reasonable efforts, cannot discover the whereabouts of the parents;

3. ~~(c)~~ The child is a ward of the state; or

4. ~~(d)~~ The child is an unaccompanied homeless child ~~[youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 114341]~~.

(5) The POE shall keep a record of the reasonable efforts made to discover the whereabouts of the parents, ~~including [such as]~~:

(a) Detailed records of the telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(6) The POE shall have a procedure for selecting surrogates that is approved by the Department of Public Health. **The department shall approve a procedure that is established to ensure that a surrogate:**

(a) ~~Is not[.]~~ ~~[Shall not be]~~ an employee of the Kentucky Department for Public Health, the POE, or any other state agency that is involved in **early intervention services** ~~[the education]~~ or care of the child;

(b) ~~Does[.]~~ ~~[Shall]~~ not have any personal or professional interest that conflicts with the interests of the child; and

(c) ~~Has[.]~~ ~~[Shall have]~~ knowledge and skills that ensure adequate representation of the child.

(7) A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the POE solely because he or she is paid by the POE to serve as a surrogate parent.

(8) ~~If a child [in the case of a child who]~~ is an unaccompanied homeless child ~~[youth]~~, appropriate staff of emergency shelters, transitional shelters, ~~or [and]~~ street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in subsection (6) of this section until a surrogate parent can be appointed that meets all the requirements of this section.

(9) The POE shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) days after there is a determination by the Point of Entry that the child needs a surrogate.

(10) Responsibilities. A surrogate parent ~~shall [may]~~ represent a child in all matters related to:

(a) The evaluation and assessment of the child;

(b) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;

(c) The ongoing provision of early intervention services to the child; and

(d) Any other rights established under this administrative regulation.

Section 4.[3.] Mediation. (1) Each POE shall ensure that procedures are established and implemented to allow parties to disputes involving any matter concerning the identification, evaluation, placement of the child or the provision of appropriate early intervention services to resolve the disputes through a mediation process which, at a minimum, shall be available ~~if [whenever]~~ a hearing is requested under 34 C.F.R. 303.420.

(2) The POE agency shall use the mediation system established by the Department for Public Health.

(a) Mediation shall be adopted as an option to resolve complaints.~~[.]~~

(b) Mediation shall be voluntary and freely agreed to by both

parties, and shall not deny or delay a parent's right to ~~[preclude the opportunity for]~~ a due process hearing to be conducted at any time.~~[.]~~

(c) Unless the parent of a child and the cabinet otherwise agree, the child shall continue to receive the early intervention services currently being provided during the interim of any proceeding involving a complaint. If the complaint involves the application for initial services, the child shall receive those services that are not in dispute.~~[.]~~

(d) Mediators shall be trained in **applicable state and federal law relating to the First Steps program** ~~[First Steps policies and procedures]~~.

(3) Time table for mediation. ~~[The time table for the mediation process shall be:]~~

(a) Within five (5) working days after a request for mediation is made to the department **using a Mediation/Due Process Request Form**, the appointment of a mediator shall be made.~~[.]~~

(b) Either party may waive the mediation and, if waived, the parents shall be informed by the department within two (2) working days of this decision.~~[.]~~

(c) Mediation shall be completed within thirty (30) working days of the receipt by the department of the request for mediation.~~[.]~~

(d) At any time during the mediation process, a request for a due process hearing may be initiated.~~[.]~~

(e) A copy of the written resolution shall be mailed by the mediator to each party within five (5) working days following the mediation conference. A copy shall also be filed by the mediator with the department. **The written resolution shall specify in writing the agreement reached by the parties.**~~[.]~~

(4) Mediation resolutions ~~shall [may]~~ not conflict with state and federal laws and shall be to the satisfaction of both parties.~~[.]~~ Satisfaction shall be indicated by the signature of both parties on the written resolution.~~[.]~~

(5) Discussions that occur during the mediation process ~~shall [must]~~ be confidential and ~~shall [may]~~ not be used as evidence in any subsequent due process **hearing or civil proceeding**. ~~The [hearings or civil proceedings, and the] parties to the mediation process shall [may]~~ be required to sign a confidentiality pledge prior to the commencement of the process.

Section 5.[4.] Due Process Procedures for Parents and Children. (1) ~~(a) [Notice of provider's action shall be provided to the parent or guardian which shall include at least the following:~~

~~(a) A description of action by the provider with explanation, including a description of any options the provider considered and the reasons why those options were rejected;~~

~~(b) A description of each evaluation procedure, test, record report or other relevant factor the provider used as the basis for the action;~~

~~(c) A description of the parent or guardian's right to appeal and of the parent or guardian right to inspect provider records pertaining to the decision which is the subject of the notice of action;~~

~~(2) Appeal:~~

~~(a) At any time following receipt of a written notification by the provider relating to the identification, evaluation or provision of service to a child or anytime following a refusal by the provider to initiate a change in the identification, evaluation or service provided to a child, a parent or guardian may file an appeal with the Cabinet for Health and Family Services;~~

~~(b) Upon receipt of an appeal, the cabinet shall issue within five (5) days a notice of hearing conforming in accordance with KRS Chapter 13B;~~

~~(c) An administrative hearing shall be conducted within fifteen (15) days of receipt of a request for hearing [an appeal] by an impartial hearing officer appointed by the secretary of the cabinet.~~

~~(b) [c]~~ The hearing shall be conducted in accordance with the requirements of KRS Chapter 13B.

~~(c) [e]~~ A recommended decision conforming in content to the requirements of KRS 13B.110 shall be forwarded to the **fami-ly [appellant]** and the cabinet within ten (10) days of the administrative hearing.

~~(d) [f]~~ All parties to the appeal shall have five (5) days to file written exceptions to the recommended decision.

~~(e) [g]~~ A final decision on the recommendation shall be made

no later than forty-five (45) days following receipt of the appeal.

~~(f)(4)~~ Any parent involved in an administrative hearing ~~may~~~~has the right to~~:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible for the First Steps Program;

2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;

3. Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five (5) days before the proceeding;

4. Obtain a written or electronic verbatim transcription of the proceeding; and

5. Obtain written findings of fact and decisions.

~~(g)(4)~~ Any proceeding for implementing the complaint resolution process **established** in Section 4[3] of this administrative regulation shall be held at a time and place that is reasonably convenient to the parent.

~~(h)(4)~~ Any party aggrieved by the findings and decision regarding an administrative hearing ~~may~~~~has the right to~~ bring a civil action in state or federal court under 20 U.S.C. 1439(a)(1)[~~section 639(a)(1) of the Pub.L. 108-446~~].

~~(i)(4)~~ During the pendency of any proceeding involving a hearing under **this section**[~~Section 4 of this administrative regulation~~], unless the POE and parents of a child otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided. If the complaint involves an application for initial early intervention services, the child shall receive those services that are not in dispute.

(2)[3] State Complaint Procedures. The procedures established in this subsection

~~(a) The following procedures~~ shall apply to the Cabinet for Health and Family Services, Department for Public Health as to written complaints submitted pursuant to 34 C.F.R. 303.320 through 303.460.

(a) The complaint shall be submitted on a First Steps Complaint Form and shall~~must~~ include:

1. A statement that the state has violated a requirement of **state or federal law**~~for the regulations in this part~~; and

2. The facts on which the complaint is based.

(b) The alleged violation shall~~must~~ have occurred not more than one (1) year before the date that the complaint is received by the Department for Public Health unless a longer period is reasonable because:

1. The alleged violation continues for that child or other children; or

2. The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three (3) years before the date on which the complaint is received by the Department for Public Health.

(c) Within sixty (60) calendar days after a complaint is filed, the Department for Public Health shall:

1. Carry out an independent on-site investigation, if the agency determines that ~~such~~ an investigation is necessary;

2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

3. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of the Kentucky Early Intervention System; ~~and~~

4. Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

a. Findings of fact and conclusions; and

b. The reasons for the agency's final decision; ~~and~~

5. Permit an extension of the sixty (60) day time limit only if exceptional circumstances exist with respect to a particular complaint; and

6. Include procedures for effective implementation of the agency's final decision, if needed, including:

a. Technical assistance activities;

b. Negotiations; and

c. Corrective actions to achieve compliance.

(d)[7-] If a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one

or more are part of a **due process**~~that~~ hearing, the Department for Public Health **shall**~~must~~ set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. ~~However,~~ Any issue in the complaint that is not a part of the due process action **shall**~~must~~ be resolved within the sixty (60) calendar-day timeline using the complaint procedures **established**~~described~~ in this section.

(e)[8-] If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:

a. The hearing decision **shall be**~~is~~ binding; and

b. The agency **shall**~~must~~ inform the complainant ~~off~~~~to~~ that effect.

(f)[9-] A complaint alleging a public agency's or private service provider's failure to implement a due process decision shall~~must~~ be resolved by the Department for Public Health.

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

(a) First Steps Complaint Form, December 2010; and

(b) Mediation/Due Process Request Form, November 2010.~~(a) "RF 1 Statement of Assurances", November 2008;~~

~~(b) "RF 4 Refusal of Services", November 2008;~~

~~(c) "RF 15 Notice of Action", January 2010.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.~~(Mediation—(1) Mediation shall be adopted as an option to resolve complaints;~~

~~(2) Mediation shall be voluntary and freely agreed to by both parties, and shall not preclude the opportunity for a due process hearing to be conducted at any time;~~

~~(3) Unless the parent of a child and the cabinet otherwise agree, the child shall continue to receive the early intervention services currently being provided during the interim of any proceeding involving a complaint. If the complaint involves the application for initial services, the child shall receive those services that are not in dispute;~~

~~(4) The time table for the mediation process shall be:~~

~~(a) Within five (5) working days after a request for mediation is made to the cabinet, the appointment of a mediator shall be made;~~

~~(b) Either party may waive the mediation and if waived the parents shall be informed by the cabinet within two (2) working days of this decision;~~

~~(c) Mediation shall be completed within thirty (30) working days of the receipt by the cabinet of the request for mediation.~~

~~(d) At any time during the mediation process, a request for a due process hearing may be initiated;~~

~~(5) Mediation resolutions may not conflict with state or federal laws and shall be to the satisfaction of both parties; satisfaction shall be indicated by the signature of both parties on the written resolution;~~

~~(6) A copy of the written resolution shall be mailed by the mediator to each party within five (5) working days following the mediation conference. A copy shall also be filed by the mediator with the cabinet;~~

~~(7) Mediators shall be trained in First Steps policies and procedures.]~~

WILLIAM D. HACKER, MD, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 15, 2010 at 10 a.m.

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 Public Health
Division of Adult and Child Health Improvement
(As Amended at ARRS, December 14, 2010)

902 KAR 30:200. Coverage and payment for [Kentucky Early Intervention Program] Services.

RELATES TO: KRS 200.672, 34 C.F.R. 303.520, 303.521, 303.527, 303.528, 20 U.S.C. 1438, 1440~~[1431-1444]~~ [1371-1485]

STATUTORY AUTHORITY: KRS ~~[494A.030(7),]~~ 194A.050, 200.660(3), (7), ~~(8)~~~~[34 C.F.R. 303.520-303.528, 1440]~~ [20 U.S.C. 1476(a)(12), 1478]~~[-EO 2004-726]~~

NECESSITY, FUNCTION, AND CONFORMITY: ~~[EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.]~~ KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation establishes the provisions relating to early intervention services for which payment shall be made on behalf of eligible recipients.

Section 1. Participation Requirements. An early intervention provider that requests to participate as an approved First Steps provider shall comply with the following:

(1) Submit to an ongoing[annual] review by the Department for Public Health, or its agent, for compliance with 902 KAR Chapter 30~~[941 KAR Chapter 2];~~

(2)(a) Meet the qualifications for a professional or paraprofessional established in 902 KAR 30:150~~[941 KAR 2:150]~~; or

(b) Employ or contract with a professional or paraprofessional who meets the qualifications established in 902 KAR 30:150~~[941 KAR 2:150]~~;

(3) Ensure that a professional or paraprofessional employed by the provider who provides a service in the First Steps Program shall attend training on First Steps' philosophy, practices, and procedures provided by First Steps representatives prior to providing First Steps services;

(4) Agree to provide First Steps services as authorized by[according to] an individualized family service plan as required by[in] 902 KAR 30:130~~[941 KAR 2:130]~~;

(5) Agree to maintain and to submit as requested by the Department for Public Health required information, records, and reports to ensure[insure] compliance with 902 KAR Chapter 30~~[941 KAR Chapter 2]~~;

(6) Establish a contractual arrangement with the Cabinet for Health and Family Services for the provision of First Steps services; and

(7) Agree to provide upon request information necessary for reimbursement for services by the Cabinet for Health and Family Services in accordance with this administrative regulation, which shall include the tax identification number and usual and customary charges.

Section 2. Reimbursement. The Department for Public Health shall reimburse a participating First Steps provider the lower of the actual billed charge for the service or the fixed upper limit established in this section for the service being provided.

(1) A charge submitted to the Department for Public Health shall be the provider's usual and customary charge for the same service.

(2) The fixed upper limit for services shall be as established in this subsection~~[follows:]~~

(a) ~~[Primary]~~ Service coordination. Primary service coordination shall be provided by face-to-face contact or by telephone on behalf of a child, with the parent of the child, a professional or other service provider, or other significant person in the family's life.

1. In the office, the fee shall be sixty-two (62)~~[sixty-one (61)]~~ dollars and fifty (50) cents per hour of service.

2. In the home or community site, the fee shall be eighty-five (85)~~[eighty-three (83)]~~ dollars per hour of service.

(b) ~~[Initial service coordination. Initial service coordination shall be provided by face-to-face contact or by telephone on behalf of a child, with the parent of the child, a professional or other service provider, or other significant person.]~~

1. In the office, the fee shall be sixty-eight (68) dollars per hour of service.

2. In the home or community site, the fee shall be ninety-one (91) dollars per hour of service.

(c) ~~[e]~~ Primary level evaluation. The developmental component of the primary level evaluation for a child without an established risk ~~[condition]~~ shall be provided by face-to-face contact with the child and parent.

1. In the office or center-based site, the fee shall be \$270 per service event.

2. In the home or community site, the fee shall be \$270 per service event.

(c)~~[(d)]~~ Five (5) Area Assessment. The developmental component of the primary level evaluation for the child with an established risk shall be provided by face-to-face contact with the child and parent.

1. In the office or center-based site, the fee shall be \$175 per service event~~[-:]~~

2. In the home or community-based site, the fee shall be \$175 per service event.

(d)~~[(e)]~~ Record review. A record review shall be provided by a Department for Public Health approved team. The fee shall be \$300 per service event.

(e)~~[(f)]~~ Intensive clinic evaluation. The intensive level evaluation shall be provided by a Department for Public Health approved team and shall include face-to-face contact with the child and parent.

1. In the office or center-based site, which involves a board certified physician, the fee shall be \$1,100 per service event.

2. In the community site, which involves a board certified physician, the fee shall be \$1,100 per service event.

(f) ~~Early~~~~[3. In the office or center-based site without a board certified physician, the fee shall be \$400 per service event.]~~

4. ~~In the community site without a board certified physician, the fee shall be \$400 per service event.]~~

(g) ~~Therapeutic~~ intervention, service assessment, or collateral services in accordance with Section 3(1), (2), (4) and (5)~~[(3), (4), (6) and (7)]~~ of this administrative regulation shall have the fixed upper limits established in this paragraph~~[-:]~~

1. For an audiologist:

a. In the office or center based site, the fee for a service assessment, collateral service, or an early~~[a therapeutic]~~ intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service, or an early~~[a therapeutic]~~ intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

2. For a marriage and family therapist:

a. In the office or center based site, the fee for a service assessment, collateral service, or an early~~[a therapeutic]~~ intervention including cotreatment shall be sixty-three (63) per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service, or an early~~[a therapeutic]~~ intervention including cotreatment shall be eighty-nine (89) per hour of service.

3. For a licensed psychologist, a licensed ~~[psychologist, a psychological practitioner, [or] a licensed professional clinical counselor, or certified psychologist with autonomous functioning[-or certified psychologist with autonomous functioning]]~~:

a. In the office or center based site, the fee for a service assessment, collateral service, or an early~~[a therapeutic]~~ intervention including cotreatment shall be sixty-three (63) dollars~~[\$139]~~ per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service, or an early~~[a therapeutic]~~ intervention including cotreatment shall be eighty-nine (89) dollars~~[\$203]~~ per hour of service.

4. For a licensed ~~[certified]~~ psychological associate or a certified ~~[certified]~~ psychologist:

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a. In the office or center-based site, the fee for a collateral service or an early[a therapeutic] intervention including cotreatment shall be sixty-one (61)[forty-six (46)] dollars[\$104] per hour of service; or

b. In the home or community site, the fee for a collateral service or an early[a therapeutic] intervention including cotreatment shall be eighty-one (81)[seventy (70)] dollars[\$153] per hour of service.

5. For a developmental interventionist:

a. In the office or center based site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

6. For a developmental associate[~~a~~] in ~~a[the office or]~~ center based site, the fee for a collateral service or an early[a therapeutic] intervention service including cotreatment shall be twenty-four (24)[forty-five (45)] dollars per hour of service;~~or~~

~~b. In the home or community site, the fee for a collateral service or a therapeutic intervention including cotreatment shall be sixty-eight (68) dollars per hour of service.]~~

7. For a registered nurse:

a. In the office or center based site, the fee for a Service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

8. For a licensed practical nurse:

a. In the office or center based site, the fee for a collateral service or an early[a therapeutic] intervention including cotreatment shall be twenty-four (24) dollars per hour of service; or

b. In the home or community site, the fee for a collateral service or an early[a therapeutic] intervention including cotreatment shall be thirty-two (32) dollars per hour of service.

9. For a nutritionist:

a. In the office or center based site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

10. For a dietitian:

a. In the office or center based site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

11. For an occupational therapist:

a. In the office or center based site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

12. For an occupational therapy[therapist] assistant:

a. In the office or center based site, the fee for a collateral service or an early[a therapeutic] intervention including cotreatment shall be forty-six (46) dollars per hour of service; or

b. In the home or community site, the fee for a collateral service or an early[a therapeutic] intervention including cotreatment shall be seventy (70) dollars per hour of service.

13. For an orientation and mobility specialist:

a. In the office or center-based site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

14. For a physical therapist:

a. In the office or center based site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

15. For a physical therapist assistant:

a. In the office or center based site, the fee for a collateral service or an early[a therapeutic] intervention including cotreatment shall be forty-six (46) dollars per hour of service; or

b. In the home or community site, the fee for a collateral service or an early[a therapeutic] intervention including cotreatment shall be seventy (70) dollars per hour of service.

16. For a speech therapist:

a. In the office or center based site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

17. For a social worker:

a. In the office or center based site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

18. For a teacher of the deaf and hard of hearing:

a. In the office or center based site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

19. For a teacher of the visually impaired:

a. In the office or center based site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

20. For a physician or a nurse practitioner providing a collateral service in the office or center based site, the fee shall be seventy-six (76) dollars per hour of service. A physician or a nurse practitioner shall not receive reimbursement for early[therapeutic] intervention.

21. For an assistive technology specialist:

a. In the office or center based site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service, or an early[a therapeutic] intervention including cotreatment shall be eighty-one (81) dollars per hour of

service.

22. For an optometrist or ophthalmologist providing collateral service in an office ~~or~~^{off} center based site, the fee shall be sixty-three (63) dollars per hour of service. An optometrist or ophthalmologist shall not receive reimbursement for early intervention.

(g)(4) Respite shall be seven (7) dollars and sixty (60) cents per hour.

(3)(a) For early~~(therapeutic)~~ intervention, service assessment, or collateral services, ~~hours~~^{units} shall be determined using the beginning and ending time for a service ~~documented in staff notes~~.

1. Services shall be documented in the First Steps ~~online~~ data management system and shall include a list of all those present during the session, a description of **each early intervention service**~~(the early intervention service(s))~~ provided, the child's response, and future action to be taken. **Service documentation shall be entered within five (5) calendar days of the service delivery date.** ~~The staff notes shall include:~~

- a. The child's name and Central Billing and Information System number;
- b. Time in and time out;
- c. Location;
- d. Method of delivery;
- e. A description of what happened during the session, the child's response, and future action to be taken;
- f. Staff title and signature; and
- g. Date.]

2. The ~~hours~~^{units} shall be computed as follows:

- a. Fifteen (15) to twenty-nine (29) minutes ~~shall equal~~^{is equal to} 0.25 hours~~(one (1) unit)~~;
- b. Thirty (30) to forty-four (44) minutes ~~shall equal~~^{is equal to} 0.50 hours~~(two (2) units)~~;
- c. Forty-five (45) to fifty-nine (59) minutes ~~shall equal~~^{is equal to} 0.75 hours~~(three (3) units)~~; and
- d. Sixty (60) to seventy-four (74) minutes ~~shall equal~~^{is equal to} 1.00 hour~~(four (4) units)~~.

(b) For service coordination services, ~~hours~~^{units} shall be determined using the beginning and ending time for a service documented in staff notes in accordance with paragraph (a) of this subsection.

1. The ~~hours~~^{units} shall be computed as follows:

- a. One (1) to twenty-two (22) minutes ~~shall equal~~^{is equal to} 0.25 hours~~(one (1) unit)~~;
- b. Twenty-three (23) to thirty-seven (37) minutes ~~shall equal~~^{is equal to} 0.50 hours~~(two (2) units)~~;
- c. Thirty-eight (38) to fifty-two (52) minutes ~~shall equal~~^{is equal to} 0.75 hours~~(three (3) units)~~; and
- d. Fifty-three (53) to sixty-seven (67) minutes ~~shall equal~~^{is equal to} 1.00 hour~~(four (4) units)~~.

2. Service coordination minutes spent over the course of a day on a child or family shall be accumulated at the end of the day in order to determine the ~~total number of hours spent~~^{number of units used}.

(4) A payment for a primary or intensive evaluation listed in subsection (2) of this section shall be based on a complete evaluation as a single unit of service. **An~~(No)~~ individual provider shall not be reimbursed for participation on the intensive evaluation team.**

(5) Payment for assistive technology devices shall be made in accordance with **902 KAR 30:130, Section 3**~~(procedures)~~^(these) ~~[approved by the Department for Public Health]~~.

(6) Payment for transportation shall be the lesser of the billed charge or:

- (a) For a commercial transportation carrier, an amount derived by multiplying one (1) dollar by the actual number of loaded miles using the most direct route;
- (b) For a private automobile carrier, an amount equal to twenty-five (25) cents per loaded mile transported; or
- (c) For a noncommercial group carrier, an amount equal to fifty (50) cents per eligible child per mile transported.

(7) A payment for a group intervention service shall be thirty-two (32) dollars per child per hour of direct contact service for each child in the group with a limit of three (3) eligible children per professional or paraprofessional who can practice without direct supervision.

Section 3. Limitations. (1) **Service Assessments.** ~~For primary service coordination, payment shall be limited to no more than ten (10) hours (or forty (40) units) per child per six (6) month period unless preauthorized by the Department for Public Health. A prior authorization request to exceed service coordination limits shall be sent to the Department for Public Health, in accordance with Section 4 of this administrative regulation.~~

(2) For initial service coordination, payment shall be limited to no more than twenty-five (25) hours (or 100 units) per child per period of eligibility unless preauthorized by the Department for Public Health in accordance with Section 4 of this administrative regulation.

(3) ~~For service assessment:~~

(a) Payment shall be limited to no more than two (2) ~~(and one-half (2 1/2))~~ hours per child per discipline per assessment unless preauthorized by the Department for Public Health in accordance with Section 4 of this administrative regulation.

(b) Payment for a discipline specific assessment shall be limited to three (3) assessments per discipline per child, ~~unless additional hours are necessary based on the reasons listed in subsection (c) and documented in accordance with 902 KAR 30:130, Section 1(5)(4)(5)(a), (b), (c)]~~ from birth to the age of three (3) unless preauthorized by the Department for Public Health in accordance with Section 4 of this administrative regulation. ~~(and)]~~

(c) 1. A service assessment payment shall not be made for the provision of routine ~~early(therapeutic)~~ intervention services by a discipline in the general practice of that discipline.

2. Payment for a ~~[unit of]~~ service assessment shall be restricted to the ~~need[needs]~~ for additional testing ~~due to new concerns or significant change in the child's status~~^{for other activity by the discipline that go beyond routine practice}.

3. Routine activity of assessing ~~progress and~~ outcomes shall be billed as ~~early(therapeutic)~~ intervention.

(d) Payment shall be limited to an assessment provided as a face-to-face contact with the child and parent, ~~and shall not exceed two (2) hours for each event.~~

(e) Payment for a service assessment of up to two (2) hours for each event for the purpose of the annual and exit progress monitoring ~~five (5) area assessment shall be made to the primary service provider as approved by the IFSP team.~~

(2)~~(4)~~ For ~~early(therapeutic)~~ intervention, unless prior authorized by the Department for Public Health in accordance with Section 4 of this administrative regulation, limitations for payment of services shall be as **established in this subsection.**~~(follows:)]~~

(a) For office, center, or home and community sites:

1. Payment shall be limited to no more than one (1) hour per day per child per discipline by a:

a. Professional meeting the qualifications established in 902 KAR 30:150 ~~[911 KAR 2:150]~~; or

b. Paraprofessional meeting the qualifications established in 902 KAR 30:150 ~~[911 KAR 2:150]~~.

2. Payment shall be limited to no more than ~~twenty-four (24) hours~~^{ninety-six (96) units} for a single discipline and ~~thirty-six (36) hours~~^{144 units} for more than one (1) discipline during a six (6) month period and for group shall be limited to an additional ~~forty-eight (48) hours~~^{192 units} during a six (6) month period. ~~(.)~~

(b) For group:

1. Children shall not be eligible for both group and individual **early intervention services by the same discipline**~~(therapy in the same developmental domain)~~ concurrently on the Individualized Family Services Plan.

2. Group **service shall be provided by enrolled First Steps providers in accordance with 902 KAR 30:150, Section 1(11).**~~(providers shall be preapproved by the Department for Public Health.)~~

~~3.]~~ The ratio of staff to children in group ~~early(therapeutic)~~ intervention shall be limited to a maximum of three (3) children per professional and paraprofessional per group.

(c) Payment for siblings seen at the same time shall be calculated by dividing the total time spent by the number of siblings to get the amount of time to bill per child.

(d) Payment for a service shall be limited to a service that is authorized by the entire IFSP team in accordance with 902 KAR 30:130, Section 2(6) or (7)~~[911 KAR 2:130, Section 2(6) or (7)]~~.

(e) 1. Except as provided in subparagraph 2. of this paragraph, payment shall be limited to a service provided as a face-to-face contact with the child and either the child's parent or caregiver.

2. Early intervention family services authorized by KRS 200.654(7) may be provided without the child present if the reason the child's presence is clinically contraindicated is documented in the session note.

(3)(5) For respite, payment shall:

(a) Be limited to no more than eight (8) hours of respite per month, per eligible child;

(b) Not be allowed to accumulate beyond each month; and

(c) Be limited to families in crisis, or strong potential for crisis without the provision of respite.

(4)(6) For collateral services, payment for collateral services shall be a billable service for First Steps providers, who are providing early intervention services for the eligible child through an IFSP and paid by the First Steps system.[]

(a) The length of an IFSP meeting shall be limited to no more than one (1) hour.~~four (4) billable units~~.[]

(b) Payment for attendance at one (1) Admissions and Release Committee (ARC) meeting held prior to a child's third birthday shall be limited to the service coordinator and primary service provider~~two (2) professionals or paraprofessionals~~ selected by the IFSP team.[]

(c) Participation at an initial IFSP meeting by a primary level evaluator shall be limited to an evaluator who has provided feedback and interpretation of the evaluation to the family prior to the IFSP meeting in accordance with 902 KAR 30:120, Section 2(3)(d)[4(4)(e)2b]~~911 KAR 2:120, Section 1(4)(e)2b~~. Payment shall be at the collateral services rate for the discipline that the evaluator represents.~~and~~

(d) A face-to-face attendance at an IFSP meeting or a face-to-face or telephone consultation by a team member with a child's physician for developmentally-related needs shall be provided.

(5)(7) For cotreatment, payment shall be limited to three (3) disciplines providing services concurrently.

(6)(8) Unless prior authorized by the Department for Public Health due to a shortage of direct service providers~~primary level evaluators~~, a primary level evaluator shall not be eligible to provide early~~therapeutic~~ intervention to a child whom the evaluator~~he~~ evaluated and which resulted in the child becoming eligible.

Section 4. Prior Authorization Process. (1) Authorization~~Requests~~ for payment for early~~therapeutic~~ intervention services beyond the limits established in Section 3 of this administrative regulation shall be submitted to the cabinet or its designee~~Payment Authorization Coordinator~~, as determined by the Department for Public Health, [275 East Main Street, Frankfort, Kentucky 40621] and approved~~and approved~~ prior to the service being delivered and shall include the following:

(a) A service exception request completed in the First Steps~~online~~ data management system; and

(b) The Record Review Supporting Documentation, which shall include three (3) sections:

1. The Payor of Last Resort;

2. Transfer of Skills; and

3. The Service Planning Activity Matrix.

(2) The record review team shall issue a written recommendation for the IFSP team to consider within ten (10) calendar days of receipt of the request.

(3)(b)[] describing:

1. Current IFSP team members;

2. Current services;

3. Description of current development status;

4. Family input;

5. Additional services requested; and

6. Rationale for the additional services;

(b) The medical component of the primary level evaluation in accordance with 911 KAR 2:120, Section 1(4)(e)1, which shall include the following:

1. History;

2. Physical exam;

3. Hearing screening;

4. Vision screening; and

5. Other available reports from medical specialists;

(c) Developmental evaluation reports in accordance with 911 KAR 2:120, Section 1(4)(e)2, which shall include the following:

1. Primary level evaluation report; and

2. Intensive level evaluation report, if applicable;

(d) IFSP team member reports completed within the last twelve (12) months by the disciplines involved, including:

1. Assessments; and

2. Six (6) month progress reports;

(e) IFSP documents from the last twelve (12) months, including amendments;

(f) [Payor of Last Resort Form, along with available supporting documentation, including:

1. Requests submitted to other payors; and

2. Responses from payor sources;

(c)[] (g) [Transfer of Skills Form; and

(d)[] (h) [Service Planning Activity Matrix Form.

(2) Requests for payment for service coordination services beyond the limits established in Section 3 of this administrative regulation shall be submitted to the Payment Authorization Coordinator, as determined by the Department for Public Health, prior to the service being delivered and shall include:

(a) A service exception request as required by subsection (1)(a) of this section;

(b) A copy of the current IFSP; and

(c) A detailed description of how and if the additional units are to be used.

(3) If the IFSP team is not in agreement with the recommendation~~decision~~ of the record review team:

(a) A request for further review shall be submitted to the Department for Public Health; and

(b) A three (3) person team from the Department for Public Health, Division of Maternal and Child Health, including the division director, shall render a recommendation.

(4)(3)[] (4) If the IFSP team is not in agreement with the three (3) person team recommendation established in subsection (3)(b) of this section:

(a) The child's IFSP team shall be asked to reconvene for an~~a~~ IFSP meeting with a representative from the record review team and a representative from the three (3) member team; and

(b) If the IFSP team concludes at that IFSP meeting that the services are still needed, payment for the service shall be authorized for the duration of the current IFSP.

Section 5. Sliding Fee. (1) Families shall pay for services based on a sliding fee scale, except that a charge shall not be made for the following functions:

(a) Child find;

(b) Evaluation and assessment;

(c) Service coordination; and

(d) Administrative and coordinative activities including development, review, and evaluation of individualized family service plans, and the implementation of procedural safeguards.

(2) Payment of fees shall be for the purpose of:

(a) Maximizing available sources of funding for early intervention services; and

(b) Giving families an opportunity to assist with the cost of services if there is a means to do so, in a family share approach.

(3) The family share payment shall:

(a) Be explained to the family by the service coordinator;

(b) Be an income-based monthly fee, and with the exception established in paragraph (d) of this subsection, shall begin in the month of the IFSP, at the time early intervention~~therapeutic~~ services are authorized, and continue~~continuing~~ for the duration of participation in early intervention services, as determined by the:

1. Level of family gross income identified on the last Federal Internal Revenue Service statement or check stubs from~~form~~ the four (4) most recent consecutive pay periods, as reported by the family; and

2. Level of income matched with the level of poverty, utilizing the federal poverty measure, poverty guidelines as published annually by the Federal Department of Health and Human Services, based on the following scale:

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- a. Below 200 percent of poverty, there shall be no payment;
- b. From 200 percent of poverty to 299 percent, the payment shall be twenty (20) dollars per month of participation;
- c. From 300 percent of poverty to 399 percent, the payment shall be thirty (30) dollars per month of participation;
- d. From 400 percent of poverty to 499 percent, the payment shall be forty (40) dollars per month of participation;
- e. From 500 percent of poverty to 599 percent, the payment shall be fifty (50) dollars per month of participation; or
- f. From 600 percent of poverty and over, the payment shall be \$100 per month of participation;

(c) Not apply to a child receiving Medicaid or Kentucky Children's Health Insurance Program (KCHIP) benefits;

(d) Not apply to a family who receives only evaluation, assessment, service coordination services, or IFSP development in the initial calendar month of eligibility. The [initial] service coordinator shall notify the Department for Public Health First Steps Family Share Administrator[financial case manager] immediately if the initial IFSP date is different than the month that early[therapeutic] intervention services are started;

(e) Not apply to a family that does not receive services except those described in paragraph (d) of this subsection for at least one (1) month if prior authorized by the Department for Public Health First Steps Family Share Administrator[financial case manager] in accordance with paragraph (g)1 and 2 of this subsection. A request shall not be submitted for a retroactive period unless an extenuating circumstance occurs such [such] as an unexpected hospitalization;

(f) Not apply to a family that receives evaluation, assessment, service coordination, or IFSP development if the developmental evaluation or assessment did not reveal a developmental delay. The service coordinator shall notify the Department for Public Health First Steps Family Share Administrator[financial case manager] immediately if this situation exists so that the family is not assessed a family share cost; and

(g) Not prevent a child from receiving services if the family shows to the satisfaction of the Department for Public Health an inability to pay, in accordance with the following:

1. The service coordinator shall submit to the Department for Public Health First Steps Family Share Administrator[financial case manager], on behalf of the family, a waiver request to have the amount of the family share payment reduced or eliminated for a period not to exceed three (3) calendar months. A request shall not be submitted for a retroactive period unless extenuating circumstances, such as an unexpected hospitalization, occurs; and

2. The family shall undergo a financial review by the Department for Public Health that may:

a.(i) Adjust the gross household income by subtracting extraordinary medical costs, equipment costs, exceptional child care costs, and other costs of care associated with the child's other family members' disabilities; and

(ii) Result in a calculation of a new family[-] share payment amount based on the family's adjusted income compared to the percentage of the poverty level established in paragraph (b)2 of this subsection. If a recalculation is completed, the Department for Public Health shall conduct a review at least quarterly; or

b. Suspend or reduce the family[-] share payment, based on a verified financial crisis that would be exacerbated by their obligated family share payment. The Department for Public Health shall conduct a review at least quarterly.~~[-and~~

(h) ~~Not apply to a family who chooses to use their private insurance if the amount of the insurance monies received and applied to the family's services in the calendar year is equal to or greater than the sum of the obligated amount of family share during the same calendar year. Refunding of family share collected up to the amount of the private insurance reimbursement shall occur after the end of a calendar year.~~

(4) Income and insurance coverage shall be verified at six (6) month intervals, and more often if changes in household income will[shall] result in a change in the amount of the obligated family share payment. ~~[If a change in the family share category occurs, it shall become effective the month following the month the change was reported.]~~

(5) A family that refuses to have its income verified shall be

assessed a family share payment of \$100 per month of participation.

(6) If multiple children in a family receive early intervention services, the family share payment shall be the same as if there were one (1) child receiving services.

(7) If a family has the ability to pay the family share but refuses to do so for three (3) consecutive months, the family shall receive service coordination and assessment services only until discharged from the program or the family share balance is paid in full, whichever occurs first.

(8) A family who chooses to use private insurance for payment of a First Steps service shall not be responsible for payment of insurance deductibles or copayments related to this service.

(9) With the exception of a discipline identified in 902 KAR 30:130, Section 2(8)(g)2.i., j., or k.~~[2(7)(g)2i or k]~~~~[901 KAR 2:130, Section 2(9)(g)3j, k, or l]~~, a provider shall bill a third-party insurance, if any, for an early[therapeutic] intervention service prior to billing First Steps. Documentation regarding the billing, the third-party insurance representative's response, and payment, if any, shall be maintained in the child's record and submitted through the First Steps data management system[with the First Steps bill].

Section 6. Incorporation by Reference. (1) The "Record Review Supporting Documentation", November 2010, is incorporated by reference.~~[following material is incorporated by reference:~~

~~(a) "Transfer of Skills Form", November 2008 edition; and
(b) "Service Planning Activity Matrix Form", November 2008 edition.]~~Technology-assisted Observation and Teaming Support form (TOTS)", November 2008 edition, is incorporated by reference.]

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

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 15, 2010 at 10 a.m.

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 Behavioral Health, Developmental and
Intellectual Disabilities
Division of Behavioral Health
(As Amended at ARRS, December 14, 2010)

908 KAR 2:230. Kentucky Family Peer Support Specialist.

RELATES TO: KRS 12.455, 194A.030, 200.501, 200.503(2), 202.505, 202.508, 202.509, 210.005 (2), 210.010, 210.040, 210.370-485, EO 2010-431

STATUTORY AUTHORITY: KRS ~~[12.455, 194A.030,]~~ 194A.050, ~~[200.501,]~~ 210.450, EO 2010-431

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 protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of citizens of the Commonwealth and to operate programs and fulfill responsibilities vested in the cabinet. KRS 210.450 requires[authorizes] the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations governing qualifications of personnel, standards for personnel management operations and consultation in ascertaining local needs for community mental health and mental retardation programs. EO 2010-431, effective June 15, 2010, changed the name of the department from Department for Mental Health and Mental Retardation Services to Department for Behavioral Health, Developmental and Intellectual Disabilities. This administrative regulation establishes the minimum

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eligibility and training for Kentucky Family Peer Support Specialist.

Section 1. Definitions. (1) "Applicant" means an individual seeking to complete the Kentucky Family Peer Support Specialist training.

(2) "Application" means completing the Kentucky Family Peer Support Specialist Training Application Form and the Kentucky Family Peer Support Specialist Short Essay Form and submitting them to the department.

(3) "Certificate" means a document verifying completion of the training requirements for Kentucky Family Peer Specialists as outlined in this administrative regulation.

(4) "Child with a severe emotional disability" is defined by KRS 200.503(2).

(5) "Client" means a child with a severe emotional disability as defined by KRS 200.503(2).

(6) "Community Mental Health - Mental Retardation Board" is defined by KRS 210.370 to 485.

(7) "Core competencies" means the established knowledge and skills that all applicants must demonstrate in order to successfully complete the Kentucky Family Peer Support Specialist training.

(8) "Department" is defined by KRS 194A.030(4).

(9) **"Kentucky Family Leadership Academy" or "KFLA" means a prerequisite training designed for parents, caregivers, and youth leaders that fosters initial leadership development.**

(10) "Kentucky Family Peer Support Specialist" means an eligible parent/caregiver who has fulfilled the requirements of this administrative regulation and who is working under the supervision of a mental health professional.

~~[(10) "Kentucky Family Leadership Academy" or "KFLA" means a prerequisite training designed for parents, caregivers, and youth leaders that foster initial leadership development.]~~

(11) "Mental Health Professional" means a psychiatrist, psychologist, master's level social worker (MSW), master's level clinical counselor, master's level marriage and family therapist, psychiatric nurse or professional equivalent (a minimum of a bachelor's degree in a human services field with two (2) years of experience in mental health related children's services).

(12) "State Interagency Council" is defined by KRS 200.505.

(13) "Statewide Family Organization" means an organization with whom the department contracts to carry out the activities associated with statewide advocacy and support for children and youth with severe emotional disabilities.

Section 2. Eligibility. An applicant shall:

(1) Be a biological parent, adoptive parent, or relative caregiver with permanent legal custody who is raising, or has raised, a child with a severe emotional disability who has been or is a client of at least one state funded service;

(2) Have a minimum educational requirement of a high school diploma or General Educational Development (GED) certificate; and

(3) Have successfully completed the KFLA training approved by the department.

Section 3. Department's Responsibility. The department shall assure the following:

(1) Application forms are available to eligible applicants through:

- (a) Written or verbal request to the department;
- (b) The department's Web site;
- (c) Member agencies of the State Interagency Council; and
- (d) The Statewide Family Organization;

(2) Provision of state level KFLA training;

(3) Notification of Kentucky Family Peer Support Specialist training shall include:

- (a) Date(s) of the training;
- (b) Time(s) of the training; and
- (c) Location of the training;

(4) Provision of the state Kentucky Family Peer Support Specialist training from a standard curriculum with the following core competencies:

- (a) Theoretical Knowledge;
- (b) System of Care expertise;
- (c) Family Support Skills;
- (d) Cultural Competence;
- (e) Communication Skills;
- (f) Organizational Skills;
- (g) Advocacy Skills; and
- (h) Ethics and Values;

(5) Receipt of documentation of successful completion of the Kentucky Family Peer Support Specialist training;

(6) Maintenance of the following documents:

- (a) Application;
- (b) Completion of the KFLA;
- (c) Competency Examinations; and
- (d) Examination results; **and**

(7) The maintenance of a database with the names of Kentucky Family Peer Support Specialists.

Section 4. Kentucky Family Peer Support Specialist Responsibilities. An individual seeking to provide family peer support services shall:

(1) Complete and submit an application for training to the department;

(2) Complete the department approved Family Peer Support Specialist training;

(3) Successfully complete the examination following the training; and

(4) Complete and maintain documentation of a minimum of six (6) hours of related training or education in each subsequent year.

Section 5. Request to Waive the Family Peer Support Specialist Training. (1) An applicant may request to waive the Family Peer Support Specialist training under the following provisions:

(a) Completion of the application;

(b) Documentation of completion of a Family Peer Support Specialist training sponsored by a federal entity or by another state with core competencies consistent with that of the Kentucky Family Peer Support Specialist training; and

(c) Documentation to show that the training has occurred within five (5) years of the application date.

(2) The department shall review all requests to waive the training requirement and may:

(a) Approve in writing, the request based on the documentation provided by the applicant; ~~or~~

(b) Approve pending successful completion of the Kentucky Family Peer Support Specialist Core Competency Training exam; or

(c) Deny the request in writing, should the applicant fail to demonstrate compliance with any portion of this administrative regulation.

(3) If an applicant is denied a training waiver, ~~the applicant~~ **he or she** may apply to complete the Kentucky Family Peer Support Specialist training in accordance with the requirements of this administrative regulation.

Section 6. Supervision of Family Peer Support Specialists. (1) Kentucky Family Peer Support Services shall be provided under the supervision of a mental health professional who shall complete:

(a) Department approved children's targeted-case management training; or

(b) The KFLA; and

(2) Face-to-face individual supervision meeting shall occur no less than once a month.

Section 7. Scope of Service and Employment. (1) A Family Peer Support Specialist shall:

(a) Be responsible to assist parents or primary caregivers of a client to voice their opinion, needs and goals to benefit the client;

(b) Provide services and structured scheduled activities that:

- 1. Promote advocacy skills;
- 2. Increase understanding of the client's disability or disabilities;

3. Enhance the parent or caregiver's ability to participate in the client's treatment team; and

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4. Decreases client isolation; and[-]

(c) Share their relevant experiences with other parents and primary caregivers.

(2) A Family Peer Support Specialist may be employed by a:

(a) Community Mental Health - Mental Retardation Board;

(b) State operated or contracted facility; or

(c) Member agency of the State Interagency Council.

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

(a) "Kentucky Family Peer Support Specialist Training Application Form", 2010 edition; and

(b) "Kentucky Peer Support Specialist Short Essay Form", 2010 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copy right law, at the Department for Behavioral Health, Developmental and Intellectual Disabilities at 100 Fair Oaks Lane, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or via the Statewide Family Organization affiliated with the department.

STEPHEN HALL, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: October 13, 2010

FILED WITH LRC: October 13, 2010 at 4 p.m.

CONTACT PERSON: Jill Brown, Cabinet for Health and Family Services, 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
Board of Social Work
(Amended After Comments)

201 KAR 23:075. Continuing education.

RELATES TO: KRS 335.130(4)

STATUTORY AUTHORITY: KRS 335.070(3), (6), 335.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.130(4) allows the board to require continuing education as a condition of license renewal. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) "Academic courses offered by an accredited postsecondary institution" means a social work course, at the graduate level:

(a) Designated by a social work title or content; or

(b) An academic course, at the graduate level, relevant to social work.

(2) "Approved" means recognized by the Kentucky Board of Social Work.

(3) "Continuing education hour" means fifty (50) clock minutes of participation in continuing educational programs.

(4) "Program" means an organized educational experience:

(a) Planned and evaluated to meet behavioral objectives; and

(b) Presented in one (1) session or series.

(5) "Provider" means a person or an organization approved by the Kentucky Board of Social Work to provide a single continuing education program.

(6) "Relevant" means having content applicable to the practice of social work.

(7) "Sponsor" means a person or an organization approved by the Kentucky Board of Social Work to provide more than one (1) continuing education program over the course of a year,

Section 2. Accrual and Computation of Continuing Education Hours. (1) A minimum of thirty (30) continuing education hours shall be accrued by each licensed clinical social worker and certified social worker holding licensure during the three (3) year period for renewal.

(2) A minimum of fifteen (15) continuing education hours shall be accrued by each licensed social worker holding licensure during the three (3) year period for renewal.

(3) All continuing education hours shall be in or relevant to the licensee's level of licensure.

(4) Three (3) continuing education hours during each renewal period shall be acquired in the area of the social work code of ethics as established in 201 KAR 23:080.

(5) Every third renewal period, two (2) of the continuing education hours shall be on HIV/AIDS courses approved by the Cabinet for Health and Family Services pursuant to KRS 214.610.

(6) Licensed clinical social workers who are board approved supervisors pursuant to 201 KAR 23: 070, Section 3(1)(c)2, shall be required to complete a board approved supervision course every licensure renewal period.

(7) Every third renewal period, two (2) of the continuing education hours shall be on HIV/AIDS courses approved by the Cabinet for Health and Family Services pursuant to KRS 214.610.

(8) Three (3) continuing education hours shall be completed in the area of domestic violence related training courses pursuant to KRS 194A.540.

(9) One and one-half (1.5) hours of continuing education shall be completed one (1) time every six (6) years in the area of the recognition and prevention of pediatric abusive head trauma pursuant to HB 285.

(10) Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of the licensee. The hours may be earned by completing any of the following education programs:

(1) Programs not requiring board review and approval. Except for courses on ethics which are provided to meet the requirements of Section 2(4) of this administrative regulation and courses for supervision under 201 KAR 23:070, Section 3(1)(c)2, an educational program from any of the following providers shall be deemed to be relevant to the practice of social work and shall be approved without further review by the board if it is:

(a) Sponsored or approved by:

1. Clinical Social Work Association or any of its affiliated state chapters~~[The National Association of Social Workers or any of its affiliated state chapters];~~ or

2. The Association of Social Work Boards.

(b) Sponsored by:

1. The National Federation of Clinical Social Workers or any of its affiliated state chapters;

2. The American Psychological Association or any of its affiliated state chapters;

3. The American Counseling Association or any of its affiliated state chapters;

4. The National Board for Certified Counselors or any of its affiliated state chapters; and

5. The American Psychiatric Association or any of its affiliated state chapters.

6. Colleges, schools, departments or programs of Social Work in Kentucky which are accredited by the Council on Social Work Education.

(c) An academic course offered by an accredited postsecondary institution directly related to social work, counseling, or psychology.

(2) Programs requiring board review and approval. A program from any of the following sources shall be reviewed and determined if it is relevant and therefore subsequently approved by the board.

(a) Relevant programs, including home study, distance learning or teleconference courses, and in-service training provided by other organizations, educational institutions, or other service providers approved by the board.

1. Board approval for home study, distance learning and teleconference courses shall be obtained each year unless the program does not require board approval under subsection (1) of this section.

2. The combined total number of hours for home study, distance learning or teleconference courses shall not exceed one-half (1/2) of the individual's continuing education hours.

3. Courses on the board's code of ethics which are taken to meet the requirements of Section 2(4) of this administrative regulation and courses for supervision under 201 KAR 23:070, Section 3(1)(c)2, shall be attended in person before a live presenter, and shall not be taken through home study, distance learning or teleconference courses.

(b) Relevant programs or academic courses presented by the licensee. A presenter of relevant programs or academic courses shall earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course.

(c) Authoring an article in a relevant, professionally recognized or juried publication. Credit shall not be granted unless an article was published within the one (1) year period immediately preceding the renewal date. A licensee shall not earn more than one-half (1/2) of the continuing education hours required for renewal under the provisions of this subsection. More than one (1) publication shall not be counted during each renewal period.

(d) Courses on ethics required by Section 2(4) of this administrative regulation shall be submitted to the board for approval and

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shall not be automatically approved under Section 3(1) of this administrative regulation.

Section 4. Procedures for Approval of Continuing Education Providers and Programs. A program, which is offered by a provider, may be used for continuing education if approval is secured from the board for the course. In order for the board to adequately review these programs, the following information shall be submitted:

- (1) A published course outline or similar description which includes an explanation of the course objectives;
 - (2) Names and qualifications of the instructors presented in the form of curriculum vitas or resumes;
 - (3) Copies of the evaluation sheet or instrument by which the attendees can comment on the program, and the program agenda indicating hours of education, including all breaks;
 - (4) Number of continuing education hours requested and a statement whether the provider is requesting course approval to meet the requirements of Section 2(4) of this administrative regulation;
 - (5) Official certificate of completion or college transcript from the sponsoring agency or college; and
 - (6) ~~A completed Provider Application for continuing education credits approval submitted on the~~ Application for Continuing Education Credit Approval form.
- (7)(a) The board may approve a specific continuing education program if the provider of the program:
1. Files a written request for approval;
 2. Pays an application fee of \$100 for each one day program of eight (8) hours or less; and
 3. Provides information about each continuing education program that it proposes to present which meets the requirements established in subsections (1) through (6) of this section.
- (b) The approval of a program pursuant to this section shall permit the provider to offer the program for one (1) year.
- (c) The provider shall submit a request for renewal and a fifty (50) dollar renewal fee for each subsequent request to offer the same approved program.

Section 5. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. Any sponsor seeking to obtain approval of a continuing education program prior to its offering shall:

- (a) Apply to the board at least thirty (30) ~~sixty (60)~~ days in advance of the commencement of the program, and shall provide the information required in Section 4(1) through (6) of this administrative regulation.
- (b) Provide proof to the board that the sponsor seeking this status:
 1. Consistently offers programs which meet or exceed all the requirements set forth in subsection (2) of this section; and
 2. Does not exclude any licensee from its programs.
- (2) A continuing education programs shall be qualified for approval if the board determines that the program being presented:
 - (a) Is relevant to the practice of social work;
 - (b) Contributes to the professional competency of the licensee; and
 - (c) Has competent instructors with appropriate academic training, professional license or certification, or professionally recognized experience.
- (3) The sponsor shall specify whether it is requesting course approval to meet the requirements of Section 2(4) of this administrative regulation.
- (4)(a) The board may approve an organization that is not listed in Section 3(1) of this administrative regulation as a sponsor of continuing education for a twelve (12) month period if the organization:
 1. Files a written request for approval by submitting the Sponsorship Application for Continuing Education Credit Approval form;
 2. Pays an initial application fee of \$250;
 3. Proposes to sponsor continuing education programs that meet the requirements established in Section 3 of this administrative regulation; and
 4. The board shall periodically review the programs that a

sponsor has provided to determine if the sponsor continues to meet the requirements of this administrative regulation.

(b) An approved sponsor shall submit an annual report of the continuing education programs offered during that year.

(c) A sponsor that is approved pursuant to paragraph (a) of this subsection may request renewal of its approval for subsequent years by filing a 150 renewal fee annually and notifying the board that the original information required in this section remains current.

Section 6. (1) A licensee or a certificate holder may request an individual review of a continuing education program that was otherwise not approved if it was completed during the appropriate time period if the individual has:

- (a) Made a timely request by applying for individual review by submitting the Individual Application for Continuing Education Credit Approval form; and
 - (b) Paid a fee of ten (10) dollars.
- (2) The review shall be based on the standards for continuing education established by this administrative regulation.
- (3) Approval by the board of a continuing education program under this section shall:
- (a) Qualify as if it has been obtained from an approved provider; and
 - (b) Be limited to the particular offering upon which the request for individual review is based.

Section 7. Responsibilities and Reporting Requirements of Licensees. Each licensee shall be responsible for obtaining required continuing education hours. The licensee shall identify his or her own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding licensure shall:

- (1) Select approved programs by which to earn continuing education hours;
- (2) Submit to the board, when applicable, a request for continuing education programs requiring approval by the board as established in Section 4 of this administrative regulation;
- (3) Maintain the licensee's own records of continuing education hours;
- (4) At the time of renewal, list the continuing education hours obtained during that licensure renewal period;
- (5) Furnish documentation of attendance and participation in the appropriate number of continuing education hours at the time of his or her renewal, as follows:
 - (a) Each person holding licensure shall maintain, for a period of one (1) year from the date of renewal, all documentation verifying successful completion of continuing education hours;
 - (b) In each calendar year, up to fifteen (15) percent of all licensees shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period;
 - (c) Verification of continuing education hours shall not otherwise be reported to the board;
 - (d) ~~Documentation sent in to the board prior to renewal shall be returned to the licensee by regular mail;~~
 - (e) Documentation shall take the form of official documents including:
 1. Transcripts;
 2. Certificates;
 3. Affidavits signed by instructors; or
 4. Receipts for fees paid to the sponsor; and
 - (e)(f) Each licensee shall retain copies of his or her documentation.

Section 8. Responsibilities and Reporting Requirements of Providers and Sponsors. (1) Providers of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 7(5) of this administrative regulation, directly to the licensee.

(2) Sponsors of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as

approved by the board.

Section 9. Board to Approve Continuing Education Hours; Appeal when Approval Denied. In the event of denial, in whole or part, of any application for approval of continuing education hours, a licensee or a provider shall have the right to request reconsideration by the board of its decision. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 10. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship as determined by the board, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the requirements or make the required reports.

(2) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the person holding licensure and shall be accompanied by a verifying document signed by a licensed physician.

(3) Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding licensure shall reapply for the waiver or extension.

Section 11. Continuing Education Requirements for Reinstatement or Reactivation of Licensure. (1) A person requesting reinstatement or reactivation of licensure shall submit evidence of thirty (30) hours of continuing education within the thirty-six (36) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.

(2) The person may request, and the board, at its discretion, may reinstate the licensure, with the provision that the person shall receive thirty (30) hours of continuing education within six (6) months of the date on which the licensure is reinstated.

(3) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

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

(a) "Provider Application for Continuing Education Credit Approval", 10/2010;

(b) "Sponsorship Application for Continuing Education Credit Approval", 10/2010;

(c) "Individual Application for Continuing Education Credit Approval", 10/2010[6-02, Kentucky Board of Social Work, is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Licensure for Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON SANDERS, Chair

APPROVED BY AGENCY: December 14, 2010

FILED WITH LRC: December 15, 2010 at 11 a.m.

CONTACT PERSON: Margaret Hazlette, Executive Director, Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-2350, fax (502) 696-8030.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Margaret Hazlette, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes continuing education requirements.

(b) The necessity of this administrative regulation: This admin-

istrative is necessary to set the requirements for continuing education for licensure renewal.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.130(4) allows the board to require continuing education as a condition of license renewal. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the licensees of the continuing education requirements established 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: This amendment establishes continuing education requirements related to HIV/Aids, domestic violence, and pediatric abusive head trauma, as well as the academic credit equivalency.

(b) The necessity of the amendment to this administrative regulation: This administrative is necessary to identify the requirements for continuing education for licensure renewal.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.130(4) allows the board to require continuing education as a condition of license renewal. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation informs licensees of the board's requirements for continuing education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5,000 persons are licensed by the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment requires the courses that licensees shall take for renewal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost for a continuing education courses vary and are established by the provider. Licensees must meet the requirements in order to renew their licenses every three years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Continuing education help keep licensees informed of current practice.

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

(a) Initially: The board estimates that no additional costs will be incurred by this amendment.

(b) On a continuing basis: The board estimates that no additional costs will be incurred by this amendment.

(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 the 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 administrative regulation.

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

(9) TIERING: Is tiering applied? No. The mandate established by this administrative regulation is required of 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? Kentucky Board of Social Work.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.070(3), (6), and 335.130.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Massage Therapy
(Amended After Comments)

201 KAR 42:010. Goals for massage therapy sessions.

RELATES TO: KRS 309.350(7), ~~KRS 309.350(6)~~, 309.355(3)

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) authorizes the board to promulgate administrative regulations setting standards of practice. This administrative regulation establishes the goals of massage therapy and possible means of achieving these goals.

Section 1. (1) Goals for massage therapy include:

- (a) Maintaining health;
- (b) Providing relaxation;
- (c) Preserving or increasing functional capacity;
- (d) Diminishing soft-tissue pain arising from stress, anxiety, adhesions, and overuses; and
- (e) Providing treatment that is professionally appropriate for the client.

(2) In order to reach these objectives, the massage therapist shall:

- (a) Provide consultation with a client or a referring professional on soft-tissue issues;
- (b) Evaluate clients for the appropriate approaches for their session;
- (c) Plan sessions;
- (d) Provide direct treatment; and
- (e) Provide draping and treatment in a way that ensures the safety, comfort, and privacy of the client.

(3) With client permission, the massage therapist may interact with the client's physician or other healthcare providers if the client is under direct medical care.

Section 2. Client Management. (1) The massage therapist shall:

- (a) Evaluate each client through:
 - 1. Intake interviews;
 - 2. Observation;
 - 3. Palpation; and

4. Relevant records provided by the client.

(b) Plan and implement a treatment session or program individualized for the client;

(c) Refer to a licensed healthcare provider any client whose condition is determined by the massage therapist to be beyond the therapist's scope of practice.

(2) If the basis for a massage appointment is a referral from a healthcare provider, the massage therapist may confer with the referring healthcare provider after obtaining the client's permission.

(3) If the client is self-referred and under the care of a doctor, the massage therapist may seek permission to:

(a) Advise the doctor that the patient is seeking massage treatment;

(b) Provide to the doctor the massage therapist's evaluation results;

(c) Advise the doctor of the noted treatment plan; and

(d) Provide a follow-up report upon completion of the massage treatment plan to enhance communication between the multidisciplinary care-giving team. ~~[Section 3. Massage Therapists Credentialed by Other Jurisdictions:~~

~~(1) Persons duly licensed, certified in another state or territory, the District of Columbia, or a foreign country when incidentally in this Commonwealth shall:~~

~~(2) Restrict their practice of massage therapy in this state to those for whom they are providing instruction and consultation if the credentialed massage therapist is teaching a course related to massage therapy or consulting with licensee of the Board; or~~

~~(3) Only administer massage therapy to those who have travelled into this state as part of the same response, response, event, or performance if the credentialed massage therapist is in the Commonwealth to provide massage as part of an emergency response team, charity event, athletic event, or artistic performance.]~~

THERESA CRISLER, Chair

APPROVED BY AGENCY: December 3, 2010

FILED WITH LRC: December 15, 2010 at 11 a.m.

CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Licensure for Massage Therapy, PO Box 1370, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of
(a) What this administrative regulation does: This regulation establishes goals for massage therapy sessions.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions KRS 309.355(3) related to standards of practice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by establishing goals for the provision of massage therapy.

(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: Deleting a provision in the necessity and conformity section.

(b) The necessity of the amendment to this administrative regulation: Provides greater detail related to statutory authority for promulgation.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of massage therapy.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify goals for massage therapists to pursue in practice.

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

zations, or state and local governments affected by this administrative regulation: There are approximately 2149 licensed massage 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 this administrative regulation or amendment: None, the regulation clarifies existing standards.

(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): None, the measure is necessary for the protection of the public. The individuals may avert legal or disciplinary action by maintaining compliance.

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Massage Therapy

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(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. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensure for Massage Therapy (Amended After Comments)

201 KAR 42:020. Fees.

RELATES TO: KRS 309.357, 309.362(2), (3)

STATUTORY AUTHORITY: KRS 309.355(3), 309.357

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. KRS 309.357 requires the board to establish reasonable fees for the licensure [and renewal and reinstatement] of massage therapists. KRS 309.362(2) and (3) authorize the issuance of an inactive license and reinstatement. This administrative regulation establishes the fees relating to massage therapy (MT) licensure.

Section 1. Fee Payments. (1) All fees established in Section 2 of this administrative regulation shall be:

(a) Made payable as required by KRS 309.356 to the State Treasury; and

(b) Paid by:

1. Cashier's check;

2. Certified check;

3. Money order; ~~or~~

4. Personal check; or

5. Online payment by credit card, debit card, or electronic check.

(2) A payment for an application fee that is incorrect shall be returned to the applicant and the application shall not be posted until the correct fee is received.

(3) The application fee and the initial licensure fee established in Section 2(1) of this administrative regulation shall be nonrefundable pursuant to KRS 309.357(1) and (2).

(4) If it is determined that a refund of any fee is required, the refund shall be issued to the applicant or licensee.

Section 2. Fees. (1) The fee for an initial massage therapist license shall be \$125 ~~paid according to the following schedule:~~

~~(a) Fifty (50) dollars of the \$125 shall be nonrefundable and due at the time of application.~~

~~(b) The remaining seventy-five (75) dollar balance of the \$125 fee shall be due at the time the license is approved.~~

(2)(a) The biennial renewal fee for a massage therapist license renewed on or before the renewal date shall be \$100.

(b) If the license is renewed after the renewal date and up to sixty (60) days after expiration of the license, the fee for late renewal shall be \$150.

(c) If the license is renewed sixty-one (61) to ninety (90) days ~~sixty (60) days or more~~ after the expiration of the license, the late renewal fee shall be \$200.

(d) If a license is not renewed within ninety (90) days of expiration ~~two (2) years of expiration~~ of the license, the applicant shall apply for a license pursuant to KRS 309.358(2) or 309.359 or demonstrate to the board that the applicant was unable to renew in a timely manner due to circumstances beyond his or her control pursuant to KRS 309.357(6)(a).

(3)(a) The application fee for Active to Inactive status shall be thirty-five (35) dollars.

(b) A licensee shall be in active and in good standing at the time when the licensee elects inactive status.

(4)(a) The annual renewal date for an inactive license shall remain the original issue date of the license.

(b) The annual renewal fee for an inactive license shall be thirty-five (35) dollars.

(5) If the inactive license is renewed after the renewal date and up to sixty (60) days after expiration of the license, the fee for late inactive renewal shall be \$52.50.

(6) If the inactive license is renewed sixty-one (61) ~~sixty (60)~~ to ninety (90) days ~~or more~~ after the expiration of the license, the late renewal fee shall be seventy (70) dollars.

(7) The application fee for moving a license from Inactive to Active status shall be fifty (50) dollars and shall not be prorated.

THERESA CRISLER, Chair

VOLUME 37, NUMBER 7 – JANUARY 1, 2011

APPROVED BY AGENCY: December 3, 2010

FILED WITH LRC: December 15, 2010 at 11 a.m.

CONTACT PERSON: Adriana Lang, Board Administrator,
Kentucky Board of Licensure for Massage Therapy, PO Box 1370,
Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes fees for licensure as a massage therapist.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions KRS 309.357.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to establish reasonable fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board by establishing the required fees which generate the revenue that funds the board's operation.

(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: Allows payment online, establishes procedure for obtaining refund, and reflects statutory timeframe for payment of fees during the late renewal period.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to reflect statutory changes and allow the licensee or applicant to pay their fees by alternative means.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to charge a reasonable fee.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify fees associated with application and licensure and the procedure for payment of those fees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2,149 licensed massage 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 this administrative regulation or amendment: None, the regulation clarifies existing standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will cost only the respective fee as reflected. No fees have been changed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals will have more options as to form of payment of fees.

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

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

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

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

(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 new fees will be required to implement this administrative regulation amendment.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Massage Therapy.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.357

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 funds the operation of the board. The amendment will have no impact on net revenue.

(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 funds the operation of the board and generates all board funds. The amendment will have no impact on net revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation funds the operation of the board and generates all board funds. The amendment will have no impact on net revenue.

(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 Licensure for Massage Therapy (Amended After Comments)

201 KAR 42:035. Application process, exam, and curriculum requirements.

RELATES TO: KRS 309.358, 309.359

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. The board is required to issue a license to an applicant meeting the standards in KRS ~~309.358(309.358(2))~~ or 309.359. This administrative regulation establishes the application process and curriculum requirements for licensure.

Section 1. An applicant for licensure as a massage therapist shall:

(1) File a completed, signed, and dated application and required documentation with the board, meeting the requirements set forth in ~~309.358(309.358(2))~~; and

(2) Pay the application fee as established in 201 KAR 42:020.

Section 2. To comply with KRS ~~309.358(4)(309.358(2)(4))~~, an applicant shall submit to the board, at the time of application, [a curriculum statement,] official transcript or certificate that shows the completion of at least 600 classroom hours, itemizing ~~(consisting of)~~ the following minimum requirements:

(1) 125 hours of sciences to include anatomy, physiology, and kinesiology;

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(2) 200 hours of massage or bodywork theory, technique, and practice focusing on:

- (a) Gliding strokes;
- (b) Kneading;
- (c) Direct pressure;
- (d) Deep friction;
- (e) Joint movement;
- (f) Superficial warming techniques;
- (g) Percussion;
- (h) Compression;
- (i) Vibration;
- (j) Jostling;
- (k) Shaking; and
- (l) Rocking.

(3) 200 hours of approach to the business of massage, including:

- (a) Contraindications;
- (b) Benefits;
- (c) Business;
- (d) History;
- (e) Ethics;
- (f) Client documentation;
- (g) Legalities of massage; and
- (h) Modality courses designated to meet the school's specific program objectives;
- (4) Forty (40) hours of pathology; and
- (5) The school may use discretion in allotting the additional thirty-five (35) curricular hours that are required under KRS 309.358.

Section 3. Examinations. (1.) An examination shall be approved by the board as meeting the standard in KRS 309.358(5) if the board determines that the examination:

(a) Has been scientifically constructed to be valid and objective;

(b) Reflects the curriculum content established in 201 KAR 42:035(2);

(c) Has security procedures to protect the exam content; and

(d) Has clear application, reporting and appeal procedures.

(2) Approval of exams shall be noted in the board minutes and on the board Web-site.

(3) The following examinations have been approved:

(a) Examinations pertaining to massage and bodywork that are administered by a certifying agency approved by the National Commission for Certifying Agencies such as the National Certification Board for Therapeutic Massage and Bodywork or the National Certification Commission for Acupuncture and Oriental Medicine;

(b) The MBLEX(MB Lex) or other exam administered by the Federation of State Massage Therapy Boards;

(c) The State of Ohio Massage Therapy Licensing Exam;

(d) The State of New York Massage Therapy Licensing Exam.

[Section 4. Upon receipt of an application for licensure, the board administrator shall verify that the documentation accompanying the application is complete and the fee is paid.

— (1) Applications shall be received ten (10) calendar days prior to the next scheduled applications committee meeting as posted on the board Web site.

— (2) If the application, documentation and fee are complete and meet all the requirements of KRS 309.358, the board administrator shall issue the license and add the licensee's name to a list to be ratified at the next board meeting.

— (3) If the application, documentation or fee is incomplete, the board administrator shall notify the applicant in writing or electronically of the deficiencies and add the applicant's name to list of pending applications that shall be available to the Applications Committee of the board for its next meeting.

— (4) If the application, documentation and fee are complete and the applicant is applying for licensure by endorsement pursuant to KRS 309.359, the board administrator shall process the application pursuant to 201 KAR 42:070.

— (5) If the application or documentation contain information that indicates that the applicant has a felony conviction or other reason to doubt good moral character, has not graduated from a school with an existing Certificate of Good Standing, or has passed an

examination not previously approved by the board, then the board administrator shall hold the application on the deferred list for the Applications Committee to consider at its next scheduled meeting.

— (a) If the requirements set out in KRS 309.358 have been met, the Applications Committee shall issue the license and add the licensee's name to the list to be ratified by the board at its next scheduled meeting.

— (b) The Applications Committee may place the application on the agenda for the next scheduled board meeting if the application is complete but requires further consideration by the board.]

Section ~~4.5.1~~~~3~~. Appeals. An applicant may appeal a decision denying his or her licensure application in accordance with KRS 309.362(2).

Section ~~6.1~~~~4~~. Incorporation by Reference. (1) "Application for Licensure as a Massage Therapist", August 2010, is incorporated by reference~~[December 2006]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

THERESA CRISLER, Chair

APPROVED BY AGENCY: December 3, 2010

FILED WITH LRC: December 15, 2010 at 11 a.m.

CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Licensure for Massage Therapy, PO Box 1370, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes application procedures for becoming a licensed massage therapist.

(b) The necessity of this administrative regulation: This regulation is necessary to provide appropriate procedures and notice of those procedures to potential licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by ensuring that the board has a clear process for the issuance of licenses.

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

(a) How the amendment will change this existing administrative regulation: This amendment specifies approved examinations and provides greater insight into the timeline for application processing.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to give licensees more options for completion of the exam requirement.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of massage therapy.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify, for the board staff and potential licensees, the process by which applications are approved.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2,149 licensed massage therapists. The change in this regulation will affect only prospective licensees.

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

(a) List the actions that each of the regulated entities identified

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in question (3) will have to take to comply with this administrative regulation or amendment: Prospective licensees will have greater options with regard to exams which will qualify them for licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Possibly fees associated with the exam that the individual selects to become licensed and normal application fees as established by regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The prospective licensees will have greater options on the selection of an exam to become licensed.

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government including cities, counties, fire departments, or school districts will be impacted by this administrative regulation? Kentucky Board of Licensure for Massage Therapy.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(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. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensure for Massage Therapy (Amended After Comments)

201 KAR 42:040. ~~Renewal and reinstatement procedures.~~

RELATES TO: KRS 309.357(3), (4), (5), (6), 309.361

STATUTORY AUTHORITY: KRS 309.355(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. KRS 309.357(3) requires all licenses to be renewed. This administrative regulation provides directions for the renewal of these licenses.

Section 1. A license to practice massage therapy may be renewed upon:

(1) Payment of the biennial renewal fee as established in 201 KAR 42:020, Section 2(2) on or before the anniversary date of issue of license; and

(2) Submission of the "Application for Renewal" form with the following written information to the board:

(a) Current complete home address and telephone number;

(b) Current complete name, address, and telephone number of each location in which massage therapy service is provided.

(c) ~~A list indicating~~Documentation of completion of continuing education ~~units taken~~requirements during the licensure renewal period established in 201 KAR 42:110.

1. The list of units shall itemize clock hours credited for each course.

2. The list shall designate the courses that fulfill the three (3) required hours of ethics training.

3. Documentation shall be required of audited renewal applications.

(d) Written confirmation that, since the license was issued or renewed, the licensee has not:

1. Been convicted of a felony;

2. Had his or her license disciplined and is not currently under disciplinary review in another state;

3. Engaged in any other unprofessional conduct, stated in KRS 309.362(1); or

4. Defaulted on the repayment obligation of financial aid programs administered by the Kentucky Higher Education Assistance Authority (KHEAA) per KRS 164.772.

Section 2. A licensee convicted of a felony or disciplined in the interim period between issuance and renewal of the license, or between renewal periods, shall submit notice of the conviction or discipline to the board within sixty (60) days of the discipline or conviction~~[prior to license renewal]~~.

Section 3. If payment and complete information are not received by the board on or before the anniversary date of issue of license, the license shall expire and the person shall not practice nor represent themselves~~[work]~~ as a massage therapist in Kentucky.

Section 4. An expired license may be renewed~~[reinstated]~~ within ninety (90) days~~[two (2) years]~~ of expiration if the applicant submits:

(1) A completed "Application for Renewal of License as a Massage Therapist" form;

(2) Documentation of successful completion of twenty-four (24) hours of continuing professional education, which:

(a) Includes studies in ethics, business practices, science, and techniques related to massage therapy;

(b) Have been credited within two (2) years prior to the renewal deadline; and

(c) Have not been previously used within the same renewal period to satisfy Kentucky license renewal requirements; and

(3) The appropriate fee for renewal, as required by 201 KAR 42:020, Section 2(2)(b), (c), or (d), or (d) or subsection (d), (5) or (6)~~[Section 2(2)(a), (b), or (c)]~~.

Section 5. (1) Upon initial licensing, a licensee shall be furnished:

(a) A billfold license identification card; and

(b) A wall certificate to be displayed at the primary massage therapy service location.

(2) Upon each subsequent renewal, a licensee shall be furnished a billfold license identification card.

(3) Official verification of licensure status shall be available through the online verification Web site.

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Section 6. Reactivation Requirement for Inactive Status Massage Therapist. (1)(a) Before the expiration of five (5) years of inactive status, a licensee requesting to return to active status shall:

1. Provide proof to the board of continuing education required by KRS 309.362(3);

2. Complete the Application for Renewal; and

3. Pay the fee prescribed by 201 KAR 42:020, Section 2(7).

(b) The continuing education hours provided pursuant to paragraph (a)1 of this subsection may be used for the next regular renewal period.

(2) After more than five (5) years of inactive status, a person requesting to return to active status shall reapply and meet the requirements of 309.358[(2)] as provided by KRS 309.362(3).

Section 7. Incorporation by Reference. (1) "Application for Renewal of License as a Massage Therapist", September 2010~~December 2006~~, 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 40602, (502) 564-3296, Monday through Friday, 8 a.m. to 4:30 p.m.

THERESA CRISLER, Board Chair

APPROVED BY AGENCY: December 3, 2010

FILED WITH LRC: December 15, 2010 at 10 a.m.

CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Licensure for Massage Therapy, P.O. Box 1370, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes renewal procedures for individuals already licensed as massage therapists.

(b) The necessity of this administrative regulation: This regulation is necessary to provide appropriate procedures for the renewal of one's massage therapy license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by ensuring that licensees are notice of the requirements for the renewal of their license.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the time period for late renewals to accurately reflect recent statutory changes.

(b) The necessity of the amendment to this administrative regulation: This amendment changes the time period for late renewals to accurately reflect recent statutory changes.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of massage therapy.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will bring the regulation into conformity with the recently amended statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2,149 licensed massage 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 this administrative

regulation or amendment: Among other things, this amendment will change the type of documentation that a licensee is required to provide upon renewal.

(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): None

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Massage Therapy.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(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. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensure for Massage Therapy (Amended After Comments)

201 KAR 42:050. Complaint procedure and disciplinary action.

RELATES TO: KRS 309.355(1), (2), (6), 309.362

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(1) authorizes the board to regulate the practice of massage therapy. KRS 309.355(2) authorizes the board to investigate every alleged violation and take action, as it may deem appropriate.

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ate. This administrative regulation establishes the procedure for filing a complaint and the action to be taken by the board on a complaint and disciplinary action of a licensee or applicant in violation of KRS 309.351 or 309.362.

Section 1. Definitions. (1) "Complaint committee" means a committee of the board that:

- (a) Reviews an initiating complaint; and
- (b) Recommends dismissal or further investigation of the complaint, or
- (c) Determines the existence of sufficient evidence to bring a formal complaint.

(2) "Formal complaint" means a formal administrative pleading authorized by the board that sets forth a charge against a licensee or applicant and commences a formal disciplinary proceeding under KRS Chapter 13B.

(3) "Initiating complaint" means a written complaint alleging a violation of KRS 309.350 through 309.364 or the administrative regulations of the board by a licensee or applicant for licensure as a massage therapist.

(4) "Respondent" means the person against whom an initiating complaint or formal complaint has been made.

Section 2. Initiating Complaint. (1) A complaint may be initiated by:

- (a) An individual;
 - (b) A state or government agency;
 - (c) Another member of the massage therapy profession; or
 - (d) The board.
- (2) An initiating complaint shall be made in writing to the board and received in the board office.

(3) The board may conduct an investigation on its own initiative, without receipt of a complaint, if the board has reason to believe that there may be a violation of KRS 309.350 through 309.364, or administrative regulations promulgated in relation thereto.

(4) A certified copy of a court record for conviction of a misdemeanor or felony shall be considered a valid reason for an initiating complaint. The complaint should be submitted on a board-approved form.

Section 3. Procedure Upon Receipt of Initiating Complaint. (1) Upon receipt of the initiating complaint, the board office shall send a copy of the initiating complaint to the respondent at the respondent's last address of record with the board.

(2) The respondent shall file a response to the initiating complaint with the board within twenty (20) days after the board mails the initiating complaint to the respondent.

(3) The allegations in an initiating complaint shall be considered true if respondent fails to respond to the initiating complaint in a timely fashion.

Section 4. The complaint committee shall:

- (1) Review the initiating complaint and the response filed by the respondent at its next meeting; and
- (2) Recommend one (1) of the following options to the board at the board's next meeting:

- (a) Dismissal;
 - (b) Further investigation; ~~or~~
 - (c) Issuance of a formal complaint; or
 - (d) Referral to another government agency.
- (3) A complaint committee member having any known conflict of interest shall recuse from the matter and disclose the existence of a conflict in a regular board meeting.

Section 5. Board Action upon Recommendation of Complaint Committee. At the board's next meeting following review by the complaint committee, the board shall review the committee's recommendations and may accept or reject the recommendations in whole or in part.

Section 6. Dismissals. The complainant and respondent shall be notified if a case is dismissed.

Section 7. Investigations. (1) If investigation is warranted, the board may appoint one (1) of its members or an agent or representative of the board to conduct an investigation of the respondent.

(2) In its investigation, the board may be assisted by:

- (a) Board staff;
- (b) A board agent; or
- (c) The Office of the Attorney General.

Section 8. Formal complaints. If the board finds that sufficient evidence exists to file a formal complaint, the board may:

- (1) Resolve the case informally by agreed order; or
- (2) File a formal complaint, in accordance with KRS Chapter 13B.

Section 9. Settlement by Informal Proceedings. (1) The board, through counsel, may enter into informal discussions or negotiations with the respondent for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through informal proceedings shall be approved by the board and signed by the chair of the board, the respondent and the respondent's attorney. ~~A[and a] copy shall be placed in the licensee's file and a copy shall be mailed to the complainant.~~

(3) The board may employ mediation as a method of resolving the matter informally.

Section 10. Procedures for Disciplinary Hearings. (1) All procedures for disciplinary hearings shall conform to KRS Chapter 13B.

(2) Testimony to be considered by the board, hearing panel, or hearing officer, if any, may be taken by deposition. A party or witness may be allowed to testify by deposition, rather than attend the hearing, upon a showing of inability to attend and a showing that other parties shall have an opportunity to cross-examine at the deposition. The presiding officer or hearing officer, if any, shall rule upon motions to allow testimony to be considered by deposition, subject to review and approval by the board.

(3) The presiding officer or hearing officer, if any, may order that at least five (5) days prior to the hearing, each party shall file a summary of each witness' expected testimony.

Section 11. Final Disposition. Upon reaching a decision, the board shall notify the respondent in writing, by certified mail or personal service, of its final disposition of the matter and the complainant shall be notified by regular mail.

Section 12. Incorporation by Reference. (1) The "Form to File a Complaint" (September 2010)~~The "Complaint Form" October 2006~~ is incorporated by reference.

(2) The "Unlicensed Activity Report" (September 2010) is incorporated by reference.

(3) 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 40602, (502) 564-3296, Monday through Friday, 8 a.m. to 4:30 p.m.

THERESA CRISLER, Chair

APPROVED BY AGENCY: December 3, 2010

FILED WITH LRC: December 15, 2010 at 11 a.m.

CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Licensure for Massage Therapy, PO Box 1370, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes procedures for the processing of complaints against licensees.

(b) The necessity of this administrative regulation: This regulation is necessary to provide appropriate procedures and safeguards for the complaint process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by ensuring that the board has a clear process for conducting investigations and taking disciplinary action.

(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 greater options to the board for disposition of cases and requires board members to disclose conflicts of interest.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to give the board more options for disposing of disciplinary actions and improves board member ethical standards.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of massage therapy.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will give the board more options for the disposition of cases and ensure that the disciplinary process is conducted in an ethical manner.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2149 licensed massage 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 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 board will have greater options related to the disposition of disciplinary cases.

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Massage Therapy

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(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. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensure for Massage Therapy (Amended After Comments)

201 KAR 42:060. Code of ethics, and standards of practice for licensed massage therapists.

RELATES TO: KRS 309.355(3), 309.362

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) authorizes the Board of Licensure for Massage Therapy to establish by administrative regulation a code of ethics, and standards of practice for massage therapists. This administrative regulation establishes those standards, which, if violated, are a basis for disciplinary action under KRS 309.362.

Section 1. Code of Ethical Standards for the Massage Therapist. A massage therapist shall:

(1) Maintain the confidentiality of all client information, unless law or court order mandates disclosure;

(2) Keep the client well informed of procedures and methods that will be employed during the session;

(3) Report to the board if the massage therapist has first-hand knowledge or evidence indicating any unethical, incompetent, or illegal act has been committed by another licensee;[-]

(4) Take precautions to do no harm to the physical, mental, and emotional well being of clients and associates;[-]

(5) Make every reasonable effort to report unlicensed massage practice to the board;[-]

(6)[(45)] Represent his or her educational and professional qualifications honestly;

(7)[(46)] Inform clients of the limitations of the licensee's practice;

(8)[(47)] Consistently take measures to improve professional knowledge and competence by a regular assessment of personal and professional strengths and weaknesses through continuing education training;

(9)[(48)] Respect the client's right to treatment with informed and voluntary consent, either verbal or written, and to refuse, modify, or terminate treatment regardless of prior consent;

(10)[(49)] Not initiate or engage in sexual conduct or activities with a client;

(11)[(40)] Not engage in an interest, activity, or influence that conflicts with the practitioner's obligation to act in the best interest of the client;

(12)[(44)] Respect the client's boundaries with regard to privacy, disclosure, exposure, emotional expression, beliefs, and client's reasonable expectations of professional behavior;

(13)[(42)] Refuse to accept gifts or benefits, which are intended to influence a referral or treatment that are purely for personal gain and not for the good of the client;

~~(14)~~~~(13)~~ Conduct all business and professional activities with honesty and integrity.

~~(15)~~~~(14)~~ Respect the inherent worth of all clients;

~~(16)~~~~(15)~~ Provide only those services that the licensee is qualified to perform; and

~~(17)~~~~(16)~~ Respect the client's autonomy.

Section 2. Standards of Practice for the Massage Therapist. When engaged in the practice of massage therapy, a massage therapist shall:

(1) Perform a written or verbal intake interview with the client to determine whether any contraindications to massage therapy exist and whether modifications including pressure, technique, and duration of treatment are appropriate;

(2) Acknowledge the limitations of, and contraindications for, massage;

(3) Refer the client to other professionals or services if the treatment or service is beyond the massage therapists scope of practice;

(4) Maintain for a minimum period of five (5) years accurate, timely, and organized records of every client;

(5) Provide massage therapy services that meet or exceed the generally accepted practice of the profession;

(6) If a plan of care or treatment is appropriate, explain the plan to the client, to others designated by the client, and to appropriate professionals with client permission;

(7) Unless prohibited by law, be allowed to pool or apportion fees received with other members of a business entity in accordance with any business agreement;

(8) Practice massage therapy in sanitary and safe conditions; and

(9) Have the right to refuse to treat any person or part of the body at the licensee's discretion.

Section 3. Standards for Documentation. The massage therapist and client shall agree upon the purpose of the massage session.

(1) No documentation is required if the massage session is for general relaxation, a sports event massage, or public demonstration as in chair massage.

(2) If a written plan of treatment is requested or required, the client file shall include the following documentation:

(a) The initial evaluation, which shall include:

1. The client's name, age, and gender;

2. Date of the session;

3. Pertinent medical history, including:

a. Client sensitivities and allergies;

b. Medical diagnoses, if available, and the source of the diagnosis;

c. Contraindications; and

d. Medications as disclosed by the client.

(b) Progress notes signed by a massage therapist rendering the massage therapy, which shall include:

1. Subjective information including the area of complaint as stated by the client and the date of onset;

2. Objective information including any observations and objective testing, if applicable;

3. Ongoing assessments, if applicable;

4. Actions taken by the massage therapist; and

5. Client response to massage therapy treatment.

(c) A plan of treatment, if applicable, consisting of:

1. Modalities to be rendered;

2. Frequency and duration of treatment;

3. Referral to other professionals, if indicated;

4. Client self-help education and instruction; and

5. Goals or desired outcome of the treatment.

THERESA CRISLER, Chair

APPROVED BY AGENCY: December 3, 2010

FILED WITH LRC: December 15, 2010 at 11 a.m.

CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Licensure for Massage Therapy, PO Box 1370, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes a code of ethics for massage therapists.

(b) The necessity of this administrative regulation: This regulation is necessary to provide appropriate ethical standards for massage therapists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering the statute by putting licensees on notice of the ethical standards that they will be held to.

(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 creates a requirement that licensees make efforts to report unlicensed practice.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to provide the board with greater reporting of unlicensed practice so that it can take the appropriate action.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of massage therapy.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the board with greater notice of illegal practice so that it can discharge its statutory duty to prevent the same.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2,149 licensed massage 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 this administrative regulation or amendment: Make reasonable efforts to report unlicensed practice when it comes to their attention.

(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): A better reputation as a professional in this occupation.

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including

cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Massage Therapy.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(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. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Licensure for Massage Therapy
(Amended After Comments)**

201 KAR 42:070. Endorsement.

RELATES TO: KRS 309.358, 309.359

STATUTORY AUTHORITY: KRS 309.359

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.359

authorizes the board to issue a license to a person holding a credential in another state of the United States. This administrative regulation establishes the application process for issuance of a license to a person holding a credential in another state of the United States.

Section 1. An applicant Meeting Equal or Higher Standards. An applicant holding a license issued by another state with licensure standards equal to or higher than the requirements of KRS 309.358(2) shall submit:

(1) A completed Application for Licensure as a Massage Therapist form which is incorporated by reference in 201 KAR 42:035;

(2) Verifiable[Certified] proof of the individual's current licensure, registration, or certification from the state where the individual is credentialed, provided to the board directly from the licensure, certification, or accreditation board, on the Endorsement Form which the applicant shall obtain from the Kentucky Board of Licensure for Massage Therapy and send to their current credentialing board;

(3) A verifiable[certified] statement that the individual is in good standing as a massage therapist from the credentialing authority of the jurisdiction in which the applicant holds a license or credential including duration of the license or credential; and

(4) The appropriate fee for licensure as required by 201 KAR 42:020, Section 2(1)(a)(b).

Section 2. An Applicant Meeting Lesser Standards. An applicant who is credentialed as a massage therapist in another state with less stringent requirements than KRS 309.358(2) shall submit:

(1) A completed Application for Licensure as a Massage Therapist form which is incorporated by reference in 201 KAR 42:035;

(2) Certified proof of the individual's current licensure, registration, or certification from the state where the individual is creden-

tialed, provided to the board directly from the licensure, certification, or accreditation board on the Endorsement Form which the applicant shall obtain from the Kentucky Board of Licensure for Massage Therapy and send to their current credentialing board;

(3) A certified statement that the individual is in good standing as a massage therapist from the credentialing authority of the jurisdiction in which the applicant holds a license or credential including duration of the license or credential;

(4) The appropriate fee for licensure as required by 201 KAR 42:020, Section 2(1)(a)(b); and

(5) Documents evidencing the applicant's combined initial training, professional experience, continuing education, or other credentials constituting equivalency to KRS 309.358. Acceptable documentation may include:

(a) Passage of the National Certification Board of an examination that has been approved by the board.~~Therapeutic Massage and Bodywork's National Certification Exam (NCE) or other exam administered by a certifying agency that has been approved by the National Commission for Certifying Agencies;~~

(b) Certified school transcripts received directly from the massage school;

(c) Copies of continuing education certificates from studies completed after or not included as part of the initial training;

(d) Certified transcript of health care related academic course work;

(e) Proof of teaching massage therapy relevant curriculum as stated in KRS 309.363;

(f) Other credentials that may constitute equivalence to the standards in KRS 309.358(2)(d) which may also include research, clinical internships, publications, and massage therapy leadership positions; or

(g) Current proof of hands-on therapeutic massage or bodywork sessions. Supporting documentation for the hours or years of massage therapy work, including appointment books, employer verification, log books, or appointment books for self employed individuals. If this is the only documentation to establish equivalency, a minimum of four (4) years experience is required. Section 3. Upon receipt of an application for endorsement, the board administrator shall verify that documentation accompanying the application is complete and that the fee is paid.

(1) The board administrator shall forward the application to the applications committee for review under KRS 309.359.

(2) If the application, documentation or fee is incomplete, the board administrator shall notify the applicant in writing or electronically within two (2) weeks indicating the deficiency and add the applicant's name to the list of pending applications that shall be made available to the applications committee of the board prior to the next board meeting.

(3) If the application or documentation contain information that indicates that the applicant has a felony conviction or other reason to doubt good moral character, has not graduated from a school with an existing Certificate of Good Standing, or has not passed a board approved examination, the board administrator shall hold the application on a deferred list for the applications committee to consider prior to the next board meeting.

a. If the requirements set out in KRS 309.358 have been met or the committee determines that standards equivalent to those found in KRS 309.358 have been met as indicated in KRS 309.359(2), the applications committee shall issue the license and add the licensee's name to the list to be ratified by the board at the next board meeting.

b. The applications committee may place an application on the agenda of the next board meeting if the committee determines that further consideration is necessary.

Section 4. [3:] Incorporation by Reference. (1) "Endorsement Form", September 2010~~December, 2006~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

THERESA CRISLER, Chair

VOLUME 37, NUMBER 7 – JANUARY 1, 2011

APPROVED BY AGENCY: December 3, 2010

FILED WITH LRC: December 15, 2010 at 10 a.m.

CONTACT PERSON: Adriana Lang, Board Administrator,
Kentucky Board of Licensure for Massage Therapy, PO Box 1370,
Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes a process for becoming licensed by endorsement.

(b) The necessity of this administrative regulation: This regulation is necessary to provide a process by which an individual can become licensed by endorsement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering the statute by delineating a process for approval of license applications seeking admission by endorsement.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the process by which an application is considered for the benefit of the staff and the prospective licensee.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to provide the board staff and prospective licensees with clarity related to approval of applications filed pursuant to this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of massage therapy.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the board staff and prospective licensees with clarity related to approval of applications filed pursuant to this regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2,149 licensed massage therapists. The number that will apply for licensure by endorsement constitutes a very small number each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: 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): None.

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Massage Therapy.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(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. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensure for Massage Therapy (Amended After Comments)

201 KAR 42:080. Programs of massage therapy instruction.

RELATES TO: KRS 309.352(2), 309.355(3), 309.358(4), and 309.363(1)

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.352(2) requires the board to define licensed health-care professionals for the supervision of massage therapy students in clinical settings. KRS 309.355(3) requires the board to promulgate administrative regulations on standards of massage therapy educational program curriculum and instructor qualifications. KRS 309.358(4) authorizes the board to approve massage therapy training programs. KRS 309.363 requires board approval of massage therapy programs of instruction and establishes instructor qualifications. This administrative regulation establishes the definitions of supervision and qualifying supervisors and describes the process for issuing and renewing the Certificate of Good Standing to a program of massage therapy education.

Section 1. Definitions. (1) "Adjunctive courses" means courses in a program of education that enhance the career of a massage therapist but are not massage theory, technique and practice[; including but not limited to CPR, First Aid, HIV/AIDS training, Law, Business, Health, and other bodywork or holistic approaches such as aromatherapy, reflexology, Tai Chi, or other course as determined by the board.]

(2) "Clinic" or "Clinical" means a setting in which students are provided with on-site supervision and training in the practice of massage therapy.

(3) "Clinical coordinator" means the instructor of a massage therapy course in which students are assigned to perform massage

therapy sessions on non-students, on or off-campus, who is responsible for assigning the student to an appropriate clinical setting, indirect supervision of student performance through regular consultation with the student and evaluating student achievement of clinical course objectives.

(4) "Externship" means ~~a~~[an advanced] course offered by ~~an~~[and] approved program which is not included in the primary 600 hours required for licensure with a course having a syllabus describing objectives and evaluations, that is over and above the 600 supervised curriculum hours required for licensure.

(5) "Other licensed healthcare professional" means, for the purposes of massage training program externship~~[clinical]~~ experiences, supervision of the student practicing massage in a business while completing an externship~~[a clinical]~~ requirement may be done by the practitioners cited in KRS 309.352(9)(a), (b), (c), (e), and (f).

(6) "Supervision" means for the purposes of massage training program clinical experiences or externships, supervision is the process of verifying attendance, assigning work, consulting with student, evaluating student performance, and being available for emergency assistance.~~[A student completing an externship or clinical experience shall not receive compensation.]~~

Section 2. (1) A program applying for a Certificate of Good Standing shall file a completed, signed, and dated application and required documentation with the board, meeting the requirements set forth in KRS 309.363(1), (a), (b), and (c).

(2) Documentation shall include:

(a) A copy of the current license to operate issued by the Kentucky State Board for Proprietary Education, the Council on Post-secondary Education, or their equivalent in the state in which the school is conducting classes.

(b) A curriculum statement as described in KRS 309.363(1)(b)1, 2, 3, 4, and 5 showing clock hours for each of the required subjects.

(3) A listing of instructional staff and their qualifications, including:

(a) Documentation of current licensure of massage instructors; and

(b) Resume, CV or PE-11 form for all instructors showing the specific qualifications for teaching an adjunctive or science course.

(4) A description of the policies and procedures in place for collecting and analyzing data about the quality and effectiveness of educational programs including student progress, completion, and licensure~~[and placement rates]~~.

(5) A copy of the program or school catalogue.

(6) Documentation of accreditations held by the program or school offering the program.

(7) A copy of a student contract agreeing not to accept compensation for massage therapy services provided prior to licensure by the board.

Section 3. A Certificate of Good Standing may be renewed upon:

(1) Submission of the Application for Renewal of Certificate of Good Standing form with the following written information to the board on or before the anniversary date of issue of certificate; and

(2) Current complete name, address, email address, Web site, and telephone number of each location in which the massage therapy training program is provided.

(3) Current listing of instructional staff and their qualifications, with attached documentation of qualifications of new instructors.

(4) A current curriculum statement as described in KRS 309.363(1)(b)1, 2, 3, 4, and 5.

(5) A curriculum statement for new programs of massage therapy added to the school's original offering, such as an Associates Degree Program, if the new program may be used to meet initial qualifications for licensure.

(6) A statement with supporting statistics to show student completion, examination pass rates, licensure rates, and placement rates.

(7) Documentation of accreditation reviews and renewals, if held.

Section 4. ~~[The Board may deny, refuse to renew, or issue a probationary certificate of good standing if:~~

~~(1) A school or program of instruction fails to submit any of the documentation required in Section 3 of this administrative regulation; or~~

~~(2) Documentation shows that the program is substantially deficient or fails to show significant improvement in the following standards:~~

~~(a) Completion rate: seventy (70) percent of students enrolled beyond fifteen (15) days complete the program~~

~~(b) Examination pass rates: eighty (80) percent of graduates pass a board approved exam for licensure within six (6) months of graduation. Sixty (60) percent of graduates should pass on first attempt as documented by reports from test administrators.~~

~~(c) Placement rates: sixty five (65) percent of graduates report placement or verifiable self-employment within one (1) year of licensure.~~

~~(d) Program or School accreditation that is denied, revoked or put on probation.~~

~~(e) Graduates or students who are documented as going into another program of training, deployed by military, or medically unable to perform massage therapy may be subtracted from the statistics used to compute rates.~~

~~(3) A pattern of noncompliance with KRS 309.352(8) and 201 KAR 42:080, Section 5.~~

Section 5.] Externships and Clinicals. (1) A student completing an externship or clinical experience shall not receive compensation.

(2) Massage schools or businesses that provide any type of student massage must conspicuously include the respective words "student massage" in all promotional materials, and must conspicuously display a written notice in the waiting room or treatment area that services are being provided by a student.

(3) [(2)] Clinical courses awarding credit hours toward the 600 hours required for licensure shall be supervised by a licensed massage therapist with three years experience and available for on-site consultation.

(a) Massage sessions offered as part of a student clinic shall be evaluated by the instructor and appropriate goals for improvement in areas such as customer service, technique, body mechanics and draping shall be set according to the needs of the student.

(b) Student massage clinics shall be supervised by a massage therapy instructor in the clinic.

(c) Student clinic client records will be maintained at the school and shall meet the Standards for Documentation established in 201 KAR 42:060, Section 3 and 2(4), and record of payment shall be made available to the client upon request.

(4) The instructor of the externship course shall provide: [(3)] Externship courses shall be supervised by a LMT or other licensed healthcare professional who shall provide:

(a) Clear, written learning objectives to students and their site supervisors;

(b) Planned opportunities to discuss the externship experience at regular intervals with the student, and with the site supervisor; and

(c) A mechanism for evaluating student performance in the externship experience, presented to the student and the site supervisor at the beginning of the course.

(5) [(4)] A program offering an externship course shall have a written agreement signed by the institution/program director and the externship site personnel which clearly defines the responsibilities of the onsite supervisor, the clinical coordinator and the student. An externship course shall be limited to no more than twenty (20) percent of the total program hours. The externship course if offered, shall be completed after the primary 600 supervised curriculum hours required by KRS 309.363(1)(b).

(6) [(5)] A program offering an externship course shall have liability insurance to cover student activities within the course.

(7) [(6)] Externship sites will have a licensed massage therapist or other licensed healthcare professional onsite to be available for emergencies or consultation. Externs may accrue hours for reception, documentation, business-related activities other than hands-on massage services while the site supervisor is off-premises. A

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student session at an externship site may occur with the site supervisor available by phone if the client of such session is on staff of the externship site or another extern, and a member of the professional staff is on premises for emergency assistance.

(8)(7) Externship client records will be maintained at the externship site and shall meet the Standards for Documentation established in 201 KAR 42:060, Sections 3 and 2(4), and record of payment shall be available to client upon request.

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

(a) "Certificate of Good Standing Application", August 2010; and

(b) "Application for Renewal of Certificate of Good Standing", August 2010.

(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, (502) 564-3296, Monday through Friday, 8 a.m. to 5 p.m.

THERESA CRISLER, Board Chair

APPROVED BY AGENCY: December 3, 2010

FILED WITH LRC: December 15, 2010 at 11 a.m.

CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Licensure for Massage Therapy, PO Box 1370, Frankfort, Kentucky 40602, phone (502) 564-3296.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes a process for the issuance and renewal of a certificate of good standing for massage therapy programs.

(b) The necessity of this administrative regulation: This regulation is necessary for the board to carry out its statutory duty to approve of the curriculum and other credentials of massage therapy programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes a process for the issuance and renewal of a certificate of good standing for massage therapy programs.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2,149 licensed massage therapists. Seventeen schools in the Commonwealth offer massage therapy programs approved by the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will be required to renew its certificate of good standing annually.

(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): None

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Massage Therapy.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(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. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amended After Comments)

401 KAR 49:080. Solid waste grant funds and solid waste collector and recycler registration.

RELATES TO: KRS 224.43-310, 224.43-315, 224.43-345, 224.43-505

STATUTORY AUTHORITY: KRS 224.43-340, 224.43-345, 224.43-505

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.43-340 authorizes the cabinet to promulgate administrative regulations pursuant to KRS Chapter 224 for the reduction and management of solid waste. This administrative regulation establishes administrative procedures concerning registration of solid waste collectors and recyclers ~~(the area solid waste management plans described in KRS 224.43-345)~~ and the Kentucky Pride Fund described in KRS 224.43-505.

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Section 1. Definitions. (1) "City street cleanup" means the cleanup of litter along a number of city street miles equivalent to one-half (1/2) of a city's total street miles in accordance with KRS 224.43-345(1)(g)4.

(2) "Direct expenses" means:

(a) For anti-litter control program activities, direct expenses include staff time, supplies, contract costs, expenditures related to the operation of equipment, actual disposal costs incurred, and activities, including education, focusing on litter prevention and litter cleanup along public roadways. Direct expenses do not include the purchase of a motor vehicle or lease of a motor vehicle when the lease includes a purchase option; and

(b) For illegal open dump cleanup activities, direct expenses include staff time, supplies, contractor costs, expenditures related to the operation of equipment for remediation, and actual disposal costs. Direct expenses do not include the purchase of a motor vehicle or lease of a motor vehicle when the lease includes a purchase option.

(3) "Illegal open dump" means a facility or site used for the disposal of solid waste that:

(a) Is equal to or greater than two (2) consolidated cubic yards; and

(b)1. Does not have a valid solid waste permit issued by the cabinet pursuant to 401 KAR Chapters 47 and 48; or

2. Has a valid solid waste permit issued by the cabinet pursuant to 401 KAR Chapters 47 and 48, but does not meet the standards established by the cabinet in 401 KAR 30:031.

(4) "In-kind services" means the value of noncash contributions provided by the grant recipient in the form of real property, equipment, supplies, and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(5) "Public road cleanup" means the cleanup of litter along a number of public road miles equivalent to one-third (1/3) of the total public road miles in the solid waste management area, excluding total city street miles in accordance with KRS 224.43-345(1)(g)4.

(6) "Recycler" means the following:

(a) A person who operates a business for the purpose of recycling recovered material, as defined in KRS 224.01-010(20), collected or diverted from the municipal solid waste stream, but does not include a business operated for the exclusive purpose of collecting motor vehicles or motor vehicle parts to be sold for reuse; or

(b) A city or county that is operating a recycling program for the purpose of collecting or diverting recovered material, as defined in KRS 224.01-010(20), from the municipal solid waste stream.

(7) "Regional" means a partnership between two (2) political subdivisions that are not within the same county.

(8) "Solid waste collector" means a person who provides collection of municipal solid waste, including collection for the purpose of recycling.

Section 2. Solid Waste Collector and Recycler Registration and Reporting. (1) Except for counties meeting the definition of recycler, by February 1 of each year, each solid waste collector and recycler shall register and report to the county in which they provide the service in accordance with KRS 224.43-315(2) and (3).

(2) Solid waste collectors and recyclers required to register and report, pursuant to KRS 224.43-315(2) and (3), and this administrative regulation, shall use one (1) of the following:

(a) Municipal Solid Waste Collector (MSW) and Recycler Registration and Reporting Form, DEP 5033, January 2004; or

(b) A form approved by the county that contains, at a minimum, the same information as found in the form specified in paragraph (a) of this subsection.

Section 3. Anti-litter Control Program Activities. (1) Three (3) public road cleanups shall be performed annually by the county.

(2) Two (2) city street cleanups shall be performed annually. These cleanups shall be performed by:

(a) Incorporated cities receiving anti-litter control program grant funds pursuant to Section 4 of this administrative regulation; or

(b) The county, if the incorporated city does not receive anti-litter control program grant funding pursuant to Section 4 of this

administrative regulation.

(3) Counties shall report all anti-litter control program activities on Anti-Litter Control Program Annual Report Form, DEP 8061.

(a) This form shall be submitted to the cabinet by March 1 of each year; and

(b) This form shall be used to meet the requirements established in KRS 224.43-310(5)(e).

Section 4. Anti-Litter Control Program Grants. (1) An anti-litter control program grant shall be available to:

(a) Counties; and

(b) Those incorporated cities that provide garbage collection service, either:

1. Directly by the city;

2. By contract between the city and the county; or

3. By a contract between the city and a solid waste collector registered pursuant to Section 2 of this administrative regulation.

(2)(a) Anti-litter control program grant recipients shall use grant funding for direct expenses, as defined in Section 1(2)(a) of this administrative regulation, associated with public road cleanup and city street cleanup requirements referred to in KRS 224.43-505(d)5.

(b) Anti-litter control program grant recipients shall keep documentation related to grant activities, including grant expenditure documentation, for at least three (3) years.

(3) Counties applying for anti-litter control program grant funding shall complete and submit a County Request and Agreement for Anti-Litter Control Program Grant Funding, DEP 7117, September 2010, to the cabinet by November 1 annually.

(4)(a) Incorporated cities, who meet the qualification of subsection (1)(b) of this section, applying for anti-litter control program grant funding shall complete and submit a City Request and Agreement for Anti-Litter Control Program Grant Funding, DEP 7118, September 2010, to the cabinet by November 1 annually.

(b) A copy of the city's solid waste ordinance or solid waste contract shall be submitted with the application.

(5) Applicants for anti-litter control program grant funding shall be in compliance with KRS 224.43-340.

(6)(a) It shall be the responsibility of the anti-litter control program grant funding recipient to determine compliance with subsection (2) of this section.

(b)1. The head of the governing body of the grant recipient shall certify on Certification of Use of Anti-Litter Control Program Grant Funding, DEP 0059, September 2010, that anti-litter control program grant funding was spent in accordance with subsection (2) of this section.

2. Counties shall submit the Certification of Use of Anti-Litter Control Program Grant Funding, DEP 0059, September 2010, to the cabinet by March 1, with the annual report required by KRS 224.43-310(5) and 401 KAR 49:011, Section 7.

3. Incorporated cities shall submit the Certification of Use of Anti-Litter Control Program Grant Funding, DEP 0059, September 2010, to the cabinet by February 1.

(7) Incorporated cities shall submit the Anti-Litter Control Program Annual Report Form, DEP 8061, September 2010, to the cabinet by February 1.

(8) Anti-litter control program grant funding not spent in the calendar year it is received shall be returned to the cabinet by April 15 of the following year.

(9) Grant recipients that complete and submit a certification in accordance with subsection (6) of this section shall not be deemed out of compliance with the public road cleanup and city street cleanup requirements of KRS 224.43-345(1)(g)4.

Section 5. Illegal Open Dump Cleanup Grant Program. (1) A county shall be eligible for illegal open dump cleanup grant funding if the county meets the criteria described in KRS 224.43-505(3)(b).

(2) A county shall meet the requirement of KRS 224.43-505(3)(b)2 by:

(a) Employing a solid waste coordinator who shall not be an elected official; and

(b)1. The county, through an ordinance or resolution, may empower the solid waste coordinator with enforcement powers necessary to implement all components of the solid waste man-

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agement plan described in KRS 224.43-340 and 224.43-345; or

2. Counties may employ a solid waste coordinator and an enforcement officer for the duties required to implement all components of the solid waste management plan described in KRS 224.43-340 and 224.43-345.

(3) Eligible counties applying for illegal open dump cleanup grant funding for the cost of eliminating illegal open dumps shall apply annually by submitting the following:

(a) Illegal Open Dump Cleanup Grant Program Grant Application, DEP 7125, (January 2011)(September 2010);

(b) Illegal Open Dump Cleanup Grant Program Estimated Expense Worksheet, DEP 6086, September 2010;

(c) Illegal Open Dump Characterization Worksheet, DEP 8063, September 2010; and

(d) DWM Pre-Inspection Report, including photographs;

(4) Grant funding shall be used for the direct expenses, as defined in paragraph 1(2)(b) of this administrative regulation, associated with the cleanup of illegal open dumps approved by the cabinet in the original or supplemental application for the applicable grant period.

(5) Illegal open dumps that have already been remediated two (2) times with assistance from the Kentucky Pride Fund during a five (5) year Areas Solid Waste Management Plan Update period shall not be approved.

(6) Grant recipients shall submit Illegal Open Dump Cleanup Grant Quarterly Progress Report Form, DEP 8062, September 2010, to the cabinet within thirty (30) days of the end of each quarter.

(7) Grant recipients shall submit the Illegal Open Dump Cleanup Grant Program Final Expense Worksheet, DEP 6088, September 2010, with attached invoices for rental equipment and contractor costs, receipts for disposal and miscellaneous supplies, photographs and DWM Post-inspection Report to the cabinet demonstrating actual cleanup costs pursuant to subsection (4) of this section for the illegal open dumps approved in the application not later than thirty (30) days after the end of the grant period.

(8) Grant recipients shall submit a final Illegal Open Dump Cleanup Grant Quarterly Progress Report Form, DEP 8062, September 2010, not later than thirty (30) days after the end of the grant period.

(9) If a county has grant funding remaining after all illegal open dumps approved on the original application have been cleaned, the county may submit a supplemental application.

(a) Supplemental applications shall be submitted by the county at least six (6) months prior to the end of the grant period.

(b)1. Supplemental applications shall include all paperwork required in subsection (3) of this section;

2. Supplemental applications shall be accompanied by the Illegal Open Dump Cleanup Grant Program Final Expense Worksheet, DEP 6088, September 2010, with attached invoices for rental equipment and contractor costs, receipts for disposal and miscellaneous supplies, photographs and DWM Post-inspection Report to the cabinet demonstrating actual cleanup costs pursuant to subsection (4) of this section showing that all illegal open dumps approved in the original application have been remediated; and

3. A final Illegal Open Dump Cleanup Grant Quarterly Progress Report Form, DEP 8062, September 2010, shall be submitted with the supplemental application.

(c) The county shall submit the Illegal Open Dump Cleanup Grant Program Final Expense Worksheet, DEP 6088, September 2010, with attached invoices for rental equipment and contractor costs, receipts for disposal and miscellaneous supplies, photographs and DWM Post-inspection Report to the cabinet demonstrating actual cleanup costs pursuant to subsection (4) of this section for the illegal open dumps approved in the supplemental application not later than thirty (30) days after the end of the grant period.

(10) Illegal open dump cleanup grant recipients shall comply with the terms and conditions of the grant agreement.

(11) Illegal open dump cleanup grant funding not spent in the grant period shall be returned within forty-five (45) days of notification by the cabinet that money needs to be returned.

Section 6. Recycling Grant Program. (1) Counties, waste man-

agement districts, cities, urban-county governments or other political subdivisions of the state may apply for recycling grants established in KRS 224.43-505(4).

(2) Applicants shall meet the requirements of KRS 224.43-505(4)(a), (b), and (c).

(3) Applications creating regional recycling infrastructure shall be given priority.

(4) Applications for recycling grants shall be applied for annually.

(5) Applicants shall submit Kentucky Pride Fund Recycling Grant Application, DEP 7126, September 2010.

(6)(a) Grant recipients shall submit quarterly reports not later than thirty (30) days after the end of each quarter throughout the grant period on Kentucky Pride Fund Recycling Grant Quarterly Report, DEP 5038, September 2010.

(b) Grant recipients shall submit the final quarterly report not later than thirty (30) days after the end of the grant period.

(7) Grant recipients shall comply with the terms and conditions of the grant agreement.

(8) Recycling grant funds shall not be awarded to an otherwise eligible entity if the entity is out of compliance with KRS 224.43-315, KRS 224.43-340, 224.43-345, 224.43-505, or 224.50-878.

(9) Recycling grant funding not spent in the grant period shall be returned to the cabinet within forty-five (45) days of notification from the cabinet that grant funding needs to be returned.

Section 7. Household Hazardous Waste (HHW) Management Grant Program. (1) Counties, waste management districts, cities, urban-county governments or other political subdivisions of the state may apply for household hazardous waste management grant funds established in KRS 224.43-505.

(2) Household hazardous waste management grants shall be applied for annually.

(3) Applicants shall submit Kentucky Pride Fund Household Hazardous Waste Management Grant Application, DEP 7127, September 2010.

(4) Grant recipients shall be limited to one event annually, unless a supplemental application is submitted.

(5)(a) Supplemental applications shall be submitted on Kentucky Pride Fund Household Hazardous Waste Management Grant Application, DEP 7127, September 2010, not later than sixty (60) days before the end of the grant period.

(b) Kentucky Pride Fund Household Hazardous Waste Management Grant Close-out Report, DEP 6087, September 2010, shall be submitted with the supplemental application.

(6) Grant recipients shall submit Kentucky Pride Fund Household Hazardous Waste Management Grant Close-out Report, DEP 6087, September 2010, within forty-five (45) days of completion of the event.

(7) Household Hazardous Waste Management Grant funds shall not be awarded to an otherwise eligible entity if the entity is out of compliance with KRS 224.43-315, 224.43-340, 224.43-345, 224.43-505, or 224.50-878.

(8) Household Hazardous Waste Management Grant funding not spent in the grant period shall be returned to the cabinet within forty-five (45) days of notification from the cabinet that grant funding needs to be returned.

Section 7. Extensions. Entities may request an extension to deadlines established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation. The extension request shall be submitted in writing and received by the Recycling and Local Assistance Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

Section 8. Enforcement. (1) An entity failing to comply with the terms of the grant agreements authorized in this administrative regulation shall be ineligible for grants authorized under KRS 224.43-505 or 224.50-878 until it returns to compliance or for a period of one (1) year.

(2) An entity failing to meet the requirements of 401 KAR

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49:011 shall be ineligible for grants authorized under KRS 224.43-505 or 224.50-878 until it returns to compliance.

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

(a) "Municipal Solid Waste (MSW) Collector and Recycler Registration and Reporting Form", DEP 5033, January 2004;

(b) "County Request and Agreement For Anti-Litter Control Program Grant Funding", DEP 7117, September 2010;

(c) "City Request and Agreement for Anti-Litter Control Program Grant Funding", DEP 7118, September 2010;

(d) "Certification of Use of Anti-Litter Control Program Grant Funding", DEP 0059, September 2010;

(e) "Anti-Litter Control Program Annual Report Form", DEP 8061, September 2010;

(f) "Illegal Open Dump Cleanup Grant Program Grant Application", DEP 7125, ~~January 2011~~[September 2010];

(g) "Illegal Open Dump Cleanup Grant Program Estimated Expense Worksheet," DEP 6086, September 2010;

(h) "Illegal Open Dump Characterization Worksheet", DEP 8063, September 2010;

(i) "Illegal Open Dump Cleanup Grant Quarterly Progress Report Form", DEP 8062, September 2010;

(j) "Illegal Open Dump Cleanup Grant Final Expense Worksheet", DEP 6088, September 2010;

(k) "Kentucky Pride Fund Recycling Grant Application", DEP 7126, September 2010;

(l) "Kentucky Pride Fund Recycling Grant Quarterly Report Form", DEP 5038, September 2010;

(m) "Kentucky Pride Fund Household Hazardous Waste Management Grant Application", DEP 7127, September 2010; and

(n) "Kentucky Pride Fund Household Hazardous Waste Management Grant Close-out Report", DEP 6087, September 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the Division's Web page at waste.ky.gov. ["County" means the governing body of a solid waste management area.

(3) "Illegal open dump" means any facility or site for the disposal of solid waste that does not have a valid permit issued by the cabinet or does not meet the standards established by the cabinet and is equal to or greater than two (2) consolidated cubic yards of solid waste.

(4) "In-kind services" means the value of noncash contributions provided by parties in the form of real property, equipment, supplies, and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(5) "Public road cleanup" means the cleanup of litter along a number of public road miles equivalent to one third (1/3) of the total public road miles in the solid waste management area, excluding total city street miles in accordance with KRS 224.43-345(1)(g)4.

(6) "Recycler" means the following:

(a) Any person who operates a business for the purpose of recycling recovered material, as defined in KRS 224.01-010(20), collected from the municipal solid waste stream, excluding any business operated for the exclusive purpose of collecting motor vehicles or motor vehicle parts to be sold for reuse; or

(b) A recycling program operated by a municipality for the purpose of collecting recovered material, as defined in KRS 224.01-010(20), from the municipal solid waste stream.

(7) "Solid waste collector" means a person who provides collection of municipal solid waste, including collection for the purpose of recycling.

Section 2. Waste Collector and Recycler Registration and Reporting. (1) By February 1 of each year, each solid waste collector and recycler shall register and report in accordance with KRS 224.43-315(2) and (3).

(2) Solid waste collectors and recyclers required to register and report, pursuant to KRS 224.43-315(2) and (3), and this administrative regulation, shall utilize DEP Form #5033 "Municipal Solid

Waste (MSW) Collector and Recycler Registration and Reporting Form" incorporated by reference in Section 7 of this administrative regulation.

Section 3. Litter Abatement Funding. (1) Litter abatement funding to complete the public road cleanup requirements established in KRS 224.43-345(1)(g)4 shall be available to the counties and those incorporated cities that provide garbage collection service, either directly by the city or the county, or by contract between the municipality and a registered solid waste collector.

(2) Litter abatement funding shall be utilized for direct expenses associated with public road cleanup requirements established in KRS 224.43-345. Direct expenses include staff time, supplies, contract costs, expenditures related to the operation of equipment, street sweeping activities, actual disposal costs incurred, and education activities focusing on litter prevention and litter cleanup activities along public roadways. Direct expenses do not include the purchase of a motor vehicle, or lease of a motor vehicle, when the lease includes the purchase option.

(3) All recipients of litter abatement funds shall provide a twenty-five (25) percent match to the litter abatement funding in accordance with KRS 224.43-505(3). The match may be fulfilled through in-kind services.

(4) Counties and cities shall complete and return a "County Request for Litter Abatement Funding" document to the cabinet to be eligible for funding.

Section 4. Litter Abatement Activities. (1) Three (3) public road cleanups shall be performed annually by the county.

(2) Two (2) city street cleanups shall be performed annually by incorporated cities receiving litter abatement funds or by the county, if the incorporated city does not receive funding.

(3) Counties shall report to the cabinet on litter abatement activities in the annual report required by KRS 224.43-310(5).

(4) Incorporated cities that enter into an agreement with the cabinet to receive a portion of a county's litter abatement funding shall report annually to their county by February 1, demonstrating that the city used the litter abatement funds it received appropriately pursuant to Section 3(2) of this administrative regulation.

(5) Counties and incorporated cities that utilize litter abatement funding in accordance with Section 3(2) of this administrative regulation to meet public road cleanup requirements established in KRS 224.43-345(1)(g)4 and Section 4 of this administrative regulation shall not be deemed out of compliance with the public road cleanup requirements of KRS 224.43-345(1)(g)4.

Section 5. Illegal Dump Remediation Costs Reimbursement.

(1) Funding for illegal open dump remediation established in KRS 224.43-505 is available to counties that meet the eligibility requirements of KRS 224.43-505(2)(c). The cabinet shall reimburse eligible counties seventy-five (75) percent of remediation costs of eliminating illegal open dumps that pose the greatest public health and environmental risks as determined by the cabinet.

(2) Eligible counties shall be reimbursed for direct costs associated with illegal open dump remediation. Direct costs include staff time, supplies, contract costs, expenditures related to the operation of equipment for remediation, and actual disposal costs. Direct costs do not include the purchase of a motor vehicle, or lease of a motor vehicle, when the lease includes a purchase option.

(3) Expenditures paid for with other grant dollars do not qualify as a direct cost.

(4) Beginning July 1, 2004, a county shall be eligible for reimbursement if the county:

(a) Meets the criteria described in KRS 224.43-505(2)(c)3a-f; and

(b) Employs a solid waste coordinator, required pursuant to KRS 224.43-505(2)(c)3b, who shall not be an elected official.

1. The county, through an ordinance or resolution, shall empower the solid waste coordinator with enforcement powers necessary to implement all components of the solid waste management plan described in KRS 224.43-340.

2. Counties may employ a solid waste coordinator and an enforcement officer for the duties required to implement all components of the solid waste management plan described in KRS

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224.43-340.

~~(5) Counties shall not be reimbursed for the costs of remediating the following types of illegal open dumps:~~

- ~~(a) Illegal open dumps eliminated prior to qualification; or~~
- ~~(b) Illegal open dumps that recur after being remediated more than two (2) times with assistance from the Kentucky Pride Fund.~~

~~Section 6. Enforcement. Any county or incorporated city failing to comply with the terms of the agreement specified in Section 3(4) of this administrative regulation shall be ineligible for litter abatement funding for the following year.~~

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

- ~~(a) "Municipal Solid Waste (MSW) Collector and Recycler Registration and Reporting Form (January 2004)";~~
- ~~(b) "County Request for Litter Abatement Funding (July 2004)".~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

HENRY C. A. LIST, Deputy Secretary

For LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: December 7, 2010

FILED WITH LRC: December 8, 2010 at 2 p.m.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes administrative procedures concerning the area solid waste management plans described in KRS 224.43-345 and the Kentucky Pride Fund described in KRS 224.43-505.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to administer KRS 224.43-345 and KRS 224.43-505.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the statute by establishing procedures for the Kentucky Pride Fund grant programs and by establishing a reporting mechanism for solid waste collectors and recyclers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in effective administration of the statute by establishing the Kentucky Pride Fund grant programs.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the way the match for the illegal open dump grant program is calculated. The amendment also adds language to the anti-litter control program grant requiring the grant recipient to keep documentation of grant activities for at least three years.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to be consistent with match calculations for all grants and for documentation purposes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statutes by clarifying the calculation for the illegal open dump grant.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will help clarify the statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Counties and cities are eligible for the anti-litter control program grants established in this regulation.

Counties are eligible for the illegal open dump grants established in this regulation.

Counties, waste management districts, cities, urban-county governments and other political subdivisions of the state are eligible for the recycling and the household hazardous waste management grants as outlined in 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: To comply with the amendment, recipients of anti-litter control program grants will have to retain documentation of grant activities and expenditures for three years.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment should not cost the anti-litter control program grant recipients any additional money because they are already keeping this documentation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, grant recipients will be able to show proof of their expenditures.

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

The Division of Waste Management already implements these programs.

(a) Initially: There should be no additional cost to implement this amendment.

(b) On a continuing basis: The Division typically awards approximately \$5 million a year in anti-litter control program grants, approximately \$3 million a year in illegal open dump grants, and approximately \$2 million in recycling and household hazardous waste management grants. The Division spends approximately \$460,000 in administrative costs for these programs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation will be funded by the Kentucky Pride Fund, which comes from the Environmental Remediation Fee.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. Applicants for grants are required to submit the same information and use the same forms.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This amendment will affect counties and cities that receive anti-litter control program grants and illegal open dump grants.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.43-505

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 does not increase revenue for the state or for local governments.

(b) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not increase revenue for the state or for local governments.

(c) How much will it cost to administer this program for the first year? This administrative regulation currently costs the state approximately \$460,000 to implement.

(d) How much will it cost to administer this program for subsequent years? This amendment will cost approximately \$460,000 to implement.

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 administrative regulation provides a way for political subdivisions of the state, particularly counties and cities, to receive money to properly manage solid waste. There is a statutory provision for counties to pick up litter and to clean illegal open dumps. The grant programs for these two activities will allow the county to have funding for these clean ups without an increased burden to the county budget.

The grants for recycling and household hazardous waste management grants will allow political subdivisions to apply for grants to effectively manage these materials.

**PUBLIC PROTECTION CABINET
Department of Insurance
Health and Life Division
(Amended After Comments)**

806 KAR 12:150. Annuity disclosures.

RELATES TO: KRS 304.12-010, 304.12-020, 304.12-230, 26 U.S.C. 4010, 403, 414, 457, 29 U.S.C. 1001-1461

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the ~~Commissioner of the Department~~ Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation requires insurers to deliver information to purchasers of annuities that will improve the buyer's ability to select the most appropriate annuity for the buyer's needs and improve the buyer's understanding of the basic features of the product that has been purchased or is under consideration.

Section 1. Definitions. (1) "Buyer's Guide" means the current ~~(Life Insurance and)~~ Annuity Buyer's Guide published by the Commonwealth of Kentucky ~~Department~~ Office of Insurance.

(2) "Charitable gift annuity" is defined in KRS 304.1-120(6)(b).

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements derived from processes or methods that are guaranteed at issue and not subject to company discretion, but ones in which the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates including any bonus, benefits, values, noninterest based credits, charges, or elements of formulas used to determine at issue. An element is determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

(5) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one (1) or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(6) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated.

(7) "Guaranteed elements" means the premiums and credited interest rates, including any bonus, benefits, values, noninterest based credits, charges, or elements of formulas used to determine

any of these, that are guaranteed and determined at issue. An element is guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(8) "Nonguaranteed elements" means the premiums and credited interest rates including any bonus, benefits, values, noninterest based credits, charges, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(9) "Structured settlement annuity" means

(a) A "qualified funding asset" as defined in 26 U.S.C. 130(d); or

(b) An annuity that would be a qualified funding asset pursuant to 26 U.S.C. 130(d) except for the fact that it is not owned by an assignee under a qualified assignment.

Section 2. Applicability. This administrative regulation shall apply to all group and individual annuity contracts and certificates except:

(1) Registered or nonregistered variable annuities or other registered products;

(2)(a) Annuities used to fund:

1. An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA), codified as 29 U.S.C. 1001 to 1461;

2. A plan described by 26 U.S.C. 401(a), (k), or 403(b), if the plan, for purposes of ERISA, is established or maintained by an employer;

3. A governmental or church plan defined in 26 U.S.C. 414 or a deferred compensation plan of a state or local government or a tax exempt organization under 26 U.S.C. 457; or

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(b)1. Notwithstanding paragraph (a) of this subsection, this administrative regulation shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and if the insurance company has been notified that plan participants may choose from among two (2) or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract.

2. As used in this subsection, direct solicitation shall not include a meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;

(3) Structured settlement annuities;

(4) Charitable gift annuities; and

(5) Funding agreements.

Section 3. Standards for the Disclosure Document and Buyer's Guide. (1)(a) If the application for an annuity contract is solicited personally by an agent, the applicant shall be given both the disclosure document described in subsection (3) of this section and the Buyer's Guide no later than the time of application.

(b) If the application for an annuity contract is taken by means other than a personal solicitation by an agent, the applicant shall be sent both the disclosure document described in subsection (3) of this section and the Buyer's Guide no later than five (5) business days after the completed application is received by the insurer.

1. With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application; or

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

2. With respect to an application received via the Internet:

a. Taking reasonable steps to make the Buyer's Guide available for viewing and printing on the insurer's Web site shall satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application; or

b. Taking reasonable steps to make the disclosure document

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available for viewing and printing on the insurer's Web site shall satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

3. A solicitation for an annuity contract that is not personally solicited by an agent shall include a statement that the proposed applicant may obtain a free Annuity Buyer's Guide by contacting the Department[Office] of Insurance or the insurer.

(c)1. If the Buyer's Guide and disclosure document described in subsection (3) of this section are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty.

2. This free look period shall run concurrently with any other free look period provided under state law or administrative regulation.

(2) The following information shall be included in the disclosure document:

(a) The generic name of the contract, the company product name, if different, the form number, and the fact that it is an annuity;

(b) The insurer's name and address;

(c) A description of the contract and its benefits, emphasizing its long-term nature, including the following information:

1. The guaranteed, nonguaranteed, and determinable elements of the contract and their limitations, if any, and an explanation of how they operate;

2. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and shall not be guaranteed;

3. Periodic income options both on a guaranteed and nonguaranteed basis;

4. Value reductions caused by withdrawals from or surrender of the contract;

5. How values in the contract can be accessed;

6. The death benefit, if available, and how it will be calculated;

7. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

8. An explanation of the impact of a rider, such as a long-term care rider;

(d) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply; and

(e) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

(3) The disclosure statement shall comply with the minimum standards for readability and intelligibility established in 806 KAR 14:121.

Section 4. Report to Contract Owners. For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

(1) The beginning and end date of the current report period;

(2) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;

(3) The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and

(4) The amount of outstanding loans, if any, as of the end of the current report period.

Section 5. Effective Date. The requirements, implementation, and enforcement of this administrative regulation shall begin on July 1, 2011[January 1, 2008].

Section 6. Incorporation by Reference. (1) "The Life Insurance and Annuity Buyer's Guide, Commonwealth of Kentucky", December 2010[September 2010][June 2007], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department[Office] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

(3) This material is also available on the department's Web site at <http://insurance.ky.gov/>.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 13, 2010

FILED WITH LRC: December 14, 2010 at 3 p.m.

CONTACT PERSON: DJ Wasson, Staff Assistant, 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 insurers to deliver information to purchasers of annuities that will improve the buyer's ability to select the most appropriate annuity for the buyer's needs and improve the buyer's understanding of the basic features of the product that has been purchased or is under consideration

(b) The necessity of this administrative regulation: This administrative regulation will provide guidance and a consumer guide to insurer to assist in educating Kentucky citizens prior to purchasing an annuity.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This regulation and the material incorporated by reference will aid insurer to educate consumer regarding the purchase of annuities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation currently provides guidance, procedures and the Life Insurance and Annuities buyer's guide to insurers for use with consumers.

(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 make technical corrections and will amend the material incorporated by reference to remove the life insurance information. There will be a separate buyer's guide for life insurance.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate appropriate changes into the buyer's guide.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This amendment will make technical changes to the regulation due 2010 Ky. Acts Ch. 24 and the material incorporated by reference will aid insurers to educate consumers regarding the purchase of annuities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will update the information provided in the buyer's guide, which is incorporated by reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will affect approximately 470 insurers offering annuity products.

(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: These entities will be required to provide a copy of the new buyer's guide to consumers due to this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since these insurers and agents are already providing the previous version of the buyer's guide, the costs associated with

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providing the amended version should be minimal. The insurer or agent may print or e-mail a link to the buyer's guide which is published on the Department of Insurance Web site.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The insurers and agents will be in compliance with state law and will have resources to aid consumers in purchasing an annuity.

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

(a) Initially: Minimal, if any.

(b) On a continuing basis: Minimal, if any.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Department of Insurance.

(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.

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

(9) TIERING: Is tiering applied? Tiering is not applied; the provisions of this administrative regulation will be implemented in the same manner for all insurers who have annuity products.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Insurance.

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) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance code.

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 amended regulation should 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? The amended regulation will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? The cost of administering this program will not change.

(d) How much will it cost to administer this program for subsequent years? The cost of administering this program will not change.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

**PUBLIC PROTECTION CABINET
Department of Insurance
Health and Life Division
(Amended After Comments)**

806 KAR 12:170. Life insurance disclosures.

RELATES TO: KRS 304.12-010, 304.12-020, 304.12-230

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the ~~Commissioner~~~~Executive Director of the Office~~ of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation establishes requirements for insurers to deliver information to purchasers of life insurance that is designed to improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs and improve the buyer's understanding of the basic features of the policy that has been purchased or is under consideration.

Section 1. Definitions. (1) "Buyer's Guide" means the current Life Insurance~~and Annuity~~ Buyer's Guide published by the Commonwealth of Kentucky ~~Department~~~~Office~~ of Insurance.

(2) "Generic name" means a short title that is descriptive of the premium and benefit patterns of a policy or a rider.

(3) "In force illustration" means an illustration furnished after the policy has been in force for one (1) year or more.

(4) "Nonguaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, non-interest based credits, charges, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(5) "Policy data" means a display or schedule of numerical values, both guaranteed and nonguaranteed, for each policy year or a series of designated policy years of the following information:

(a) Illustrated annual, other periodic, and terminal dividends;

(b) Premiums;

(c) Death benefits; and

(d) Cash surrender values, outstanding policy loans, current policy loan interest rate, and endowment benefits.

(6) "Policy summary" means a separate document describing the elements of the policy and complying with the requirements established in Section 3 of this administrative regulation.

Section 2. Application. (1) Except as provided in subsection (2) of this section of this administrative regulation, this administrative regulation shall apply to:

(a) A solicitation, negotiation, or procurement of life insurance occurring within this state; and

(b) An issuer of life insurance contracts including fraternal benefit societies.

(2) This administrative regulation shall not apply to:

(a) Individual and group annuity contracts;

(b) Credit life insurance;

(c) Group life insurance;

(d) Life insurance policies issued in connection with pension and welfare plans which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Section 1001 et seq. as amended; or

(e) Variable life insurance under which the amount or duration of the life insurance varies according to the investment experience of a separate account.

Section 3. Policy Summary. A policy summary shall describe the elements of the policy including the following:

(1) A permanently placed title stating: "STATEMENT OF POLICY COST AND BENEFIT INFORMATION";

(2) The name and address of the insurance agent or, if an agent is not involved, a statement of procedure to be followed in order to receive responses to inquiries regarding the policy summary;

(3) The full name and home office or administrative office address of the life insurance company issuing the policy;

(4) The generic name of the basic policy and each rider;

(5) The following amounts shall be listed in total, not on a per thousand or per unit basis and, if applicable for the first ten (10) policy years and representative policy years thereafter, the amounts shall be listed sufficiently to clearly illustrate the premium and benefit patterns, including at least an age from sixty (60)

through sixty-five (65) and policy maturity:

- (a) The annual premium of the basic policy;
- (b) The annual premium for each optional rider;
- (c) 1. The amount payable upon death at the beginning of the policy year pursuant to the basic policy with additional benefits for each rider shown separately.
2. If more than one (1) insured is covered pursuant to one (1) policy or rider, death benefits shall be displayed separately for each insured or for each class of insured's if death benefits do not differ within the class;
- (d) The total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider; and
- (e) Endowment amounts payable pursuant to the policy that are not included pursuant to the cash surrender values described in this subsection;
- (6)(a) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether the rate is applied in advance or in arrears.
- (b) If the policy loan interest rate is adjustable, the policy summary shall state that the annual percentage rate shall be determined in accordance with the provisions of the policy and the applicable law; and
- (7) The date on which the policy summary was prepared.

Section 4. Duties of Insurers. (1) Requirements for new issues.

- (a) 1. Except as provided in subparagraph 2 of this paragraph, the insurer shall provide the Buyer's Guide to each prospective purchaser ~~[purchasers]~~ prior to accepting the applicant's initial premium or premium deposit.
2. If the policy for which application is made contains an unconditional refund provision of at least ten (10) days, the Buyer's Guide may be delivered with the policy or prior to delivery of the policy.
- (b) The insurer shall provide a policy summary to prospective purchasers in which the insurer shall identify the policy form as not marketed with an illustration.
1. The policy summary shall show guarantees only.
2. The policy summary shall consist of a separate document with all required information set out in a manner that does not minimize or render any portion of the summary obscure.
3. Amounts that remain level for two (2) or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year.
4. Amounts in Section 3(5) of this administrative regulation shall be listed in total, not on a per thousand or per unit basis.
5. If more than one (1) insured is covered under one (1) policy or rider, death benefits shall be displayed separately for each insured or for each class of insured's if death benefits do not differ within the class.
6. Zero amounts shall be displayed as a blank space.
7. Delivery of the policy summary shall be consistent with the time for delivery of the Buyer's Guide as specified in paragraph (a) of this subsection.

(2) Requirements applicable to existing policies.

- (a) Upon request by the policy owner, the insurer shall furnish the policy data or an in force illustration as follows:
1. For policies issued prior to January 1, 2008, the insurer shall furnish policy data, or, at its option, an in force illustration meeting the requirements of 806 KAR 12:140.
2. For policies issued on and after January 1, 2008 and declared not to be used with an illustration, the insurer shall furnish policy data, limited to guaranteed values, if it has chosen not to furnish an in force illustration meeting the requirements of 806 KAR 12:140.
3. If the policy was issued on and after January 1, 2008 and declared to be used with an illustration, an in force illustration shall be provided.
4. Unless otherwise requested, the policy data shall be provided for twenty (20) consecutive years beginning with the previous policy anniversary.
5. The insurer may charge a reasonable fee for the policy data, not to exceed ten (10) dollars.
- (b) 1. If a life insurance company changes its method of deter-

mining scales of nonguaranteed elements on existing policies, it shall notify each affected policy owner of the change and its effect on the policy no later than the date of the first payment on the new basis.

2. The requirement established in subparagraph 1. of this paragraph shall not apply to policies for which the death benefit pursuant to the basic policy on the date of notice does not exceed \$5,000.

(c) If the insurer makes a material revision in the terms and conditions which will limit its right to change any nonguaranteed factor, it shall notify each affected policy owner of the change no later than the first policy anniversary following the revision.

Section 5. General Rules. (1)(a) Prior to commencing a life insurance sales presentation, an agent shall inform the prospective purchaser that the agent is acting as a life insurance agent.

(b) The agent shall inform the prospective purchaser in writing of the full name of the insurance company which the agent represents.

(c) In sales situations in which an agent is not involved, the insurer shall identify the insurer's full name.

(2)(a) An insurance producer marketing insurance products shall not use a title or designation, including "financial planner," "investment advisor," "financial consultant," or "financial counseling" to imply that the insurance producer is engaged in an advisory or consulting business in which compensation is unrelated to sales.

(b) This subsection shall not preclude:

1. A person recognized as having a financial planning or consultant designation from using the designation even if only selling insurance; or

2. Members of a recognized trade or professional association from having these terms as part of the organization's name from citing membership. If authorized only to sell insurance products, a person citing membership shall disclose that fact.

(c) A person shall not charge an additional fee for services customarily associated with the solicitation, negotiation, or servicing of policies.

(3)(a) A reference to nonguaranteed elements shall include a statement that the item is not guaranteed and is based on the company's current scale of nonguaranteed elements.

(b) If a nonguaranteed element would be reduced by the existence of a policy loan, a statement to that effect shall be included in each reference to nonguaranteed elements.

Section 6. Failure to Comply. ~~[(4)]~~ Failure of an insurer to provide or deliver the Buyer's Guide, an in force illustration, a policy summary, or policy data shall constitute an omission that misrepresents the benefits, advantages, conditions, or terms of an insurance policy.

Section 7. Effective Date. The requirements, implementation, and enforcement of this administrative regulation shall begin on January 1, 2011 ~~[January 1, 2008]~~.

Section 8. Incorporation by Reference. (1) "The Life Insurance ~~[and Annuity]~~ Buyer's Guide, Commonwealth of Kentucky", December 2010 ~~[September 2010]~~ ~~[June 2007]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department ~~[Office]~~ of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the department's office's internet Web site at: <http://insurance.ky.gov/> ~~[http://doi.ppr.ky.gov/kentucky]~~.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 13, 2010

FILED WITH LRC: December 14, 2010 at 3 p.m.

CONTACT PERSON: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires insurers to deliver information to purchasers of life insurance that will improve the buyer's ability to select the most appropriate product for the buyer's needs and improve the buyer's understanding of the basic features of the product that has been purchased or is under consideration

(b) The necessity of this administrative regulation: This administrative regulation will provide guidance and a consumer guide to insurers to assist in educating Kentucky citizens prior to purchasing life insurance.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This regulation and the material incorporated by reference will aid insurers to educate consumers regarding the purchase of life insurance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation currently provides guidance, procedures and The Life Insurance and Annuities buyer's guide to insurers for use with consumers.

(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 make technical corrections and will amend the material incorporated by reference to remove the annuities information. There will be a separate buyer's guide for annuities.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate appropriate changes into the buyer's guide.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This amendment will make technical changes to the regulation due 2010 Ky. Acts ch.24 and the material incorporated by reference will help insurers to educate consumer regarding the purchase of life insurance.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will update the information provided in the buyer's guide, which is incorporated by reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will affect approximately 470 insurers offering life insurance products and approximately 47,700 individual agents and 3,500 business entities licensed to sell life insurance products.

(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: These entities will be required to provide a copy of the new buyer's guide to consumers due to this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since these insurers and agents are already providing the previous version of the buyers guide, the costs associated with providing the amended version should be minimal. The insurer or agent may print or e-mail a link to the buyer's guide which is published on the Department of Insurance website.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The insurers and agents will be in compliance with state law and will have resources to aid consumers in purchasing life insurance.

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

(a) Initially: Minimal, if any.

(b) On a continuing basis: Minimal, if any.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Department of Insurance.

(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.

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

(9) TIERING: Is tiering applied? Tiering is not applied; the provisions of this administrative regulation will be implemented in the same manner for all insurers who have life insurance products.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Insurance.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statute 304.2-110 (1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance code.

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 amended regulation should 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? The amended regulation will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? The cost of administering this program will not change.

(d) How much will it cost to administer this program for subsequent years? The cost of administering this program will not change.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amended After Comments)

810 KAR 1:110. Out-of-competition testing.

RELATES TO: KRS 230.215, 230.230, 230.240, 230.260, 230.290, 230.300, 230.310, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain

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horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." 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. This administrative regulation establishes new sampling and testing procedures for the prohibited substances identified herein, and establishes penalties for individuals that are found to be in violation of this administrative regulation.

Section 1. Definitions. (1) "Actionable finding" means a determination by the commission that a substance described in Section 2 of this administrative regulation was present in a horse based on the commission's review of a report of finding issued by the commission laboratory and its review of split sample analysis results, or based on the commission's review of a report of finding issued by the commission laboratory for which an owner and trainer have waived their right to have a split sample analysis performed.

(2) "Sample" means that portion of a specimen subjected to testing by the commission laboratory.

(3) "Specimen" means a sample of blood, urine, or other biologic matter taken or drawn from a horse for chemical testing.

Section 2. Prohibited Substances and Practices. (1) The following shall be a violation of this administrative regulation:

(a) The presence in, or administration to, a horse, at any time, of blood doping agents including: erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, or any other substance that enhances the oxygenation of equine body tissue;

(b) The nontherapeutic administration to, a horse, at any time, of whole blood or packed red blood cells;

(c) The presence in, or administration to, a horse, at any time, of naturally produced venoms, synthetic analogues of venoms, derivatives of venoms or synthetic analogues of derivatives of venoms;

(d) The presence in, or administration to, a horse, at any time, of growth hormones;

(e) The possession of erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, naturally produced venoms, synthetic analogues of venoms, derivatives of venoms, synthetic analogues of derivatives of venoms, or growth hormones on the grounds of a licensed association or a training facility under the jurisdiction of the commission; and

(f) The possession at any time of whole blood or packed red blood cells on the grounds of a licensed association or a training facility under the jurisdiction of the commission by anyone other than a licensed veterinarian rendering emergency treatment to a horse located on the grounds of the association or training facility. The attending veterinarian shall notify the commission veterinarian of the intent to administer whole blood or packed red blood cells prior to his or her collection or possession of the whole blood or packed red blood cells.

(2) The use of a hyperbaric oxygen chamber shall not be a violation of this administrative regulation.

Section 3. Out-of-Competition Testing. (1) Any horse eligible to race in Kentucky shall be subject to testing without advance notice for the substances specified in Section 2 of this administrative regulation. A horse is presumed eligible to race in Kentucky if:

(a) It is under the care, custody, or control of a trainer licensed by the commission; or

(b) It is owned by an owner licensed by the commission; or

(c) It is nominated to a race at an association licensed pursuant to KRS 230.300; or

(d) It has raced at an association licensed pursuant to KRS 230.300 within the previous twelve (12) calendar months; or

(e) It is stabled on the grounds of an association licensed pursuant to KRS 230.300 or a training facility subject to the jurisdiction of the commission; or

(f) It is nominated to participate in the Kentucky Thoroughbred Development Fund.

~~(2) [If a horse to be tested is not covered under subsection (1) of this section, the executive director or chief state steward may nevertheless designate any horse that may become eligible to race in Kentucky to be tested for the prohibited substances described in Section 2 of this administrative regulation.~~

~~(3)~~ Horses may be designated for testing by the executive director, the chief state steward, or their respective designee.

~~(3)~~~~(4)~~ A horse designated for testing under this section shall be subject to testing for the substances described in Section 2 of this administrative regulation.

~~(4)~~~~(5)~~ An owner, trainer, or any authorized designee shall fully cooperate with the commission veterinarian, or his or her designee, by:

(a) Locating and identifying any horse designated for out-of-competition testing;

(b) Making the horse available for the collection of the specimen at an agreed upon stall or other safe location; and

(c) Observing the collection of the specimen.

1. If the owner, trainer or their authorized designee, is not available to observe the collection of the specimen, the collection shall be deferred until the trainer, owner, or their authorized designee, becomes reasonably available, but the collection shall occur no later than six (6) hours after notice of intent to collect a specimen from a horse is received.

2. If the collection does not occur within the time provided for in this subsection, any horse that is designated for testing may be barred from racing in Kentucky and placed on the veterinarian's list, 810 KAR 1:018, Section 18, and the steward's list, for a period of 180 days and the owner and trainer of the horse may be subject to the penalties described in Section 8 of this administrative regulation.

~~(5)~~~~(6)~~ If the owner, trainer, or any authorized designee fails to cooperate or otherwise prevents a horse from being tested, the horse designated for testing shall be barred from racing in Kentucky and placed on the veterinarian's list, 810 KAR 1:018, Section 18, and the steward's list, for 180 days, and the individual(s) responsible for the failure to cooperate or prevention of the horse from being tested shall be subject to the penalties described in Section 8 of this administrative regulation.

~~(6)~~~~(7)~~ (a) A horse that is barred from racing in Kentucky and placed on the Veterinarian's List and the Steward's List pursuant to subsection (5) or (6) of this section shall remain barred from racing and shall remain on the veterinarian's list and the steward's list upon sale or transfer of the horse to another owner or trainer until the expiration of 180 days; and

(b) Until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

Section 4. Specimen Collection. (1) A specimen shall be collected from any horse designated by the executive director, the chief state steward, or their designee, whether the horse is located in Kentucky or in another jurisdiction.

(2) When a designated horse is located in another jurisdiction, the executive director or commission veterinarian may select a veterinarian from another racing commission or regulatory entity to collect the specimen.

(3) If specimen collection occurs at a licensed association or training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, may collect a specimen from a horse designated for testing at any time.

(4) If specimen collection occurs at a location other than the grounds of a licensed association or a training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, shall collect the specimen between the hours of 7 a.m. and 6 p.m., prevailing time, and shall notify the owner, trainer or any other person exercising care, custody or control of the horse before arriving to collect the specimen.

(5) A licensed association or training facility under the jurisdiction of the commission at which a horse designated for testing is located shall cooperate fully in the collection of the specimen.

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Section 5. Minimum and split samples. The commission veterinarian shall determine minimum and split sample requirements as set forth at 810 KAR 1:018, Section 11.

Section 6. Sample storage and testing. (1) Any out of competition sample collected pursuant to this administrative regulation shall be stored in a temperature controlled unit at a secure location chosen by the commission until the sample is submitted for testing. The samples shall be secured under conditions established by the commission veterinarian in accordance with the procedures set forth in 810 KAR 1:018, Section 11.

(2) The commission is the owner of an out of competition specimen.

(3) The sample may be submitted to the commission laboratory for testing on the same date the specimen is collected or on a subsequent date.

(4) A written chain of custody protocol shall be made available to the owner and trainer upon request.

(5) A trainer or owner of a horse receiving notice of a report of finding from the commission may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to a split sample laboratory which has documented its proficiency in detecting the substance associated with the report of finding and has been approved by the commission.

(6) Split samples shall be subject to the provisions and procedures set forth in 810 KAR 1:018, Section 12, and the chain of custody of any split sample shall be maintained in accordance with the procedures set forth in 810 KAR 1:018, Section 13.

(7) The cost of testing the split sample under subsections (5) and (6) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

Section 7. Steps After Actionable Finding or Any Other Violation of this Administrative Regulation. In the event of an actionable finding, or any other violation of this administrative regulation, the following steps shall be taken:

(1)(a) Within five (5) business days of receipt of notification of an actionable finding, the commission shall notify the owner and trainer in writing of the actionable finding and shall schedule a stewards' hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to accommodate the parties; and

(b) The commission shall cause the subject horse to be immediately placed on the Veterinarian's List, 810 KAR 1:018, Section 18, and the Steward's List, thereby rendering the horse ineligible to compete, pending the conduct of the hearing described in subsection (1) of this section and the issuance of a steward's order.

(2) Within thirty (30) days of the commission's discovery of any violation of this administrative regulation other than an actionable finding, the commission shall notify the owner and trainer in writing of the violation and shall schedule a stewards' hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to accommodate the parties.

Section 8. Penalty. A trainer, owner, or any other individual who violates this administrative regulation shall be subject to the following penalties:

(1) For a first offense:

(a) A revocation of the individual's license for a period of five (5) to ten (10) years;

(b) A fine of up to \$50,000;

(c) The forfeiture of any purse money earned at a licensed association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected, between the time that the specimen was collected and the commission's determination of an actionable finding; and

(d) Any individual who has his or her license revoked for a violation of this administrative regulation shall go before the license review committee before being eligible for a new license.

(2) For a second offense:

(a) Permanent revocation of the individual's license; and

(b) The forfeiture of any purse money earned at a licensed

association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected, between the time that the specimen was collected and the commission's determination of an actionable finding.

(3) Upon a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected shall be barred from racing in Kentucky and placed on the veterinarian's list, 810 KAR 1:018, Section 18, and the steward's list, for a period of 180 days and shall remain barred from racing in Kentucky until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

(4) Upon a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected remains subject to the requirements of subsection (3) of this section upon sale or transfer of the horse to another owner or trainer before the expiration of 180 days; and until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

(5) The penalties established by this administrative regulation shall supersede any set forth in 810 KAR 1:028.

(6) The provisions of 810 KAR 1:018, Section 15, shall apply to this administrative regulation.

(7) The chief state steward and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation.

Section 9. Postrace testing. Nothing contained in this administrative regulation shall be construed to prevent the commission from conducting postrace testing for the substances described in Section 2 of this administrative regulation. In the event of an actionable finding for the presence of any of the substances described in Section 2 of this administrative regulation as a result of postrace testing, the provisions of Sections 7 and 8 of this administrative regulation shall apply.

Section 10. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

ROBERT M. BECK, Jr., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 15, 2010

FILED WITH LRC: December 15, 2010 at noon

CONTACT PERSON: Timothy A. West, Assistant General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West

(I) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates new out of competition sampling and testing procedures that allow the commission to detect the presence of certain substances in a horse that are prohibited by 810 KAR 1:018, but cannot be effectively detected through the existing post-race sampling and testing procedures. The new procedures, which allow the commission to collect specimens from a horse prior to the horse being entered in a race, only apply to the non-therapeutic substances identified in the regulation that have the ability to affect a horse's performance on the racetrack long after they can be detected in the horse's system through post-race sampling and testing.

(b) The necessity of this administrative regulation: This regulation is necessary because the prohibited, non-therapeutic substances identified therein cannot be effectively detected through

the existing post-race sampling and testing procedures. The prohibited substances only remain in a horse's system for a very short period of time. However, their ability to affect a horse's performance can last for weeks or even months. Because their effects far outlast their ability to be detected, these substances are generally administered well in advance of a race and are not detectable through the testing of post-race specimens. Therefore, it is necessary for the commission to be able to collect a specimen from a horse at or close to the time a prohibited substance may have been administered, which, in most cases, is before a horse is even entered in a race. This regulation allows the commission to do exactly that.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." 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. This regulation allows the commission to sample horses in such a way as to effectively restrict or prohibit "the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race," and further allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The commission's current post-race sampling and testing procedures are not adequate to detect the administration of the prohibited substances identified in the regulation. This regulation rectifies that problem by allowing the commission to sample and test a horse at the time and in the manner necessary to detect the presence of those prohibited substances, thus fulfilling its statutory mandate.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes the provision that allows the KHRC to test horses that "may become eligible to race in Kentucky."

(b) The necessity of the amendment to this administrative regulation: This amendment was necessary to make certain that the regulation was not overly broad and did not exceed to scope of the KHRC's jurisdiction.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment aligns the scope of the KHRC's ability to test horses with its jurisdiction, as set forth in KRS 230.260(7).

(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 administrative regulation will affect owners and trainers with horses that are eligible, or that may become eligible, to race in the Commonwealth; the five currently-licensed racing associations offering thoroughbred racing; any training center under the jurisdiction of the commission; jockeys and any other persons who come into contact with horses racing or training in the

Commonwealth; patrons who place pari-mutuel wagers on horse races in the Commonwealth; and the commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The owners and trainers are required to cooperate with the commission in the sampling of horses by locating and identifying any horse designated for testing, making the horse available at a stall or other safe location for the collection of a specimen and witnessing the collection of the specimen.

The licensed racing associations and training centers under the jurisdiction of the commission will be required to cooperate, if necessary, by locating horses to be sampled. As is the case with post-race sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. Jockeys and other licensees that come into contact with horses racing in the Commonwealth will not have any additional responsibilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The commission will not have any out of pocket expenses but will devote employee time toward identifying horses to be tested and collecting specimens for testing. As is the case with post-race sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. As is already the case, owners and trainers will bear any costs associated with the testing of split samples if a primary sample collected from one of their horses tests positive for a prohibited substance and the owner or trainer elects to have a split sample tested.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the entities identified above will benefit from sampling and testing procedures that will allow the commission to detect the presence of the prohibited substances identified in the regulation. The horses, jockeys, and any other individuals who come into contact with horses racing or training in the Commonwealth will benefit because the regulation provides a strong deterrent to putting their health, safety, and welfare at risk through the use of the prohibited substances; The owners and trainers will benefit from the knowledge that they are competing on a level playing field with each other and will be less likely to feel the need to take their horses to race in other jurisdictions; The patrons placing pari-mutuel wagers on horse racing in the Commonwealth will benefit from the knowledge that certain horses cannot gain an advantage over others through the use of prohibited substances; The racing associations and the commission will benefit from increased public confidence in the integrity of horse racing in the Commonwealth; The Commonwealth will benefit from the tax revenue generated when owners and trainers remain in state rather than racing in other jurisdictions and from the tax revenue generated when the betting public wagers their money on races run in Kentucky.

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

(a) Initially: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(b) On a continuing basis: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission will not incur any out of pocket expenses as a result of this regulation. It will compensate employees for the additional time spent on designating horses to be tested and collecting samples from those horses from its general operating budget.

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

fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The regulation does not establish any fees or directly or indirectly increase any fees. However, as is the case with post-race sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. To the extent that these expenses could be characterized as "fees," this regulation will result in an increase in testing and the associations may see a corresponding increase in their expenses.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

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 Horse Racing Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320.

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 commission will not incur any out of pocket expenses but will devote additional employee time toward designating horses for testing and collecting specimens to be tested.

(d) How much will it cost to administer this program for subsequent years? The commission will not incur any out of pocket expenses but will devote additional employee time toward designating horses for testing and collecting specimens to be tested.

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 Kentucky Horse Racing Commission (Amended After Comments)

811 KAR 1:240. Out-of-competition testing.

RELATES TO: KRS 230.215, 230.230, 230.240, 230.260, 230.290, 230.300, 230.310, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain

horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." 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. This administrative regulation establishes new sampling and testing procedures for the prohibited substances identified herein, and establishes penalties for individuals that are found to be in violation of this administrative regulation.

Section 1. Definitions. (1) "Actionable finding" means a determination by the commission that a substance described in Section 2 of this administrative regulation was present in a horse based on the commission's review of a report of finding issued by the commission laboratory and its review of split sample analysis results, or based on the commission's review of a report of finding issued by the commission laboratory for which an owner and trainer have waived their right to have a split sample analysis performed.

(2) "Sample" means that portion of a specimen subjected to testing by the commission laboratory.

(3) "Specimen" means a sample of blood, urine, or other biologic matter taken or drawn from a horse for chemical testing.

Section 2. Prohibited Substances and Practices. (1) The following shall be a violation of this administrative regulation:

(a) The presence in, or administration to, a horse, at any time, of blood doping agents including: erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, or any other substance that enhances the oxygenation of equine body tissue;

(b) The nontherapeutic administration to, a horse, at any time, of whole blood or packed red blood cells;

(c) The presence in, or administration to, a horse, at any time, of naturally produced venoms, synthetic analogues of venoms, derivatives of venoms or synthetic analogues of derivatives of venoms;

(d) The presence in, or administration to, a horse, at any time, of growth hormones;

(e) The possession of erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, naturally produced venoms, synthetic analogues of venoms, derivatives of venoms, synthetic analogues of derivatives of venoms, or growth hormones on the grounds of a licensed association or a training facility under the jurisdiction of the commission; and

(f) The possession at any time of whole blood or packed red blood cells on the grounds of a licensed association or a training facility under the jurisdiction of the commission by anyone other than a licensed veterinarian rendering emergency treatment to a horse located on the grounds of the association or training facility. The attending veterinarian shall notify the commission veterinarian of the intent to administer whole blood or packed red blood cells prior to his or her collection or possession of the whole blood or packed red blood cells.

(2) The use of a hyperbaric oxygen chamber shall not be a violation of this administrative regulation.

Section 3. Out-of-Competition Testing. (1) Any horse eligible to race in Kentucky shall be subject to testing without advance notice for the substances specified in Section 2 of this administrative regulation. A horse is presumed eligible to race in Kentucky if:

(a) It is under the care, custody or control of a trainer licensed by the commission; or

(b) It is owned by an owner licensed by the commission; or

(c) It is nominated to a race at an association licensed pursuant to KRS 230.300; or

(d) It has raced at an association licensed pursuant to KRS 230.300 within the previous twelve (12) calendar months; or

(e) It is stabled on the grounds of an association licensed pursuant to KRS 230.300 or a training facility subject to the jurisdiction of the commission; or

(f) It is nominated to participate in the Kentucky Standardbred Development Fund.

(2) ~~If a horse to be tested is not covered under subsection (1),~~

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~~the executive director or presiding judge may nevertheless designate any horse that may become eligible to race in Kentucky to be tested for the prohibited substances described in Section 2 of this administrative regulation.~~

~~—(3)]~~ Horses may be designated for testing by the executive director, the presiding judge, or their respective designee.

~~(3)[(4)]~~ A horse designated for testing under this section shall be subject to testing for the substances described in Section 2 of this administrative regulation.

~~(4)[(5)]~~ An owner, trainer, or any authorized designee shall fully cooperate with the commission veterinarian, or his or her designee, by:

(a) Locating and identifying any horse designated for out-of-competition testing;

(b) Making the horse available for the collection of the specimen at an agreed upon stall or other safe location; and

(c) Observing the collection of the specimen.

1. If the owner, trainer, or their authorized designee, is not available to observe the collection of the specimen, the collection shall be deferred until the trainer, owner, or their authorized designee, becomes reasonably available, but the collection shall occur no later than six (6) hours after notice of intent to collect a specimen from a horse is received.

2. If the collection does not occur within the time provided for in this subsection, any horse that is designated for testing may be barred from racing in Kentucky and placed on the veterinarian's list, 811 KAR 1:095, Section 18, and the judge's list, for a period of 180 days and the owner and trainer of the horse may be subject to the penalties described in Section 8 of this administrative regulation.

~~(5)[(6)]~~ If the owner, trainer, or any authorized designee fails to cooperate or otherwise prevents a horse from being tested, the horse designated for testing shall be barred from racing in Kentucky and placed on the veterinarian's list, 811 KAR 1:095, Section 18, and the judge's list, for 180 days, and the individual(s) responsible for the failure to cooperate or prevention of the horse from being tested shall be subject to the penalties described in Section 8 of this administrative regulation.

~~(6)[(7)]~~(a) A horse that is barred from racing in Kentucky and placed on the Veterinarian's List and the Judge's List pursuant to subsection (5) or (6) of this section shall remain barred from racing and shall remain on the veterinarian's list and the judge's list upon sale or transfer of the horse to another owner or trainer until the expiration of 180 days; and

(b) Until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the presiding judge.

Section 4. Specimen Collection. (1) A specimen shall be collected from any horse designated by the executive director, the presiding judge, or their designee, whether the horse is located in Kentucky or in another jurisdiction.

(2) When a designated horse is located in another jurisdiction, the executive director or commission veterinarian may select a veterinarian from another racing commission or regulatory entity to collect the specimen.

(3) If specimen collection occurs at a licensed association or training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, may collect a specimen from a horse designated for testing at any time.

(4) If specimen collection occurs at a location other than the grounds of a licensed association or a training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, shall collect the specimen between the hours of 7 a.m. and 6 p.m., prevailing time, and shall notify the owner, trainer or any other person exercising care, custody or control of the horse before arriving to collect the specimen.

(5) A licensed association or training facility under the jurisdiction of the commission at which a horse designated for testing is located shall cooperate fully in the collection of the specimen.

Section 5. Minimum and Split Samples. The commission veterinarian shall determine minimum and split sample requirements as

set forth at 811 KAR 1:090, Section 11.

Section 6. Sample Storage and Testing. (1) Any out of competition sample collected pursuant to this administrative regulation shall be stored in a temperature controlled unit at a secure location chosen by the commission until the sample is submitted for testing. The samples shall be secured under conditions established by the commission veterinarian in accordance with the procedures set forth in 811 KAR 1:090, Section 11.

(2) The commission is the owner of an out of competition specimen.

(3) The sample may be submitted to the commission laboratory for testing on the same date the specimen is collected or on a subsequent date.

(4) A written chain of custody protocol shall be made available to the owner and trainer upon request.

(5) A trainer or owner of a horse receiving notice of a report of finding from the commission may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to a split sample laboratory which has documented its proficiency in detecting the substance associated with the report of finding and has been approved by the commission.

(6) Split samples shall be subject to the provisions and procedures set forth in 811 KAR 1:090, Section 12, and the chain of custody of any split sample shall be maintained in accordance with the procedures set forth in 811 KAR 1:090, Section 13.

(7) The cost of testing the split sample under subsections (5) and (6) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

Section 7. Steps After Actionable Finding or Any Other Violation of This Administrative Regulation. In the event of an actionable finding, or any other violation of this administrative regulation, the following steps shall be taken:

(1)(a) Within five (5) business days of receipt of notification of an actionable finding, the commission shall notify the owner and trainer in writing of the actionable finding and shall schedule a judges' 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 a continuation is necessary to accommodate the parties; and

(b) The commission shall cause the subject horse to be immediately placed on the Veterinarian's List, 811 KAR 1:090, Section 18, and the Judge's List, thereby rendering the horse ineligible to compete, pending the conduct of the hearing described in subsection (1) of this section and the issuance of a judge's order.

(2) Within thirty (30) days of the commission's discovery of any violation of this administrative regulation other than an actionable finding, the commission shall notify the owner and trainer in writing of the violation and shall schedule a judges' 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 a continuation is necessary to accommodate the parties.

Section 8. Penalty. A trainer, owner or any other individual who violates this administrative regulation shall be subject to the following penalties:

(1) For a first offense:

(a) A revocation of the individual's license for a period of five (5) to ten (10) years;

(b) A fine of up to \$50,000;

(c) The forfeiture of any purse money earned at a licensed association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected, between the time that the specimen was collected and the commission's determination of an actionable finding; and

(d) Any individual who has his or her license revoked for a violation of this administrative regulation shall go before the license review committee before being eligible for a new license.

(2) For a second offense:

(a) Permanent revocation of the individual's license; and

(b) The forfeiture of any purse money earned at a licensed association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected,

between the time that the specimen was collected and the commission's determination of an actionable finding.

(3) Upon a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected shall be barred from racing in Kentucky and placed on the veterinarian's list, 811 KAR 1:090, Section 18, and the judge's list, for a period of 180 days and shall remain barred from racing in Kentucky until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the presiding judge.

(4) Upon a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected remains subject to the requirements of subsection (3) of this section upon sale or transfer of the horse to another owner or trainer before the expiration of 180 days; and until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the presiding judge.

(5) The penalties established by this administrative regulation shall supersede any set forth in 811 KAR 1:095.

(6) The provisions of 811 KAR 1:090, Section 15, shall apply to this administrative regulation.

(7) The presiding judge and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation.

Section 9. Postrace Testing. Nothing contained in this administrative regulation shall be construed to prevent the commission from conducting postrace testing for the substances described in Section 2 of this administrative regulation. In the event of an actionable finding for the presence of any of the substances described in Section 2 of this administrative regulation as a result of postrace testing, the provisions of Sections 7 and 8 of this administrative regulation shall apply.

Section 10. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 15, 2010

FILED WITH LRC: December 15, 2010 at noon

CONTACT PERSON: Timothy A. West, Assistant General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West

(I) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates new out of competition sampling and testing procedures that allow the commission to detect the presence of certain substances in a horse that are prohibited by 810 KAR 1:018, but cannot be effectively detected through the existing postrace sampling and testing procedures. The new procedures, which allow the commission to collect specimens from a horse prior to the horse being entered in a race, only apply to the non-therapeutic substances identified in the regulation that have the ability to affect a horse's performance on the racetrack long after they can be detected in the horse's system through post-race sampling and testing.

(b) The necessity of this administrative regulation: This regulation is necessary because the prohibited, non-therapeutic substances identified therein cannot be effectively detected through the existing post-race sampling and testing procedures. The prohibited substances only remain in a horse's system for a very short period of time. However, their ability to affect a horse's performance

can last for weeks or even months. Because their effects far outlast their ability to be detected, these substances are generally administered well in advance of a race and are not detectable through the testing of post-race specimens. Therefore, it is necessary for the commission to be able to collect a specimen from a horse at or close to the time a prohibited substance may have been administered, which, in most cases, is before a horse is even entered in a race. This regulation allows the commission to do exactly that.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." 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. This regulation allows the commission to sample horses in such a way as to effectively restrict or prohibit "the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race," and further allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The commission's current post-race sampling and testing procedures are not adequate to detect the administration of the prohibited substances identified in the regulation. This regulation rectifies that problem by allowing the commission to sample and test a horse at the time and in the manner necessary to detect the presence of those prohibited substances, thus fulfilling its statutory mandate.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes the provision that allows the KHRC to test horses that "may become eligible to race in Kentucky."

(b) The necessity of the amendment to this administrative regulation: This amendment was necessary to make certain that the regulation was not overly broad and did not exceed to scope of the KHRC's jurisdiction.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment aligns the scope of the KHRC's ability to test horses with its jurisdiction, as set forth in KRS 230.260(7).

(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 administrative regulation will affect owners and trainers with horses that are eligible, or that may become eligible, to race in the Commonwealth; the five currently-licensed racing associations offering thoroughbred racing; any training center under the jurisdiction of the commission; jockeys and any other persons who come into contact with horses racing or training in the Commonwealth; patrons who place pari-mutuel wagers on horse races in the Commonwealth; and the commission.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The owners and trainers are required to cooperate with the commission in the sampling of horses by locating and identifying any horse designated for testing, making the horse available at a stall or other safe location for the collection of a specimen and witnessing the collection of the specimen.

The licensed racing associations and training centers under the jurisdiction of the commission will be required to cooperate, if necessary, by locating horses to be sampled. As is the case with post-race sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. Jockeys and other licensees that come into contact with horses racing in the Commonwealth will not have any additional responsibilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The commission will not have any out of pocket expenses but will devote employee time toward identifying horses to be tested and collecting specimens for testing. As is the case with post-race sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. As is already the case, owners and trainers will bear any costs associated with the testing of split samples if a primary sample collected from one of their horses tests positive for a prohibited substance and the owner or trainer elects to have a split sample tested.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the entities identified above will benefit from sampling and testing procedures that will allow the commission to detect the presence of the prohibited substances identified in the regulation. The horses, jockeys, and any other individuals who come into contact with horses racing or training in the Commonwealth will benefit because the regulation provides a strong deterrent to putting their health, safety, and welfare at risk through the use of the prohibited substances; The owners and trainers will benefit from the knowledge that they are competing on a level playing field with each other and will be less likely to feel the need to take their horses to race in other jurisdictions; The patrons placing pari-mutuel wagers on horse racing in the Commonwealth will benefit from the knowledge that certain horses cannot gain an advantage over others through the use of prohibited substances; The racing associations and the commission will benefit from increased public confidence in the integrity of horse racing in the Commonwealth; The Commonwealth will benefit from the tax revenue generated when owners and trainers remain in state rather than racing in other jurisdictions and from the tax revenue generated when the betting public wagers their money on races run in Kentucky.

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

(a) Initially: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(b) On a continuing basis: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission will not incur any out of pocket expenses as a result of this regulation. It will compensate employees for the additional time spent on designating horses to be tested and collecting samples from those horses from its general operating budget.

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

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

regulation does not establish any fees or directly or indirectly increase any fees. However, as is the case with post-race sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. To the extent that these expenses could be characterized as "fees," this regulation will result in an increase in testing and the associations may see a corresponding increase in their expenses.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

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 Horse Racing Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320.

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 commission will not incur any out of pocket expenses but will devote additional employee time toward designating horses for testing and collecting specimens to be tested.

(d) How much will it cost to administer this program for subsequent years? The commission will not incur any out of pocket expenses but will devote additional employee time toward designating horses for testing and collecting specimens to be tested.

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 Kentucky Horse Racing Commission (Amended After Comments)

811 KAR 2:150. Out-of-competition testing.

RELATES TO: KRS 230.215, 230.230, 230.240, 230.260, 230.290, 230.300, 230.310, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which quarter horse, appaloosa, and Arabian racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of

complete honesty and integrity of horse racing in the Commonwealth." 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. This administrative regulation establishes new sampling and testing procedures for the prohibited substances identified herein, and establishes penalties for individuals that are found to be in violation of this administrative regulation.

Section 1. Definitions. (1) "Actionable finding" means a determination by the commission that a substance described in Section 2 of this administrative regulation was present in a horse based on the commission's review of a report of finding issued by the commission laboratory and its review of split sample analysis results, or based on the commission's review of a report of finding issued by the commission laboratory for which an owner and trainer have waived their right to have a split sample analysis performed.

(2) "Sample" means that portion of a specimen subjected to testing by the commission laboratory.

(3) "Specimen" means a sample of blood, urine, or other biologic matter taken or drawn from a horse for chemical testing.

Section 2. Prohibited Substances and Practices. (1) The following shall be a violation of this administrative regulation:

(a) The presence in, or administration to, a horse, at any time, of blood doping agents including: erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, or any other substance that enhances the oxygenation of equine body tissue;

(b) The nontherapeutic administration to, a horse, at any time, of whole blood or packed red blood cells;

(c) The presence in, or administration to, a horse, at any time, of naturally produced venoms, synthetic analogues of venoms, derivatives of venoms or synthetic analogues of derivatives of venoms;

(d) The presence in, or administration to, a horse, at any time, of growth hormones;

(e) The possession of erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, naturally produced venoms, synthetic analogues of venoms, derivatives of venoms, synthetic analogues of derivatives of venoms, or growth hormones on the grounds of a licensed association or a training facility under the jurisdiction of the commission; and

(f) The possession at any time of whole blood or packed red blood cells on the grounds of a licensed association or a training facility under the jurisdiction of the commission by anyone other than a licensed veterinarian rendering emergency treatment to a horse located on the grounds of the association or training facility. The attending veterinarian shall notify the commission veterinarian of the intent to administer whole blood or packed red blood cells prior to his or her collection or possession of the whole blood or packed red blood cells.

(2) The use of a hyperbaric oxygen chamber shall not be a violation of this administrative regulation.

Section 3. Out-of-competition Testing. (1) Any horse eligible to race in Kentucky shall be subject to testing without advance notice for the substances specified in Section 2 of this administrative regulation. A horse is presumed eligible to race in Kentucky if:

(a) It is under the care, custody or control of a trainer licensed by the commission; or

(b) It is owned by an owner licensed by the commission; or

(c) It is nominated to a race at an association licensed pursuant to KRS 230.300; or

(d) It has raced at an association licensed pursuant to KRS 230.300 within the previous twelve (12) calendar months; or

(e) It is stabled on the grounds of an association licensed pursuant to KRS 230.300 or a training facility subject to the jurisdiction of the commission; or

(f) It is nominated to participate in the Kentucky Quarter Horse, Appaloosa, and Arabian Development Fund.

~~(2) If a horse to be tested is not covered under subsection (1) of this section, the executive director or chief state steward may nevertheless designate any horse that may become eligible to race~~

~~in Kentucky to be tested for the prohibited substances described in Section 2 of this administrative regulation.~~

~~(3)~~ Horses may be designated for testing by the executive director, the chief state steward, or their respective designee.

~~(3) [(4)]~~ A horse designated for testing under this section shall be subject to testing for the substances described in Section 2 of this administrative regulation.

~~(4) [(5)]~~ An owner, trainer, or any authorized designee shall fully cooperate with the commission veterinarian, or his or her designee, by:

(a) Locating and identifying any horse designated for out-of-competition testing;

(b) Making the horse available for the collection of the specimen at an agreed upon stall or other safe location; and

(c) Observing the collection of the specimen.

1. If the owner, trainer or their authorized designee, is not available to observe the collection of the specimen, the collection shall be deferred until the trainer, owner, or their authorized designee, becomes reasonably available, but the collection shall occur no later than six (6) hours after notice of intent to collect a specimen from a horse is received.

2. If the collection does not occur within the time provided for in this subsection, any horse that is designated for testing may be barred from racing in Kentucky and placed on the veterinarian's list and the steward's list, for a period of 180 days and the owner and trainer of the horse may be subject to the penalties described in Section 8 of this administrative regulation.

~~(5) [(6)]~~ If the owner, trainer, or any authorized designee fails to cooperate or otherwise prevents a horse from being tested, the horse designated for testing shall be barred from racing in Kentucky and placed on the veterinarian's list and the steward's list, for 180 days, and the individual(s) responsible for the failure to cooperate or prevention of the horse from being tested shall be subject to the penalties described in Section 8 of this administrative regulation.

~~(6) [(7)]~~ (a) A horse that is barred from racing in Kentucky and placed on the veterinarian's list and the steward's list pursuant to subsection (5) or (6) of this section shall remain barred from racing and shall remain on the veterinarian's list and the steward's list upon sale or transfer of the horse to another owner or trainer until the expiration of 180 days; and

(b) Until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

Section 4. Specimen Collection. (1) A specimen shall be collected from any horse designated by the executive director, the chief state steward, or their designee, whether the horse is located in Kentucky or in another jurisdiction.

(2) When a designated horse is located in another jurisdiction, the executive director or commission veterinarian may select a veterinarian from another racing commission or regulatory entity to collect the specimen.

(3) If specimen collection occurs at a licensed association or training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, may collect a specimen from a horse designated for testing at any time.

(4) If specimen collection occurs at a location other than the grounds of a licensed association or a training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, shall collect the specimen between the hours of 7 a.m. and 6 p.m., prevailing time, and shall notify the owner, trainer or any other person exercising care, custody or control of the horse before arriving to collect the specimen.

(5) A licensed association or training facility under the jurisdiction of the commission at which a horse designated for testing is located shall cooperate fully in the collection of the specimen.

Section 5. Minimum and Split Samples. The commission veterinarian shall determine minimum and split sample requirements as set forth at 810 KAR 1:018, Section 11(2).

Section 6. Sample Storage and Testing. (1) Any out of compe-

tion sample collected pursuant to this administrative regulation shall be stored in a temperature controlled unit at a secure location chosen by the commission until the sample is submitted for testing. The samples shall be secured under conditions established by the commission veterinarian in accordance with the procedures set forth in 810 KAR 1:018, Section 12(1).

(2) The commission is the owner of an out of competition specimen.

(3) The sample may be submitted to the commission laboratory for testing on the same date the specimen is collected or on a subsequent date.

(4) A written chain of custody protocol shall be made available to the owner and trainer upon request.

(5) A trainer or owner of a horse receiving notice of a report of finding from the commission may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to a split sample laboratory which has documented its proficiency in detecting the substance associated with the report of finding and has been approved by the commission.

(6) Split samples shall be subject to the provisions and procedures set forth in 810 KAR 1:018, Section 12, and the chain of custody of any split sample shall be maintained in accordance with the procedures set forth in 810 KAR 1:018, Section 13.

(7) The cost of testing the split sample under subsections (5) and (6) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

Section 7. Steps After Actionable Finding or Any Other Violation of This Administrative Regulation. In the event of an actionable finding, or any other violation of this administrative regulation, the following steps shall be taken:

(1)(a) Within five (5) business days of receipt of notification of an actionable finding, the commission shall notify the owner and trainer in writing of the actionable finding and shall schedule a stewards' hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to accommodate the parties; and

(b) The commission shall cause the subject horse to be immediately placed on the veterinarian's list, 810 KAR 1:018, Section 18, and the steward's list, thereby rendering the horse ineligible to compete, pending the conduct of the hearing described in subsection (1) of this section and the issuance of a steward's order.

(2) Within thirty (30) days of the commission's discovery of any violation of this administrative regulation other than an actionable finding, the commission shall notify the owner and trainer in writing of the violation and shall schedule a stewards' hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to accommodate the parties.

Section 8. Penalty. A trainer, owner or any other individual who violates this administrative regulation shall be subject to the following penalties:

(1) For a first offense:

(a) A revocation of the individual's license for a period of five (5) to ten (10) years;

(b) A fine of up to \$50,000;

(c) The forfeiture of any purse money earned at a licensed association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected, between the time that the specimen was collected and the commission's determination of an actionable finding; and

(d) Any individual who has his or her license revoked for a violation of this administrative regulation shall go before the license review committee before being eligible for a new license.

(2) For a second offense:

(a) Permanent revocation of the individual's license; and

(b) The forfeiture of any purse money earned at a licensed association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected, between the time that the specimen was collected and the commission's determination of an actionable finding.

(3) Upon a violation of this administrative regulation, the horse

in which the presence of a substance described in Section 2 of this administrative regulation was detected shall be barred from racing in Kentucky and placed on the Veterinarian's List and the Steward's List, for a period of 180 days and shall remain barred from racing in Kentucky until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

(4) Upon a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected remains subject to the requirements of subsection (3) of this section upon sale or transfer of the horse to another owner or trainer before the expiration of 180 days; and until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

(5) The penalties established by this administrative regulation shall supersede any set forth in 811 KAR 2:100 and 810 KAR 1:028.

(6) The provisions of 810 KAR 1:018, Section 15, shall apply to this administrative regulation.

(7) The chief state steward and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation.

Section 9. Postrace Testing. Nothing contained in this administrative regulation shall be construed to prevent the commission from conducting postrace testing for the substances described in Section 2 of this administrative regulation. In the event of an actionable finding for the presence of any of the substances described in Section 2 of this administrative regulation as a result of postrace testing, the provisions of Sections 7 and 8 of this administrative regulation shall apply.

Section 10. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 15, 2010

FILED WITH LRC: December 15, 2010 at noon

CONTACT PERSON: Timothy A. West, Assistant General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West

(I) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates new out of competition sampling and testing procedures that allow the commission to detect the presence of certain substances in a horse that are prohibited by 810 KAR 1:018, but cannot be effectively detected through the existing post-race sampling and testing procedures. The new procedures, which allow the commission to collect specimens from a horse prior to the horse being entered in a race, only apply to the non-therapeutic substances identified in the regulation that have the ability to affect a horse's performance on the racetrack long after they can be detected in the horse's system through post-race sampling and testing.

(b) The necessity of this administrative regulation: This regulation is necessary because the prohibited, non-therapeutic substances identified therein cannot be effectively detected through the existing post-race sampling and testing procedures. The prohibited substances only remain in a horse's system for a very short period of time. However, their ability to affect a horse's performance can last for weeks or even months. Because their effects far outlast their ability to be detected, these substances are gener-

ally administered well in advance of a race and are not detectable through the testing of post-race specimens. Therefore, it is necessary for the commission to be able to collect a specimen from a horse at or close to the time a prohibited substance may have been administered, which, in most cases, is before a horse is even entered in a race. This regulation allows the commission to do exactly that.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which quarter horse, appaloosa, and arabian racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." 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.

This regulation allows the commission to sample horses in such a way as to effectively restrict or prohibit "the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race," and further allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The commission's current post-race sampling and testing procedures are not adequate to detect the administration of the prohibited substances identified in the regulation. This regulation rectifies that problem by allowing the commission to sample and test a horse at the time and in the manner necessary to detect the presence of those prohibited substances, thus fulfilling its statutory mandate.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes the provision that allows the KHRC to test horses that "may become eligible to race in Kentucky."

(b) The necessity of the amendment to this administrative regulation: This amendment was necessary to make certain that the regulation was not overly broad and did not exceed to scope of the KHRC's jurisdiction.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment aligns the scope of the KHRC's ability to test horses with its jurisdiction, as set forth in KRS 230.260(7).

(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 administrative regulation will affect owners and trainers with horses that are eligible, or that may become eligible, to race in the Commonwealth; the currently-licensed racing associations offering quarter horse, appaloosa, and Arabian racing; any training center under the jurisdiction of the commission; jockeys and any other persons who come into contact with horses racing or training in the Commonwealth; patrons who place pari-mutuel wagers on horse races in the Commonwealth; and the commission.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative

regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The owners and trainers are required to cooperate with the commission in the sampling of horses by locating and identifying any horse designated for testing, making the horse available at a stall or other safe location for the collection of a specimen and witnessing the collection of the specimen.

The licensed racing associations and training centers under the jurisdiction of the commission will be required to cooperate, if necessary, by locating horses to be sampled. As is the case with post-race sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. Jockeys and other licensees that come into contact with horses racing in the Commonwealth will not have any additional responsibilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The commission will not have any out of pocket expenses but will devote employee time toward identifying horses to be tested and collecting specimens for testing.

As is the case with post-race sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens.

As is already the case, owners and trainers will bear any costs associated with the testing of split samples if a primary sample collected from one of their horses tests positive for a prohibited substance and the owner or trainer elects to have a split sample tested.

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

Each of the entities identified above will benefit from sampling and testing procedures that will allow the commission to detect the presence of the prohibited substances identified in the regulation.

The horses, jockeys, and any other individuals who come into contact with horses racing or training in the Commonwealth will benefit because the regulation provides a strong deterrent to putting their health, safety, and welfare at risk through the use of the prohibited substances;

The owners and trainers will benefit from the knowledge that they are competing on a level playing field with each other and will be less likely to feel the need to take their horses to race in other jurisdictions;

The patrons placing pari-mutuel wagers on horse racing in the Commonwealth will benefit from the knowledge that certain horses cannot gain an advantage over others through the use of prohibited substances;

The racing associations and the commission will benefit from increased public confidence in the integrity of horse racing in the Commonwealth;

The Commonwealth will benefit from the tax revenue generated when owners and trainers remain in state rather than racing in other jurisdictions and from the tax revenue generated when the betting public wagers their money on races run in Kentucky.

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

(a) Initially: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(b) On a continuing basis: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission will not incur any out of pocket expenses as a result of this regulation. It will compensate employees for the additional time spent on designating horses to be tested and collecting samples from those horses from its general operating budget.

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

fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The regulation does not establish any fees or directly or indirectly increase any fees. However, as is the case with post-race sampling and testing, and as set forth in KRS 230.240, the racing associations will continue to pay the cost of testing the specimens. To the extent that these expenses could be characterized as "fees," this regulation will result in an increase in testing and the associations may see a corresponding increase in their expenses.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

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 Horse Racing Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320.

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 commission will not incur any out of pocket expenses but will devote additional employee time toward designating horses for testing and collecting specimens to be tested.

(d) How much will it cost to administer this program for subsequent years? The commission will not incur any out of pocket expenses but will devote additional employee time toward designating horses for testing and collecting specimens to be tested.

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 (Amended After Comments)

815 KAR 7:120. Kentucky Building Code.

RELATES TO: KRS 132.010(9), (10), 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990, 227.300, 227.550(7)[~~EO 2009-535~~]

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050[~~EO 2009-535~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform statewide building code, based on a model code, which establishes standards for construction of buildings in the state. [~~EO 2009-535, effective June 12, 2009, 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 Kentucky Building Code's general provisions.

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

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

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

(4) "Farm" means property:

(a) Located outside the corporate limits of a municipality on at least ten (10) acres;

(b) Used for purposes set forth in the definitions of "agricultural land" and "horticultural land", established in KRS 132.010(9) and (10), respectively; and

(c) Qualified by and registered with the property valuation administrator in that county.

(5) "Fire Code Official" means the State Fire Marshal, fire chief, or other enforcement officer designated by the appointing authority of the jurisdiction for the enforcement of the provisions of KRS 227.300 and the Kentucky Standards of Safety as established in 815 KAR 10:060.

(6) "Industrialized building system" or "building system" is defined by KRS 198B.010(16).

(7) "KBC" means the Kentucky Building Code as established in this administrative regulation.

(8) "Kentucky Residential Code" means the International Residential Code, 2006, as amended for application in Kentucky by 815 KAR 7:125.

(9) "Kentucky Standards of Safety" means the requirements established in 815 KAR 10:060, which serve as the fire prevention code for existing buildings as well as a supplement to this code.

(10) "Manufactured home" is defined by KRS 227.550(7).

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

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

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

(14) "Single-family dwelling" or "one (1) family dwelling" means a single unit which:

(a) Provides complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation; and

(b) Shall not be connected to any other unit or building.

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

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

Section 2. Administration and Enforcement of the Building Code. (1) Notwithstanding the requirements of the International Building Code 2006, the Kentucky changes established in the 2007 Kentucky Building Code shall be mandatory and shall supersede any conflicting provision of the international code.

(2)(a) Except as provided in paragraph (b) of this subsection and as superseded by the provisions of this administrative regulation and the 2007 Kentucky Building Code, the International Building Code 2006, shall be the mandatory state building code for Kentucky for all buildings.

(b) One (1) and two (2) family dwellings and townhouses shall be governed by 815 KAR 7:125.

Section 3. State Plan Review and Inspection Fees. The fees required by this section shall apply for plan review and inspection by the office.

(1) Fast track elective.

(a) A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table 121.3.1 in subsection (3) of this section, plus an additional fifty (50) percent of the basic plan review or inspection fee.

(b) The additional fifty (50) percent fee shall not be less than \$400 and not more than \$3,000.

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- (c) The entire fee shall be paid with the initial plan submission.
- (2) New buildings.
- (a) The office's inspection fees shall be calculated by:
 - 1. Multiplying the total building area under construction by the cost per square foot of each occupancy type as listed in subsection (3) of this section; and
 - 2. Computing the square footage by the outside dimensions of the building.
- (b) The fee for buildings with multiple or mixed occupancies shall be calculated using the cost per square foot multiplier of the predominant use.
- (3) Table 121.3.1, Basic Office Fee Schedule. The basic plan review or inspection fee shall be:
 - (a) Assembly occupancies, fourteen (14) cents;
 - (b) Business occupancies, thirteen (13) cents;
 - (c) Day care centers, thirteen (13) cents;
 - (d) Educational occupancies, thirteen (13) cents;
 - (e) High hazard occupancies, twelve (12) cents;
 - (f) Industrial factories, twelve (12) cents;
 - (g) Institutional occupancies, fourteen (14) cents;
 - (h) Mercantile occupancies, thirteen (13) cents;
 - (i) Residential occupancies, thirteen (13) cents;
 - (j) Storage, eleven (11) cents; or
 - (k) Utility and miscellaneous, eleven (11) cents.
- (4) Additions to existing buildings.
- (a) Plan review fees for additions to existing buildings, which shall not require the entire building to conform to the Kentucky Building Code, shall be calculated in accordance with the schedule listed in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition.
- (b) The minimum fee for review of plans under this subsection shall be \$250.
- (5) Change in use.
- (a) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule listed in subsection (3) of this section by using the total square footage of the entire building or structure under the new occupancy type as determined by the outside dimensions.
- (b) The minimum fee for review of plans under this subsection shall be \$250.
- (6) Alterations and repairs.
- (a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by using the lower result of:
 - 1. Multiplying the cost for the alterations or repairs by 0.0025; or
 - 2. Multiplying the total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.
- (b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.
- (c) The minimum fee for review of plans under this subsection shall be \$275.
- (7) Specialized fees. In addition to the fees listed in subsections (1) through (6) of this section, the following fees shall be applied for the specialized plan reviews listed in this subsection:
 - (a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule:
 - 1. An inspection of four (4) through twenty-five (25) sprinklers shall be a fee of \$150;
 - 2. An inspection of twenty-six (26) through 100 sprinklers shall be a fee of \$200;
 - 3. An inspection of 101 through 200 sprinklers shall be a fee of \$250;
 - 4. An inspection of 201 through 300 sprinklers shall be a fee of \$275;
 - 5. An inspection of 301 through 400 sprinklers shall be a fee of \$325;
 - 6. An inspection of 401 through 750 sprinklers shall be a fee of \$375; and
 - 7. An inspection of over 750 sprinklers shall be a fee of \$375 plus thirty (30) cents per sprinkler over 750.
 - (b) Fire detection system review fee:

- 1. Zero to 20,000 square feet shall be \$275; and
- 2. Over 20,000 square feet shall be \$275 plus thirty (30) dollars for each additional 10,000 square feet in excess of 20,000 square feet.
- (c) The standpipe plan review fee shall be \$275. The combination stand pipe and riser plans shall be reviewed under the automatic sprinkler review fee schedule.
- (d) Carbon dioxide suppression system review fee:
 - 1. One (1) through 200 pounds of agent shall be \$275; and
 - 2. Over 200 pounds of agent shall be \$275 plus five (5) cents per pound in excess of 200 pounds.
- (e) Clean agent suppression system review fee:
 - 1.a. Up to thirty-five (35) pounds of agent shall be \$275;
 - b. Over thirty-five (35) pounds shall be \$275 plus ten (10) cents per pound in excess of thirty-five (35) pounds.
 - 2. The fee for gaseous systems shall be ten (10) cents per cubic foot and not less than \$150.
- (f) Foam suppression system review fee.
 - 1. The fee for review of a foam suppression system shall be fifty (50) cents per gallon of foam concentrate if the system is not part of an automatic sprinkler system.
 - 2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed under the automatic sprinkler review fee schedule.
 - 3. The fee for review of plans under subparagraph 1 of this paragraph shall not be less than \$275 or more than \$1,500.
- (g) The commercial range hood review fee shall be \$225 per hood.
- (h) Dry chemical systems review fee (except range hoods). The fee for review of:
 - 1. One (1) through thirty (30) pounds of agent shall be \$275; and
 - 2. Over thirty (30) pounds of agent shall be \$275 plus twenty-five (25) cents per pound in excess of thirty (30) pounds.
- (i) The flammable, combustible liquids or gases, and hazardous materials plan review fee shall be \$100 for the first tank, plus fifty (50) dollars for each additional tank and \$100 per piping system including valves, fill pipes, vents, leak detection, spill and overfill detection, cathodic protection, or associated components.
- (j) Boiler and unfired pressure vessel fees. Plan review fees of boiler and unfired pressure vessel installations shall be in accordance with 815 KAR 15:027.

Section 4. General. All plans shall be designed and submitted to conform to this administrative regulation.

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

- (a) "International Building Code, 2006", First Edition, International Code Council, Inc.; and
 - (b) "2007 Kentucky Building Code", Ninth Edition, 2007, revised ~~December 2010~~~~September 2010~~~~March 2010~~.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD MOLONEY, Chair
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 14, 2010

FILED WITH LRC: December 14, 2010 at 2 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the uniform Kentucky Building Code as required pursuant to KRS 198B.050.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to adopt the Kentucky Building Code as required pursuant to KRS 198B.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation utilizes the International Building Code as the basis for construction standards and allows the Board of Housing, Buildings and Construction to make amendments unique to Kentucky after due consideration of equivalent safety measures as required by KRS 198B.050.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth standards authorized by the statute for the enforcement of the building code, incorporating all applicable laws into its processes.

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

(a) How the amendment will change this existing administrative regulation: Amends the Kentucky Building Code, Chapter 9, and adds a new section, Section 914 to require carbon monoxide alarms be installed in new construction; Chapter, 10, Section 1025, discontinuous handrails to improve safety and prevent injuries; and Chapter 35, Referenced Standards, to update the International Energy Conservation Code from the 2006 edition to the 2009 edition.

(b) The necessity of the amendment to this administrative regulation: To implement code changes approved by the Board of Housing, Buildings and Construction on February 18, 2010 and August 19, 2010.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 198B mandates the Board of Housing, Buildings and Construction to establish a uniform Kentucky Building Code. These amendments were approved by the Board to update and amend the current 2007 Kentucky Building Code.

(d) How the amendment will assist in the effective administration of the statutes: These amendments to the Kentucky Building Code are intended to enhance public safety and to allow the construction industry to utilize an updated version of the International Energy Conservation Code.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Construction projects subject to the Kentucky Building Code will be affected by the amendments to this regulation; architects; engineers; contractors; project managers; businesses; and local government.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The identified entities must comply with the new amendments to the building code.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Carbon monoxide alarms, discontinuous rails and the energy code adoption will be based upon the number of the units and the size of the structure constructed. Therefore, the total cost to the builder/contractor will depend upon the size of the project.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include enhanced safety features and enhanced energy savings.

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

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments are anticipated to result in no additional costs to the agency.

(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 amend-

ments will not necessitate an increase in fees or require funding to the Department for implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no establishment of fees. Any costs resulting from these administrative amendments will be borne by the builder and owners.

(9) TIERING: Is tiering applied? Tiering is not applied as all builders, contractors and owners will be subject to the amended 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 of Housing, Buildings and Construction, Building Codes Enforcement, Local Jurisdiction Inspection Programs, Contractors, Builders, Construction Trade Licensees and Owners.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 198B.040(7) and 198B.050.

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

(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 regulatory amendments are not anticipated to generate additional revenues for the agency.

(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 regulatory amendments are not anticipated to generate additional revenues for the agency.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer these regulatory amendments.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer these regulatory amendments.

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 (Amended After Comments)

815 KAR 7:125. Kentucky Residential Code.

RELATES TO: KRS 132.010(9), (10), 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990, 227.550(7) [~~EO 2009-535~~]

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050 [~~EO 2009-535~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform state building code, based on a model code, which establishes standards for construction of buildings in the state. [~~EO 2009-535, effective June 12, 2009, 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 administra-

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tive regulation establishes the basic mandatory uniform statewide code provisions relating to construction of one(1) and two(2) family dwellings and townhouses.

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

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

(3) "Commissioner" means the commissioner of the Department of Housing, Buildings, and Construction.

(4) "Department" means the Department of Housing, Building, and Construction.

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

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

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

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

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

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

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

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

(2) Exceptions.

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

(b) All residential occupancies which are not single-family, two-family, or townhouses shall comply with the International Building Code for one (1) and two (2) Family Dwellings, 2006, and the 2007 Kentucky Building Code.

(3) The International Residential Code for one (1) and two (2) Family Dwellings, 2006, shall be amended as established in the 2007 Kentucky Residential Code.

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

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

(a) "International Residential Code for One(1)- and Two(2)-Family Dwellings, 2006", International Code Council, Inc., February 2006; and

(b) "2007 Kentucky Residential Code", August 2008, revised ~~December 2010~~~~[September 2010]~~~~[October 2009]~~.

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

RICHARD MOLONEY, Chair
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 14, 2010

FILED WITH LRC: December 14, 2010 at 2 p.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502)

573-0394 Ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dawn M. Bellis

(1) Provide a brief summary of:

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

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

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

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

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

(a) How the amendment will change this existing administrative regulation: This amendment will incorporate a new section, R325, to Chapter 3 of the 2007 Kentucky Residential Code, requiring installation of carbon monoxide alarms in new construction.

(b) The necessity of the amendment to this regulation: The amendment is necessary to implement a legislative request to enhance the safety in new construction by installing a carbon monoxide alarm outside each separate sleeping area in the immediate vicinity of the bedrooms in dwelling units with fuel-fired appliances and in dwelling units that have attached garages.

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

(d) How the amendment will assist in the effective administration of the statutes: Will provide the amendment to the 2007 Kentucky Residential Code approved by the Board of Housing, Buildings and Construction on August 19, 2010.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Home builders and purchasers. Local governments that elect to have a building inspection program for single family dwellings 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 comply with this administrative regulation or amendment: The referenced entities will have to conform to the new code requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The new code will require that carbon monoxide alarms be installed in new construction. Increased construction costs will depend upon the size of the building and should be modest.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The carbon monoxide alarms will result in safer homes being built.

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

(a) Initially: No additional implementation costs are expected.

(b) On a continuing basis: No additional implementation costs are expected.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No in-

creases in fees are provided by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied. Tiering is not applied as the code would be enforced for all new construction.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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 regulatory amendment will generate no additional revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulatory amendment will generate no additional revenues.

(c) How much will it cost to administer this program for the first year? This regulatory amendment will result in no additional costs.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amended After Comments)

902 KAR 20:410. Specialty intermediate care clinics.

RELATES TO: KRS 216B.010-216B.131, 216B.990

STATUTORY AUTHORITY: 216B.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation provides minimum licensure requirements for the operation of specialty intermediate care clinics.

Section 1. Definitions. (1) "Clinic" or "specialty intermediate care (IC) clinic" means a clinic located on the grounds of a state-owned facility licensed pursuant to 902 KAR 20:086 as an intermediate-care facility for the intellectually and developmentally disabled.

(2) "Developmental disability" is defined by 42 U.S.C. 15002(8)(A) as a severe, chronic disability of an individual that:

(a) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b) Is manifested before the individual attains age twenty-two (22);

(c) Is likely to continue indefinitely;

(d) Results in substantial functional limitations in three (3) or

more areas of major life activity, including:

1. Self-care;
2. Receptive and expressive language;
3. Learning;
4. Mobility;
5. Self direction;
6. Capacity for independent living; or
7. Economic self-sufficiency; and

(e) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(3) "Intellectual disability" 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.

(4) "Patient" means an individual who receives services provided by a specialty IC clinic and who:

(a) Is not a resident of, but qualifies for admission to an intermediate-care facility for the intellectually and developmentally disabled by meeting the patient status criteria established in 907 KAR 1:022, Section 4; or

(b) Is a resident of an intermediate-care facility for the intellectually and developmentally disabled which contracts with, or makes arrangements with the specialty IC clinic for outpatient services.

Section 2. Licensure Application and Fee. (1) An applicant for licensure as a specialty IC clinic shall complete and submit to the Office of the Inspector General an Application for License to Operate a Health Facility or Service, pursuant to 902 KAR 20:008, Section 2(1)(f).

(2) The initial and annual fee for licensure as a specialty clinic shall be \$500.

Section 3. Scope of Operations and Services. (1) Services provided by a specialty IC clinic shall be individualized to meet the treatment needs of each of the specialty IC clinic's patients. Patients may receive one (1) or more of the following services from the clinic:

- (a) Dental services;
- (b) Psychiatric services;
- (c) Psychological services;
- (d) Psychotropic medication management;
- (e) Neurology;
- (f) Epileptology;
- (g) Preventive health care;
- (h) Medical assessment and treatment;
- (i) Occupational therapy;
- (j) Physical therapy;
- (k) Speech therapy;
- (l) Nutritional or dietary consultation;
- (m) Mobility evaluation or treatment;
- (n) Behavioral support services;
- (o) Audiology;
- (p) Ophthalmology;
- (q) Pharmacy;
- (r) Medication consultation;
- (s) Medication management;
- (t) Seizure management;
- (u) Behavioral support services;
- (v) Diagnostic services;
- (w) Clinical laboratory services;
- (x) Physician services; or

(y) Laboratory services.

(2) Off-site services.

(a) Specialty IC clinic personnel as identified in Section 5(4) of this administrative regulation may provide services off-site at a local health department or in a health facility licensed under 902 KAR Chapter 20 if the specialty IC clinic has an agreement to provide the off-site services at the health department or licensed health facility's location for the purpose of improving patient accessibility or accommodating the patient's individualized healthcare needs.

(b) A psychologist, psychiatrist, behavior specialist, or board certified behavior analyst directly employed by, or under contract with a specialty IC clinic, may provide behavioral assessments or consultation off-site:

1. In a patient's home; or
2. At a day service or other service site where the patient receives services.

Section 4. Administration and Policies. (1) The licensee shall have legal responsibility for the specialty IC clinic, including responsibility for ensuring compliance with federal, state, and local laws and regulations pertaining to the operation of the clinic.

(2) The licensee shall establish lines of authority and designate an administrator who shall be principally responsible for the daily operation of the specialty IC clinic.

(3) A specialty IC clinic shall establish and follow written administrative policies covering all aspects of operation, including:

- (a) A description of organizational structure, staffing, and allocation of responsibility and accountability;
 - (b) Policies and procedures for the guidance and control of personnel performances;
 - (c) A written program narrative describing in detail the:
 1. Services offered;
 2. Methods and protocols for service delivery;
 3. Qualifications of personnel involved in the delivery of the services; and
 4. Goals of the service;
 - (d) A description of how administrative and patient care records and reports are maintained; and
 - (e) Procedures to be followed in the event the clinic performs any functions related to the storage, handling, and administration of drugs and biologicals.
- (4) Patient Care Policies. A specialty IC clinic shall develop patient care policies which address:
- (a) A description of the services the clinic provides directly and those provided through agreement.
 - (b) Guidelines for the medical management of health problems which include the conditions requiring medical consultation or patient referral; and
 - (c) Procedures for the annual review and evaluation of the services provided by the clinic.

Section 5. Personnel. (1)(a) A specialty IC clinic shall have a medical director who is a licensed physician.

(b) The specialty IC clinic's medical director shall:

1. Be responsible for all medical aspects of the clinic and provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311;
2. Provide medical direction, supervision, and consultation to the staff;
3. In conjunction with the registered nurse described in subsection (2) of this section, participate in the development, execution, and periodic review of the clinic's written policies and services;
4. Periodically review the clinic's patient records, provide medical orders, and provide medical care services to patients of the clinic;
5. Be present for weekly consultation, or delegate responsibility for weekly consultation to another physician employed by, or under contract with the specialty IC clinic if a temporary absence is necessary; and
6. Be available within one (1) hour through direct telecommunication for consultation, assistance with medical emergencies, or patient referral. If a temporary absence is necessary, the medical director shall designate another physician who is employed by, or under contract with the specialty IC clinic to be available within one (1) hour through direct telecommunication for consultation, assis-

tance with medical emergencies, or patient referral.

(2) A specialty IC clinic shall have at least one (1) registered nurse who shall:

(a) Have at least one (1) year experience in treating or working with individuals with an intellectual disability and a developmental disability;

(b) Participate in the development, execution, and periodic review of the written policies governing the services the clinic provides;

(c) Participate with the medical director in periodic review of patient health records;

(d) Provide services in accordance with clinic policies, established protocols, the Nurse Practice Act (KRS Chapter 314), and with administrative regulations promulgated thereunder;

(e) Arrange for or refer patients to needed services that cannot be provided at the clinic; and

(f) Assure that adequate patient health records are maintained and transferred when patients are referred.

(3) A specialty IC clinic shall maintain, through direct employment or contract, a sufficient number of qualified personnel to provide effective patient care and all other related services.

(4) Qualified personnel directly employed by, or under contract with a specialty IC clinic shall include:

- (a) Physicians;
- (b) Dentists;
- (c) Dental hygienists;
- (d) Physician assistants;
- (e) Nurse practitioners;
- (f) Registered nurses;
- (g) Psychologists;
- (h) Psychiatrists;
- (i) Pharmacists;
- (j) Audiologists;
- (k) Optometrists;
- (l) Dietitians;
- (m) Behavior specialists;
- (n) Board certified behavior analysts;
- (o) Ophthalmologists;
- (p) Physical therapists;
- (q) Speech therapists;
- (r) Occupational therapists;
- (s) Physical therapist assistants; and
- (t) Occupational therapist assistants.

(5)(a) Prior to providing any service described in Section 3(1) of this administrative regulation, all qualified personnel as identified in subsection (4) of this section shall submit to an in-state criminal background information check conducted by the Justice and Public Safety Cabinet or Administrative Office of the Courts.

(b) An out-of-state criminal background information check shall be obtained for any qualified personnel who have resided or been employed outside Kentucky.

(c) A clinic shall not knowingly employ any person who has been convicted of a felony offense under:

1. KRS Chapter 209;
2. KRS Chapter 218A;
3. KRS 507.020, 507.030, and 507.040;
4. KRS Chapter 509;
5. KRS Chapter 510;
6. KRS Chapter 511;
7. KRS Chapter 513;
8. KRS 514.030;
9. KRS Chapter 530;
10. KRS Chapter 531;
11. KRS 508.010, 508.020, 508.030, and 508.032;
12. A criminal statute of the United States or another state similar to subparagraphs 1 to 11 of this paragraph; or

13. A violation of the uniform code of military justice or military regulation similar to subparagraphs 1 to 11 of this paragraph which has caused the person to be discharged from the Armed Forces of the United States.

(d) A person who has received a pardon for an offense specified in paragraph (c) or has had the record of such an offense expunged may be employed.

(6) A specialty IC clinic shall maintain written personnel policies which shall be available to all employees.

(7) A specialty IC clinic shall maintain a written job description for each position which shall be reviewed and revised as necessary.

(8) A specialty IC clinic shall maintain current personnel records for each employee. An employee's personnel record shall include the following:

1. Employee's name and address;
 2. Evidence that the health care professional has a valid license or other valid credential required for the professional to be able to practice;
 3. Record of training and experience; and
 4. Record of performance evaluations.
- (9)(a) Specialty IC clinic personnel shall attend in-service training programs relating to their respective job duties. These training programs shall include:
1. Thorough job orientation for new personnel;
 2. Regular in-service training programs;
 3. Behavior management procedures and techniques;
 4. Training in the detection and reporting of suspected abuse or neglect of a child or adult;
 5. Training in the field of intellectual and developmental disabilities; and
 6. Emergency and safety procedures.
- (b) A written document describing the training programs completed by all clinic employees shall be maintained on the premises of the clinic.

Section 6. Medical Records. (1) A specialty IC clinic shall maintain medical records which contain the following:

- (a) Name of the patient;
 - (b) Description of each medical visit or contact, including:
 1. Date of the visit;
 2. Condition or reason for the visit;
 3. Name of health care practitioner providing the service;
 4. Description of the services provided; and
 5. Any medications or treatments prescribed;
 - (c) Medical or social history relevant to the services provided, including data obtained from other providers;
 - (d) Names of referring physicians, if any, and physicians orders for special diagnostic services; and
 - (e) Documentation of all referrals made, including the reason for the referral and to whom the patient was referred.
- (2) A specialty IC clinic shall maintain confidentiality of patient records at all times pursuant to and in accordance with federal, state and local laws and administrative regulations, including the privacy standard promulgated pursuant to Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. 160 and 164.
- (3) A specialty IC clinic shall:
- (a) Establish systematic procedures to assist in continuity of care if the patient moves to another source of care;
 - (b) Transfer medical records or an abstract upon request, subject to required releases and authorizations; and
 - (c) Have a specific location designated for the storage and maintenance of the clinic's medical records, maintain scanned copies of the original medical records in an electronic format, or maintain electronic health records, available for copying to a disk or printing at the clinic.
- (4)(a) Medical records shall be maintained by the clinic for a period of six (6) years following the last treatment, assessment, or visit made by the patient, or three (3) years after the patient reaches age eighteen (18), whichever is longer.
- (b) A provision shall be made for written designation of a specific location for the storage of medical records in the event the specialty IC clinic ceases to operate because of disaster, or for any other reason.
- (5) A specialty IC clinic shall safeguard each clinic's medical records and content against loss, defacement, and tampering.

Section 7. Provision of Services. (1) Equipment. Equipment used for direct patient care shall comply with the following:

- (a) The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative, properly calibrated, and cleaned regularly;
- (b) All personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed, regis-

tered or certified in accordance with applicable state statutes and administrative regulations; and

(c) A written plan shall be developed and maintained to provide for training of personnel in the safe and proper usage of the equipment.

(2) Diagnostic services. Diagnostic services shall be performed in accordance with the specialty IC clinic's protocol.

(a) Protocols for diagnostic examinations shall be developed by the medical director.

(b) Diagnostic services shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of the specific technique utilized for diagnostic purposes.

(c) Physical examination services shall be nonabusive and provided in a manner which ensures the greatest amount of safety and security for the patient.

1. Personnel performing physical examinations shall have adequate training and be currently licensed, registered, or certified in accordance with applicable Kentucky statutes and administrative regulations.

2. Personnel performing physical examinations shall be limited by the relevant scope of practice of state licensure.

(3) Referrals. A specialty IC clinic shall refer a patient for services that cannot be provided at the clinic.

(4) Restraints

(a) A specialty IC clinic shall promote a restraint free environment and ensure that restraints are used only for medical emergencies or if the resident poses an immediate risk to self or others.

(b) Use of any type of restraint as a health-related protection shall be prescribed by a physician if necessary during the conduct of specific medical procedure.

(c) The specialty IC clinic shall have a system to monitor and decrease the use of physical restraint and pre-sedation.

Section 8. Physical Environment. (1) Accessibility. A specialty IC clinic shall meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Fire safety. A specialty IC clinic shall be approved by the State Fire Marshal's office prior to initial licensure.

(3) Housekeeping and maintenance services.

(a) Housekeeping. A specialty IC clinic shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other sources.

(b) Maintenance. The premises shall be well kept and in good repair as follows:

1. The clinic shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair;

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors which can be opened for ventilation shall be screened;

3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly;

4. A pest control program shall be in operation in the clinic. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock;

5. Sharp wastes, such as broken glass, scalpel blades, and hypodermic needles shall be segregated from other wastes and aggregated in rigid disposable containers immediately after use. Needles and syringes shall not be cut, dismantled, or destroyed after use but shall be placed intact directly into a rigid container. The rigid containers of sharp wastes shall either be incinerated, on site or off site, or disposed of in a sanitary landfill approved pursuant to 401 KAR 47:020; and

6. The clinic shall establish a written policy for the handling and disposal of all infectious, pathological, and contaminated waste if the clinic generates them. Any incinerator used for the disposal of waste

shall be in compliance with 401 KAR 59:020 or 61:010.

a. (i) Infectious waste shall be placed in double impervious plastic bags and each bag shall be two (2) mils in thickness.

(ii) A bag, when full, shall not exceed twenty five (25) pounds.

(iii) All bags shall be securely closed and a tag, which reads "INFECTIOUS WASTE" and identifies the clinic from which the waste is being removed and shall be attached to the bag in a conspicuous manner.

b. All unpreserved tissue specimens procedures shall be incinerated on or off site.

c. The following wastes shall be sterilized before disposal or be disposed of by incineration if they are combustible:

(i) Dressings and materials from open or contaminated wounds;

(ii) Waste materials and disposable linens from isolation rooms;

(iii) Culture plates;

(iv) Test tubes;

(v) Sputum cups; and

(vi) Contaminated sponges and swabs.

MARY REINLE BEGLEY, Inspector General

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 14, 2010

FILED WITH LRC: December 14, 2010 at 10 a.m.

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes, 502-564-2888

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for licensure as a specialty intermediate care clinic located on the grounds of a state-owned facility licensed pursuant to 902 KAR 20:086 as an intermediate-care facility for the intellectually and developmentally disabled.

(b) The necessity of this administrative regulation: Following a November 2001 investigation by the U.S. Department of Justice's Civil Rights Division (DOJ) of conditions and practices at the Oakwood Developmental Center, Kentucky voluntarily came forward with a Strategic Action Plan incorporated into the Commonwealth's Settlement Agreement with DOJ. The Strategic Action Plan details Kentucky's solutions to DOJ's findings, including a process for transitioning residents of intermediate-care facilities for the intellectually and developmentally disabled to community placements. The Strategic Action Plan further calls for the establishment of specialty intermediate care clinics located on the grounds of intermediate-care facilities for the intellectually and developmentally disabled. The specialty intermediate care clinics will provide an array of specialized outpatient services, including medical, behavioral, psychiatric, nutritional, and therapy services to individuals in the community who qualify for admission to an intermediate-care facility for the intellectually and developmentally disabled. The specialty intermediate care clinics may also serve facility residents. However, the primary benefit derived from the specialty intermediate care clinics is the role they will play in helping transition residents from institutional settings to the community, and further maintain community placements for individuals with an intellectual disability and a developmental disability who have complex health care needs and require specialized services that are not available outside of the specialty intermediate care clinic or the intermediate-care facility for the intellectually and developmentally disabled.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities.

(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 forth the licensure requirements for specialty intermediate care clinics.

(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 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: Specialty intermediate care clinics, one of which will be operational on September 1, 2010 on the campus of Oakwood, will provide an array of individualized outpatient services to individuals with an intellectual disability and a developmental disability.

(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: Specialty intermediate care clinics will be required to provide outpatient services individualized to meet the treatment needs of residents and those individuals with an intellectual disability and a developmental disability who qualify for admission to an intermediate-care facility for the intellectually and developmentally disabled; have an administrator who is principally responsible for the daily operation of the clinic; have a medical director who is responsible for all medical aspects of the clinic; maintain administrative policies covering all aspects of operation; have at least one registered nurse; maintain a sufficient number of qualified personnel to provide effective patient care; assure all qualified personnel submit to criminal background checks; not employ or contract with health care practitioners convicted of a felony offense identified in Section 5(5) of this administrative regulation; maintain personnel records; maintain patient medical records; and meet the physical environment requirements established in Section 8 of this administrative regulation for maintaining a clean and safe clinic.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial and annual fee for licensure as a specialty intermediate care clinic will be \$500.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An entity that demonstrates compliance with this administrative regulation will be approved for licensure as a specialty intermediate care clinic. These clinics will play a vital role in delivering services individualized to meet the health care needs of individuals with an intellectual disability and a developmental disability who live in the community and qualify for placement in an institutional setting.

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

(a) Initially: Based on the small number of entities eligible to become licensed as a specialty intermediate care clinic, the cost of implementing this administrative regulation is expected to be absorbable and the licensure fee is anticipated to cover all, or most of the cost of implementation.

(b) On a continuing basis: Based on the small number of entities eligible to become licensed as a specialty intermediate care clinic, the cost of implementing this administrative regulation is expected to be absorbable and the licensure fee is anticipated to cover all, or most of the cost 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 used for the implementation and enforcement of this administrative regulation will be from licensure fees collected from specialty intermediate care clinics and state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The initial and annual fee for licensure as a specialty intermediate care clinic will be \$500.

(8) State whether or not this administrative regulation estab-

lished any fees or directly or indirectly increased any fees: This administrative regulation establishes an initial and annual fee for licensure as a specialty intermediate care clinic. Both the initial and annual licensure fee will be \$500.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. 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 relates to the licensure of specialty intermediate care clinics located on the grounds of state-owned facilities licensed pursuant to 902 KAR 20:086 as intermediate-care facilities for the intellectually and developmentally disabled.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042

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 cabinet will collect an initial fee of \$500 from each applicant for licensure as a specialty intermediate care clinic. There will be one specialty intermediate care clinic operational on September 1, 2010. Therefore, the cabinet will collect at least \$500 in licensure fees 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? The cabinet will collect an annual licensure fee of \$500 from each licensed specialty intermediate care clinic.

(c) How much will it cost to administer this program for the first year? Based on the low number of entities eligible to become licensed as a specialty intermediate care clinic, the cost of implementing this administrative regulation is expected to be absorbable and the licensure fee is anticipated to cover all, or most of the cost of implementation.

(d) How much will it cost to administer this program for subsequent years? Based on the low number of entities eligible to become licensed as a specialty intermediate care clinic, the cost of implementing this administrative regulation is expected to be absorbable and the licensure fee is anticipated to cover all, or most of the cost of implementation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, DECEMBER 15, 2010

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 3:100. Administrative wage garnishment.

RELATES TO: KRS 164.744(1), 164.748(4), (10), (20), 164.753(2), 34 C.F.R. 682.410(b)(9), 20 U.S.C. 1071-1087-2, 1095a

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(2), 20 U.S.C. 1095a

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 164.744(1) and 164.748(2), the Kentucky Higher Education Assistance Authority has entered into agreements with the secretary to provide loan guarantees in accordance with 20 U.S.C. 1071 through 1087-2. 20 U.S.C. 1095a permits a student loan guarantee agency to garnish the disposable pay of a borrower to recover a loan guaranteed pursuant to 20 U.S.C. 1071 through 1087-2, notwithstanding a provision of state law. That section also permits the student loan guarantee agency to establish procedures for requesting and conducting a hearing related to the wage garnishment. KRS 164.748(10) authorizes the authority to collect from borrowers loans on which the authority has met its guarantee obligation, and KRS 164.748(20) authorizes the authority to conduct administrative hearings, exempt from KRS Chapter 13B, pertaining to wage garnishment. This administrative regulation establishes the procedures for implementing wage garnishment in accordance with requirements of the federal act.

Section 1. (1) Following payment of a claim by the authority to a participating lender by reason of the borrower's default in repayment of an insured student loan, the authority, acting through its executive director or other designee, may issue an administrative order for the withholding of the debtor's disposable pay, which order shall conform to the requirements of this section.

(2) This administrative regulation shall apply to a debtor who is either a borrower or an endorser of an insured student loan.

(3) An order for withholding of disposable pay shall not be issued under this section nor become effective less than thirty (30) days after the authority provides a written notice to the debtor by personal service or mail, addressed to the debtor at the residence or employment location last known to the authority. The notice shall include at least the following information:

(a) The name and address of the debtor;

(b) The amount of the debt determined by the authority to be due;

(c) Information sufficient to identify the basis for the debt;

(d) A statement of the intention of the authority to issue an order for withholding of disposable pay;

(e) A statement of the right to dispute the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to paragraph (g) of this subsection);

(f) A statement of the right to inspect and copy any records relating to the debt open to inspection in accordance with KRS 61.870 through 61.884;

(g) A statement of the opportunity to enter into a written agreement with the authority, on terms satisfactory to the authority, establishing a schedule for repayment of the debt;

(h) A statement that, unless there is good cause determined by the authority for the debtor's failure to timely request a hearing, the debtor's acquiescence to the withholding of disposable pay shall be presumed; and

(i) A statement that if the debtor requests a hearing, but fails to appear without good cause determined by the hearing officer, the hearing officer shall affirm the issuance of an order for withholding of disposable pay.

(4) An amount shall not be withheld from the disposable pay of an individual during the first twelve (12) consecutive months of reemployment commenced within twelve (12) months following an involuntary separation from employment.

(5) Establishment of a written repayment schedule in accordance with subsection (3)(g) of this section shall be deemed, for purposes of subsection (3)(e) of this section, conclusive acknowledgment by the debtor of the existence and amount of debt agreed to be paid.

(6) Service of the notice required by subsection (3) of this section shall be conclusively presumed to be effected five (5) days after mailing of the notice by the authority, unless the notice is returned to the authority undelivered by the postal service. The date of service of the notice shall otherwise be evidenced by affidavit of a person executing personal service or a delivery receipt.

Section 2. (1)(a) A hearing shall be provided if the debtor, on or before the 15th day following the date of service of the notice required by Section 1(3) of this administrative regulation, files with the authority a written request for a hearing in accordance with procedures prescribed by this administrative regulation. The timely filing of a request for a hearing (evidenced by a legibly dated U.S. Postal Service postmark or mail receipt) shall automatically stay further collection activity under this administrative regulation pending the outcome of the hearing.

(b) If the debtor requests a hearing, but the request is not timely filed, a hearing shall be provided, but the request shall not stay further action pending the outcome of the hearing.

(c) A hearing officer, appointed by the authority (who shall not be an individual under the supervision or control of the board other than an administrative law judge), shall conduct the hearing.

(d) A hearing officer shall voluntarily disqualify himself and withdraw from a case in which he cannot afford a fair and impartial hearing or consideration.

1. A party shall request the disqualification of a hearing officer by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded.

2. The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding.

3. Grounds for disqualification of a hearing officer shall include the following:

a. Participating in an ex parte communication which would prejudice the proceedings;

b. Having a pecuniary interest in the outcome of the proceeding; or

c. Having a personal bias toward a party to a proceeding which would cause a prejudgment on the outcome of the proceeding.

(e) A dispute hearing shall be conducted in Franklin County or another location agreed to by the parties.

(f) In lieu of an in-person hearing, upon request of the debtor, a hearing may be conducted by telephone or the hearing officer may conduct a review based solely upon submission of written material by both the debtor and the authority. An in-person or telephonic hearing shall be mechanically, electronically or stenographically recorded.

(g) Unless required for the disposition of an ex parte matter specifically authorized by this administrative regulation, a hearing officer shall not communicate off the record with a party to the hearing concerning a substantive issue, while the proceeding is pending.

(2)(a) The hearing officer's decision, reason therefore and an explanation of the appeal process shall be rendered in writing no more than sixty (60) days after receipt by the authority of the request for the hearing. The decision shall establish the debtor's liability, if any, for repayment of the debt and the amount to be withheld from the debtor's disposable pay.

(b) Subject to subsection (3)(b) of this section, the hearing officer's decision shall be final and conclusive pertaining to the right of the authority to issue an administrative order for the withholding of the debtor's disposable pay.

(c) A person, upon request, shall receive a copy of the official record at the cost of the requester. The party requesting a recording or transcript of the hearing shall be responsible for transcription costs. The official record of the hearing shall consist of:

1. All notices, pleadings, motions, and intermediate rulings;

2. Any prehearing order;

3. Evidence received and considered;
4. A statement of matters officially noticed;
5. Proffers of proof and objections and rulings thereon;
6. Ex parte communications placed upon the record by the hearing officer;

7. A recording or transcript of the proceedings; and

8. The hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation.

(3)(a) Following the issuance of the hearing officer's decision, the debtor or the authority may petition the board to review the decision.

(b) An adverse decision by the hearing officer shall be appealed in writing to the board not later than twenty (20) calendar days after the date of the hearing officer's decision. A petition for review of the hearing officer's decision shall be timely filed if received by the executive director within twenty (20) calendar days after the date of the hearing officer's decision. If there is no appeal to the board within twenty (20) days, the findings of the hearing officer shall be conclusive and binding upon the parties.

(c) A petition for review of the hearing officer's decision shall not stay a final order pending the outcome of the review. If the debtor's liability is established by the hearing officer's decision, an administrative order for withholding of disposable pay shall be issued by the authority within sixty (60) days after the date of the hearing officer's decision. If the debtor petitions the board to review the hearing officer's decision and obtains reversal, modification or remand of the hearing officer's decision, the authority shall return to the debtor any money received pursuant to the withholding order contrary to the final order of the board.

(d) The respondent may, within ten (10) calendar days from the date the petition was received by the executive director, provide a brief statement to the board responding to the petition of review. The response shall be timely filed if received by the executive director within ten (10) calendar days from receipt by the executive director of the petition for review.

(e) A petition for review of the hearing officer's decision shall contain the following information:

1. A concise statement of the reason that the petitioner asserts as the basis pursuant to paragraph (g) of this subsection for reversing, modifying or remanding the hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation;

2. A statement specifying the part of the official record that the petitioner relies upon to support reversing, modifying or remanding the hearing officer's decision pursuant to paragraph (g) of this subsection; and

3. A statement of whether the petitioner believes that oral argument to the board is necessary.

(f) The board shall review the hearing officer's decision at its next regularly scheduled meeting convened at least thirty (30) days after the petition for review of the hearing officer's decision is received or at a special meeting convened for that purpose within ninety (90) days after receipt of the petition for review of the hearing officer's decision, whichever first occurs.

(g) The board shall decide the dispute upon the official record, unless there is fraud or misconduct involving a party, and may consider oral arguments by the debtor and the authority. The board shall:

1. Not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact; and

- 2.a. Uphold the hearing officer's decision unless it is clearly unsupported by the evidence and the applicable law;

- b. Reject or modify, in whole or in part, the hearing officer's decision; or

- c. Remand the matter, including an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation, in whole or in part, to the hearing officer for further proceedings as appropriate if it finds the hearing officer's final order is:

- (i) In violation of constitutional or statutory provisions;

- (ii) In excess of the statutory authority of the agency;

- (iii) Without support of substantial evidence on the whole record;

- (iv) Arbitrary, capricious, or characterized by abuse of discre-

tion; or

- (v) Based on an ex parte communication which substantially prejudiced the rights of a party and likely affected the outcome of the hearing.

(h) The final order of the board shall be in writing. If the final order differs from the hearing officer's decision, it shall include separate statements of findings of fact and conclusions of law.

(4) The remedies provided in this section shall not:

- (a) Preclude the use of other judicial or administrative remedies available to the authority under state or federal law; and

- (b) Be construed to stay the use of another remedy.

Section 3. Hearing Procedure. (1) The debtor shall have the right to be heard by the hearing officer, be represented by counsel, present evidence, cross examine, and make both opening and closing statements.

(2)(a) Upon request of a party, the hearing officer may issue subpoena for the production of a document or attendance of a witness.

- (b)1. Not more than ten (10) business days after the date of filing the request for a hearing or a review of written material, the debtor shall submit to the counsel for the authority a written statement specifically stating the basis of dispute.

2. Not less than fifteen (15) business days prior to the hearing, the parties shall:

- a. Confer and jointly stipulate the issues that are in controversy to be resolved by the hearing officer;

- b. Discuss the possibility of informal resolution of the dispute;

- c. Exchange a witness list of the names, addresses, and phone numbers of each witness expected to testify at the hearing and a brief summary of the testimony of each witness that the party expects to introduce into evidence; and

- d. Exchange an exhibit list identifying documents to be admitted into evidence at the hearing and provide a legible copy of all exhibits.

- 3.a. If the debtor is unavailable or otherwise fails to confer and jointly stipulate the issues pursuant to subparagraph 2 of this paragraph, the authority shall serve upon the debtor proposed stipulation of issues. If within five (5) calendar days, the debtor fails to respond to the proposed stipulation of issues, the debtor shall be precluded from raising an additional issue not identified in the proposed stipulation of issues.

- b. If the debtor is unavailable or otherwise fails to cooperate in a timely manner for the exchange of the witness or exhibit lists, the debtor shall be precluded from admitting the information as part of the evidence at the hearing.

4. The authority shall provide to the hearing officer the documentation submitted in accordance with subparagraph 1 of this paragraph and shall report to the hearing officer the results of the discussions between the parties described in subparagraphs 2 and 3 of this paragraph.

5. Additional time for compliance with the requirements of this paragraph may be granted by the hearing officer, upon request, if it does not prejudice the rights of the authority or delay the rendering of a hearing decision within the time prescribed in this subsection.

6. If the debtor requests a hearing, but the debtor's written statement and supporting documentation, considered from a viewpoint most favorable to the debtor, does not reflect a genuine issue of fact or prima facie defense to the legal enforceability of the authority's claim, the hearing officer, on petition of the authority and notice to the debtor, may enter an order dismissing the request for a hearing and authorizing issuance of the order described in Section 5 of this administrative regulation.

(c) Facts recited in the authority's notice pursuant to Section 1(3) of this administrative regulation that are not denied shall be deemed admitted. Each party shall remain under an obligation to disclose new or additional items of evidence or witnesses which may come to their attention as soon as practicable.

- (d)1. Either party, without leave of the hearing officer, may depose a witness, upon reasonable notice to the witness and the opposing party, and submit to the opposing party interrogatories or request for admissions.

2. The party receiving interrogatories or request for admissions shall respond within fifteen (15) calendar days.

3. Each matter of which an admission is requested shall be deemed admitted unless, within fifteen (15) days after service of the request or a shorter or longer time that the hearing officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter.

(e) Sufficient grounds for entry of an appropriate order by the hearing officer, including postponement, exclusion of evidence, dismissal of the appeal, quashing the withholding order, or vacating the stay, shall exist if there is:

1. Noncompliance with this subsection;
2. Failure of the authority to:
 - a. Timely appoint a hearing officer; or
 - b. Respond to a request for inspection of records; or
3. Failure of the debtor to submit information in accordance with paragraph (b) of this subsection.

(3) Order of proceeding.

(a) The hearing officer shall:

1. Convene an in-person or telephonic hearing;
2. Identify the parties to the action and the persons participating;

3. Admit into evidence the notice required by Section 1(3) of this administrative regulation and the debtor's statement and the stipulations required by subsection (2)(b)1 and 2 of this section;

4. Solicit from the parties and dispose of any objections or motions;

5. Accept into evidence any documentary evidence not objected to;

6. Solicit opening statements; and

7. Proceed with the taking of proof.

(b) The taking of proof shall commence first by the debtor and then by the authority, with opportunities for cross-examination, rebuttal, and closing statements.

(4) Rules of evidence.

(a) All testimony shall be made under oath or affirmation.

1. The hearing officer shall not admit evidence that is excludable as a violation of an individual's constitutional or statutory rights or a privilege recognized by the courts of the commonwealth.

2. Statutes or judicial rules pertaining to the admission of evidence in a judicial proceeding shall not apply to a hearing under this section.

3. The hearing officer may receive evidence deemed reliable and relevant, including evidence that would be considered hearsay if presented in court, except that hearsay evidence shall not be sufficient in itself to support the hearing officer's decision.

4. A copy of a document shall be admissible if:

- a. There is minimal authentication to establish a reasonable presumption of its genuineness and accuracy; or
- b. It is admitted without objection.

5. The hearing officer may exclude evidence deemed unreliable, irrelevant, incompetent, immaterial, or unduly repetitious.

(b) An objection to an evidentiary offer may be made by any party and shall be noted in the record.

(c) The hearing officer:

1. May take official notice of:
 - a. Statutes and administrative regulations;
 - b. Facts which are not in dispute; and
 - c. Generally-recognized technical or scientific facts;
2. Shall notify all parties, either before or during the hearing of a fact so noticed and its source; and
3. Shall give each party an opportunity to contest facts officially noticed.

(d) At the discretion of the hearing officer, the parties may be allowed up to fifteen (15) days following the hearing to submit written arguments or briefs.

(5) Upon request of either party, the record of the hearing shall be transcribed, and shall be available to the parties at their own expense.

(6) Burden of proof.

(a) The authority shall have the burden to establish the existence and amount of the debt.

(b) The debtor shall have the burden to establish an affirmative defense.

(c) The party with the burden of proof on an issue shall have

the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion shall be met by a prima facie establishment of relevant, uncontroverted facts or, if relevant facts are disputed, a preponderance of evidence in the record.

(d) Failure to meet the burden of proof shall be grounds for a summary order from the hearing officer.

Section 4. Defenses. (1) Except as provided in subsection (2) of this section, a debtor may assert a defense to the issuance of an administrative order to withhold the debtor's disposable pay, legal or equitable, pertaining to the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to Section 1(3)(g) of this administrative regulation).

(2) The hearing officer shall not consider as a defense a question of law or fact that has previously been adjudicated by a court of competent jurisdiction or by an independent third-party trier of fact in an administrative proceeding involving the debtor and the authority pertaining to the existence, amount, or the debtor's liability on the particular debt in question or the terms of a prior repayment schedule.

(3) If the debtor asserts as a defense a question of law or fact that was previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4:030 or 11 KAR 4:050, the hearing officer:

(a) Shall:

1. Consider the matter; and
2. Give deference to the prior decision by the authority in the same manner that a court would give deference in reviewing the decision of an administrative agency; and

(b) May reverse the prior decision if the debtor presents evidence that:

1. Circumstances have changed or new information is available; or

2. The prior decision:

- a. Substantially disregarded or ignored the defense; or
- b. Was arbitrary, capricious, not supported by the facts or made through fraud.

(4) If the debtor asserts as a defense a claim of entitlement to discharge of the particular debt pursuant to 34 C.F.R. 682.402, except for reason of bankruptcy, but has not previously sought discharge by the authority for that specific reason, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to submit documentation to the authority for a determination of eligibility for entitlement to the discharge. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to submit documentation to the authority for review of entitlement to discharge;

(b) Dismiss the request for hearing if the debtor has submitted documentation and the authority has approved discharge of the debt; or

(c) Proceed with the hearing if the debtor submitted documentation and the authority denied discharge, except that the hearing officer shall consider the defense of entitlement to discharge in accordance with subsection (3) of this section.

(5) If the debtor asserts as a defense a claim that the debt was dischargeable in a previous bankruptcy pursuant to 11 U.S.C. 523(a)(8), but the debtor did not previously seek discharge by the bankruptcy court, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to reopen the bankruptcy case. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to obtain the bankruptcy court's permission to reopen the bankruptcy case to seek discharge of the particular debt; or

(b) Dismiss the request for hearing if the bankruptcy court has reopened the bankruptcy case to consider discharge of the particular debt.

(6)(a) If the debtor asserts as a defense a claim that withholding of his disposable pay would constitute an extreme financial

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hardship, the debtor shall submit documentation of all available resources and actual expenses and shall have the burden of demonstrating the necessity of actual expenses.

(b) The hearing officer shall compare the debtor's available resources and the necessary expenses and current debt obligations of the debtor and debtor's dependents. The hearing officer shall determine that extreme financial hardship exists if the debtor currently is not able to provide at least minimal subsistence for the debtor and debtor's dependents that could be claimed on a federal income tax return. The hearing officer shall consider as available resources of the debtor income of the debtor, the debtor's spouse, and debtor's dependents from all sources, including nontaxable income and government benefits, expenses paid on behalf of the debtor by another person, and the cash value of any current liquid assets, such as bank accounts and investments. The hearing officer shall consider the claim of extreme financial hardship in accordance with the following presumptions.

1. Withholding of an amount of disposable pay shall constitute an extreme financial hardship if:

a. The debtor resides in the District of Columbia or a state other than Alaska or Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guideline
1	\$10,830
2	\$14,570
3	\$18,310
4	\$22,050
5	\$25,790
6	\$29,530
7	\$33,270
8	\$37,010
Each additional person	Add \$3,740

b. The debtor resides in Alaska and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guidelines
1	\$13,530
2	\$18,210
3	\$22,890
4	\$27,570
5	\$32,250
6	\$36,930
7	\$41,610
8	\$46,290
Each additional person	Add \$4,680

c. The debtor resides in Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guidelines
1	\$12,460
2	\$16,760
3	\$21,060
4	\$25,360
5	\$29,660
6	\$33,960
7	\$38,260
8	\$42,560
Each additional person	Add \$4,300

2.a. If the debtor resides in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, or Vermont, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	1,958	1,214	1,927	2,316	3,143	4,123	5,607	6,880	14,405
Rented dwelling	3,932	3,546	3,562	4,059	3,776	3,602	3,856	3,445	1,926
Other lodging	215	90	105	150	250	526	348	882	2,140
Utilities, fuels, and public services	1,666	1,805	2,210	2,569	3,061	3,342	3,647	4,046	5,551
Household operations	214	237	385	376	552	555	840	885	1,996
Housekeeping and miscellaneous supplies	297	270	245	310	423	426	544	669	936
Household furnishings and equipment	407	636	535	601	760	1,105	1,654	1,485	3,144
Vehicle purchases (net outlay)	303	384	656	1,316	2,203	1,285	1,481	3,080	4,264
Gasoline and motor oil	786	684	694	947	1,341	1,757	2,099	2,480	3,420
Vehicle maintenance and repairs	252	299	232	342	381	580	617	778	1,217
Vehicle insurance	693	70	379	919	999	779	1,141	1,512	1,706
Vehicle rental, lease, license and other charges	207	103	172	155	282	287	379	483	1,295

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Public transportation	534	166	195	277	358	409	475	516	1,423
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b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

	New York	Philadelphia	Boston
Owned dwellings	9,760	8,790	8,804
Rented dwellings	4,387	2,721	3,155
Other lodging	1,325	1,126	1,092
Utilities, fuels, and public services	4,146	4,356	4,067
Household operations	1,365	1,131	1,215
Housekeeping and miscellaneous supplies	610	701	527
Household furnishings and equipment	1,848	2,044	1,817
Vehicle purchases (net outlay)	2,102	2,455	2,572
Gasoline and motor oil	2,051	2,447	2,224
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,928	2,977	2,615
Public transportation	1,168	779	657

3.a. If the debtor resides in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, or Wisconsin, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	1,260	994	1,465	1,916	2,901	3,852	4,954	6,829	11,817
Rented dwellings	2,679	2,862	2,914	2,950	2,547	2,560	2,448	1,634	864
Other lodging	227	165	139	196	221	218	369	478	1,549
Utilities, fuels and public services	1,312	1,497	2,231	2,481	2,872	3,131	3,330	3,778	4,636
Household operations	148	173	310	357	483	444	556	813	1,680
Housekeeping and miscellaneous supplies	229	217	318	346	476	580	506	582	1,051
Household furnishings and equipment	415	643	584	656	806	987	1,180	2,024	2,874
Vehicle purchases (net outlay)	628	896	747	1,515	1,824	2,762	1,679	2,969	5,806
Gasoline and motor oil	938	956	1,101	1,365	1,709	2,068	2,439	2,960	3,824
Vehicle maintenance and repairs	260	207	256	398	495	532	571	749	1,116
Vehicle insurance	373	282	413	454	779	645	881	988	1,466
Vehicle lease, license, and other charges	120	194	172	165	270	307	406	581	949
Public transportation	146	114	203	266	162	222	214	388	860

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

	Chicago	Detroit	Minneapolis St. Paul	Cleveland
Owned dwelling	9,377	6,591	8,574	6,433
Rented dwelling	2,639	2,155	2,455	2,337
Other lodging	1,019	726	689	991
Utilities, fuels, and public services	4,062	3,654	3,482	3,839
Household operations	1,100	665	1,553	881
Housekeeping and miscellaneous supplies	621	632	670	651
Household furnishings and equipment	2,013	1,444	2,420	1,081
Vehicle purchases (net outlay)	3,075	2,242	3,950	2,995
Gasoline and motor oil	2,547	2,946	2,432	2,384
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,559	3,606	2,702	2,622
Public transportation	767	406	594	365

4.a. If the debtor resides in Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, or West Virginia, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

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Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Owned dwelling	2,228	1,166	1,448	2,473	2,779	3,189	4,246	5,774	11,518
Rented dwelling	2,580	2,319	2,691	2,449	2,669	2,865	2,651	2,252	1,220
Other lodging	163	49	85	117	164	196	274	415	1,180
Utilities, fuels, and other charges	2,281	2,242	2,574	2,738	2,997	3,267	3,484	3,872	4,774
Household operations	264	172	353	488	427	517	603	937	1,874
Housekeeping and miscellaneous supplies	271	277	388	369	419	454	526	607	1,022
Household furnishings and equipment	766	804	557	763	778	848	1,176	1,751	2,991
Vehicle purchases (net outlay)	737	532	959	1,626	1,534	2,091	2,587	3,398	5,401
Gasoline and motor oil	1,261	1,144	1,307	1,621	2,108	2,421	2,669	3,144	4,007
Vehicle maintenance and repairs	223	216	264	390	457	510	584	714	1,134
Vehicle insurance	602	445	693	658	887	878	1,135	1,330	1,543
Vehicle lease, license, and other charges	92	100	80	143	147	169	227	299	601
Public transportation	137	60	113	95	156	168	143	300	810

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

	Washington, D.C.	Baltimore	Atlanta	Miami	Dallas Fort Worth	Houston
Owned dwelling	12,435	9,443	7,421	7,507	6,339	6,906
Rented dwelling	3,691	2,912	2,923	4,118	3,142	2,834
Other lodging	1,041	548	582	470	396	619
Utilities, fuels, and public services	4,001	4,170	3,811	3,576	4,307	4,332
Household operations	1,774	881	820	1,180	1,093	1,018
Housekeeping and miscellaneous supplies	752	822	447	587	695	677
Household furnishings and equipment	2,433	1,478	1,271	1,022	1,767	1,674
Vehicle purchases (net outlay)	3,492	2,396	2,101	3,049	4,196	4,070
Gasoline and motor oil	2,666	2,665	2,821	2,863	2,733	3,274
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	3,190	2,191	1,893	2,076	2,861	3,064
Public transportation	1,103	542	501	518	350	472

5.a. If the debtor resides in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, or Wyoming, except for a metropolitan area listed in clause b of this paragraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	3,481	1,631	1,982	2,039	3,404	4,048	5,225	8,082	14,856
Rented dwelling	3,831	4,309	3,641	5,019	4,744	4,838	4,344	3,967	2,833
Other lodging	238	173	139	177	241	332	366	523	1,608
Utilities, fuels, and public services	1,838	1,692	1,927	2,080	2,445	2,828	3,066	3,475	4,436
Household operations	334	447	417	550	481	568	592	1,003	2,140
Housekeeping and miscellaneous supplies	419	266	506	288	434	551	587	689	1,065
Household furnishings and equipment	744	690	715	733	1,175	1,093	1,609	1,531	3,247
Vehicle purchases (net outlay)	506	1,189	978	1,481	2,101	2,312	2,306	4,345	4,754
Gasoline and motor oil	1,298	1,040	1,044	1,357	1,699	2,066	2,474	2,800	3,557
Vehicle maintenance and repairs	297	253	317	390	554	696	706	901	1,325
Vehicle insurance	1,420	291	452	529	584	1,020	1,423	1,069	1,515
Vehicle lease, license, and other charges	231	136	171	141	252	321	424	445	979
Public transportation	258	650	214	299	244	428	536	497	1,306

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the

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applicable amount for a category shall be presumed unnecessary:

	Los Angeles	San Francisco	San Diego	Seattle	Phoenix
Owned dwelling	9,077	11,238	8,903	8,883	7,806
Rented dwelling	5,857	6,208	6,432	3,950	3,201
Other lodging	587	1,355	426	1,057	705
Utilities, fuels, and public services	3,364	3,204	2,861	3,485	3,874
Household operations	1,343	1,567	1,581	1,103	1,362
Housekeeping and miscellaneous supplies	623	600	573	641	655
Household furnishings and equipment	1,794	1,939	1,787	2,396	1,889
Vehicle purchases (net outlay)	2,883	2,973	1,429	3,113	5,074
Gasoline and motor oil	2,913	2,589	2,593	2,608	2,957
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,826	3,550	2,020	2,816	2,998
Public transportation	604	1,479	514	1,107	602

6. If the debtor is the only member of the household, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	2,488	2,269	2,573	2,562	2,990	3,654	4,204	4,609	6,282
Apparel	710	539	651	571	739	980	1,187	1,468	1,891
Health insurance	451	511	1,190	1,334	1,237	1,006	1,000	1,117	1,166
Medical services	146	169	234	346	370	472	419	737	748
Prescription drugs	164	208	244	429	372	312	280	343	392
Medical supplies	38	30	44	58	69	70	83	91	138
Personal care products and services	234	209	243	313	357	406	450	540	688
Education	1,495	1,019	459	309	413	390	506	379	926
Life and other personal insurance	31	53	94	108	187	123	111	158	263

7. If the debtor's household consists of two (2) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	4,514	3,814	4,204	3,496	4,492	4,954	5,199	6,113	8,640
Apparel	1,010	877	1,045	911	910	1,222	1,107	1,743	2,849
Health insurance	1,361	1,088	1,237	1,791	2,144	2,353	2,142	2,043	2,273
Medical services	565	292	413	377	783	658	827	921	1,232
Prescription Drugs	525	342	343	645	692	765	758	675	707
Medical supplies	145	43	68	65	108	122	150	147	200
Personal care products and services	389	294	306	285	364	452	531	601	999
Education	291	293	416	350	297	267	512	636	1,562
Life and other personal insurance	185	78	114	159	215	257	243	327	655

8. If the debtor's household consists of three (3) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	5,223	3,822	4,343	4,575	4,980	5,647	6,425	6,787	9,557
Apparel	1,914	1,170	1,249	1,257	1,517	1,609	2,025	1,897	3,214
Health insurance	797	519	594	635	839	1,210	1,575	1,760	2,075
Medical services	191	133	163	202	312	426	535	764	1,039
Prescription drugs	238	232	174	228	291	329	583	478	617
Medical supplies	103	505	40	69	43	65	71	120	183
Personal care products and services	368	269	307	316	401	450	635	551	991
Education	530	536	201	211	356	385	509	705	2,524
Life and other personal insurance	88	85	135	57	151	143	264	288	681

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9. If the debtor's household consists of four (4) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$10,000	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	5,028	5,250	4,539	5,735	6,476	6,721	7,556	11,152
Apparel	2,128	1,625	1,275	2,086	2,220	1,508	1,828	3,463
Health insurance	712	425	476	698	1,058	1,424	1,631	2,168
Medical services	584	333	177	296	350	664	730	1,184
Prescription drugs	167	189	69	220	289	328	399	523
Medical supplies	28	56	25	73	64	95	99	158
Personal care products and services	361	264	283	377	534	399	617	1,066
Education	805	603	306	325	443	542	800	2,486
Life and other personal insurance	149	61	70	115	142	195	256	623

10. If the debtor's household consists of five (5) or more persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$10,000	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	6,307	4,858	6,180	5,695	6,685	7,319	8,542	12,284
Apparel	2,129	2,467	1,434	1,783	1,773	1,810	2,295	3,792
Health insurance	608	308	313	586	826	1,174	1,411	2,099
Medical services	336	146	275	170	636	486	959	1,210
Prescription drugs	170	102	88	203	279	258	430	555
Medical supplies	35	14	31	66	104	59	123	166
Personal care products and services	329	359	378	342	419	473	614	1,078
Education	286	248	257	276	296	339	619	2,605
Life and other personal insurance	63	35	63	62	105	182	244	626

Section 5. (1) An administrative order issued by the authority to withhold disposable pay shall be served upon the debtor's employer personally or by mail. A notice of the issuance of the order shall be provided to the debtor by regular first class mail. The order shall require the withholding and delivery to the authority of not more than fifteen (15) ~~ten (10)~~ percent of the debtor's disposable pay, except that a greater percentage may be deducted upon the written consent of the debtor.

(2) The order shall state the amount or percentage to be withheld and the amount of the debt, the statutory and regulatory basis therefore, and the time withholding is to begin.

(3) The order shall continue to operate until the debt is paid in full with interest accrued and accruing thereon at the prescribed rate in the promissory note or applicable law and collection costs that may be charged to the borrower under the promissory note or applicable law. The order shall have the same priority as provided to a judicially ordered garnishment prescribed in KRS 425.506.

(4) An employer who has been served with an administrative order for withholding of earnings shall answer the order within twenty (20) days, and shall provide a copy to the debtor the first time that withholding occurs and each time thereafter that a different amount is withheld. The employer shall be liable to the authority for a lawfully due amount which the employer fails to withhold from disposable pay due the debtor following receipt of the order, plus attorneys' fees, costs, and, in the discretion of a court of competent jurisdiction, punitive damages.

(5) A withholding under this section shall not be grounds for discharge from employment, refusal to employ or disciplinary action against an employee subject to withholding under this section.

(6) The employer shall have no liability or further responsibility after properly, completely, and timely fulfilling the duties under this section.

Section 6. (1) Whenever this administrative regulation requires delivery of a notice, subpoena, or other communication by personal service, the service shall be made by:

(a) An officer authorized under KRS 454.140 to serve process; or

(b) A person over the age of eighteen (18) years of age, who shall prove service by affidavit or by the signature of the person being served.

(2) Receipt of a notice or other communication by the debtor shall be rebuttably presumed if the person to be served or another adult with apparent authority at the place of residence or employment last known to the authority signs a receipt or refuses to accept the notice or communication after identification and offer of delivery to the person so refusing.

(3) For an administrative order to withhold disposable pay served upon an employer, receipt shall be rebuttably presumed if:

(a) The person to whom the order is directed signs or refuses to sign a receipt; or

(b) His employee or agent with apparent authority signs or refuses to sign a receipt.

KRISTI P. NELSON, Chair

APPROVED BY AGENCY: October 26, 2010

FILED WITH LRC: December 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, January 24, 2011, at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be

canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, January 31, 2011. 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-7293, phone (502) 696-7298, fax (502) 6960-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Diana L. Barber, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures to be followed by the Authority in garnishing a defaulted student loan borrower's wages for payment of the borrower's student loan debt, as well as the procedures for a borrower to request a hearing on a garnishment and procedures for conducting that hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the requirements of the Higher Education Act of 1965, as amended, and its accompanying regulations regarding the collection of defaulted student loan debts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the Authority to collect defaulted student loan debts through administrative wage garnishment and to conduct administrative hearings relating to the wage garnishment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting forth the procedures to be followed during the administrative wage garnishment process as well as the hearing process.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will change the existing regulation by updating the wage withholding percentage under administrative wage garnishment to accurately reflect the amount currently authorized by federal law.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this regulation in order to bring the regulation provisions into alignment with current federal law as well as with the Authority's practice regarding the appropriate wage withholding percentage applicable to garnishment orders issued under the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the requirements of federal and state law that authorize the Authority to promulgate regulations establishing procedures for the administrative wage garnishment process as authorized by federal statute.

(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 accurately stating the percentage of a debtor's wages which are subject to withholding under the administrative wage garnishment process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Student loan borrowers that have defaulted on their repayment obligations, whose wages are otherwise eligible for administrative wage garnishment, will be impacted by this amendment. During calendar year 2010, approximately 2,734 notices of wage garnishment were sent and received by student loan borrowers. However, since the withholding percentage was increased

from 10 to 15 by 20 U.S.C. 1095a §488A effective July 1, 2006, all garnishment orders issued since that date have indicated the correct withholding percentage. Thus, as a practical matter, there will be no change to the process or the impact on defaulted student loan borrowers as a result of this amendment.

(4) Provide an analysis of how the entities identified in (3) above 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 in order to comply with this administrative regulation or amendment: No actions are required of the defaulted student loan borrowers in compliance with this regulation.

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

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

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

(a) Initially: There are no costs to student loan borrowers associated with the implementation of the amendment to this administrative regulation.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Authority maintains a federally restricted trust fund pursuant to 20 U.S.C. Section 1072b for operation of the insured student loan program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees is necessary for the implementation of the amendment to this administrative regulation. The amendment to this administrative regulation merely incorporates the withholding percentage specified by federal statute and utilized by the authority since July 1, 2006.

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

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Section 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

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

2. What units, parts or division of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.744(1), KRS 164.748(2), (4), (10), and (20), 164.753(2), 20 U.S.C. 1071 through 1087(2), 1095a, 34 C.F.R. 682.410(b)(9) and (10).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 20 U.S.C. 1095a, 34 C.F.R. 682.410(b)(10)

2. State in sufficient detail the state compliance standards. This regulation provides for the garnishment of the disposable pay of a borrower who has defaulted in making payments on a loan guaranteed pursuant to Title IV, Part B, of the federal act and establishes the procedures for requesting and conducting a hearing related to the garnishment of the disposable pay.

At least thirty (30) days before the initiation of garnishment proceedings, the Authority shall mail to the borrower's last known address a written notice of the nature and amount of the debt, the intention of the Authority to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice five (5) days after it was mailed by the Authority. The Authority shall offer the borrower an opportunity to inspect and copy Authority records related to the debt and an opportunity to enter into a written repayment agreement with the Authority under terms agreeable to the Authority.

The Authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The Authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the Authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The Authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures prescribed in the administrative regulation, to be rendered within sixty (60) days after the Authority's receipt of the borrower's hearing request. The hearing official appointed by the Authority to conduct the hearing may not be under the supervision or control of the head of the Authority. The hearing official shall issue a final written decision.

If the borrower's written request is received by the Authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the Authority to initiate proceedings, and an explanation of the borrower's rights, the Authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the Authority after the 15th day following the borrower's receipt of the notice, the Authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures prescribed in the administrative regulation, may be rendered within sixty (60) days, but shall not delay issuance of a withholding order.

This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the Authority, then the hearing officer must give deference to a prior decision

of the Authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above one-hundred twenty-five percent (125%) of the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care.

The final decision of the hearing officer may be appealed to and reviewed by the Authority Board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the Board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence.

The Authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been re-employed continuously for at least 12 months.

Unless the Authority receives information that the Authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within twenty (20) days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within twenty (20) days after a final decision is made by the Authority to proceed with garnishment.

The employer shall deduct and pay to the Authority from a borrower's wages an amount that does not exceed the lesser of fifteen (15) percent of the borrower's disposable pay for each pay period or the amount permitted by 15 U.S.C. §1673, unless the borrower provides the Authority with written consent to deduct a greater amount.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal statute and regulation require the Authority, as the designated state guarantee Authority, to ensure by adoption of standards, policies and procedures that a borrower has an opportunity for a hearing to dispute the existence, amount or repayment of the debt and that the regulations and procedures for such a hearing meet the requirements of the applicable federal statute (20 U.S.C.S. §1095a) and the applicable federal regulation (34 C.F.R. 682.410(b)(10)).

Specifically, the statute and regulation require that in order to issue an administrative order of wage garnishment under the authority of the federal statute:

At least thirty (30) days before the initiation of garnishment proceedings, the Authority shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the Authority to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice five (5) days after it was mailed by the Authority. The Authority shall offer the borrower an opportunity to inspect and copy Authority records related to the debt and an opportunity to enter into a written repayment agreement with the Authority under terms agreeable to the Authority.

The Authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The Authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the Authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The Authority shall provide a hearing to the borrower in sufficient

time to permit a decision, in accordance with the procedures that the Authority may prescribe, to be rendered within sixty (60) days after the Authority's receipt of the borrower's hearing request. The hearing official appointed by the Authority to conduct the hearing may not be under the supervision or control of the head of the Authority. The hearing official shall issue a final written decision.

If the borrower's written request is received by the Authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the Authority to initiate proceedings, and an explanation of the borrower's rights, the Authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the Authority after the 15th day following the borrower's receipt of the notice, the Authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the Authority may prescribe, may be rendered within sixty (60) days, but shall not delay issuance of a withholding order.

The Authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been re-employed continuously for at least 12 months.

Unless the Authority receives information that the Authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within twenty (20) days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within twenty (20) days after a final decision is made by the Authority to proceed with garnishment.

The employer shall deduct and pay to the Authority from a borrower's wages an amount that does not exceed the lesser of fifteen (15) percent of the borrower's disposable pay for each pay period or the amount permitted by 15 U.S.C. §1673, unless the borrower provides the Authority with written consent to deduct a greater amount.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph.

The administrative regulation does not impose stricter requirements than the federal mandate. The federal statute and regulation do not specify specific hearing procedures with the exception that the hearing must be conducted by an independent hearing officer and not an employee of the Authority, the hearing must be conducted and a decision rendered within sixty (60) days after the receipt of the request for a hearing, and that the hearing officer's decision is final (in contrast to KRS Chapter 13B that specifies that the hearing officer renders a "recommended" order subject to finalization by the board). The administrative regulation complies with these requirements. The remaining policies and procedures for requesting and conducting a hearing are left to the discretion of the guaranty agency under the language that the hearing must be conducted "in accordance with the procedures that the agency may prescribe.

The Authority provides the debtor with the opportunity for a hearing to dispute the existence, amount or repayment of the debt. The administrative regulation sets out the procedures for requesting a hearing, the appointment of an impartial hearing officer, the time limits for requesting a hearing and the procedures for conducting a hearing, and the procedures for appealing the decision of the hearing officer to the board.

This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the Authority, then the hearing officer must give deference to a prior decision of the Authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending

consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care.

The final decision of the hearing officer may be appealed to and reviewed by the Authority board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the Board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no requirements in this administrative regulation that are stricter than the federal mandate.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (Amendment)

11 KAR 4:080. Student aid applications.

RELATES TO: KRS 164.518, 164.744(2), 164.748(4), (7), (8), 164.753(3), (4), (6), 164.7535, 164.769, 164.780, 164.785, 34 C.F.R. 654.1-654.5, 654.30-654.52, 20 U.S.C. 1070d-31 - 1070d-41

STATUTORY AUTHORITY: KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3), (6), 164.7535, 164.769(5), (6)(f), 34 C.F.R. 654.30, 654.41, 20 U.S.C. 1070d-37, 1070d-38

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) authorizes the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by KHEAA.

Section 1. Applications. In order to participate in a specified grant, scholarship, or work-study program administered by the Kentucky Higher Education Assistance Authority, the following application forms shall be completed in accordance with their instructions:

(1) For the KHEAA Grant Program as set forth in 11 KAR 5:130, the 2010-2011 Free Application for Federal Student Aid (FAFSA);

(2) For the KHEAA Work-Study Program as set forth in 11 KAR 6:010, the KHEAA Work-Study Program Student Application;

(3) For the Teacher Scholarship Program as set forth in 11 KAR 8:030, the Teacher Scholarship Application;

(4) For the Early Childhood Development Scholarship Program as set forth in 11 KAR 16:010:

(a) The 2010-2011 Free Application for Federal Student Aid (FAFSA);

(b) The Early Childhood Development Scholarship Application; and

(5) For the Robert C. Byrd Honors Scholarship Program as set forth in 11 KAR 18:010:

(a) For high school and home school students, the Robert C. Byrd Honors Scholarship Program; and

(b) For GED recipients, the Robert C. Byrd Honors Scholarship Program GED Recipients; and

(6) For the Go Higher Grant Program as set forth in 11 KAR 5:200;

(a) The 2010-2011 Free Application for Federal Student Aid (FAFSA); and

(b) The Go Higher Grant Program Application.

(7) For the Coal County Scholarship Program for Pharmacy Students as set forth in 11 KAR 19:010, the Coal County Scholarship Program for Pharmacy Students application.

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

(a) The "2010-2011 Free Application for Federal Student Aid (FAFSA)", December 2009;

(b) The "KHEAA Work-Study Program Student Application", July 2001;

(c) The "Teacher Scholarship Application", June 2006;

(d) The "Early Childhood Development Scholarship Application", April 2006;

(e) The "Robert C. Byrd Honors Scholarship Program", June 2009; ~~and~~

(f) The "Robert C. Byrd Honors Scholarship Program-GED Recipients", June 2009; and

(g) The "Go Higher Grant Program Application", January 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material may also be obtained at www.kheaa.com

KRISTI P. NELSON, Chair

APPROVED BY AGENCY: October 26, 2010

FILED WITH LRC: December 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, January 24, 2011, at 10 a.m., Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 work-days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2011. 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carole Ellis, Director of Student Financial Aid

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study program administered by the Authority.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to the administration of the Early Childhood Development Scholarship Program, KHEAA Work-study Program, Teacher Scholarship Program, College Access Program (CAP), Kentucky Tuition Grant (KTG), Go Higher Grant Programs, and Coal County Pharmacy Scholarship as well as the Robert C. Byrd Scholarship Program pursuant to KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3), (6), 164.7535, 164.769(5), (6)(f), 164.7890, 34 C.F.R. 654.30, 654.41, and 20 U.S.C. 1070d-36, 1070d-37, 1070d-38.

(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 the applications to be utilized under the grant, scholarship and work-study programs administered by the Authority.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes by prescribing and incorporating the various application forms to be used by students to apply for the financial aid programs administered by the authority.

(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 designates and incorporates by reference the application to be utilized for the newly-created Coal County Scholarship Program for Pharmacy Students. (b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to incorporate the Coal County Scholarship Program for Pharmacy Students application into the same regulation as the other student aid program applications.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by incorporating the Coal County Scholarship Program for Pharmacy Students application for consistency.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the state student aid programs by incorporating the application for the Coal County Scholarship Program for Pharmacy Students program into the same regulation as those for the other Authority-administered financial aid programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment to this administrative regulation will affect all those individuals who seek to apply for the Coal County Scholarship Program for Pharmacy Students.

(4) Provide an analysis of how the entities identified in (3) above 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 in order to comply with this administrative regulation or amendment: All potential recipients of the pharmacy scholarship will be required to complete the current-year version of the application for that program incorporated by reference in this regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Completion of the specified Coal County Scholarship Program for Pharmacy Students application will result in receipt of an award under that program to the extent funds are available provided the applicant is otherwise qualified.

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

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required in order to implement this administrative regulation since it merely incorporates the Coal County Scholarship Program for Pharmacy Students application.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and

"due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

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? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3), (6), 164.7535, 164.769(5), (6)(f), 164.7890, 34 C.F.R. §654.30, §654.41, 20 U.S.C. §1070d-36, 37, 38.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:470. Dialysis technician credentialing requirements and training program standards.

RELATES TO: KRS 314.035, 314.137

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians. This administrative regulation establishes the requirements for dialysis technician training programs and for credentialing dialysis technicians.

Section 1. Definitions. (1) "Approved dialysis technician training program" means a program to train dialysis technicians that is approved by the board.

(2) "Central venous catheter" means a catheter that is inserted in such a manner that the distal tip is located in the superior vena cava.

(3) "Dialysis technician applicant" means an individual who has applied for a dialysis technician credential.

(4) "Dialysis technician trainee" means an individual who is enrolled in an approved dialysis technician training program.

(5) "Supervision" means initial and ongoing direction, procedural guidance, observation, and evaluation by a registered nurse or physician, and when a patient is being dialyzed the registered

nurse or physician is in the immediate clinical area.

Section 2. Requirements for Dialysis Technician Credential. (1)(a) An individual who applies to be credentialed as a dialysis technician in order to engage in dialysis care shall:

1. File with the board the "Application for Dialysis Technician Credential";

2. Have completed an approved dialysis technician training program or an out-of-state dialysis training program pursuant to subsection (1)(b) of this section;

3. Pay the fee established in Section 12 of this administrative regulation;

4. Provide a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the date of the application;

5. Provide a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

6. Provide to the board a certified copy of the court record of any misdemeanor or felony conviction from any jurisdiction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years; and

7. Provide to the board a letter of explanation that addresses each conviction.

(b)1. If the dialysis technician applicant has completed an out-of-state dialysis technician training program, the applicant shall submit the training program curriculum and evidence of completion to the board. The board or its designee shall evaluate the applicant's

training program to determine its comparability with the standards as stated in Section 7 of this administrative regulation.

2. The board or its designee shall advise an applicant if the training program is not comparable and specify what additional components shall be completed to meet the requirements of Section 7 of this administrative regulation.

3. A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall be required to complete that portion of a board-approved dialysis technician training program related to specific portions of the legal and ethical aspects of practice as set forth in the "Dialysis Technician Training Program Guide". An applicant shall submit evidence to the board of successful completion of the following sections:

a. State and federal regulations governing dialysis;

b. The principles and legal aspects of documentation, communication and patient rights;

c. The roles of the dialysis technician and other multidisciplinary team members; and

d. Principles related to patient safety.

4. A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall submit the "Checklist for Dialysis Technician Competency Validation" signed by the applicant's immediate supervisor in Kentucky. The "Checklist for Dialysis Technician Competency Validation" shall be filed after the submission of the "Application for Dialysis Credential".

5. A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall submit evidence of:

a. Successful completion of a comprehensive, written final examination from a board-approved dialysis technician training program; or

b. Dialysis technician certification issued within the past two (2) years by the Nephrology Nursing Certification Commission, the Board of Nephrology Examiners Nursing and Technology, or the National Nephrology Certification Organization.

(2) An individual shall be exempt from the credentialing requirement while enrolled in an approved dialysis technician training program. The individual shall use the title dialysis technician trainee.

(3) Upon approval of the application, the board shall initially issue the dialysis technician credential for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialing period.

(4)(a) An applicant for a dialysis technician credential may engage in dialysis care as a dialysis technician applicant upon:

1. Receipt by the board of the "Application for Dialysis Techni-

cian Credential"; and

2. Meeting the requirements of subsection (6) of this section. as an applicant until:

1. The credential is issued; or
2. The application is denied by the board.

(5) An "Application for Dialysis Technician Credential" submitted for initial credentialing shall be valid for six (6) months from the date of receipt by the board.

(6) A felony or misdemeanor conviction shall be reviewed to determine whether:

- (a) The application shall be processed with no further action; or
- (b) The application shall be processed only after:

1. The applicant has entered into an agreed order with the board with terms and conditions as agreed by the parties; or

2. If the parties are unable to agree on terms and conditions, a hearing is held pursuant to KRS 314.091 and 201 KAR 20:162, and a final decision is entered by the board.

Section 3. Renewal. (1) To be eligible for renewal of the credential, the dialysis technician shall submit, no later than one (1) month prior to the expiration date of the credential:

(a) The "Application for Renewal of the Dialysis Technician Credential"; and

(b) The fee established in Section 12 of this administrative regulation.

(2) Upon approval of the application, the credential shall be renewed for twenty-four (24) months. The credential shall lapse on the last day of the credentialing period.

(3) A dialysis technician shall report to the board at the time of renewal the name of the national certification program that has issued the technician's certification and provide a copy of the certification certificate to the board.

Section 4. Reinstatement. (1) Before beginning practice as a dialysis technician or a dialysis technician applicant, the individual shall meet the requirements of this section. If the dialysis technician credential has lapsed for a period of less than one (1) credentialing period, the individual may reinstate the credential by:

(a) Submitting the "Application for Dialysis Technician Credential";

(b) Paying the fee established in Section 12 of this administrative regulation; and

(c) Providing a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the date of the application.

(2) If the dialysis technician credential has lapsed for more than one (1) credentialing period, the dialysis technician may reinstate the credential by:

(a) Completing a board-approved dialysis technician training program before submitting the "application for Dialysis Technician Credential". While enrolled in a training program, the individual shall be referred to as a dialysis technician trainee;

(b) Submitting the "Application for Dialysis Technician Credential";

(c) Paying the fee established in Section 12 of this administrative regulation;

(d) Submitting the "Checklist for Dialysis Technician Competency Validation" signed by the individual's immediate supervisor;

(e) Providing a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the date of application; and

(f) Providing a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is dated within six (6) months of the date of the application.

(3) An "Application for Dialysis Technician Credential" submitted for reinstatement shall be valid for six (6) months from the date of receipt by the board.

(4) Upon approval of the application, the credential shall be reinstated for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialing period.

Section 5. Scope of Practice. (1) The scope of practice of a dialysis technician shall include the following and shall be per-

formed under the direct, on-site supervision of a registered nurse or a physician:

(a) Preparation and cannulation of peripheral access sites (arterial-venous fistulas and arterial-venous grafts);

(b) Initiating, delivering or discontinuing dialysis care;

(c) Administration of the following medications only:

2. Normal saline via the dialysis machine to correct dialysis-induced hypotension based on the facility's medical protocol. Amounts beyond that established in the facility's medical protocol shall not be administered without direction from a registered nurse or a physician.

3. Intradermal lidocaine, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse;

(d) Assistance to the registered nurse in data collection;

(e) Obtaining a blood specimen via a dialysis line or a peripheral access site;

(f) Responding to complications that arise in conjunction with dialysis care; and

(g) Performance of other acts as delegated by the registered nurse pursuant to 201 KAR 20:400.

(2) The scope of practice of a dialysis technician shall not include:

(a) Dialysis care for a patient whose condition is determined by the registered nurse to be critical, fluctuating, unstable, or unpredictable;

(b) The connection and disconnection of patients from, and the site care and catheter

port preparation of, percutaneously or surgically inserted central venous catheters; and

(c) The administration of blood and blood products.

Section 6. Discipline of a Dialysis Technician. (1) A dialysis technician, an employer of dialysis technicians, or any person having knowledge of facts shall report to the board a dialysis technician who may have violated any provision of this administrative regulation.

(2) The board shall have the authority to discipline a dialysis technician for:

(a) Failure to safely and competently perform the duties of a dialysis technician as stated in Section 5 of this administrative regulation;

(b) Practicing beyond the scope of practice as stated in Section 5 of this administrative regulation;

(c) Conviction of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty under the laws of any state or of the United States. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence. A "conviction" shall include pleading no contest, entering an Alford plea, or entry of a court order suspending the imposition of a criminal penalty to a crime;

(d) Obtaining or attempting to obtain a credential by fraud or deceit;

(e) Abusing controlled substances, prescription medications, or alcohol;

(f) Misuse or misappropriation of any drug placed in the custody of the dialysis technician for administration, or for use of others;

(g) Falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records;

(h) Having a dialysis technician credential disciplined by another jurisdiction on grounds sufficient to cause a credential to be disciplined in this Commonwealth;

(i) Practicing without filing an "Application for Dialysis Technician Credential" or without holding a dialysis technician credential;

(j) Abuse of a patient;

(k) Theft of facility or patient property;

(l) Having disciplinary action on a professional or business license;

(m) Violating any lawful order or directive previously entered by the board;

(n) Violating any administrative regulation promulgated by the board; ~~or~~

(o) Having been listed on the nurse aide abuse registry with a

substantiated finding of abuse, neglect, or misappropriation of property; or

(p) Having violated the confidentiality of information or knowledge concerning any patient, except as authorized or required by law.

(3) The discipline may include the following:

(a) Immediate temporary suspension of the credential, following the procedure set out in KRS 314.089;

(b) Reprimand of the credential;

(c) Probation of the credential for a specified period of time, with or without limitations and conditions;

(d) Suspension of the credential for a specified period of time;

(e) Permanent revocation of the credential; or

(f) Denying the application for a credential.

(4) The board shall follow the procedures set out in and have the authority set forth

in KRS 314.091, 201 KAR 20:161, and 20:162 for management and resolution of complaints filed against a dialysis technician.

(5) In addition to the provisions of subsection (3) of this section, the board may impose a civil penalty of up to \$10,000.

Section 7. Dialysis Technician Training Program Standards. (1) Program administrator. A registered nurse, holding a current Kentucky license, temporary work permit, or multistate privilege, with at least one (1) year of experience in dialysis care, shall be administratively responsible for planning, development, implementation, and evaluation of the dialysis technician training program. The name, title, and credentials identifying the educational and professional qualifications of the program administrator shall be provided to the board. A change in the program administrator shall be reported to the board within thirty (30) days of the change.

(2) Faculty qualifications. The dialysis technician training program shall be taught by multidisciplinary faculty with expertise in the subject matter. The name, title, and credentials identifying the educational and professional qualifications of each didactic and clinical instructor shall be provided to the board.

(3) The dialysis technician training program shall be based upon the "Dialysis Technician Training Program Guide".

(4) The dialysis technician training program syllabus shall include:

(a) Prerequisites for admission to the program;

(b) Program outcomes. The outcomes shall provide statements of measurable competencies to be demonstrated by the learner; supportive content identified;

(d) Content. The content shall be described in outline format with corresponding time frame and testing schedules;

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

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

(g) Evaluation. There shall be clearly defined criteria for evaluating the learner's achievement of program outcomes. There shall also be a process for annual program evaluation by trainees, program administrator, faculty, and employers.

(5) Any proposed substantive changes to the dialysis technician training program syllabus after initial submission shall be submitted to the board in writing and shall not be implemented without approval from the board.

(6) Trainee clinical practice requirements. The dialysis technician trainee enrolled in a dialysis technician training program shall practice dialysis care incidental to the training program only under the supervision of a faculty member, or his designee.

(7) The dialysis technician training program shall be at least 400 hours in length. A minimum of 200 hours shall be didactic.

(8) Completion requirements. Requirements for successful completion of the dialysis technician training program shall be clearly specified. The requirements shall include demonstration of clinical competency and successful completion of a comprehensive, written final examination. The final examination shall be administered only during the final forty (40) hours of the training program. There shall be a statement of policy regarding a trainee who fails to successfully complete the training program.

(9) The program shall establish a written records retention plan describing the location and length of time records are maintained. At a minimum, the following records shall be maintained by the program:

(a) Provider name, dates of program offerings, and sites of the training program;

(b) The program code number issued by the board; and

(c) Trainee roster, with a minimum of name, date of birth, Social Security number, and program completion date.

(10) An individual who successfully completes the training program shall receive a certificate of completion that documents the following:

(a) Name of individual;

(b) Title of training program, date of completion, and location;

(c) Provider's name;

(d) The program code number issued by the board; and

(e) Name and signature of program administrator.

(11) The program shall submit the "List of Dialysis Technician Training Program Graduates" within three (3) working days of the program completion date.

(12) The program shall notify the board in writing within thirty (30) days of a training program closure. The notification shall include the date of closing, a copy of the program trainee roster from the date of the last renewal to the date of closing, the location of the program's records as defined in subsection (9) of this section, and the name and address of the custodian of the records.

(13) A dialysis technician training program that conducts either the didactic portion or the clinical portion in this state shall be required to be approved by the board and the program shall meet the requirements of this section.

Section 8. Dialysis Technician Training Program Initial Approval. (1) To receive initial approval, a dialysis technician training program shall:

(a) File an "Application for Dialysis Technician Training Program Approval"; and

(b) Pay the fee established in Section 12 of this administrative regulation.

(2) Board approval for a dialysis technician training program that meets the requirements of this administrative regulation shall be granted for a two (2) year period from the date of approval.

(3) Upon approval, the board shall issue a program code number.

(a) File an "Application for Dialysis Technician Training Program Approval";

(b) Submit an annual program evaluation summary report and any actions taken as a result of the evaluation as required by Section 7(4)(g) and (5) of this administrative regulation;

(c) Submit a list of current faculty including the name, title, and credential identifying the educational and professional qualifications of each instructor;

(d) Submit a copy of the program trainee roster for the past two (2) years as required by Section 7(9)(c) of this administrative regulation; and

(2) The application shall be submitted at least two (2) months prior to the end of the current approval period.

(3) Continued approval shall be based on compliance with the standards set out in Section 7 of this administrative regulation.

(4) Continued approval shall be granted for a two (2) year period.

(5) If a program fails to maintain continued approval, the approval shall lapse.

Section 10. Reinstatement of Dialysis Technician Training Programs. A program whose approval has lapsed and that seeks to reinstate that approval shall:

(1) File an "Application for Dialysis Technician Training Program Approval"; and

(2) Pay the fee established in Section 12 of this administrative regulation.

Section 11. Board Actions on Dialysis Technician Training Programs. (1) A representative of the board may make a site visit

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to a dialysis technician training program to determine if the program is complying with regulatory standards.

(2) The board shall prepare a report of the site visit, identifying deficiencies for the training program, and shall include recommendations and requirements to be met in order to maintain compliance with standards.

(3) The program administrator shall submit to the board a response to the site visit report.

(4) Based on the report of deficiencies, the training program's response, and any other relevant evidence, the board may grant approval, continue approval, continue approval with stipulations as determined by the board, or propose to deny or withdraw approval of the program.

(5) A dialysis technician training program administrator may request a review of a board decision concerning approval using the following procedure:

(a) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the dialysis technician training program administrator contests.

(b) The board, or its designee, shall conduct a review. The dialysis technician training program administrator may appear in person to present reasons why the board's decision should be set aside or modified.

(c) The dialysis technician training program administrator shall be notified of the board's decision.

(6) The board shall deny or withdraw approval of a program after an administrative hearing conducted pursuant to KRS Chapter 13B,

Section 12. Fees. (1) The application fee for the initial credential shall be seventy (70) dollars.

(2) The credential renewal fee shall be seventy (70) dollars.

(3) The credential reinstatement fee shall be \$100.

(4) The dialysis technician training program initial approval fee shall be \$950.

(5) The dialysis technician training program continued approval fee shall be \$800.

(6) The dialysis technician training program reinstatement fee shall be \$950.

(7) An additional fee of twenty-five (25) dollars shall be charged for an application for renewal of the credential that is filed after the deadline for filing.

(8) An additional fee of \$150 shall be charged for an application for continued dialysis technician training program approval that is filed after the deadline for filing.

(9) A fee of thirty-five (35) dollars shall be charged for issuing a duplicate of the credential.

(10) A check submitted to the board for payment of a fee which is returned by the bank for nonpayment shall be assessed a return check fee of thirty-five (35) dollars.

(11) A fee of ten (10) dollars shall be charged for written verification of a dialysis technician credential. If submitted in list format, a fee of ten (10) dollars for the first name shall be assessed and a fee of one (1) dollar shall be assessed for each additional name.

(12) A fee of twenty-five (25) dollars shall be charged for a duplicate application form which is issued due to the failure to maintain a current mailing address as required by Section 13 of this administrative regulation.

(13) A fee of thirty five (35) dollars shall be charged for a name change and the issuance of a new credential.

(14) All fees shall be nonrefundable.

Section 13. Miscellaneous Requirements. (1) Any person credentialed by the board as a dialysis technician shall maintain a current mailing address with the board and immediately notify the board in writing of a change of mailing address.

(2) As a condition of holding a credential from the board, a dialysis technician shall be deemed to have consented to service of notices or orders of the board at the mailing address on file with the board. Any notice or order of the board mailed or delivered to the mailing address on file with the board shall constitute valid service of the notice or order.

(3) Any dialysis technician credentialed by the board shall,

within ninety (90) days of entry of the final judgment, notify the board in writing of any misdemeanor or felony conviction in this or any other jurisdiction. A conviction shall include pleading no contest, entering an Alford plea, or entry of a court order suspending the imposition of a criminal penalty to a crime. Upon learning of any failure to notify the board under this provision, the board may initiate an action for immediate temporary suspension until the person submits the required notification.

(4) Any dialysis technician credentialed by the board shall immediately notify the board in writing if any professional or business license that is issued to the person by any agency of the commonwealth or any other jurisdiction is surrendered or terminated under threat of disciplinary action or is refused, limited, suspended, or revoked, or if renewal of continuance is denied.

(5) If the board has reasonable cause to believe that any dialysis technician is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it may require the person to submit to a chemical dependency evaluation or a mental or physical examination by a practitioner it designates. Upon failure of the person to submit to a chemical dependency evaluation or a mental or physical examination, unless due to circumstances beyond the person's control, the board may initiate an action for immediate temporary suspension pursuant to KRS 314.089 or deny an application until the person submits to the required examination.

(6) Every dialysis technician shall be deemed to have given consent to submit to a chemical dependency evaluation of a mental or physical examination when so directed in writing by the board. The direction to submit to an evaluation or an examination shall contain the basis of the board's reasonable cause to believe that the person is unable to practice with reasonable skill and safety, or has abused alcohol or drugs. The person shall be deemed to have waived all objections to the admissibility of the examining practitioner's testimony or examination reports on the ground of privileged communication.

(7) The dialysis technician shall bear the cost of any chemical dependency evaluation or mental or physical examination ordered by the board.

Section 14. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) "Application for Dialysis Technician Training Program Approval", Kentucky Board of Nursing, 6/06;

(b) "Application for Dialysis Technician Credential", Kentucky Board of Nursing, 12/09;

(c) "Application for Renewal of Dialysis Technician Credential", Kentucky Board of Nursing, 9/07;

(d) "Checklist for Dialysis Technician Competency Validation", Kentucky Board of Nursing, 9/07;

(e) "Dialysis Technician Training Program Guide", August 14, 2001, Kentucky Board of Nursing; and

(f) "List of Dialysis Technician Training Program Graduates", Kentucky Board of Nursing, 9/07.

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

CAROL KOMARA, President

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 14, 2010 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2011 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 2011, 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

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comments shall be accepted until close of business January 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets requirements for dialysis technician (DT) credentialing and DT training program standards.

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

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

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

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

(a) How the amendment will change this existing administrative regulation: It adds a new provision for disciplinary action: violating patient confidentiality.

(b) The necessity of the amendment to this administrative regulation: This provision was recently added to the nurse disciplinary statute. It was determined to be appropriate to add it to this administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set these requirements.

(d) How the amendment will assist in the effective administration of the statutes: It will protect patient confidentiality.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All DTs, approximately 1100.

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

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

(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 comply.

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

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no cost.

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. 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 Nursing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131

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? None

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

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

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

301 KAR 2:122. Seasons, methods, and limits for small game.

RELATES TO: KRS 150.340, 150.360, 150.370, 150.990

STATUTORY AUTHORITY: KRS 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish hunting seasons, ~~and~~ to regulate bag and possession limits, the methods of taking, and the devices used to take wildlife. This administrative regulation is necessary to conserve small game wildlife populations and to provide recreational hunting and trapping opportunity for the public. ~~[ensure the permanent and continued supply of small game by protecting them from overharvest.]~~

Section 1. Definitions. (1) "Eastern Zone" means the third through the ninth wildlife districts as established~~[specified]~~ in 301 KAR 4:010.

(2) "Grouse Zone" means the area consisting of Adair, Bath, Bell, Boyd, Bracken, Breathitt, Campbell, Carter, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fleming, Floyd, Garrard, Greenup, Harlan, Harrison, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe Counties.

(3) "Modern gun deer season" means the season established by 301 KAR 2:172.

(4) "Rabbit" means an eastern cottontail rabbit, swamp rabbit, or Appalachian cottontail rabbit.

(5) "Small game" means squirrels, rabbits, northern bobwhite or ruffed grouse.

(6) "Squirrel" means a gray squirrel or fox squirrel.

(7) "Western Zone" means the first and second wildlife districts as established~~[specified]~~ in 301 KAR 4:010.

Section 2. Methods of Harvest for Small Game. (1) A person shall use any of the following to take small game:

(a) Rimfire gun;

(b) Shotguns no larger than 10-gauge;

(c) Muzzle-loading gun;

(d) .22 caliber handgun;

(e) Bow and arrow;

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- (f) Crossbow;
(g) The following caliber air-guns with pellets:
1.177;
2. .20; or
3. .22. [(g) 177, 20, or 22 caliber air gun with pellets;]
(h) Dogs; [or]
(i) Falconry, pursuant to 301 KAR 2:195; or
(j) Trapping, pursuant to Section 5 of this administrative regulation, for:
1. Rabbits; or
2. Squirrel.
(2) A person shall not use the following to take small game:
(a) A shotgun shell containing a shot size larger than number two (2); or
(b) Single projectile shotgun ammunition. [possess a shotshell containing larger than number two (2) size shot.
(3) A person shall not possess single projectile shotgun ammunition except during the modern gun deer season as a legal deer hunter.]

Section 3. Small Game Hunting Seasons. (1) Except as specified in 301 KAR 2:049 or 2:125, a person shall not take small game except during the dates specified in this section.

(2)[Except as specified in 301 KAR 2:049 or 2:125, a person shall not take the following small game except during the dates specified in this section:

(4)] Small game taken by falconry: September 1 through March 30.

(3)[(2)] Squirrel:

(a) The third Saturday in May through the third Friday in June; and [The first Saturday in June for fourteen (14) consecutive days; and]

(b) The third Saturday in August through the last day of February except during the first two (2) days of modern gun deer season.

(4) [(3)] Rabbit and northern bobwhite:

(a) Western Zone: the third day of modern gun deer season until February 10.

(b) Eastern Zone: November 1 until January 31 except during the first two (2) days of modern gun deer season.

(5)[(4)] Ruffed Grouse: November 1 through the last day of February in the Grouse Zone, except during the first two (2) days of modern gun deer season.

(6)[(5)] There shall not be a closed season for chasing rabbits during daylight hours for sport and not to kill.

(7)[(6)] Free youth week. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may take small game without a hunting or trapping license. Statewide requirements and bag limits apply.

Section 4. Limits and Other Requirements. (1) The small game possession limits shall be twice the daily bag limits.

(2) Daily bag limits:

(a) Squirrel: six (6);

(b) Rabbit: four (4);

(c) Northern bobwhite: eight (8); and

(d) Ruffed grouse: four (4).

(3)[Small Game Bag and Possession Limits.

	Daily	Possession
Squirrels	6	12
Rabbits	4	8
Northern Bobwhite	8	16
Ruffed Grouse	4	8

Section 5. Limits by Falconry.] A falconer hunting outside any of the dates specified in Section 3(2) through (4) of this administrative regulation shall not take more than two (2) small game animals per day.

(4)[Section 6. Shooting Hours.] A person shall hunt small game during [the] daylight hours only.

Section 5.[Section 7.] Trapping for Squirrel and Rabbit. A person trapping for squirrel or rabbit shall: (1) Trap in accordance with 301 KAR 2:251, Section 7.[Section 8.]

(2) Only trap when the small game hunting season and trapping season overlap;

(3) Possess a trapping license;

(4) Adhere to daily bag and possession limits pursuant[and possession bag limits according] to Section 4 of this administrative regulation; and

(5) Harvest squirrel and rabbits upon capture, except for a person possessing the appropriate captive wildlife permit, pursuant to 301 KAR 2:081 and 3:022.

BENJY T. KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: December 10, 2010

FILED WITH LRC: December 15, 2010 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2011 at 2 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by January 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements for hunting small game species in Kentucky. This regulation establishes season dates, bag and possession limits, methods of taking, and devices used to take small game species in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly conserve and manage small game species in Kentucky and provide ample recreational hunting opportunity to small game hunters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations governing hunting and trapping seasons for wildlife, including small game species.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the administration of KRS 150.025 by establishing small game hunting seasons, limiting take and possession of small game, and restricting the methods of take in order to conserve and protect small game species.

(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 expands the spring squirrel season by opening at an earlier date in May rather than June. It also removes the prohibition on possession of certain ammunition in order to comply with the requirements of Senate Bill 64 which became effective in July 2010.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to expand squirrel hunting opportunity in Kentucky and comply with the requirements of SB 64.

(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: Those people hunting small game species in the Commonwealth will be affected. There are approximately 200,000 small game hunters in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Squirrel hunters will be able to hunt earlier in the year.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Squirrel hunters will benefit from increased opportunity to hunt.

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

(a) Initially: There will not be an initial change in cost for 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 the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees were established, and no fees were increased.

(9) TIERING: Is tiering applied? Tiering was not used because all hunters and trappers in Kentucky will need to comply 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 Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be affected by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 grants the Kentucky Department of Fish and Wildlife Resources authority to regulate and restrict when, where, and how wildlife are taken.

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.

(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 future revenue for the state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be any additional costs to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be not be additional costs to implement this administrative regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

RELATES TO: KRS 150.025, 150.175, 150.180, 150.183, 150.240, 150.275, 150.280, 150.290, 150.450, 150.485, 150.520, 150.525, 150.600, 150.603, 150.620, 150.660, 150.720[~~EO 2008-546~~]

STATUTORY AUTHORITY: KRS 150.175, 150.195(4)(f), [~~150.175,~~] 150.225, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175 authorizes the types of licenses, permits [~~establishes the kinds of licenses~~] and tags. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.620 authorizes the department to charge reasonable fees for [~~promulgate administrative regulations governing~~] the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation establishes fees and terms for licenses, permits, and tags [~~licenses and the expiration dates for the licenses.~~]

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year.

(1) Sport fishing licenses:

(a) Statewide annual fishing license (resident): twenty (20) dollars;

(b) Statewide annual fishing license (nonresident): fifty (50) dollars;

(c) Joint statewide fishing license (resident): thirty-six (36) dollars; and

(d) Trout permit (resident or nonresident): ten (10) dollars.

(2) Commercial fishing licenses:

(a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: \$150; and

(b) Commercial fishing license (nonresident) plus ten (10) non-resident commercial gear tags: \$600.

(3) Commercial fishing gear tags (not to be sold singly):

(a) Commercial fishing gear tags (resident) block of ten (10) tags: fifteen (15) dollars; and

(b) Commercial fishing gear tags (nonresident) block of ten (10) tags: \$100.

(4) Hunting licenses:

(a) Statewide hunting license (resident): twenty (20) dollars;

(b) Statewide hunting license (nonresident): \$130;

(c) Statewide junior hunting license (resident or nonresident): five (5) dollars;

(d) Shooting preserve hunting license (resident or nonresident): five (5) dollars;

(e) Statewide waterfowl permit (resident or nonresident): fifteen (15) dollars; and

(f) Migratory game bird permit (resident or nonresident): ten (10) dollars.

(5) Combination hunting and fishing license (resident): thirty (30) dollars.

(6) Senior/disabled combination hunting and fishing license (resident): five (5) dollars.

(7) Trapping licenses:

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- (a) Trapping license (resident): twenty (20) dollars;
- (b) Trapping license (resident landowner/tenant): ten (10) dollars;
- (c) Trapping license (nonresident): \$130; and
- (d) Junior trapping license (resident): five (5) dollars.
- (8) Game permits:
 - (a) Game permit, resident bear: thirty (30) dollars;
 - (b) Resident quota elk hunt permit: thirty (30) dollars;
 - (c) Nonresident quota elk hunt permit: \$365;
 - (d) Resident out-of-zone elk hunt permit: thirty (30) dollars;
 - (e) Nonresident out-of-zone elk hunt permit: \$365;
 - (f) Game permit, resident deer: thirty (30) dollars;
 - (g) Game permit, nonresident deer: sixty (60) dollars;
 - (h) Junior game permit, deer (resident or nonresident): ten (10) dollars;
 - (i) Bonus antlerless deer permit (two (2) tags per permit) (resident or nonresident): fifteen (15) dollars;
 - (j) Bonus quota hunt deer permit (resident or nonresident): thirty (30) dollars;
 - (k) Game permit, resident spring turkey: thirty (30) dollars;
 - (l) Game permit, nonresident spring turkey: sixty (60) dollars;
 - (m) Game permit, resident fall turkey: thirty (30) dollars;
 - (n) Game permit, nonresident fall turkey: sixty (60) dollars; and
 - (o) Junior game permit, turkey (resident or nonresident): ten (10) dollars.
- (9) Peabody individual permit: fifteen (15) dollars.
- (10) Commercial mussel licenses:
 - (a) Musseling license (resident): \$400;
 - (b) Musseling license (nonresident): \$1,600;
 - (c) Mussel buyer's license (resident): \$600; and
 - (d) Mussel buyer's license (nonresident): \$1,600.
- (11) Sportsman's licenses (resident) (includes resident hunting and fishing combination, spring turkey permit, fall turkey permit, trout permit, state waterfowl permit and game permit for deer): ninety-five (95) dollars.
- (12) Junior sportsman's license (resident or nonresident) (includes junior hunting license, junior deer permit, junior turkey permit, trout permit and waterfowl permit): twenty-five (25) dollars.
- (13) Land Between the Lakes hunting permit: twenty (20) dollars.
- (14) Conservation permit: five (5) dollars.

Section 2. Licenses, tags and permits, listed in this section shall be valid for the calendar year in which they are issued.

- (1) Live fish and bait dealer's licenses:
 - (a) Live fish and bait dealer's license (resident): fifty (50) dollars; and
 - (b) Live fish and bait dealer's license (nonresident): \$150.
- (2) Commercial taxidermist license: \$150.
- (3) Commercial guide licenses:
 - (a) Commercial guide license (resident): \$150; and
 - (b) Commercial guide license (nonresident): \$400.
- (4) Shooting preserve permit: \$150.
- (5) Dog training area permit: fifty (50) dollars.
- (6) Collecting permits:
 - (a) Educational wildlife collecting permit: twenty-five (25) dollars; and
 - (b) Scientific wildlife collecting permit: ~~\$100, [\$250]~~
- (7) Nuisance wildlife control operators (NWCO) permit: \$100;
- (8) Pay lake license:
 - (a) First two (2) acres or less: \$150; and
 - (b) Per additional acre or part of acre: twenty (20) dollars.
- (9) Commercial captive wildlife permit: \$150.
- (10) Commercial fish propagation permit: fifty (50) dollars.
- (11) Wildlife rehabilitator's permit: twenty-five (25) dollars.
- (12) Annual wildlife transportation permit: \$250; and
- (13) Peabody Wildlife Management Area annual event permit: \$250; and
- (14) Fish transportation permit: twenty-five (25) dollars.

Section 3. Licenses, tags and permits listed in this section shall be valid for three (3) years from the date of issue.

- (1) Falconry permit: seventy-five (75) dollars.
- (2) Noncommercial captive wildlife permit: seventy-five (75)

dollars.

Section 4. Licenses, tags and permits listed in this section shall be valid for the date or dates specified on each.

- (1) Short-term licenses:
 - (a) One (1) day resident fishing license: seven (7) dollars;
 - (b) One (1) day nonresident fishing license: ten (10) dollars;
 - (c) Seven (7) day nonresident fishing license: thirty (30) dollars;
 - (d) Fifteen (15) day nonresident fishing license: forty (40) dollars.
 - (e) One (1) day resident hunting license (not valid for deer, elk, or turkey hunting): seven (7) dollars.
 - (f) One (1) day nonresident hunting license (not valid for deer, elk, or turkey hunting): ten (10) dollars.
 - (g) Five (5) day nonresident hunting license (not valid for deer, elk, or turkey hunting): forty (40) dollars;
 - (h) Three (3) day fur bearer's license: fifty (50) dollars; and
 - (2) Individual wildlife transportation permit: twenty-five (25) dollars.
 - (3) Special resident commercial fishing permit: \$600.
 - (4) Special non-resident commercial fishing permit: \$900.
 - (5) Commercial waterfowl shooting area permit: \$150.
 - (6) Shoot to retrieve field trial permits:
 - (a) Per trial (maximum four (4) days): seventy-five (75) dollars; and
 - (b) Single day: twenty-five (25) dollars.
 - (7) Boat dock permit: \$100 per ten (10) year permit period beginning January 1, 2008, except that the fee shall be pro-rated for the number of years remaining in the ten (10) year period.
 - (8) Shoreline use permit: Valid for a fifteen (15) year permit period beginning January 1, 2010 and shall contain three (3) tiers:
 - (a) Tier I: \$100;
 - (b) Tier II: \$200;
 - (c) Tier III: \$300; and
 - (d) The fees shall be pro-rated to the nearest five (5) year interval remaining in the fifteen (15) year permit period.
 - (9) Peabody individual event permit: twenty-five (25) dollars.
 - (10) Commercial Roe-bearing Fish Buyer's permit:
 - (a) Commercial Roe-bearing Fish Buyer's permit (resident): \$500; and
 - (b) Commercial Roe-bearing Fish Buyer's permit (nonresident): \$1,000.
 - (11) Commercial Roe-bearing Fish Harvester's permit:
 - (a) Commercial Roe-bearing Fish Harvester's permit (resident): \$500; and
 - (b) Commercial Roe-bearing Fish Harvester's permit (nonresident): \$1,500.
 - (12) Otter Creek Outdoor Recreation Area:
 - (a) Daily Entry Permit: three (3) dollars, with children under twelve (12) free; and
 - (b) Daily Special Activities Permit: seven (7) dollars.
- Section 5. Licenses, tags, and permits listed in this section shall be valid on a per unit basis as specified.
- (1) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.
 - (2) Pheasant hunt permit (per person, per day): twenty-five (25) dollars.
 - (3) Horse stall rental (per space, per day): two (2) dollars.
 - (4) Dog kennel rental (per dog, per day): fifty (50) cents.
 - (5) Pond stocking fee (per stocking):
 - (a) Ponds less than 1.5 surface acres: seventy-five (75) dollars;
 - (b) Ponds from 1.5 to 2.9 surface acres: \$200; and
 - (c) Ponds equal to or greater than 3.0 surface acres: \$200 plus \$150 for each additional surface acre of water over 3.0 acres pro-rated on a 0.25 acre basis.
 - (6) Commercial captive cervid permit (per facility, per year): \$150.
 - (7) Noncommercial captive cervid permit (per facility; per three years): seventy-five (75) dollars.

Section 6. The following licenses listed in this section shall be

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valid from April 1 through March 31 of the following year:

- (1) Fur processor's license (resident): \$150.
- (2) Fur buyer's license (resident): fifty (50) dollars.
- (3) Fur buyer's license (nonresident): \$300.

Section 7. The following Otter Creek Outdoor Recreation Act permits shall be valid from July 1 through June 30 of the following year:

(1) Annual Entry Permit: thirty (30) dollars, with children under twelve (12) free; and

(2) Annual Special Activities Permit: seventy (70) dollars.

BENJY T. KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: December 3, 2010

FILED WITH LRC: December 15, 2010

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2010, at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by January 31, 2010. 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) 564-3400 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 the fees, terms, and expiration dates for licenses, tags, and permits sold by the Department of Fish and Wildlife Resources.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the Department of Fish and Wildlife Resources to establish reasonable license fees, permit terms, and the expiration dates of licenses and permits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.175 establishes the kinds of licenses, permits, and tags. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 requires the department to prescribe reasonable fees for licenses, permits, and registrations authorized by Chapter 150.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the requirements and purposes of the statutes identified in (1)(c) by establishing reasonable fees for licenses, permits, and tags issued by the department.

(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 reasonable fees for the use of Otter Creek Outdoor Recreation Area. It also reduces the Scientific Wildlife Collection Permit from \$250 to \$100.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish reasonable fees for the use of Otter Creek Outdoor Recreation Area and to make the Scientific Collection permit fee more reasonable.

(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: It is unknown how many individuals will use Otter Creek Outdoor Recreation Area. In 2010, 52 individuals possessed a Scientific Wildlife Collection 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: A person wishing to use Otter Creek Recreation Area will be required to purchase either a daily or annual entry permit. Those wishing to use the shooting ranges, horseback riding trails, or mountain biking trails will have to additionally purchase a Special Activities Permit. Individuals who want to collect wildlife species for scientific purposes will need a Scientific Wildlife Collection permit, but the fee has been reduced by \$150.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will cost an individual \$3 a day or \$30 per year to enter Otter Creek Recreation Area. It will cost an individual an additional \$7 a day or \$70 a year to use the trail systems for horseback riding or mountain biking or for shooting range participants. It will cost a Scientific Wildlife Collector \$100 a year to collect wildlife in Kentucky.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Otter Creek users will benefit from gaining access to a 2,200 acre multiple use recreation area close to Louisville that was previously closed to public access. Horseback riders, mountain bikers, hikers, birdwatchers, etc. will benefit from a maintained trail system that will allow them to pursue their individual activities. Shooting enthusiasts will benefit from being able to use a quality outdoor firearm shooting range and two outdoor archery ranges. Scientific Wildlife Collectors will benefit from a reduced permit fee.

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

(a) Initially: There will only be a minimal set-up cost for the administrative body to initially create the Otter Creek Use Permits and the Scientific Wildlife Collecting Permit.

(b) On a continuing basis: There will be a minimal cost on a continuing basis.

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

7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The newly established fees will be necessary to cover the costs of operating, managing, and maintaining Otter Creek Outdoor Recreation Area. The Collecting permit fees will be used to administer and oversee collecting permits and the associated reports.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation established new fees for the use of Otter Creek Outdoor Recreation Area.

(9) TIERING: Is tiering applied? Yes, tiering was applied for different types of recreational activity on Otter Creek Outdoor Recreation Area. Horseback riders and mountain bikers wishing to use the trail system on the area and those people using the shooting ranges will have to purchase an additional Special Activities Permit to pursue those activities.

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, Fisheries, Administrative Services, and Law Enforcement will be impacted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.175 establishes the kinds of licenses, permits, and tags. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 requires the department to prescribe reasonable fees for licenses, permits, and registrations authorized by KRS Chapter 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? It is unknown how much revenue will be generated at Otter Creek in the first year, since attendance numbers are currently unavailable. Based on 2010 Wildlife Collecting Permit numbers, it is estimated that at least \$5,000 will be generated with this permit.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is unknown at this time for Otter Creek in subsequent years. The department will get a better idea after the first full year of operation. The Wildlife Collecting Permit will generate at least \$5,000 in subsequent years.

(c) How much will it cost to administer this program for the first year? The cost of administering the new permit system for the first year will be minimal.

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

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 5:006. Wastewater planning requirements for regional planning agencies [areas].

RELATES TO: KRS ~~Chapters 67, 67A, 74, 76, 96, 108, 220, 224.10-100, 224.70-100, 224.70-110, 424, [224.73, 224A.040, 224A.050, 224A.055, 224A.070, 224A.080,]~~ 33 U.S.C. 1251-1387 ~~[et seq.]~~

STATUTORY AUTHORITY: KRS 224.10-100, ~~[224.16-050,]~~ 224.70-100, 224.70-110, ~~[224A.111, 224A.112, 224A.113,]~~ 40 C.F.R. ~~[25.4, Part 35,]~~ 130, 33 U.S.C. ~~[4281, 4285,]~~ 1288, 1313

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Energy and Environment [Environmental and Public Protection] Cabinet to develop a comprehensive plan for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. ~~[The Clean Water Act, 33 U.S.C. 1281 et seq. and more specifically,]~~ 33 U.S.C. 1313(e) requires each state to establish and maintain [the implementation of] a continuing planning process ~~[by governmental bodies]~~ to provide for the control of water pollution. 33 U.S.C. 1288 requires the governor of the state or local officials to designate a boundary for areas within the state and a single representative organization [organizations] within each area [the areas] to develop a wastewater treatment management plan applicable to all wastewater [wastewaters] generated within an area. ~~[40 C.F.R. Part 130 speci-~~

~~fies further detail for compliance with Section 208 of the Clean Water Act, including the requirement that the state establish and maintain a continuing planning process that includes the process for incorporating elements of any applicable areawide wastewater treatment management plans under Section 208, applicable basin plans under Section 209 of the Clean Water Act, and a process for updating and maintaining water quality management plans, including schedules for revision.]~~ 40 C.F.R. 130.6~~(e)~~ also requires the state and areawide agencies to update the plans as needed to reflect changing water quality conditions, results of implementation actions, and new requirements, or to remove conditions in prior conditional or partial plan approvals. This administrative regulation establishes Kentucky's regional facility [implements the required] planning process for publicly-owned wastewater treatment works that are, or result in, point sources of water pollution in designated planning areas. [for the Commonwealth of Kentucky in order to conform with federal requirements and provides for the preparation of wastewater treatment management plans by governmental agencies for point sources of pollution.]

Section 1. Applicability. (1) A governmental entity, such as a city, county, or other public body created by KRS 67, 67A, 74, 76, 96, 108, or 220, may apply for designation as a regional planning agency by submitting a regional facility plan to the cabinet.

(2) The cabinet shall designate a regional planning agency in accordance with 33 U.S.C. 1288(a)(2) and (3).

(3) The cabinet shall de-designate a regional planning agency if:

(a) The regional planning agency requests de-designation;

(b) The regional planning agency fails to meet its planning obligations as specified in a grant agreement, contract, or memorandum of understanding; or

(c) The regional planning agency no longer has the resources or the commitment to continue water quality planning activities within the designated boundary.

(4) If a regional planning agency is de-designated, the cabinet shall assume responsibility for continued water quality planning and oversight of implementation of planning activities within the regional planning area.

(5) The cabinet shall not designate an entity as a regional planning agency if that entity does not have authority to meet the requirements established in 33 U.S.C. 1288(c)(2)(A) through (I).

Section 2. Requirement to Submit a Regional Facility Plan. (1) A new regional planning agency shall submit a regional facility plan to the cabinet.

(2) An existing regional planning agency shall submit a regional facility plan if:

(a) A new wastewater treatment facility is proposed for construction within the planning area;

(b) An existing regional planning agency proposes to expand the average daily design capacity of an existing wastewater treatment facility by more than thirty (30) percent; or

(c) The equivalent population served by an existing wastewater collection system or a system with a Kentucky Inter-System Operating Permit is proposed for expansion by more than thirty (30) percent of the population served in the previously approved regional facility plan.

(3) A regional planning agency shall request a pre-planning meeting with the cabinet before submitting a regional facility plan.

(4) Two (2) paper copies and one (1) electronic copy of the regional facility plan shall be submitted to the cabinet.

Section 3. Contents of a Regional Facility Plan. (1) A regional facility plan shall include adequate information to allow for an environmental assessment of the primary projects proposed in the regional facility plan and to assure that a cost-effective and environmentally sound means of achieving the established water quality goals can be implemented.

(2) A regional facility plan shall be consistent with the Regional Facility Plan Guidance and shall include:

(a) A regional facility plan summary;

(b) A statement of the purpose of and need for the regional facility plan, including documentation of existing water quality or

public health problems related to wastewater in the planning area;

(c) Physical characteristics of the planning area;

(d) A description of the socioeconomic characteristics of the planning area;

(e) A description of the existing environment in the planning area;

(f) A description of the existing wastewater collection and treatment facilities in the planning area;

(g) A forecast of flows and waste loads for the planning area;

(h) This administrative regulation shall govern the regional planning process for the development of water quality management plans to control point sources of pollution in given areas throughout the Commonwealth. This administrative regulation establishes the process by which regional planning agencies and the Commonwealth shall comply with Sections 201, 205, 208, and 303(e) of the Clean Water Act to provide planning for wastewater control in particular areas for point sources of pollution.

Section 2. Requirements. (1) No new regional facility shall be constructed, no average daily design capacity of an existing regional facility shall be expanded by more than thirty (30) percent, or no existing regional sewage collection system shall expand its equivalent population served by more than thirty (30) percent of the existing population, without the regional planning agency submitting a regional facility plan and the cabinet approving the plan. All regional facility plans shall be prepared by a registered professional engineer.

(2) A regional planning agency shall submit a regional facility plan if or regional facility plan update when the following occurs:

(a) A new regional facility is proposed to be constructed within the planning area;

(b) The average daily design capacity of an existing regional facility is proposed to be expanded by more than thirty (30) percent;

(c) The equivalent population served by an existing regional sewage collection system is proposed to be expanded by more than thirty (30) percent of the existing population served;

(d) A regional facility or other governmental agency applies for a grant from the U.S. EPA or applies for a loan from the federally assisted wastewater revolving fund pursuant to the requirements of 40 C.F.R. Part 35 and 200 KAR Chapter 17. A plan of study shall be submitted to the cabinet for the project to be eligible to be placed on the project priority list and receive priority points;

(e) A regional planning agency considers the submission of the plan to be in the best interest of the public and the environment; or

(f) It has been twenty (20) years since the regional planning agency or its successor has submitted a regional facility plan.

Section 3. Regional Planning Agencies. (1) Governmental entities such as cities, counties, and other public bodies that are created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220 may apply to the cabinet to become a regional planning agency, if they have not already been designated as a regional planning agency, by submitting a regional facility plan. The cabinet may designate the entity as a regional planning agency if it finds that the proposed area is not served by another regional planning agency; the development of this agency would be in the best interest of the public and the environment; or the agency has the legal, institutional, managerial, and financial capability, and specific activities necessary to carry out its responsibilities in accordance with Section 208(e)(2)(A) through (I) of the CWA.

(2) Designation. Regional planning agencies may be designated by the cabinet in accordance with Section 208(a)(2) and (3) of the CWA and this administrative regulation. Designations and redesignations shall be subject to approval by the U.S. EPA in accordance with Section 208(a)(7) of the CWA.

(3) De-designation. The cabinet may modify or withdraw the planning designation of a regional planning agency if:

(a) The regional planning agency requests the cancellation;

(b) The regional planning agency fails to meet its planning requirements as specified in grant or loan agreements, contracts, or memoranda of understanding; or

(c) The regional planning agency no longer has the resources or the commitment to continue water quality planning activities

within the designated boundaries.

(4) Impact of de-designation. When a regional planning agency's designation has been withdrawn, the cabinet shall assume direct responsibility for continued water quality planning and oversight of implementation of planning activities within the area.

Section 4. Contents of Plan. The regional facility plan shall include the necessary information to allow for an environmental assessment and to assure that the most cost effective and environmentally sound means of achieving the established water quality goals can be implemented. These plans shall contain the following information:

(1) Maps showing the planning area. In the determination of a planning area, appropriate attention shall be given to include the entire area where cost savings, regionalization, other management advantages, or environmental gains may result from interconnection of individual sewage facilities or collective management of the systems. At least one (1) original seven and one-half (7 1/2) minute USGS topographic map shall be submitted showing the planning area. Computer generated USGS data compatible with the cabinet's computer system may be substituted for the USGS map.

(2) A description of the existing regional facilities, including physical condition, hydraulic and organic design capacities, characteristics of wastewater, ability to meet permit limits, method of sludge handling and disposal, existing flows including average and peak flows, a waste load allocation for the proposed project, inflow and infiltration problems including location and frequency of by-passes or overflows, combined sewers if any, the collection system including location of pump stations and their capacities, and operation and maintenance problems. The location and identification of any other sewage treatment plants located in, or serving a part of, the planning area shall also be shown.

(3) A description of the planning area characteristics, including the location of wetlands, delineation of the 100 year floodplain area, topography, groundwater, surface streams, geology, soils with specific mention of suitability or unsuitability of soils, and topography for on-site sewage disposal systems.

(4) If there is a proposed project, a discussion of the need for the project including current compliance status, applicable permit limits, and if proposed sewers are involved, documentation as to why on-site systems are not acceptable. Discussions and documentation of any water quality or public health problems in the area shall be included. The applicant shall also describe any type of state or federal enforcement actions that may exist against any wastewater treatment plant within the area.

(5) A discussion of the current and projected population in the planning area including existing population in the current service area, twenty (20) year projected population in the current service area, existing population in unsewered parts of the planning area, and twenty (20) year projected population in the unsewered parts of the planning area. Current and projected industrial and commercial users of the system shall be included. When appropriate, these areas of the planning area not currently sewered should be divided into three (3) time frames: present to two (2) years, three (3) to ten (10) years, and eleven (11) to twenty (20) years. The current and projected populations shall be shown for each area on the planning area map. If available, a local planning and zoning land use map shall be included. The basis for the projected population change shall be identified.

(6) A detailed evaluation of alternatives, along with a twenty (20) year present worth cost analysis for each alternative. All wastewater management alternatives considered, including no action, and the basis for the engineering judgment [judgement] for selection of the alternatives chosen for detailed evaluation, shall be included. Sufficient detail shall be provided to allow for a thorough cost analysis to be conducted. Nonmonetary effectiveness criteria shall be limited to implementability, environmental impact, engineering evaluation, public support, and regionalization. The alternatives shall reflect a comprehensive regional plan for the planning area and shall minimize the number of point source discharges. Intended sources of funding shall be listed along with estimated user fees;

(i) Cross-cutter correspondence and mitigation;

(j) An evaluation of the recommended regional facility plan; and

(k)-

~~(7) In addition to the cost for the current project being proposed, cost estimates shall be given for the entire twenty (20) year planning period. Cost estimates shall be provided for each time frame identified in subsection (5) of this section and shall be broken down by the following categories: secondary wastewater treatment, advanced wastewater treatment, inflow and infiltration correction, major sewer rehabilitation, new collector sewers, interceptor sewers, combined sewer overflow corrections, and storm water pollution corrections.~~

~~(8) Documentation of public participation.~~

~~1. A copy of the advertisement for the public hearing required by Section 5 of this administrative regulation, and a copy of the minutes of the public hearing, and any written comments and responses shall be submitted as part of the regional facility plan.~~

~~2. If more than one (1) public hearing is was held or if there are were public meetings or public notices about ef the project, a copy copies of all documentation of these events shall be submitted as part of the regional facility plan.~~

~~3. At the required public hearing, the scope of the project, cost of the project, alternatives considered, and estimated user charges and hook-up fees shall be discussed.~~

~~(3) The items required in subsection(2)(f) through (h) of this section shall be prepared by a professional engineer licensed in Kentucky.~~

Section 4. Requirement to Submit an Asset Inventory Report.

(1) An asset inventory report shall be submitted to the cabinet if:

(a) It has been ten (10) years since the regional planning agency submitted a regional facility plan or asset inventory report; and

(b) Section 2(2) of this administrative regulation does not require the regional planning agency to submit a regional facility plan.

(2) The regional planning agency shall submit the following information on the Asset Inventory Report Form:

(a) Wastewater facility data;

(b) Revenue and expenses;

(c) Asset inventory

(d) Project prioritization;

(e) Funding plan;

(f) Copies of supporting documentation; and

(g) Certification statement from a designated official.

(3) The cabinet shall issue an assessment report to the regional planning agency that provides recommendations related to facility planning, operation, and management that ensure continuing compliance and protection of surface water and groundwater.

(4) The cabinet shall publish its assessment of the Asset Inventory Report on its Web site for thirty (30) days.

Section 5. Public Notice, Public Comment, and Public Hearing Requirements. (1) Prior to the approval of the regional facility plan or updates to the plan, the regional facility planning agency shall publish give public notice of its draft plan and shall hold a public hearing on the draft plan. Public notice of the draft plan and the public hearing on the draft plan shall be provided given pursuant to KRS Chapter 424.

(2) A All public notice notices issued pursuant to under this administrative regulation shall contain the following information:

(a) The name and address of the regional planning agency that is proposing which drafted the plan;

(b) A brief description of the contents of the draft plan and the area to be served;

(c) The name, address, and telephone number of persons from whom interested persons may obtain further information including copies of the draft regional facility plan;

(d) A brief description of the procedures for the public's right to comment on the draft regional facility plan and the procedures for commenting required by this administrative regulation;

(e) A reference to The date of any previous public notices relating to the draft regional facility plan;

(f) The date, time, and place of the hearing on the draft plan; and

(g) A brief description of the nature and purpose of the hearing.

(3) The planning agency shall provide a copy of the public notice to the cabinet for publication on its Web site at least two (2) weeks prior to the public hearing.

(4) The public shall have be given an opportunity to comment on the draft plan and the period for comment shall remain open for thirty (30) days from the date of the first publication of the notice of the public hearing or until the termination of the hearing, whichever is later. The regional planning agency may extend the public comment period, on request, if it believes additional public input is necessary.

(5) A Commentors may request longer comment periods, which may be granted by the regional planning agency, if appropriate.

(4) Any person may submit written or oral comments statements and data to the regional planning agency concerning the draft regional facility plan. Reasonable limits may be set up on the time limit for oral statements and the submission of statements in writing may be required.

(6) All persons who believe any condition of the draft plan is inappropriate, inaccurate, incomplete, or otherwise not in the best interest of the public and the environment, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual background supporting their position, including all supporting materials, by the close of the public comment period.

Section 6. Regional Facility Plan Review. (1) The cabinet shall prepare Action on the Plan. (4) an environmental assessment report summarizing will be written by the cabinet which summarizes the regional facility plan.

(a) The cabinet shall will submit the environmental assessment report to the State Clearinghouse for review and comments to identify potentially adverse impacts resulting from the primary projects proposed.

(b) The cabinet shall publish the environmental assessment report on its Web site for thirty (30) days.

(c) The cabinet may identify measures in the environmental assessment report to avoid, minimize, or reduce potentially adverse environmental impacts.

(2) The cabinet shall issue a determination to approve or deny a regional facility plan within 120 calendar days of receipt of a complete regional facility plan.

(3) If the regional facility plan is submitted consistent with the requirements of this administrative regulation and addresses water quality or public health problems related to wastewater, the cabinet shall approve the regional facility plan.

(4) KPDES and facility construction permit decisions shall be made in accordance with approved regional facility plans, as established in 40 C.F.R. 130.12(a) and (b).

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

(a) "Regional Facility Plan Guidance", December 2010; and

(b) "Asset Inventory Report Form", December 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained through the Division of Water's Web site at <http://water.ky.gov>. Mitigative measures may be required to address any negative comments as a result of this review.

(2) If the cabinet finds that the regional facility plan has been properly submitted and is in the best interest of the environment and the public, the cabinet will approve the plan.

Section 7. Consistency with Plans. Construction grant, loan, and permit decisions shall be made in accordance with certified and approved water quality management plans, including regional facility plans, as described in 40 C.F.R. 130.12(a) and (b) and this administrative regulation.

Section 8. Nonpoint Source Controls. Regional planning agencies may implement plans for nonpoint source controls, other than plans for agricultural nonpoint source controls, in their designated

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~~areas. Regional planning agencies may develop plans for agricultural nonpoint source controls in their areas, if the plans are developed in coordination with the Agriculture Water Quality Authority, established pursuant to KRS 224.74. These plans may be included in the comprehensive water quality management plan that may include the regional facility plan.]~~

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: December 7, 2010

FILED WITH LRC: December 8, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2011 at 5 p.m., Eastern Time, at the 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2011, 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 January 31, 2011. 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: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky's regional facility planning process for publicly-owned wastewater treatment works that are, or result in, point sources of water pollution in designated planning areas.

(b) The necessity of this administrative regulation: KRS 224.10-100 requires the cabinet to develop a comprehensive plan for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. 33 U.S.C. 1313(e) requires each state to establish and maintain a continuing planning process for the control of water pollution. 33 U.S.C. 1288 requires the governor of the state or local officials to designate a boundary for areas within the state and single representative organizations within the each area to develop a wastewater treatment management plan applicable to all wastewaters generated within an area. 40 C.F.R. 130.6 requires the state and areawide agencies to update the plans as needed to reflect changing water quality conditions, results of implementation actions, and new requirements, or to remove conditions in prior conditional or partial plan approvals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation requires regional planning agencies to perform facility planning for point sources of pollution in designated planning areas for maintaining, improving and protecting water quality. Also the facility planning process is a key element of the comprehensive plan for the management of water resources, as mandated by federal law and KRS 224.10-100.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation serves as an important component of the federally required continuing planning process and comprehensive plans for the management of water resources, as required by KRS 224.10-100.

(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 amendments to this administrative regu-

lation decrease the financial burden to regional planning agencies, clarify language, and strike outdated federal citations. To reduce the costs to regional planning agencies, the regulation no longer requires the entire regional facility plan to be developed by an engineer; only those parts that are engineering work must be developed by professional engineer. The requirement to submit a revised regional facility plan is no longer automatically triggered by an application for federal funding or a twenty-year time lapse. For regional planning agencies that do not otherwise trigger the need to submit a regional facility plan, there is an option to submit an asset inventory report. Additionally, the regulation implements a 120 day review deadline for the Cabinet to approve or deny a regional facility plan.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to make the regional planning process more efficient and effective, and to allow flexibility for regional planning agencies that are experiencing little or no growth.

(c) How the amendment will assist in the effective administration of the statutes: This amendment will improve an important component of the federally required continuing planning process for maintaining, improving, and protecting the state's water resources.

(d) How the amendment will assist in the effective administration of the statutes: The proposed revisions to this administrative regulation incorporate by reference guidance documents, require the cabinet to post the environmental assessment reports online, which adds transparency, and clarify ambiguous language. These amendments will improve the effectiveness and efficiency of the regional facility planning and review process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 231 regional planning agencies (a governmental entity, such as a city, county, or other public body created by KRS 67, 67A, 74, 76, 96, 108, or 220) 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, 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: A regional planning agency will be required to submit a regional facility plan when it is first formed, proposes to construct a new wastewater treatment facility, expands an existing wastewater treatment facility by thirty percent, or proposes to expand the population served by more than thirty percent. If a regional planning agency does not meet one of the triggers for a new regional facility plan, it will be required to submit an asset inventory report every ten years.

(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 revised administrative regulation will not result in increased costs to a regional planning agency. Regional planning agencies will be able to reduce their planning costs significantly because of the limited role of a professional engineer required in the revised facility plans. Additionally, the amendment to this administrative regulation gives a regional planning agency the option of submitting an asset inventory report, instead of a full regional facility plan. The asset inventory report is an abbreviated planning document that is appropriate for smaller regional planning agencies, or regional planning agencies in areas that are experiencing little or no growth.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendments to this administrative regulation will decrease the financial burden to regional planning agencies. To reduce the costs to regional planning agencies, the regulation no longer requires the entire regional facility plan to be developed by an engineer; only those parts that are engineering work must be developed by a professional engineer. The requirement to submit a revised regional facility plan is no longer automatically triggered by an application for federal funding or a 20-year time lapse. For regional planning agencies that do not otherwise trigger the need to submit a regional facility plan, there is an option to submit an asset inventory report. The asset

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inventory report will give the regional planning agencies a tool to target capital investments toward critical assets and prolong the useful life of their assets. Additionally, the regulation implements a 120 day review deadline for the Cabinet to approve or deny a regional facility plan.

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

(a) Initially: There are no additional costs to implement the amendments to this administrative regulation.

(b) On a continuing basis: There are no additional costs to implement the amendments to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation is implemented and enforced using state general funds and federal funds provided by the Environmental Protection Agency through the Clean Water State Revolving Fund, Water Pollution Control Grant.

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

(9) TIERING: Is tiering applied? Tiering is applied to this amendment. A regional planning agency that is experiencing low growth or no growth will not be required to submit a full regional facility plan every twenty years. Instead, a regional planning agency has the option to submit an asset inventory report every ten years, which will reduce the costs of complying with this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Regional planning agencies, including city and county governments that have the overall responsibility for regional facility planning process within their designated planning boundaries.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 33 U.S.C. 1288, 1313, 40 C.F.R. 130, KRS 224.10-100, 224.70-100, 224.70-110

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

(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 in the first year.

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

(c) How much will it cost to administer this program for the first year? The cabinet does not anticipate any additional costs to administer this program as a result of the proposed amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The cabinet does not anticipate any additional costs to administer this program as a result of the proposed amendments to this administrative regulation.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 33 U.S.C. 1288, 1313, 40 C.F.R. 130

2. State compliance standards. KRS 224.10-100, 224.70-100, 224.70-110.

3. Minimum or uniform standards contained in the federal mandate. 33 U.S.C. 1313 requires each state to establish and maintain a continuing planning process to provide for the control of water pollution. 33 U.S.C. 1288 requires the governor of the state or local officials to designate a boundary for areas within the state and single representative organizations within each area to develop a wastewater treatment management plan applicable to all wastewaters generated within an area. 40 C.F.R. 130.6 requires the state and areawide agencies to update the plans as needed to reflect changing water quality conditions, results of implementation actions, and new requirements, or to remove conditions in prior conditional or partial plan approvals.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Vehicle Licensing (Amendment)

601 KAR 9:210. Continuation of title liens.

RELATES TO: KRS 186A.190, 186A.193, 186A.195, 186A.185
STATUTORY AUTHORITY: KRS 186A.010(2), 186A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186A.010(2) requires the Transportation Cabinet to develop an automated motor vehicle and trailer registration and titling system. KRS 186A.190 establishes the procedures for the perfection and discharge of a security interest in property that has been issued a Kentucky certificate of title under the cabinet's titling system. [KRS 186A.190 states that the notation of a security interest on a certificate of title shall automatically expire within a certain period. The statute further provides that secured parties may continue their security interest notation beyond the expiration by filing a continuation statement.] This administrative regulation establishes [sets forth] the procedure for filing a continuation statement to extend a security interest notation on a certificate of title.

Section 1. Continuation of a Security Interest. (1) A secured party ~~shall~~may continue a security interest on a certificate of title beyond the expiration date ~~established~~set forth in KRS 186A.190 by filing a Title Lien Statement, TC Form 96-187~~(96-187E)~~ in the office of the county clerk of the county where the original lien is filed.

(2) ~~[(4)]~~ For the purpose of continuing a security interest, the Title Lien Statement, TC Form 96-187 shall be filed:

(a) No sooner than six (6) months prior to the expiration date of the initial period ~~established~~set forth in KRS 186A.190(1);

(b) On the expiration date; ~~[date corresponding to the date of lapse]~~ or

(c) If there is no expiration date, then on the last day of the month of expiration ~~[if there is no corresponding date]~~.

(3) The Title Lien Statement ~~[form]~~ shall be filed no later than close of business on the date upon which the financing statement lapses.

(4) The date the Title Lien Statement~~[form]~~ is received in the appropriate county clerk's office ~~[as indicated in this section]~~ shall control the effectiveness of the continuation statement.

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Section 2. Incorporation by Reference. (1) Title Lien Statement Form, TC 96-187E, July 2001, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Vehicle Regulation, Division of Motor Vehicle Licensing, Transportation Cabinet Building, 200 Mero Street, Division of Motor Vehicle Licensing, 2nd Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

MIKE HANCOCK, Secretary

APPROVED BY AGENCY: December 7, 2010

FILED WITH LRC: December 14, 2010 at 2 pm.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2011 at 10 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five (5) working days prior to the hearing. This request does not have to be in writing. 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 wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 31, 2011. 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: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann Dangelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a procedure for continuation of a title lien pursuant to KRS 186A.190.

(b) The necessity of this administrative regulation: This regulation is necessary to inform a creditor of the procedures necessary to continue a security interest beyond the automatic lapse.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 186A.010 requires the cabinet to establish a titling system. This administrative regulation establishes the procedures necessary to continue a security interest on a certificate of title.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the procedure for filing a continuation statement for obtaining continuation of a security interest on a vehicle title.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update and amend the language and required form.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the language, address of the cabinet, and the form used in the continuation process.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment upgrades language and form but follows the structure provided by KRS 186A.010 and 186A.190.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will insure that a creditor has the current procedures and form to continue a security interest.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All entities that take security interests in motor vehicles, the owners of motor vehicles, and county clerks.

(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 or different actions by the parties effected.

(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 involved with these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The parties will benefit by having the most current forms and procedures.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no costs associated with implementing these amendments.

(a) Initially:

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no costs associated with implementation and enforcement of this regulation.

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

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

(9) **TIERING:** Is tiering applied? No. Tiering is not applied and any secured party can continue a security interest on a certificate of title beyond the expiration date established.

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 impacts procedures in the County Clerk's office.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 186A.010 and 186A.190.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional costs are required or 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? This amended regulation will not generate additional revenue.

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

(c) How much will it cost to administer this program for the first year? No costs are required or expected based on these amendments.

(d) How much will it cost to administer this program for subsequent years? No subsequent costs are anticipated.

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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PUBLIC PROTECTION CABINET
Department of Insurance
Health and Life Division
(Amendment)

806 KAR 17:460. Requirements for autism benefits for children.

RELATES TO: KRS 304.17A-141 - 304.17A-143, 304.17A-600-304.17A-633[~~304.17A-661, 304.17A-669(2)~~]

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner[~~Executive Director~~] of Insurance to promulgate reasonable administrative rules and 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. This administrative regulation establishes definitions and guidelines for a health benefit plan[~~plans~~] in providing a benefit for an individual with an autism spectrum disorder[~~benefits for children~~].

Section 1. Definitions. (1) "Autism services provider" is defined by KRS 304.17A-141(2).

(2) "Autism spectrum disorders" is defined in KRS 304.17A-143(3) and 304.17A-141(3). [~~(2) "Child" is defined in KRS 304.17A-143(4).~~]

(3) "Diagnosis of autism spectrum disorders" is defined by KRS 304.17A-141(4).

(4) "Health benefit plan" is defined in KRS 304.17A-005(22).

(5) "Treatment for autism spectrum disorders" is defined by KRS 304.17A-141(11). [~~(4) "Respite care" means short-term care and supervision provided in a child's home or in another setting to provide temporary relief to the child's caregiver.~~]

(6) "Therapeutic or rehabilitative care" means care to improve functioning of a child with autism or to prevent the condition from worsening.

(6) "Utilization review" is defined in KRS 304.17A-600(18).

Section 2. Cost-sharing and Benefit Limitations. (1) Deductibles, coinsurance, and copayments may be applied to diagnosis and treatment for autism spectrum disorders that are no less favorable than those that apply to other medical services covered by the health benefit plan [~~therapeutic, respite, and rehabilitative care services for a child with autism~~].

(2) Diagnosis and treatment of autism spectrum disorders shall not be subject to any limits on the number of visits an individual may make to an autism services provider.

(3) Payment of a benefit for the treatment of an autism spectrum disorder shall not be construed to reduce any other benefits available under the terms of the health benefit plan.

Section 3. [~~Services.~~] (1) ~~Therapeutic and rehabilitative care services for a child with autism shall be provided under the same terms and conditions as treatment for physical health conditions, pursuant to KRS 304.17A-661 and subject to the exemption set forth in KRS 304.17A-669(2).~~

(2) ~~Other health plan limitations on therapeutic, respite, and rehabilitative services shall not operate to reduce the amount of coverage provided for autism in KRS 304.17A-143(2).~~

(3) ~~Respite care shall be furnished on a short-term one-to-one basis because of the absence of or need for relief of the child's caregiver.~~

(4) ~~Therapeutic or rehabilitative care shall be provided by a licensed or certified health care provider.~~

(5) ~~An insurer shall not require that respite care be provided by a licensed or certified health care provider.~~

Section 4-] Utilization Review. If a review of the medical necessity or appropriateness of treatment for autism spectrum disorders for an individual [~~therapeutic, respite, and rehabilitative care services for a child with autism~~] is conducted, the review shall comply with the requirements of KRS 304.17A-600 to 304.17A-633 and 304.17A-142(6), if applicable.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 13, 2010

FILED WITH LRC: December 14, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 26, 2011, 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 19, 2011, 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 January 31, 2011. 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, Staff Assistant, 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 definitions and guidelines for a health benefit plan in providing a benefit for children who have an autism spectrum disorder.

(b) The necessity of this administrative regulation: 2010 Ky. Acts Ch. 150 requires health benefit plans to provide coverage for autism spectrum disorders. This administrative regulation provides some guidance relating the administration of an autism spectrum disorder benefit.

(c) How does this administrative regulation conform to the content of the authorizing statutes: In the 2010 session, KRS 304.17A-143 was amended and KRS 304.17A-141 and 142 were created to expand the benefit for autism spectrum disorders. This administrative regulation provides some guidance relating to the administration of an autism spectrum disorder benefit.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation currently provides form filing procedures and provides the amendments to this plan, including amendments to increase the coverage benefit for autism spectrum disorders as required by 2010 Ky. Acts ch. 150.

(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 make technical corrections and will amend the administrative regulation in conformance with changes created by the 2010 Legislative session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate appropriate changes made by 2010 Ky. Acts ch. 150 into this administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.17A-141 through 304.17A-143 requires insurers to provide autism spectrum benefits and this amendment will revise this regulation to conform to the new requirements.

(d) How the amendment will assist in the effective administration of the statutes: KRS 304.17A-141 through 304.17A-143 requires insurers to provide autism spectrum benefits. This amendment will revise the regulation in conformance with changes in state law. Insurers offering the revised health benefit plans will be in compliance with the revised laws.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Amendment to this administrative regulation

will affect 19 insurers who have individuals covered under a health benefit plan in the individual, small group or large group markets. Additionally any insurer with a health line of authority may file forms to offer a health benefit plan.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These entities will be required to make conforming amendments to their forms after the effective date of this regulation. Once the filing is approved, the entities will need to implement the change.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): These entities will be responsible for a filing fee of five dollars to amend a form. The cost to implement a change in a product is specific to the entity. A draft version of this regulation was sent to insurers and other interested parties for comment on November 5, 2010. No comments related to the cost or recommended changes were received from stakeholders.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will have a revised health benefit plan product in compliance with state law.

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

(a) Initially: Minimal, if any.

(b) On a continuing basis: Minimal, if any.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Department of Insurance.

(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. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees, or direct or indirect increases in fees, will be established or incurred.

(8) TIERING: Is tiering applied? No, tiering is not applied; the provisions of this administrative regulation will be implemented in the same manner for all insurers who have health benefit plan products.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Insurance

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statute 304.2-110 (1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance code. 2010 Ky. Acts Ch. 150 requires health benefit plans to provide coverage for autism spectrum disorders.

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 amended regulation should 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? The amended regulation will not generate additional revenue.

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

year? The cost of administering this program will not change.

(d) How much will it cost to administer this program for subsequent years? The cost of administering this program will not change.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Kentucky Board of Home Inspectors (Amendment)

815 KAR 6:040. Home inspector preclicensing~~[and continuing education]~~ providers.

RELATES TO: KRS 198B.712, 198B.722, 198B.724

STATUTORY AUTHORITY: KRS 198B.706(2), (15), 198B.712(2)(c), 198B.724

NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(15) requires the Kentucky Board of Home Inspectors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.700 to 198B.738 ~~[and to establish requirements for continuing education]~~. KRS 198B.712(2)(c) requires an applicant to complete a board-approved ~~[training program or]~~ course of study. ~~[KRS 198B.724 requires the board to establish continuing education requirements.]~~ This administrative regulation establishes the procedures for being approved by the board as a preclicensing~~[or a continuing education]~~ provider.

Section 1. Definitions. (1) "Board" is defined in KRS 198B.700(2).

(2) "Contact hours" means fifty (50) minutes of instruction, exclusive of any breaks, recesses, or other time not spent in instruction.

(3) ~~["Continuing education provider" means the person or legal entity who is registered pursuant to this administrative regulation and who is responsible for conducting a continuing education course approved pursuant to this administrative regulation.]~~

(4) ~~["Preclicensing course provider" means the person or legal entity who is approved by the board to conduct preclicensing courses in home inspection.]~~ ~~[registered pursuant to this administrative regulation and who is responsible for conducting a course approved pursuant to this administrative regulation.]~~

Section 2. Preclicensing Course Provider Approval. ~~[Registration Requirements. (1)]~~ Applicants to be a pre-licensing course provider shall submit the following:

(1) ~~[(a)]~~ A properly completed "Application for Approval as a Pre-Licensing Course Provider for Home Inspectors", Form KBHI 3;

(2) A \$100 nonrefundable application fee;

(3) Copy of the Certificate of Approval from the Kentucky State Board for Proprietary Education, if required by KRS Chapter 165A or proof that the applicant is exempt from licensure ~~[(b) A nonrefundable fee of \$500];~~

(4) A syllabus of all courses, that will be offered, which shall include the physical location(s) of the laboratory and field training portions of the courses;

(5) A list of all course instructors; ~~[(c) Information required to demonstrate that its course meets the requirements of 815 KAR 6:040, Section 2(8); and]~~

(6) A copy of each brochure used to advertise the courses;

(7) A sample of the official transcript. ~~[(d) A surety bond in a form acceptable to the board and in the amount of \$50,000.]~~

(2) ~~Applicants to be a continuing education course provider shall submit the following:~~

(a) ~~A properly completed "Application for Approval as a Continuing Education Course Provider for Home Inspectors", Form KBHI 4; and~~

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(b) A nonrefundable fee of \$100-]

Section 3. Renewals. ~~A provider's approval~~[(1)] ~~Provider registration~~ shall expire every two (2) years.[(2)] To renew its ~~approval~~ ~~registration~~, each provider shall submit the application and fee required for initial ~~approval~~ ~~registration~~.

Section 4. Required records. (1) Each provider shall maintain the following records with respect to each course:

- (a) The time, date, and place each course is completed;
- (b) The name, address, and qualifications of each instructor who teaches any portion of the course and whether each instructor has been approved by the board;
- (c) The name ~~and~~[-] address, ~~and license number, if applicable,~~ of each person who registered for the course;
- (d) ~~The original sign-in sheet used at the site of the course to register persons who attend each course. The sign-in sheet shall require every person to print their name, list their license number, if applicable, and sign their name;~~
- (e) The course syllabus used for each course; ~~[-and]~~
- (e) ~~[(f)]~~ The course evaluations; ~~and~~[-]
- (f) ~~The grades received by each person who completed the course.~~

(2) The provider shall issue to each person who successfully completes an approved course, a certificate of completion containing the following:

- (a) The name of the attendee;
- (b) ~~The license number, if applicable, of the attendee;~~
- (e) The name of the provider;
- (c) ~~[(d)]~~ The course name;
- (d) ~~[(e)]~~ The course number;
- (e) ~~[(f)]~~ The date of the course; and
- (f) ~~[(g)]~~ The total number of contact hours successfully completed in each subject covered by the course.

(3) Each provider shall maintain its records for at least three (3) years after the completion of each course. These records shall be submitted to the board or its agents upon request.

(4) Each provider shall submit to the board, in writing, notice of any changes in the information provided in the initial registration of the provider. The notification shall be made within thirty (30) days following the date the change is effective.

Section 5. ~~[Approval of Continuing Education Courses. (1) A continuing education provider shall submit a request for approval of a continuing education course which shall include the following:~~

- (a) ~~The total number of contact hours;~~
- (b) ~~The course syllabus;~~
- (c) ~~A detailed outline of the contents of the course;~~
- (d) ~~The name and qualifications of all instructors known at the time of the request for approval; and~~
- (e) ~~The minimum qualifications of any instructors not known at the time of the request for approval.~~

~~(2) The fee for course approvals shall be twenty-five (25) dollars per class, per date offered. A continuing education provider shall not pay in excess of \$250 in course approval fees in any one (1) year.~~

~~(3) The board shall approve continuing education courses which:~~

- (a) ~~Appropriately relate to the general business skills or the technical skills required of licensees;~~
- (b) ~~Contain sufficient educational content to improve the quality of licensee performance;~~
- (c) ~~Are taught by qualified instructors; and~~
- (d) ~~Have a course evaluation.~~

~~(4) Continuing education course approval shall be valid for two (2) years from date of issue if no substantial change is made in the course and if the registration of the provider has not expired or been suspended or revoked. Substantial changes made in any course shall require a new approval of that course. A provider shall reapply for course approval ninety (90) days prior to the date of expiration of the previous course approval.~~

~~(5) A course which has been denied may be resubmitted to the board with modifications.~~

~~(6) If a course is approved, the board shall assign the course a~~

~~number. The course provider shall use the course number in the course syllabus, in all other course materials used in connection with the course, and in all written advertising materials used in connection with the course.~~

~~Section 6.] Qualifications of Course Instructors. (1) All course instructors shall be qualified, by education or experience, to teach the course, or parts of a course, to which the instructor is assigned.~~

~~(2) Any person with a four (4) year college degree or graduate degree, with at least two (2) years of work experience in that field, shall be qualified to teach a~~~~continuing education or~~ prelicensing course in their field of study.

~~(3) To qualify as an instructor based on experience, an individual must:~~

~~(a) Be licensed and have actively practiced for at least five (5) years as a home inspector; or~~

~~(b) Have five (5) years of experience in a related field of home inspection or the Building Sciences.~~

~~(4) A licensee whose license is suspended or revoked as a result of board discipline shall not teach or serve as a course instructor during the time the license is suspended or revoked.~~

~~(5) [(4)] A course provider may request prior approval by the board regarding the qualifications of a particular instructor for a particular course.~~

Section 7. Course Syllabus. (1) Each course shall have a course syllabus that identifies:

- (a) The name of the course;
- (b) The number of the course assigned by the board;
- (c) The name and address of the provider; ~~and~~
- (d) A description or outline of the contents of the course; ~~and~~
- (e) ~~The location of each course component.~~

(2) Each person who registers for a course shall be given the course syllabus prior to the beginning of the course. ~~[The syllabus may be distributed when the person registers their attendance at the course.]~~

Section 8. Course Advertising. (1) A provider shall not advertise a course as one approved until the approval is granted by the board.

(2) A provider shall not include any false or misleading information regarding the contents, instructors, location of classrooms or laboratory courses, or number of contact hours of any course approved under this administrative regulation.

(3) A provider shall include its provider number and course numbers in all advertising.

Section 9. Disciplinary Matters. (1) The board may deny, suspend, or revoke the registration of any prelicensing course~~or continuing education~~ provider for any of the following acts or omissions:

- (a) Obtaining or attempting to obtain registration or approval through fraud, deceit, false statements, or misrepresentation;
- (b) Failing to provide complete and accurate information in the initial registration or in any notification of change in information;
- (c) Failing to timely notify the board of a change in the information required for registration of the provider;
- (d) Falsifying of any records regarding the courses conducted by the provider or the persons who attended the courses offered;
- (e) Failing to maintain any required records regarding course offerings conducted by the provider or the persons who attended the course;
- (f) Failing to adequately train the staff responsible for taking attendance at any approved course;
- (g) Failing to provide the board with copies of any document or other information required to be maintained by the provider pursuant to this administrative regulation;
- (h) Advertising that a provider has been approved by the board prior to the date the approval is granted;
- (i) Failing to include provider and course numbers in advertisements;
- (j) Failing to maintain a record of instructors;
- (k) Failing to resolve attendance reporting problems; and
- (l) Failing to comply with any other duty imposed on providers

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in this administrative regulation.

(2) Disciplinary action shall be initiated by the board by written notice to the provider by certified mail, return receipt requested, to the provider's address on file with the board.

(3) A provider may appeal a proposed disciplinary action by notifying the board in writing within ten (10) days of its desire to appeal.

(4) All appeals shall be governed in accordance with KRS Chapter 13B.

(5) A provider whose registration has been revoked shall not reapply for registration for two (2) years from the date of revocation.

Section 10. Incorporation by Reference. (1) ~~The following material is incorporated by reference:~~

~~(a) "Application for Approval as a Prelicensing Course Provider for Home Inspectors, Form KBHI 3", November 2010 Edition, is incorporated by reference.~~

~~(b) "Application for Approval as a Continuing Education Course Provider for Home Inspectors, Form KBHI 4", April, 2006]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Occupations and Professions, [Office of Housing, Buildings and Construction], 911 Leawood Drive, [401 Sea Hero Road, Suite 100,] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES R. BONE, Board Chair

APPROVED BY AGENCY: December 14, 2010

FILED WITH LRC: December 15, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2011, at 10 a.m. at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by 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 the close of business January 31, 2011. 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: Mark Brengelman, Board Counsel, Assistant Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5627, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Brengelman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application process for the board to approve pre-licensing courses.

(b) The necessity of this administrative regulation: The necessity of this regulation is to provide guidance to applicants who wish to provide pre-licensing courses in home inspection.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to promulgate administrative regulations per KRS 198.706.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the documents required to be submitted with the application and also notifies applicants that they must also apply with the Kentucky Board of Proprietary Education to operate a school.

(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 require applicants to provide a Certificate of Approval from the Kentucky Board of Proprietary Education, as well as other specified documents with the application for approval of the prelicensure by the board. The amendment also deletes the licensure process for continuing education course providers from this regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure pre-licensure course providers meet the standards to operate a school in the Commonwealth of Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 198B.706 by detailing the application process for board approval of pre-licensing courses.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the board with more specific information about the course work which will reduce subsequent requests for additional information, allowing for a more efficient approval process and will ensure each provider is licensed to operate a school in the Commonwealth of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are approximate five board approved pre-licensing course 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 the administrative regulation or amendment: Applicants will have to comply with KRS Chapter 165A and 201 KAR Chapter 40, as well as this regulation.

(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 approval as a prelicense course provider shall pay \$100 for initial licensure and \$100 for renewal every two years

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3) This regulation will decrease the current \$500 application fee to \$100 and allow qualified applicants who meet statutory and regulatory criteria to provide prelicensure courses in the Commonwealth of Kentucky. The regulation will also inform the entities that they are governed by another regulatory agency.

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

(a) Initially: Costs to implement this administrative regulation will be minimal, mainly consisting of the cost to make copies of the revised application form.

(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: 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 establish additional fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally by statute 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 the Kentucky Board of Proprietary Education and the Office of Occupations and Professions, which provides administrative services to the Kentucky Board of Home Inspectors.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 198B.706(1)(a) and 198B.712(2)(c).

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 generate approximately \$500 in revenue, which is a decrease from the current amount.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will generate approximately \$500 in revenue, which is a decrease from the current amount.

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

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

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

Revenues(+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Administration and Financial Management (Amendment)

902 KAR 8:040. Definition of terms in 902 KAR Chapter 8.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870, Chapter 337, 29 U.S.C. 206

STATUTORY AUTHORITY: KRS 194A.050, 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. This administrative regulation establishes definitions for the terms used in 902 KAR Chapter 8.

Section 1. Definitions. (1) "Above minimum salary" means due to recruitment difficulties the local health department has requested and been given approval by the department for a minimum salary upon appointment for a specific classification which is higher than the minimum salary established by the Compensation Plan.

(2) "Agency" is defined by KRS 211.1751(1).

(3)(2) "Allocate" means assigning a position to an appropriate class on the basis of similarity of work and level of responsibility performed in the position.

(4)(3) "Appeal" means the right, under the provisions of 902 KAR 8:110, to appear before the Local Health Department Employment Personnel Council or a hearing officer appointed by the department and be heard on matters of discrimination or disciplinary actions, provided for under 902 KAR 8:060 through 902 KAR 8:140.

(5)(4) "Appointing authority" means the board of health or other individual authorized under KRS Chapter 212 to make appointments.

(6)(5) "Available" means an individual on a register for a class of positions willing to accept appointment in specified areas to a particular position of that class.

(7)(6) "Cabinet" means the Cabinet for Health and Family

Services [Cabinet for Health Services.]

(8)(7) "Certification of eligible's" means a list of eligible's issued by the Department for Public Health to the appointing authority of an agency certifying that the individuals listed meet the established minimum qualifications of the position, passed the required examination, if any, and may be considered for employment.

(9)(8) "Class" means a group of positions similar as to the duties performed; degree of supervision exercised or required; minimum requirements of training, experience, or skill; and other relevant characteristics.

(10)(9) "Classified service" means employment subject to the terms of administrative regulations 902 KAR 8:060 through 902 KAR 8:140 except for:

(a) A health officer or a health department director employed under the provisions of 902 KAR 8:140; or

(b) An employee appointed on a seasonal, temporary, or emergency basis as described in administrative regulation 902 KAR 8:080; or

(c) An employee appointed as a janitor after the effective date of this administrative regulation; or

(d) An employee appointed under the provisions of 902 KAR 8:080 to work an irregular schedule as needed by an agency and whose hours of actual work do not exceed 800 [400] hours per year.

(11)(40) "Classification plan" is defined by KRS 211.1751(2).

(12) "Closed Advertisement" means the local health department recruits for a position by accepting applications only in response to a designated advertisement having a specified date.

(13)(44) "Compensation plan" is defined by KRS 211.1751(3).

(14)(42) "Compensatory time" means the accumulation of leave time for time worked on an hour-for-hour basis in excess of thirty-seven and one-half (37.5) hours per week subject to the provisions of KRS Chapter 337 and the Fair Labor Standards Act, 29 U.S.C. 206.

(15) "Continuous open recruitment" means the local health department accepts applications at any time for a designated classification.

(16)(43) "Council" is defined by KRS 211.1751(4).

(17)(44) "Demotion" means a change of an employee from a position in one (1) class to a position in another class having a lower entrance salary.

(18)(45) "Department" is defined by KRS 211.1751(5).

(19)(46) "Detail to special duty" means the assignment of an employee to a position for not more than twenty-six (26) pay periods to fulfill the responsibilities of an employee on leave or the assumption of additional job duties which are temporary.

(20)(47) "Disabled veteran" means a veteran who has established by official records of the United States government the present existence of a service connected disability.

(21)(48) "Discrimination" means any administrative decision based on a person's race, sex, age, religion, national origin, color or disability, except where the decision is supported by a valid occupational qualification.

(22)(49) "Discipline" means any effort to positively instruct or punish an employee concerning inappropriate conduct and behavior or unsatisfactory job performance requiring redirection.

(23)(20) "Eligible" means an individual whose name appears on a register for a particular class.

(24)(24) "Eligible list" means a list of names of persons who have been found qualified for positions or classes of positions.

(25)(22) "Emergency appointment" means the appointment of a person to a position, for a period not to exceed seven (7) pay periods, when an emergency makes it impractical or impossible to fill the position through standard appointment procedures.

(26)(23) "Excessive absenteeism" means absences from the employee's work station or assigned place of work that cause the irregular attendance with or without approval of the agency. Absences may include tardiness, leaving early, abuse in the use of sick leave, excessive unexcused absence that causes repetitive disruption of job performance and responsibilities of the employees and the agency, abuse in the use of annual leave, violating agency break policy, or violation of agency lunch policy.

(27) "Exempt" means the employee receives an exemption from the minimum wage and overtime pay requirements, as pro-

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vided for by the Fair Labor Standards Act (29 C.F.R. Part 541). This determination is based upon salary level, salary basis and job duties for those employed in executive, administrative or professional positions.

(28)(24) "Flagrant violation" means:

- (a) A breach of: State law;
2. An agency rule; or
3. An agency policy; or

(b) Failure of an employee to follow a directive which constitutes a clear, present, threat or danger to the life, safety, health, or welfare of:

1. A patient;
2. Another employee;
3. The general public; or
4. The subject employee; or

(c) Activity or behavior by an employee that seriously disrupts the normal course of business in the agency.

(29)(25) "Full-time employee" means an employee who is compensated on a salary basis for a standard biweekly pay period.

(30) "In-Range adjustment" means an employee may receive an increase in salary due to a change in position duties and responsibilities but are less than those that would indicate a reclassification.

(31) "Initial probationary period" means the period of six (6) months an employee is required to serve prior to becoming a regular employee in an agency.

(32) "Initial salary adjustment" means the salary upon appointment may be adjusted above the classification grade minimum to reflect additional education or experience the person has which is above the minimum requirements set for that classification.

(33) "Irregular hour" means the employee works variable hours and does not follow a regular schedule for work. The individual is paid per service or paid an hourly rate salary.

(34)(26) "Insubordination" means the refusal or the ignoring of a request to perform a task or to comply with an order given to the employee by a supervisor under circumstances where:

- (a) The employee understands the order or request; and
- (b) Refusal to perform is not justified by a reasonable safety concern.

(35)(27) "Job description" means a written description for each classification which establishes the:

- (a) Title of the class;
- (b) Duties and responsibilities of the work;
- (c) Minimum requirements for the job; and
- (d) Special requirements for the job, including physical standards necessary to perform the work.

(36)(28) "Local health department" means an agency subject to the provisions of administrative regulations 902 KAR 8:040 through 902 KAR 8:140.

(37)(32) "Lump sum [Outstanding] merit payment" means a lump sum payment made to an employee payment based on that employee's outstanding job performance.

(38) "Material and permanent duties" means a substantial and noticeable difference in status or duties which will be ongoing, without time limitations, and is not expected to change.

(39) "Mid-point" means the salary is equidistant between the minimum and maximum rates of salary compensation set for a classification.

(40)(29) "Minimum qualifications" means a comprehensive statement which establishes the minimum background required as to education and experience.

(41)(30) "Minimum salary" means the lowest rate of pay in the salary range for a class of positions.

(42) "Non-exempt" means the employee must receive minimum wage and overtime pay benefits as provided for by the Fair Labor Standards Act (29 C.F.R. Part 541).

(43) "Partial year appointment" means the appointment of a person to a position that shall contain regularly-scheduled hours, for a period of time not to exceed seven (7) pay periods per year, during which the incumbent remains an employee but is not at work.

(44)(33) "Part-time employee" means an employee who is compensated on a biweekly basis for hours worked and whose

hours worked average less than 100 hours of work per month.

(45)(34) "Part-time 100 hour employee" means an employee who is compensated on a biweekly basis for hours worked and whose hours worked average 100 hours per month or more.

(46)(35) "Pay status" means a period of time for which an employee receives pay for:

- (a) Time worked;
- (b) A holiday; or
- (c) Approved accumulated leave of absence, including:
 1. Sick leave;
 2. Extended sick leave;
 3. Vacation, using annual or compensatory leave;
 4. Military leave; or
 5. Another type of paid leave provided by 902 KAR 8:120.

(47)(36) "Performance evaluation" means a method of evaluating each employee on the employee's capability of performing the duties and responsibilities of the job.

(48) "Position description" means a written description of responsibilities and duties for an individual employee that the employee is expected to assume for a particular position. This written description is in line with the job description for the designated classification.

(49)(37) "Probationary employee" means an employee serving the required initial probationary period following appointment.

(50)(38) "Promotional probationary period" means a period during which an employee is required to demonstrate fitness for the duties to which the employee has been promoted by actual performance of the duties of the position.

(51) "Reallocation" means the placement of an employee in one position to a newly established class, or to another class due to the employee's current class having been abolished.

(52) "Reclassification with probation" means an employee is to serve a six (6) month probationary period upon being reclassified, if the reclassification is to a supervisory position or to a different classification within the same grade. The employee upon successful completion of the probationary period of the reclassification will receive a three (3) percent salary increase.

(53)(39) "Reemployment list" means a list of persons who may be appointed to a class of positions without further certification or examination due to their prior career status in the classification or related classification.

(54)(40) "Register" means an officially promulgated list of eligible's for a job classification.

(55)(44) "Regular status employee" means an employee who has successfully completed a required initial probationary period upon appointment, and any extension, and is subject to the provisions of 902 KAR Chapter 8.

(56) "Reinstatement" means that a former employee may return to a position which the employee held in previous employment.

(57) "Revert" means to return an employee to a previously held position.

(58)(42) "Salary range" means the rate and range of pay established for a class of positions.

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 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, 2011 at 9 a.m. in the Second Floor Board Room of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 14, 2011, 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

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administrative regulation until close of business January 31, 2011. 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: Debbie Garrison, 502-564-3796, ext.3655

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for commonly used language of Local Health Personnel.

(b) The necessity of this administrative regulation: This administrative regulation establishes definitions that are commonly used throughout the state for the Local Health Departments of Kentucky excluding Northern Kentucky Health Department District, Lexington/Fayette County Health Department and Louisville/Jefferson County Health Department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 211.1755 to administer a personnel program for local health departments based on the principles of the merit system governing Local Health Personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the definitions for the rest of the regulations in this chapter.

(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 regulation updates definitions. This amendment will add new definitions to this regulation in order to help the Local Health Department staff be familiar with Local Health Personnel terminology.

(b) The necessity of the amendment to this administrative regulation: This regulation is being amended as required by the Local Health Departments in order to assist them in the different definitions of the Local Health Personnel Merit System.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment provides a mechanism of establishing consistent verbiage and definitions for the Local Health Departments of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides for a consistent vocabulary applicable to the personnel program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect 54 local health jurisdictions and 3,600 employees except for the Lexington/Fayette County, the Louisville/Jefferson County and the Northern Kentucky District Health Departments.

(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 local health departments will need to be familiar with the new definitions contained in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not cost the entities identified in number 3 any funds to implement, they must only become familiar with the new definitions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Uniform definitions will be updated and applied across the state for all administrative regulation involving local health departments.

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

(a) Initially: It will cost no new funds are required to implement this regulation in the first year.

(b) On a continuing basis: No new funds are required to implement this 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: Current agency funding will be used to implement and enforce this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes no fees directly or indirectly.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect each local health department in Kentucky and the fiscal courts they are authorized by excluding Louisville Metro, Lexington/Fayette and the Northern Kentucky Independent District Health Departments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The following state statutes require or authorize this administrative regulation amendment: This administrative regulation defines the common language used by the local health departments governed by it as per KRS 211.1755.

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 amendment will not generate any revenue for any unit of state or local government in its first year of implementation.

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

(c) How much will it cost to administer this program for the first year? This regulation amendment will not generate any cost for any unit of state or local government in its first year of implementation.

(d) How much will it cost to administer this program for subsequent years? This regulation amendment will not generate any revenue for any unit of state or local government 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 Public Health Division of Administration and Financial Management (Amendment)

902 KAR 8:060. Classification and compensation plans for local health departments.

RELATES TO: KRS 211.170(1), (2), 211.1751, 211.1752,

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211.1755, 212.170, 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the local health department personnel program. This administrative regulation sets forth the policies and procedures for establishing the classification and compensation plans for local health departments.

Section 1. Classification Plan. (1) The department shall establish a comprehensive position classification plan in accordance with KRS 211.1755(3)(b) and with the advice of the Local Health Department Employment Personnel Council and the local health departments.

(2) The classification plan shall establish for each class of positions:

- (a) A title;
- (b) A description of the duties and responsibilities;
- (c) The minimum requirements of training and experience; and
- (d) Other qualifications necessary or desirable for the satisfactory performance of the duties of the class.

(3) The class specifications shall be descriptive and explanatory and shall be used to allocate positions as determined by their respective duties or responsibilities. The language of class specifications shall not be construed as limiting or modifying the authority of an appointing authority to change the duties and responsibilities of similar kind or quality, or to assign duties of similar kind or quality to an employee.

(4) Each position in an agency shall be allocated to one (1) of the classes established by the classification plan.

(5) A reallocation or allocation shall be made to new or existing classes as additional classes are established, abolished, or changed.

(6) The department shall allocate a newly established position to a class upon receipt of a statement, from the appointing authority, of duties, responsibilities, and requirements of the position.

(7) The department shall:

(a) Maintain the classification plan by reviewing job descriptions prepared by the appointing authority for appropriate allocation of positions to approved classes; and

(b) Periodically review the classification plan, and revise existing classifications, or add classifications, based on the review of job descriptions and other information provided by the agencies.

(8) An agency shall change the classification of an existing position through a reclassification if:

(a) A material and permanent change in the duties and responsibilities of a position occurs;

(b) The change in the duties and responsibilities is characteristic of a different classification; and

(c) The employee within a position at the time it is reclassified shall serve with the same status obtained before the position was reclassified; and

~~(d) A reclassification shall not be permitted during the initial employment probationary period.~~

(9) The department shall change the allocation of an existing position if it is determined that the position is incorrectly allocated and there has been no substantial change in duties from those in effect when the position was originally classified. If a position is reallocated, the employee within the class of position shall be entitled to serve with the same status obtained before the position was reallocated.

(10) The department shall:

- (a) Maintain a master set of approved class specifications; and
- (b) Provide each appointing authority with a copy of the master set of class specifications.

Section 2. Compensation Plan. (1) The department shall establish a compensation plan with the advice of the Local Health Department Employment Personnel Council and the local health departments. The plan shall take into consideration the following:

(a) Evaluation of the complexity of the duties and responsibilities of the various classes as described by the classification plan provided for in Section 1 of this administrative regulation;

(b) Financial condition of the agency;

(c) Experience in recruiting for a position;

(d) Prevailing rates of pay for services of similar kind and quality;

(e) Benefits received by employees; and

(f) Consistency in application among local health departments.

(2) The compensation plan shall:

(a) Include minimum, midpoint, and maximum rates of pay for the various classes within the classification plan; and

(b) Be used to determine:

1. A salary adjustment provided for under this administrative regulation; and

2. The circumstances under which a salary adjustment may exceed the maximum.

(3) The department shall periodically review and amend as necessary the compensation plan with the advice of the Local Health Department Employment Personnel Council and local health departments. An amendment shall include:

(a) A change in the minimum, midpoint, and maximum salary level for a respective classification of the classification plan; and

(b) The manner in which a salary adjustment shall be granted.

Section 3. Salary Upon Appointment. (1) The entrance salary of an employee entering employment shall be at the minimum of the range established for the class to which the employee is appointed, unless otherwise approved by the department, based on the criteria established in subsections (2) and (3) of this section.

(2)(a) Prior to the start date of a new employee, a new minimum entrance salary may be established by an agency, with the approval of the department, if it is determined that it is not possible to recruit qualified employees for a class of positions at the established entrance salary to attract qualified applicants. This shall be approved by the agency and local health personnel before the start date of employment.

(b) If an appointment is made at the newly-established minimum entrance salary, employees of the agency in the same class paid at a lower salary shall have their salaries adjusted to the newly-established minimum entrance salary.

(c) 1. If a new minimum entrance salary is established by an agency for a specified class, in addition to the adjustment required by subsection 3 of this section, based on documented recruitment needs, or a new entrance salary is established by a compensation plan change, the department may approve a salary adjustment for employees in the same class.

2. The adjustment shall be a fixed amount provided to each employee in the classification and shall not exceed the amount of increase applied to the newly established minimum.

3. In fixing salaries for this adjustment, an appointing authority shall afford equitable treatment to all employees affected by the adjustment.

(3)(a) An appointment of an applicant who meets the minimum requirements for a position may be made at a higher entrance salary than the established minimum, within the salary range applicable to the class, if:

1. The newly-appointed employee has previous, relevant experience above the minimum requirements of the job;

2. It is necessary to attract qualified applicants; and

3. The newly-appointed employee's hire rate does not exceed the salary of a present employee in the same classification with the comparable years of relevant experience, education, and training.

(b) If the individual possesses qualifications in training and experience in addition to the minimum requirements for the class, the newly-appointed employee may receive a two (2) percent salary adjustment, not to exceed the midpoint, for each year of appropriate experience and education or training in excess of the minimum requirements for the respective classification.

(c) An employee possessing the same qualifications, in the same class of positions, in the same agency, and who is paid below the entrance salary level as adjusted for the newly-appointed employee, shall have his or her salary adjusted to the approved entrance salary level.

Section 4. Initial Probationary Salary Adjustment (1) The appointing authority shall grant an employee a five (5) percent increase in salary upon successful completion of the required initial

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employment probationary period of thirteen (13) pay periods. The salary adjustment shall take effect the first pay period following completion of the probationary period.

(2) Except as provided for in 902 KAR 8:080, Section 3(3), an employee shall not be given an original probationary increment more than once for successful completion of the probationary period in the same classification.

Section 5. ~~In-Range Salary Adjustment~~~~[Due to a Change in Position Duties and Responsibilities]~~. (1) An appointing authority may request a salary adjustment not to exceed five (5) percent if an employee is assigned permanent job duties and responsibilities which are more complex and difficult than current job duties, but are less than those indicated through a reclassification.

(2) Only one (1) in-range salary adjustment shall be allowed for an employee per classification.

Section 6. Salary Adjustment Due to a Position Reclassification. (1) A position shall be reclassified if the duties and responsibilities of a position have materially changed.

(2) An agency, based on an evaluation of a position, may request a reclassification to a different position:

(a) Within the same classification series that has more complex nonsupervisory job duties and responsibilities and has a higher grade level;

(b) That has supervisory responsibilities and a higher grade level; or

(c) In a different classification series that has the same or higher grade level.

(3) An employee that occupies the position to be reclassified shall:

(a) Meet the minimum requirements of the new classification;

(b) Not have previously performed the job duties of the new classification; and

(c) Serve a probationary period of thirteen (13) pay periods if the reclassification is to a supervisory position or a different classification series within the same grade. If the employee has performed satisfactorily, as determined by the employee's supervisor, the employee shall receive a three (3) percent salary increase at the end of the probationary period.

(4) An employee that is reclassified with or without probation to a position having a higher pay grade shall receive a salary increase that is the higher of:

(a) Five (5) percent of the employee's current salary;

(b) Three (3) percent for each grade increase to the new position not to exceed ten (10) percent; or

(c) The minimum salary of the grade assigned to new position.

Section 7. Promotion of an Employee to a Vacant Position. (1) An employee may be promoted upon the request of an appointing authority if the employee meets the minimum requirements of the vacant position having a higher salary determined by the department to have and more extensive and complex job duties and responsibilities.

(2) An [The] employee who is advanced to a higher pay grade through a promotion shall receive a salary increase that is the higher of:

(a) Five (5) percent;

(b) Three (3) ~~percent~~ for each grade increase to the new position not to exceed ten (10) percent; or

(c) The minimum salary of the new position.

(3) The employee shall serve a promotional probationary period of thirteen (13) pay periods and shall receive a three (3) percent salary increase following satisfactory completion of the probationary period, as documented by the performance evaluation. However, if the employee was promoted while serving an initial probation, the employee shall receive a five (5) percent increment in salary in lieu of a three (3) percent increase.

Section 8. Demotion. If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

(1) If an employee requests a voluntary demotion:

(a) The employee's salary shall be reduced by five (5) percent;

and

(b) The employee's salary shall be reduced by an additional three (3) percent if the voluntary demotion is to a position that no longer requires supervisory responsibilities;

(2) If the demotion is due to reorganization by the agency, the employee may retain the salary received prior to demotion. If the employee's salary is not reduced upon demotion, if funding is sufficient the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files; or

(3) The salary of an employee who is demoted because of a documented disciplinary problem or inability to perform a duty or responsibility required of the position shall be reduced to the lesser of ten (10) percent or to the minimum of the new grade.

Section 9. Salary Upon Reinstatement of Former Employee.

(1) A former employee may be reinstated to a position for which the employee was previously employed.

(2) The salary of an employee that is reinstated shall be:

(a) At a salary level offered by the appointing authority if not above the salary the employee made at the time of separation;

(b) At the same pay rate the employee had been paid at the termination of service, if the time period between separation and reinstatement does not exceed three (3) years; or

(c) At a higher salary rate if justified on the basis of:

1. Additional qualifications that have been obtained by the employee since separation from the agency;

2. Established minimum entrance salary above the former salary; or

3. Compensation plan changes.

Section 10. Lump Sum Merit Payment. (1) The appointing authority, with the approval of the department, may award a regular, full-time, part-time 100 hour, or part-time employee a merit [an outstanding meritorious] lump sum payment.

(2) The appointing authority may grant a lump sum payment to an employee meeting the eligibility criteria of this section in an amount not to exceed eight (8) percent of the minimum of the established minimum of the employee's classification grade during the annual evaluation period of twenty-six (26) pay periods.

(3) A lump sum payment may be granted by the appointing authority with the approval of the department, to an employee meeting the following eligibility criteria:

(a) The employee has completed the initial probationary period required on appointment; and

1. The employee's job performance is consistently above what is normally expected or required by the job duties and responsibilities; or

2. The employee has successfully completed a special project of significant importance to warrant special attention.

(4) The appointing authority shall prepare and submit written documentation to the department that shall substantiate that the employee satisfies the eligibility criteria in [subsection (3) of] this section for the lump sum payment to be effective.

(5) The appointing authority shall inform the Board of Health the number of lump sum payments granted during the fiscal year that exceed \$2,000 per payment.

(6) An agency may grant a one (1) time lump sum payment across the board during the fiscal year to all employees in recognition of the agency exceeding expectations.

(a) The flat amount per employee shall not exceed \$1,000, and

(b) The appointing authority must have received approval from the Board of Health and the department.

Section 11. Responsibility Pay or Detail to Special Duty. (1) An employee may be detailed to special duty on a temporary basis, not to exceed twenty-six (26) pay periods, to:

(a) Occupy a position and assume the job duties and responsibilities of an employee on an approved leave of absence or an employee that has separated from the agency; or

(b) To undertake a special project assigned by the appointing authority in addition to the employee's regular duties and responsibilities.

(2) An employee who is approved for detail to special duty shall receive a salary increase of five (5) percent over the salary

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received prior to detail to special duty.

(3) After completion of the special assignment, the employee shall be transferred to the former classification or resume normal duties with the employee's salary reduced by the salary rate increase received for the detail assignment.

(4) An employee shall be entitled to salary increases provided by the agency during the special assignment.

Section 12. Educational Achievement and Skill Enhancement Pay. (1) The job-related skill enhancement pay shall be granted to recognize and reward an employee who takes the initiative through his or her own efforts to increase job worth and significantly enhance his or her value to the agency by achieving a higher level of performance through a prescribed course of study in the employee's job field.

(2) An agency may elect not to participate in the educational achievement program and advise the department in writing, if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

(4) An appointing authority may grant a five (5) percent increase to an employee's salary for completing a high school diploma, high school equivalency certificate, or a passing score on the GED test if: (a) The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

1. Outside of work hours; and
2. While in the employment of the agency;

(b) The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

(c) The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate, or a passing score on the GED test.

(5) An appointing authority may grant a five (5) percent increase to an employee's salary for postsecondary education or training if:

(a) The department has determined the employee has completed 260 hours of job-related classroom instruction;

(b) The employee began the course work after becoming an employee of the agency and completed the course work after establishing an increment date;

(c) The employee has completed the course work within five (5) years of the date on which it began;

(d) The course work has not previously been applied toward an educational achievement award;

(e) The agency has not paid for the course work or costs associated with it; and

(f) The employee was not on educational or extended sick leave when the courses were taken.

(6) An appointing authority may grant, with the approval of the department, an employee a lump sum payment not to exceed three (3) percent of the employee's grade minimum to an employee that presents a certificate, license, or other evidence of mastering a body of knowledge obtained through a prescribed course of study that is directly related to the position held and based on this evidence is identified as an approved program by the department with the advice of the council and agencies.

(7) The salary adjustment for educational achievement shall not include on the job training provided by or required by the agency as part of the assigned job duties and responsibilities.

Section 13. Other Salary Adjustments. (1)(a) An agency may submit a request to the department substantiating the need for a specific salary adjustment to address:

1. Compensation issues of the agency that negated the ability of the agency to commit available financial resources to salary adjustments based on the most recent compensation plan changes;
2. Special working conditions;
3. After hours adjustment if working hours cannot be adjusted;
4. Internal or external equity issues among individual employees or groups of employees; or
5. Other specific circumstances.

(b) The request shall address:

1. The nature of the salary problem;
2. The consequences of the salary issue;
3. Recommendation of an equitable resolution; and
4. Other pertinent information substantiating the need for the salary adjustment.

(c) The department may undertake a review of the request to determine the validity of the request, the impact on the submitting agency, and the impact on other agencies.

(2)(a) An agency may grant a one (1)-time salary adjustment for all employees during the fiscal year to:

1. Respond to retention and recruitment needs and issues of the agency based on the inability of the agency to attract and maintain a qualified workforce in order to provide services; or
2. Place the agency in a more favorable competitive market and equity position based on an assessment of comparable agencies.

(b) The salary adjustment shall be a prescribed amount given to an employee determined by:

1. Applying an amount not to exceed five (5) percent to the employee's grade minimum;
2. Applying an amount not to exceed five (5) percent to the employee's grade midpoint; or
3. Specifying a fixed hourly amount that would be provided to an employee.

Section 14. Discretionary Salary Increases. (1) The appointing authority may grant, with the approval of the department, a salary increase not to exceed five (5) percent for a regular status employee or employees who have demonstrated, based on the current performance evaluation, excellent performance and achievement.

(2) The Board of Health may grant, with the approval of the department, a salary increase not to exceed five (5) percent for a regular status public health director or administrator who has demonstrated, based on the current performance evaluation, excellent performance and achievement. The increase shall be limited to one increase per twenty-four (24) months.

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 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, 2011 at 9 a.m. in the Second Floor Board Room of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2011, 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 January 31, 2011. 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: Debbie Garrison, 502-564-3796, ext.3655

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for commonly used language of Local Health Personnel.

(b) The necessity of this administrative regulation: This administrative regulation establishes definitions that are commonly used

throughout the state for the Local Health Departments of Kentucky excluding Northern Kentucky Health Department District, Lexington/Fayette County Health Department and Louisville/Jefferson County Health Department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 211.1755 to administer a personnel program for local health departments based on the principles of the merit system governing Local Health Personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the definitions for the rest of the regulations in this chapter.

(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 regulation updates definitions. This amendment will add new definitions to this regulation in order to help the Local Health Department staff be familiar with Local Health Personnel terminology.

(b) The necessity of the amendment to this administrative regulation: This regulation is being amended as required by the Local Health Departments in order to assist them in the different definitions of the Local Health Personnel Merit System.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment provides a mechanism of establishing consistent verbiage and definitions for the Local Health Departments of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides for a consistent vocabulary applicable to the personnel program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect 54 local health jurisdictions and 3,600 employees except for the Lexington/Fayette County, the Louisville/Jefferson County and the Northern Kentucky District Health Departments.

(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 local health departments will need to be familiar with the new definitions contained in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not cost the entities identified in number 3 any funds to implement, they must only become familiar with the new definitions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Uniform definitions will be updated and applied across the state for all administrative regulation involving local health departments.

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

(a) Initially: It will cost no new funds are required to implement this regulation in the first year.

(b) On a continuing basis: No new funds are required to implement this 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: Current agency funding will be used to implement and enforce this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes no fees directly or indirectly.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect each local health department in Kentucky and the fiscal courts they are authorized by excluding Louisville Metro, Lexington/Fayette and the Northern Kentucky Independent District Health Departments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The following state statutes require or authorize this administrative regulation amendment: This administrative regulation defines the common language used by the local health departments governed by it as per KRS 211.1755.

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 amendment will not generate any revenue for any unit of state or local government in its first year of implementation.

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

(c) How much will it cost to administer this program for the first year? This regulation amendment will not generate any cost for any unit of state or local government in its first year of implementation.

(d) How much will it cost to administer this program for subsequent years? This regulation amendment will not generate any revenue for any unit of state or local government 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 Public Health

Division of Administration and Financial Management (Amendment)

902 KAR 8:070. Recruitment, examination, and certification of eligible applicants for local health departments.

RELATES TO: KRS 211.170(1), (2), 211.1751, 212.170, 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to establish policies and procedures for the personnel program for local health departments through the promulgation of administrative regulations pursuant to KRS Chapter 13A. This administrative regulation provides for a recruitment program and establishes procedures and standards for the recruitment, examination, and certification of individuals for potential employment by local health departments.

Section 1. Announcement of a Vacant Position. (1) An agency, prior to announcing a specific vacancy, shall determine whether to recruit for a vacant position on a scheduled basis or on a continuous basis for positions that are difficult to attract qualified applicants.

(2) Except as provided by 902 KAR 8:090, Sections 1 and 2,

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and 902 KAR 8:080, Section 3 ~~[Section 4]~~, an agency desiring to fill a vacant position shall announce the vacant position in the following manner:

(a) Provide notice of the vacant position within the agency in a manner that affords the ability of current employees to know of the vacancy and procedures for submitting an application;

(b) Provide notice of the vacant position through recruitment resources that are external to the agency; or

(c) A combination of (a) and (b).

(3) An announcement shall contain the following information:

(a) The conditions under which an application for potential employment shall be received;

(b) The assessment method utilized to select the individual, that may include an interview or demonstration of skills and abilities;

(c) The title and minimum salary of the class of position;

(d) The rates of pay at which appointments are expected to be made;

(e) A general statement of the duties to be performed;

(f) The minimum qualifications of education, training, and experience required as stated in the classification plan;

(g) The date, if required, on which an application is to be received in the agency;

(h) Veteran's preference, if applicable;

(i) All other conditions of competition, including the fact that failure in one (1) part of the selection criteria shall disqualify an applicant; and

(j) If an agency requires preemployment drug testing, criminal records information, physical examination, or other special conditions, a statement that they shall be required upon an offer of employment.

(4) The notice of the external recruitment effort shall meet the criteria of subsection 3 and (a) shall be distributed to one (1) or more of the following primary advertising methods:

(a) Newspapers;

(b) Web site;

(c) Other media viewable by the public. ~~[be distributed to one (1) or more of the following:~~

~~(a) Public officials;~~

~~(b) Employment service offices;~~

~~(c) Newspapers;~~

~~(d) Educational institutions;~~

~~(e) Professional and vocational societies; or~~

~~(f) Other media, individuals, and organizations, as necessary.]~~

Section 2. Application for Employment Submittal and Review Process. (1) The agency ~~[department]~~ shall be the custodian of applications.

(2) An application for employment, Form CH-36, shall be required of an individual seeking employment with an agency.

Section 3. Review of Applications by the Department. (1) The department shall review and determine the eligibility of an applicant for a position announced by an agency.

(2)(a) The department shall take one (1) or more of the actions listed in paragraph (b) of this subsection if an applicant, eligible, or appointee:

1. Lacks a specific requirement established for the assessment for the class or position;

2. Is unable to perform the duties of the class;

3. Except as provided for in subsection (3) of this section, has been convicted of a felony or misdemeanor;

4. Has previously been dismissed from a public service or agency for delinquency, misconduct, or other similar cause;

5. Made a false statement or misrepresentation in the application;

6. Has used or attempted to use political pressure or bribery to secure an advantage in obtaining the position in the examination or appointment;

7. Has directly or indirectly obtained information regarding the assessment method to which the applicant was not entitled;

8. Has failed to submit a complete application as determined by the department;

9. Has failed to submit the application within the time limits

prescribed by the agency in a ~~[the]~~ published announcement;

10. Has taken part in the compilation or administration of the interview process; or

11. Has submitted an application for an unadvertised position to an agency that is not on continuous open recruitment.

12. Has failed a background check or drug screen. ~~[otherwise failed to meet the provisions of this administrative regulation.]~~

(b) Based on one (1) or more of the reasons listed in paragraph (a) of this subsection, the department shall take any of the following actions:

1. Refuse to examine an applicant;

2. Not qualify an applicant;

3. Remove the applicant's name from a register;

4. Refuse to certify an eligible on a register; or

5. Consult with the appointing authority in taking steps to remove a person already appointed.

(3) ~~[Subject to final department approval.]~~ An applicant or employee who has been convicted of a misdemeanor may be employed, or continue employment, if the appointing authority and the department determine after review that:

(a) The applicant is highly qualified and eligible for appointment;

(b) The misdemeanor conviction will not adversely affect the applicant's job performance;

(c) A specific need exists for the appointment or continuing appointment of this applicant or employee; and

(d) Every determination made is fully supported by written documentation available for public inspection under the provisions of KRS Chapter 61.

(4) A disqualified applicant shall be promptly notified of the action by letter to the applicant's last known address.

Section 4. Establishment of Registers of Eligible Applicants. (1) An agency may announce a position on a continuous basis for a position that is difficult to recruit for and fill.

(2) If a job classification requires an applicant to meet the minimum qualifications, an individual shall remain on the register for a period of one (1) year from the date on which the individual is determined qualified.

(3) If a vacancy exists in a class of positions for which there is no appropriate register, the department may prepare an appropriate register for the class from one (1) or more existing related registers.

(4) A register may be deemed to be exhausted by the department if fewer than five (5) ~~[three (3)]~~ eligible applicants remain on the register. If a register is exhausted, each eligible on the register shall be notified by mail at his last known address.

(5) The department may remove the name of an eligible from a register:

(a) For a disqualifying cause stipulated in Section 3(2)(a) of this administrative regulation;

(b) If the eligible applicant cannot be located by the postal authorities as evidenced by the return of one (1) notice or a returned notice marked "no forwarding address";

(c) On receipt of a statement from the eligible stating that he no longer desires consideration for a position;

(d) If an offer of a probationary appointment to the class for which the register was established has been declined by the eligible;

(e) If the eligible receives a probationary appointment they shall be removed from the applicable register unless otherwise requested in writing;

(f) If the eligible ~~[he]~~ declines an offer of appointment for which the eligible previously indicated acceptance;

(g) If the eligible fails to report for a scheduled interview without valid reason;

(h) If an eligible fails to maintain a current address as evidenced by the return from postal authorities of unclaimed but properly addressed letters; or

(i) If an eligible has been certified three (3) times to an appointing authority and has not been offered employment.

~~[(6)(a) An eligible that is appointed on a probationary basis shall be removed from all applicable registers.~~

~~(b) The eligible may request in writing to the department that~~

~~his name be reinstated to the applicable register before its expiration.~~

~~(c) The department shall notify the eligible by mail to his last known address of removal from the register, and the reason for removal.]~~

Section 5. Issuance of Certification of Eligible Applicants. (1) The department shall issue a certification of eligible applicants to an agency in the following manner:

(a) A promotional certification of eligible applicants that responded to an announcement provided within an agency;

(b) A regular certification of eligible applicants that responded to an announcement provided to recruitment resources external to the agency; or

(c) A combination of (a) and (b).

(2) The appointing authority may request in writing to the department, special experience, education, or skills different from the minimum requirements of the class. If, after investigation of the duties and responsibilities of the position, the department approves the request, a certification may be issued to the agency containing the names of those individuals who possess the qualifications specified.

(3) The life of a certification of eligible applicants during which action may be taken shall be sixty (60) days from the date of issue unless otherwise specified on the certification of eligible applicants.

(4) A regular-status employee, placed in a layoff category, shall have first priority for consideration in filling a vacancy in a classified position for which the employee is qualified in the agency from which the employee was laid off.

(5) A regular-status employee in the layoff category shall indicate in writing to the department that he desires reemployment.

(6) If a laid-off regular status employee desires reemployment in a different job classification, the employee shall meet the minimum requirements of the classification.

(7) The life of the reemployment register is one (1) year or until the employee is reemployed, whichever comes first.

Section 6. Assessment Method. (1) An assessment method shall be practical in nature, constructed to reveal the capacity of the applicant for the particular position, as well as general background and related knowledge. An assessment method may be;

(a) A personal interview;

(b) Physical examination;

(c) An evaluation of experience and training;

(d) A demonstration of skill; or

(e) A combination of types, so long as all applicants for a position are given the same assessment method.

(2) An agency may form an interview committee to evaluate an eligible applicant through a structured interview process.

(3) The interview committee shall structure questions to assess the knowledge, skills, abilities, and the education and work experience of the applicants chosen to be interviewed.

(4) The interview questions, criteria for selecting applicants to be interviewed, profiles of interviewed applicants, and results of the interview process shall be maintained by the agency for a period of sixteen (16) months after an applicant has been appointed to the vacant position.

Section 7. Incorporation by Reference. (1) "Form CH-36 Application for Employment", 5/1/2005 Edition, Cabinet for Health and Family Services, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 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, 2011 at 9 a.m. in the Second Floor Board

Room of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2011, 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 January 31, 2011. 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: Debbie Garrison, 502-564-3796, ext.3655

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation describes the recruitment policies applicable to local health departments. The policies address the requirement for announcing vacant positions, the contents of the announcement, reasons for disqualification of an applicant, and the placement of a qualified applicant on a certification of eligible applicants.

(b) The necessity of this administrative regulation: The Cabinet for Health Services is responsible for supervising the personnel functions of the local health departments in Kentucky except for the Lexington/Fayette County, the Louisville/Jefferson County, and the Northern Kentucky District Health Department. This administrative regulation establishes consistent requirements for recruitment and the assessment of applicants for the positions available through local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet in accordance with KRS 211.1755 is responsible for administering a personnel program for local health departments based on the principles of merit governing the recruitment, examination of applicants, appointment, discipline, removal and other incidents of employment for county, city-county, and district agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The current administrative regulation and amendments establish a consistent recruitment program for local health department to attract a pool of qualified applicants to make an objective employment decision.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds the provision that a local health department may announce vacant positions on their agency's website. It also describes the reasons an applicant may be removed from being placed on the register.

(b) The necessity of the amendment to this administrative regulation: The amendment allows the regulated entities, local health departments, to advertise in other venues at a lower cost.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation provides consistent standards for job advertisements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides for a consistent recruitment process for both the internal and external means of attracting qualified applicants for various vacant positions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect 54 local health jurisdictions and 3,600 employees except for the Lexington/Fayette County, the Louisville/Jefferson County and three Northern Kentucky District Health Departments.

(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 local health departments must be knowledgeable about this amendment in order to understand new options for recruitment notification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not cost the entities identified in number 3 any funds to implement. The entities must only become familiar with the advertising venues for the local health departments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments would benefit the agency by allowing them to advertise in media of less or no cost.

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

(a) Initially: No new funds are required to implement this regulation in the first year.

(b) On a continuing basis: No new funds are required to implement this regulation in the first year.

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

Agency general funds will be used to implement this regulation. No increase in fees or funding is indicated.

(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 new funding will be required to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes no fees directly or indirectly.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect each local health department in Kentucky and the fiscal courts they are authorized by excluding Louisville Metro, Lexington/Fayette and the Northern Kentucky Independent District Health Departments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The following state statutes require or authorize this administrative regulation amendment: This administrative regulation will define the recruitment and hiring process of new employees of each local health department.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate revenue for state or local units but will save existing funds used for agency advertising fees in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate revenue for state or local units but will save existing funds used for agency advertising fees in subsequent years.

(c) How much will it cost to administer this program for the first year? All costs to administer this program will be absorbed by the

program. The costs to administer this program are insignificant.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Administration and Financial Management

(Amendment)

902 KAR 8:080. Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments.

RELATES TO: KRS 211.170(1), (2), 212.040, 212.850, 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. This administrative regulation establishes employment categories of permissible appointments and employment probationary periods, and the employee evaluation process.

Section 1. Initial Appointments. (1) The appointing authority of a local health department shall make an initial appointment of an eligible applicant from a certification of eligible applicants issued by the department.

(2) The reemployment of a person shall be an initial appointment if the person:

(a) Was formerly employed by an agency; and

(b) Is receiving retirement benefits from the:

1. Kentucky Employee Retirement System; or

2. Kentucky Teachers Retirement System.

Section 2. Provisional Appointments. (1) If there is an urgent reason for filling a position and no appropriate register exists, the appointing authority may submit to the department the name of a person to fill the position pending examination and establishment of a register. If the person's qualifications have been certified by the department as meeting the minimum qualifications, the person may be provisionally appointed to fill the existing vacancy.

(2) A provisional appointment shall not:

(a) Be made until the position has been classified and minimum qualifications established for the class of position; and

(b) Exceed thirteen (13) pay periods from the date of appointment or within two (2) weeks of the date on which the department notifies the appointing authority that an appropriate register has been established, whichever occurs first.

(3) Successive provisional appointments of the same person shall not be permitted. A position shall not be filled by repeated provisional appointments.

(4) Provisional service immediately prior to initial appointment may be credited, at the request of the appointing authority, toward the required probationary period.

Section 3. Reinstatement. (1) For a period of time not to exceed three (3) years since termination of employment from an agency, a regular-status employee who has resigned while in good standing, or separated without prejudice, may be eligible for reinstatement to the same position or in a corresponding position within the agency, with the same seniority rights and leave status. The individual being considered for reinstatement shall be certified by the department as meeting the current minimum qualifications.

(2) The individual being considered for reinstatement shall not be required to serve an initial probationary period if the employee

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has had a break in service of not more than twelve (12) months. The accumulated balance of sick leave earned during prior employment with the agency shall be reinstated upon employment and the period of time of prior employment with the agency shall be used to determine the rate at which the employee earns annual leave.

(3) If the employee has had a break in service of more than twelve (12) months, and the break in service does not exceed thirty-six (36) months, the employee shall serve an initial probationary period and be eligible to receive a probationary increment based on satisfactory performance. If the employee satisfactorily completes the initial probationary period, the accumulated balance of sick leave earned during prior employment with the agency shall be reinstated and the period of time of prior employment with the agency shall be used to determine the rate at which the employee earns annual leave.

(4) The annual increment date shall be twenty-six (26) pay periods from the effective date of reinstatement.

Section 4. Emergency Appointments. (1) If an emergency exists that requires the immediate services of one (1) or more persons and it is not possible to secure a person from an appropriate register, or there is no person qualified for a provisional appointment, the appointing authority may appoint a person with the approval of the department. An emergency appointment shall not exceed seven (7) pay periods in duration and shall not be renewable. The department may make investigations as necessary to determine if an emergency exists.

(2) The appointing authority shall report an emergency appointment to the department, providing the name of the appointee, rate of pay, length of employment, nature of emergency, and duties to be performed. Separation from service of an emergency appointee shall also be reported.

(3) An emergency appointment shall not confer upon the incumbent a privilege or right to promotion, transfer, or reinstatement to a position under the merit system.

~~Section 5. Temporary Appointments. (1) If a vacancy occurs in a position having duties of a strictly temporary nature, the department may issue a certification of eligible applicants who have indicated a willingness to accept temporary employment, in the order of their places on an appropriate register.~~

~~(2) The duration of a temporary appointment shall not exceed thirteen (13) pay periods.~~

~~(3) The acceptance or refusal of a temporary appointment shall not affect an eligible applicant's standing on a register or eligibility for a probationary appointment.~~

~~(4) The period of temporary service shall not constitute a part of the initial employment probationary period.~~

~~(5) Successive temporary appointments of an employee to the same position shall not be made.~~

Section 6. ~~Seasonal~~ Appointment. (1) The appointing authority may, with the approval of the department, establish a position on a temporary ~~seasonal~~ basis for up to nineteen (19) pay periods to accommodate the following:

- (a) Increased work activity of a seasonal nature;
- (b) Work study or job training programs;
- (c) Special projects; or
- (d) Summer employment.

(2) An applicant shall not be appointed to a temporary ~~seasonal~~ position unless the applicant meets established minimum requirements.

(3) Continuous appointments to the same temporary ~~seasonal~~ position shall not be made.

(4) The period of temporary service shall not constitute a part of the initial employment probationary period.

Section 6. ~~7.~~ Appointment of an Individual to a Variable Hour Position. (1) An agency because of special working requirements in meeting programmatic service needs, may establish a position having variable hours of work.

(2) An agency may appoint to a variable hour position an individual who meets the minimum requirements of education and

experience established for the position.

(3) An individual appointed shall be compensated on a fee for service or hourly rate.

(4) The hours of work of the individual shall not exceed 800 ~~400~~ hours per year.

(5) An individual appointed to the variable hour position shall be considered in the unclassified service and continued employment shall be subject to the current employment needs of the agency.

(6) The compensation of the individual employed shall be determined by the appointing authority and in accordance with 902 KAR 8:070.

(7) The individual employed shall not be eligible for salary adjustments provided by 902 KAR 8:060.

Section 7. ~~8.~~ Partial-year Appointment. (1) An agency may establish a partial-year position to accommodate foreseeable seasonal fluctuations in staffing, budgetary, operational, programmatic, or other needs.

(2) A partial-year position shall contain regularly-scheduled periods, not to exceed seven (7) pay periods per year, during which an incumbent in the position remains an employee but is not at work.

(3) An employee in a designated partial-year position shall receive the following agency-provided benefits:

(a) Health and life insurance benefits provided by the agency for full-time and part-time 100-hour employees;

(b) Sick and annual leave, in accordance with 902 KAR 8:120, Section 4, for pay periods the employee actually works;

(c) Enrollment in the Kentucky Employee Retirement System and receipt of appropriate service credit for those pay periods of actual work; and

(d) Service credit for computation of seniority for those pay periods the employee has actually worked.

(4) The employee in a designated partial-year position shall be considered a regular-status employee following completion of the initial probationary period in accordance with Section 10 of this administrative regulation.

(5) The employee in a designated partial-year position shall:

(a) Work the required number of hours, unless the employee is absent due to illness or needing to provide care for an immediate family member; and

(b) Work at the request of the agency during periods of non-work to cover during coworker periods of illness, vacation schedules, and other periods of agency demand.

Section 8. ~~9.~~ Performance Appraisal. (1) Except as provided in 902 KAR 8:096, the appointing authority, or designated supervisory staff, shall conduct a performance appraisal 800 using Form Ch-40 for a:

(a) Regular status employee on an annual basis; and

(b) Probationary employee prior to completion of the required probationary period.

(2) An overall rating of "below requirements" or "inadequate" shall require that a new rating of the employee be made within ninety (90) days.

(a) If the employee performance has improved, the appointing authority shall approve the annual increment as approved by the Board of Health.

(b) If employee has not improved or performance deteriorates, the appointing authority shall initiate a disciplinary action.

(c) An employee whose annual increment is denied shall be notified by the appointing authority in writing at least fourteen (14) days prior to the annual increment date.

(3) Performance appraisals shall be considered in determining:

(a) An annual and probationary salary advancement;

(b) Requesting and approving a:

1. Promotion;

2. Demotion; or

3. Dismissal; and

(c) The order of separation due to a reduction of work force.

(4) Each agency shall elect, by Board-of-Health vote, to participate in one (1) of the following employee performance evaluation programs:

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(a) The current employee performance evaluation described in this section; or

(b) The evaluation program described in 902 KAR 8:096.

(5)(a) An agency choosing the current employee evaluation program described in this section shall notify the department at the beginning of the new fiscal year [by July 1, 2006].

(b) The agency shall remain under the requirements of this section, unless the agency, by vote of the Board of Health, elects to participate in the provisions of 902 KAR 8:096 at the beginning of a subsequent fiscal year.

(c) An agency choosing the current employee evaluation program, as described in this section, shall not be subject to any provision of 902 KAR 8:096.

(6) An agency, by vote of the Board of Health that elects to participate in the employee evaluation program of 902 KAR 8:096 shall notify the department at the beginning of the new fiscal year [by July 1, 2006]. The agency electing to participate under 902 KAR 8:096 shall not convert to another employee evaluation program.

Section 9.[44-] Initial Probationary Period. (1) An employee shall be required to serve a probationary period upon initial employment.

(2) The initial probationary period shall be thirteen (13) pay periods except as provided in the remaining subsections [(4) and (5)] of this administrative regulation [section].

(3) If the employee has satisfactorily completed the initial probationary period based on a performance evaluation, the appointing authority shall notify the department fourteen (14) days prior to the expiration of the initial probationary period that regular status has been confirmed.

(4) An employee may be separated from his position during the initial probationary period and shall not have the right to appeal except as provided by administrative regulation 902 KAR 8:110, Section 1(4).

(5)(a) Except as provided by paragraph (b) of this subsection, if an employee is to be dismissed during the initial probationary period, the employee shall be notified in writing at least seven (7) calendar days prior to the effective date of dismissal and prior to the expiration of the probationary period.

(b) If the employee commits a serious infraction of agency policy as defined by 902 KAR 8:100, Section 4, [or is involved in misconduct], the employee shall be dismissed in writing immediately without pay.

(c) The dismissed employee shall not be placed on a register.

(6) Unless the appointing authority notifies the employee in writing seven (7) calendar days prior to the end of the initial probationary period that the employee [he] is separated, the employee shall be deemed to have served satisfactorily and shall acquire regular status in the classified service.

(7) The initial probationary period may be extended by informing the employee in writing for the following reasons:

(a) For the same length of time as leave granted to cover an absence due to medical reasons causing the employee to be absent from work for twenty (20) days or more during the probationary period; or

(b) If the employee, acting with due diligence, has been unable to complete a required job related training course during the probationary period; or

(c) The appointing authority may require an initial probationary period in excess of thirteen (13) pay periods, not to exceed a total probationary period of nineteen (19) pay periods, for determination of competency.

(8) The employee serving a probationary period may be eligible for promotion to a position in a higher class; [if the employee is certified from an appropriate register]. If an employee is promoted during a probationary period, the new probationary period shall begin with the date the employee was promoted. [(9) The department, with the advice of the Local Health Department Employment Personnel Council, may require an initial probationary period in excess of thirteen (13) pay periods, not to exceed a total probationary period of twenty-six (26) pay periods, for specific classifications that require extensive on-the-job training.]

Section 10.[44-] Resignations. (1) An employee who desires to terminate his service with an agency shall submit a written resignation to the appointing authority.

(2) A resignation shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be filed in the employee's personnel file.

(3) An employee's lump sum payment for accumulated annual leave [and compensatory time] may be held by an agency until the employee who has resigned, retired, or been dismissed, returns agency credit cards, keys to buildings and automobiles, or other agency property in the possession of the employee.

Section 11. Voluntary and Involuntary Furlough. (1) An agency may implement a voluntary or involuntary furlough program as part of a layoff plan established in Section 12 of this administrative regulation.

(2) A voluntary or involuntary furlough shall be considered a temporary nondisciplinary leave without pay, for a specified period of time if major organizational program and funding changes occur that may result in work reductions of one (1) or more employees of an agency.

(3) A furlough may apply to the entire agency, certain organizational units of the agency, or to one (1) or more employees as the need arises.

(4) A furlough may be for periods of up to twenty-two (22) working days per fiscal year. The furlough may be designated as one (1) continuous period of twenty-two (22) working days or may be discontinuous days or periods, including portions of days.

(5) Employees shall not be paid for days while on furlough. If the furlough is for a continuous period, an employee's benefits shall not be adversely affected except for the following:

(a) Retirement contributions shall be based on actual earnings;

(b) Holidays that occur during the furlough shall not be paid;

(c) Annual leave, compensatory time, and sick leave shall not be used;

(d) Accrual of annual and sick leave, anniversary dates, and seniority shall be treated as if the employee is in pay status for the duration of the furlough; and

(e) Medical, dental, life and flexible spending accounts shall continue to be in effect upon payment of required contributions.

(6) An employee who is interested in being placed in a voluntary furlough status shall request prior approval from the appointing authority. The request shall include the reason for and the manner in which the employee proposes to use the furlough period that may include:

(a) Shorter work days;

(b) Intermittent days off; or

(c) Consecutive days off.

(7) An appointing authority may direct an employee to be placed in a furlough status in lieu of a layoff status. Notice of the required furlough shall:

(a) Be received at least fifteen (15) calendar days prior to the beginning date of furlough;

(b) Include the period of the furlough and if the furlough is continuous or noncontinuous;

(c) Include the status of employee benefits; and

(d) State that failure to return to work after the completion of the mandatory furlough may be grounds for disciplinary action, up to and including dismissal from employment.

Section 12. Layoffs. (1) An agency shall have a Board of Health approved workforce reduction plan on file to [appointing authority may] lay off an employee in the classified service if necessary because of:

(a) Curtailment of work;

(b) Shortage of funds;

(c) Abolishment of a position;

(d) Modification of service requirements; or

(e) Other material change in the duties or organization of the agency.

(2)(a) Prior to the notification of an employee that he is subject to layoff and prior to the layoff of an employee, the appointing authority shall submit a layoff plan to the department for approval.

(b) The plan shall contain the names [name] of the employees.

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months of service, [employee] and the reasons, in detail, for the layoff and criteria used to select those employees subject to layoff.

(c) Upon written approval of the plan by the department, the employee shall be notified that the employee he is subject to layoff[;] and of the:

1.~~[(a) The]~~ Reason for the layoff;

2.~~[(b) The]~~ Procedures established for the layoff of employees; and

3.~~[(c) The]~~ Rights granted employees subject to layoff.

(3) An agency established under KRS 212.040 shall undertake the following procedures in assisting an employee subject to layoff:

(a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties, and responsibilities for which the employee is qualified within the agency.

(b) If a vacancy does not exist for a position of the same pay grade, level of duties and responsibilities for which the employee is qualified within the agency, the employee shall be notified of all vacant positions within the agency for which the employee is qualified. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified before another applicant or eligible on a register, except another laid-off employee with greater seniority already on a reemployment register.

(c) If no position is available to an employee subject to layoff, the employee shall be notified in writing:

1. That the employee is to be laid off effective at least fifteen (15) calendar days after receipt of the notice; and

2. Of the rights and privileges granted laid-off employees.

(4) An agency established under KRS 212.850 shall undertake the following procedures in assisting an employee subject to layoff:

(a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties and responsibilities for which the employee is qualified within the agency. The position shall be located in the same county as the position from which the employee is subject to layoff;

(b) If a vacancy does not exist for a position of the same pay grade, level of duties, and responsibilities for which the employee is qualified within the same county as the position from which the employee is subject to layoff, the employee shall be transferred to a vacant position within the agency for which the employee is qualified. The position shall be located in the same county as the position from which the employee is subject to layoff;

(c)1. If a position is not available, the employee shall be notified of all vacant positions within the agency for which the employee is qualified.

2. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified.

3. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified before another applicant or eligible on a register, except another laid-off employee with greater seniority already on a reemployment register; and

(d) If no position is available to an employee subject to layoff, the employee shall be notified in writing:

1. That the employee is to be laid off effective at least fifteen (15) calendar days after receipt of the notice; and

2. Of the rights and privileges granted laid-off employees.

(5) In the same agency, county and job classification, provisional, temporary, emergency, and probationary employees shall be laid off before regular full-time or regular part-time employees with status. An employee serving a promotional probation shall not be considered a probationary employee for purposes of layoff.

(6) If two (2) or more employees subject to layoff in a layoff plan submitted to the department have the same qualifications, the employee with the lesser seniority shall be laid off first.

(7) An employee who is laid off, upon written request, shall be placed on a reemployment register for the class of position from which the employee was laid off and for any class for which the employee is qualified.

(8) For a period of one (1) year, a laid-off employee shall be given priority consideration by the agency before another applicant or eligible except another laid-off employee with greater seniority who is already on a reemployment register.

(9) For a period of one (1) year, a laid-off employee shall not

be removed from a register unless the employee:

(a) Notifies the agency [~~department~~] in writing that the employee no longer desires consideration for a position on a register;

(b) Declines two (2) written offers of appointment to a position of the same classification and salary, and located in the same county or agency, as the position from which the employee was laid off;

(c) Without good cause, fails to report for an interview after being notified in writing at least ten (10) calendar days prior to the date of the interview;

(d) Is unable to perform the duties of the class;

(e) Has been convicted of a job related misdemeanor; or

(f) Cannot be located by postal authorities at the last address provided by the laid-off employee.

Section 13. [~~Voluntary and Involuntary Furlough. (1) An agency may implement a voluntary or involuntary furlough program as part of a layoff plan established in Section 13 of this administrative regulation.~~

~~(2) A voluntary or involuntary furlough shall be considered a temporary nondisciplinary leave without pay, for a specified period of time if major organizational, program, and funding changes occur which may result in work reductions of one (1) or more employees of an agency.~~

~~(3) A furlough may apply to the entire agency, certain organizational units of the agency, or to one (1) or more employees as the need arises.~~

~~(4) A furlough may be for periods up to twenty-two (22) working days per fiscal year. The furlough may be designated as one (1) continuous period of twenty-two (22) working days or may be discontinuous days or periods including portions of days.~~

~~(5) Employees shall not be paid for days while on furlough. If the furlough is for a continuous period, an employee's benefits shall not be adversely affected except for the following:~~

~~(a) Retirement contributions shall be based on actual earnings;~~

~~(b) Holidays that occur during the furlough period shall not be paid;~~

~~(c) Annual leave and sick leave shall not be used;~~

~~(d) Accrual of annual and sick leave, anniversary dates, and seniority shall be treated as if the employee is in pay status for the duration of the furlough; and~~

~~(e) Medical, dental, life, and flexible spending accounts shall continue to be in effect upon payment of required contributions.~~

~~(6) An employee who is interested in being placed in a voluntary furlough status shall request prior approval from the appointing authority. The request shall include the reason for and the manner in which the employee proposes to use the furlough period that may include:~~

~~(a) Shorter work days;~~

~~(b) Intermittent days off; or~~

~~(c) Consecutive days off.~~

~~(7) An appointing authority may direct an employee to be placed in a furlough status in lieu of a layoff status. Notice of the required furlough shall:~~

~~(a) Be received at least fifteen (15) calendar days prior to the beginning date of furlough;~~

~~(b) Include the period of the furlough and if the furlough is continuous or noncontinuous;~~

~~(c) Include the status of employee benefits; and~~

~~(d) State that failure to return to work after the completion of the mandatory furlough may be grounds for disciplinary action, including dismissal from employment.~~

Section 14. Incorporation by Reference. (1) "Form CH-40, Employee Performance Appraisal", 4/93 Edition, Cabinet for Health and Family Services, is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner
JANIE MILLER, Secretary

VOLUME 37, NUMBER 7 – JANUARY 1, 2011

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 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, 2011 at 9 a.m. in the Second Floor Board Room of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2011, 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 January 31, 2011. 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: Debbie Garrison, 502-564-3796, ext.3655

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes different types of appointments for employees of the local health departments. The type of appointments include, initial probationary, temporary, variable hour and provisional. This amendment changes the name of seasonal appointment to a temporary appointment. Also the amendment clarifies that an employee must be given a seven (7) day notice if being separated from the initial probationary period.

(b) The necessity of this administrative regulation: This amendment is being promulgated to update the manner by which local health department employees are appointed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet is authorized KRS 211.1755(1) to administer a personnel program for local health departments based on the principles of merit governing the recruitment, examination, appointment, discipline, removal, and other incidents of employment for county, city-county, and district agencies. KRS 211.1755(3)(a), (b), and (c) describe the provisions and factors that comprise the contents of this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment provides consistent guidelines for all local health departments regarding the type of appointments, resignations, lay-off, and furlough of 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 purpose of these amendments is to make options available to the local health departments in the conditions of employment and to provide flexibility in appointments and furloughs.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide additional incentives to employees for the various job classifications in the local health departments and to provide the agency flexibility in appointments.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation provides consistent standards for job classifications and various salary adjustments that are submitted for review and approval by the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides consistent standards for the different types of appointments as well as notifying employees of their rights during initial probationary appointments, furloughs and layoffs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative

regulation: This administrative regulation will affect 54 local health jurisdictions and 3,600 employees except for the Lexington/Fayette County, the Louisville/Jefferson County and the Northern Kentucky District Health Departments.

(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 implementation of this administrative regulation would require the local health department to be knowledgeable about its provisions. The amendment provides options to local health departments in employment considerations, and procedures that could be used in the event of the necessity to address financial shortfalls.

(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 entities for implementing this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments would benefit the agency by the agency being able to address budget shortfalls while maintaining the rights of the employees.

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

(a) Initially: No new funds are required to implement this regulation in the first year.

(b) On a continuing basis: No new funds are required to implement this regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There would be no additional cost to the cabinet 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 fees or new funding will be required to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes no fees directly or indirectly.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect each local health department in Kentucky and the fiscal courts they are authorized by excluding Louisville Metro, Lexington/Fayette and the Northern Kentucky Independent District Health Departments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The following state statutes require or authorize this administrative regulation amendment: KRS 211:1755(3)(a), (b), and (c) describe the provisions and factors that comprise the contents of 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? This regulation amendment will not generate any revenue for any unit of state or local government in its first year of implementation.

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

fire departments, or school districts) for subsequent years? This regulation amendment will not generate any revenue for any unit of state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? The salary adjustment provisions defined in this amendment would be implemented by a local health department decision and controlled by the existing budget of each local health department.

(d) How much will it cost to administer this program for subsequent years? The provisions of this administrative regulation apply to the appointment, probation, lay-off and resignation of employees of local health departments. These provisions would be a local health department decision and controlled by the existing budget of each local health department 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 Public Health
Division of Administration and Financial Management
(Amendment)

902 KAR 8:090. Promotion, transfer, and demotion of local health department employees.

RELATES TO: KRS Chapter 18A, 211.090(3), 211.170(1), (2), 211.1751, 212.170(4), 212.350, 212.640, 212.782, 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. This administrative regulation describes the provisions and requirements for promotions, transfers, and demotions of local health department employees.

Section 1. Promotion. (1) An employee may be promoted at any time upon the request of an appointing authority if the employee meets the minimum requirements of the position for having a higher grade [salary] as determined by the department.

(2) A promotion of an employee shall be based upon individual performance, with due consideration for length of service and capability of the individual employee to perform the duties and responsibilities of the new position.

(3) A promoted employee shall serve a probationary period of thirteen (13) pay periods, to determine through performance evaluation if the employee can satisfactorily perform the duties and responsibilities of the position.

(4) An employee who satisfactorily completes the required promotional probationary period of thirteen (13) pay periods, as documented by the performance evaluation, shall receive a three (3) percent increase in salary.

(5) A regular-status employee may be promoted from a classified position to an unclassified position. If separated from an unclassified position following promotion, an employee shall revert to the class in which the employee previously held status. If there is no vacancy in that class, the employee may be reverted to a position for which the employee is qualified and certified by the department, or separated from employment if a position is not available. Time served in an unclassified position shall count towards years of service and seniority. The employee shall retain eligibility to earn annual, sick, and compensatory time, if applicable, and also receive agency provided benefits.

(6) If an employee is granted leave for medical reasons in excess of twenty (20) work days during the promotional probationary period, the employee's probationary period shall be extended for the same length of time as the granted leave to cover the absence.

(7) A performance evaluation shall be completed for an employee fourteen (14) calendar days prior to completing the probationary period in order to determine the employee's ability to perform the job duties successfully.

form the job duties successfully.

(8) An employee who has been promoted, but fails to successfully complete the probationary period, as documented by the performance evaluation conducted by the appointing authority or designate supervisory staff, shall revert to a position in the former class subject to subsection (9) of this section. Documentation ~~[of the reasons]~~ for the unsuccessful completion shall be provided to the employee and the department ~~[of the reasons for unsuccessful completion]~~.

(9) If approved by the appointing authority, a promoted employee may request, during the probationary period, to be reverted to a position in the former class. The employee may revert to a position in a different class if:

(a) There is no vacancy in the former class; ~~and~~

(b) The employee is qualified; and

(c) The employee is determined eligible by the department.

(10) If a regular employee in the classified service is dismissed for cause while serving a promotional probationary period, the employee shall have the right to appeal the dismissal in accordance with 902 KAR 8:110.

Section 2. Transfers. (1) The appointing authority may, at any time, transfer a regular employee from a position in one (1) organizational subdivision to a position of the same class in another organizational subdivision within an agency.

(2) A transfer of a regular employee from a position in one class to a position in another class within an agency having the same entrance salary may be made only with the approval of the appointing authority and upon determination of eligibility and certification by the department.

(3) An employee of one (1) agency shall not transfer to another agency without prior approval of each appointing authority. If the transfer is approved:

(a) Accumulated annual and sick leave shall be transferred;

(b) Accumulated compensatory leave shall be paid in lump sum by the sending agency; and

(c) The annual increment date shall be retained by the employee.

(4) An employee initially appointed to a position in an agency having prior work experience in a health department established under KRS 212.350, 212.640, 212.782, or an employee covered under KRS Chapter 18A, shall use the length of prior employment in determining the rate of earning annual leave provided for under 902 KAR 8:120, if the prior work experience does not exceed three (3) years since separation.

Section 3. Demotions. (1) An employee may be demoted for one (1) of the following reasons:

(a) Documented unsatisfactory employee performance during the promotional probationary period;

(b) An employee, with the approval of the appointing authority, voluntarily requests a demotion to a position having a lower salary range and less responsibilities and duties;

(c) A documented disciplinary problem or the inability of an employee to perform a duty or responsibility required of the position; or

(d) Due to a reorganization or reassignment of job duties based on a reorganization plan submitted by an agency and approved by the department.

(2) If a demotion is due to a reorganization of an agency, the plan shall state if a reduction in salary of an employee is to occur.

(3) If an employee is demoted during the initial probationary period, the employee shall continue in the employee's probationary period as if the original appointment had been to the position of the lower class.

(4) The salary of an employee demoted as a result of documented unsatisfactory performance during the promotional probationary period shall be reduced to the level prior to promotion.

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 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, 2011 at 9 a.m. in the Second Floor Board Room of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 14, 2011, 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 28, 2011. 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: Debbie Garrison, 502-564-3796, ext.3655

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation describes the requirement for and the process for the promotion, transfer and demotion of a local health department employee.

(b) The necessity of this administrative regulation: The regulation is necessary to update the provision by which local health department employees are promoted, transferred, or demoted.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet is granted the authority under KRS 211.1755 (1) to administer a personnel program for local health departments based on the principles of merit governing the promotion, transfer and demotion of employment for county, city-county, and district agencies. This regulation carries out that authority by providing consistent standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a uniform requirement for promotion, demotion and the transfer of employees among the local health departments.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the requirement that the health department must complete a performance evaluation on an initial probationary employee within fourteen (14) calendar days prior to the completion of the probationary period.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide the employee with appropriate notice regarding the completion of the probationary period.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 211.1755 in that the Cabinet is authorized to establish consistent personnel policies applicable to all health departments.

(d) How the amendment will assist in the effective administration of the statutes: This amend will assist in the interpretation of the initial probationary period and the appropriate number of days to inform the employee of the fact that they complete probation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect 54 local health jurisdictions and 3,600 employees except for the Lexington/Fayette County, The Louisville/Jefferson County and the Northern Kentucky District Health Departments.

(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 regulated entity must become familiar with the provisions of the amended regulation to properly administer personnel practices.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not cost the entities identified in number 3 any funds to implement. The entities must only become familiar with the time frames for notifying employees of completing or not completing probation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments would benefit the entities by keeping them consistent with the process described in the regulation for notifying an employee if they pass their promotion probationary period.

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

(a) Initially: No new funds are required to implement this regulation in the first year.

(b) On a continuing basis: No new funds are required to implement this regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing agency funds will be used to implement and enforce this regulation. There would be no new costs to the Cabinet 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 fees or new funding will be required to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes no fees directly or indirectly.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect each local health department in Kentucky and the fiscal courts they are authorized by excluding Louisville Metro, Lexington/Fayette and the Northern Kentucky Independent District Health Departments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The following state statutes require or authorize this administrative regulation amendment: The cabinet is granted the authority under KRS 211.1755 (1) to administer a personnel program for local health departments based on the principles of merit governing the promotion, transfer and demotion of employment for county, city-county, and district agencies.

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

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

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

(c) How much will it cost to administer this program for the first year? The salary adjustment amendments defined in this regulation would be a local health department decision and controlled by

the existing budget of each local health department.

(d) How much will it cost to administer this program for subsequent years? The salary adjustment amendments defined in this regulation would be a local health department decision and controlled by the existing budget of each local health department.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(Amendment)

902 KAR 8:096. Local health department employee performance evaluation program.

RELATES TO: KRS 211.090(3), 211.170(1), 211.1751, (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the personnel program for local health departments. This administrative regulation establishes the requirements and the procedures for the evaluation of local health department employee performance.

Section 1. Effective Date of This Administrative Regulation. (1) An agency electing to participate in the employee evaluation program of this administrative regulation shall have Board of Health approval and shall notify the department prior to the start of each fiscal year.

~~(2) [The effective date for this administrative regulation shall be July 1, 2006.]~~

~~(2) The purpose of the extended effective date shall be to provide for a period of time for local health departments to transition to the new employee performance evaluation program described in this administrative regulation.~~

~~(3)~~ The cabinet shall provide technical assistance and training upon request for appropriate local health department supervisory employees prior to the adoption [effective date] of this administrative regulation.

~~(3)~~~~(4)~~ Each agency shall elect, with Board of Health approval, to participate in one (1) of the following employee performance evaluation programs:

(a) The evaluation program described in 902 KAR 8:080, Section 9; or

(b) The evaluation program described in this administrative regulation.

~~(4)~~~~(a)~~~~(6)~~ An agency choosing the employee evaluation program described in 902 KAR 8:080, Section 9, shall notify the department prior to the beginning of each fiscal year ~~[by July 1, 2006]~~. ~~(b)~~ The agency shall remain under the requirements of 902 KAR 8:080, Section 9, unless the agency, with Board of Health Approval, elects to participate in the provisions of this administrative regulation at the beginning of a subsequent fiscal year.

~~(c)~~ An agency choosing 902 KAR 8:080, Section 9 ~~[the current employee evaluation program, as described in this section]~~, shall not be subject to any provision of this administrative regulation. ~~[(6) An agency electing to participate in the employee evaluation program of this administrative regulation shall notify the department by July 1, 2006.]~~

Section 2. Purpose of the Employee Performance Evaluation Program. (1) The purpose of the employee performance evaluation program shall be to establish a uniform process for the evaluation of an employee's performance during a specified period of time.

(2) Specific objectives of the program shall include the following:

(a) Increase the efficiency of the agency and employee through

the annual planning of job duties, objectives, and performance characteristics and assisting the employee to improve performance through prior knowledge of the expectations of the supervisor;

(b) Serve as a medium which brings the supervisor and employee together for constructive performance discussion and written documentation;

(c) Serve as a means to determine the level at which an employee is performing;

(d) Recognize performance that meets and exceeds performance standards;

(e) Identify and correct substandard performance;

(f) Assist in determining and recording special talents, skills, and capabilities that might otherwise not be noticed or recognized;

(g) Ensure understanding of duties and standards expected of the employee;

(h) Provide assistance in assigning work and delegating responsibility based on a mutual understanding of the employee's skills and abilities;

(i) Encourage the continued growth and development of employees; and

(j) Serve as a basis to review the employee's performance for granting work related salary adjustments.

Section 3. Designated Employee Performance Evaluations. (1) Employee performance evaluations shall be completed at the following times:

(a) Prior to the completion of the required initial appointment probationary period established in 902 KAR 8:080, Section 9;

(b) At the annual employee performance evaluation in accordance with Section 4 of this administrative regulation;

(c) Prior to completion of the required probationary period following promotion established in 902 KAR 8:090, Section 10;

(d) Following reinstatement of an employee that had a gap of service with an agency of more than one (1) year but does not exceed three (3) years from date of separation in accordance with 902 KAR 8:080, Section 3(3); or

(e) At a special performance evaluation required by Section 10 of this administrative regulation.

Section 4. Annual Employee Performance Evaluation. (1) An employee that has gained regular status shall be evaluated by the appointing authority or designated supervisor on an annual basis.

(2) An employee's established annual increment date shall be the first day of the first pay period after completion of twenty-six (26) pay periods of service during which the employee earned annual and sick leave pursuant to 902 KAR 8:120. A designated part-time employee's established annual increment date shall be the first day of the first pay period upon completion of twenty-six (26) pay periods of service.

(3) An employee returning to duty from leave without pay shall receive an annual increment when the employee has completed twenty-six (26) pay periods of service since the date the employee last received an annual increment.

(4) An annual increment date shall not change when an employee:

(a) Is in a position that is assigned a new or different salary grade;

(b) Receives a salary adjustment as a result the employee's position being reallocated;

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Returns from military leave covered under Uniformed Services Employment and Re-employment Rights Act;

(g) Is reclassified; or

(h) Is promoted.

(5) A regular-status employee shall maintain his current annual increment date upon the effective date of this administrative regulation. The performance evaluation date for an employee appointed ~~[on or after July 1, 2006]~~ shall be twenty six (26) pay periods following initial appointment.

Section 5. Employee Performance Evaluation Process. (1) The supervisor shall maintain a record throughout the evaluation period

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for each employee supervised.

(2) The record shall provide a chronological record of consistently maintained accomplishments or problems by an employee. The records shall include:

(a) Dates;

(b) Details;

(c) Names; and

(d) Any written statements regarding accomplishments or problems.

(3) The purpose of the record shall be to ensure that the evaluations are based on actual activities and performance during the review-rating period and provide documentation necessary for the performance salary adjustment or indicated disciplinary actions necessary in the case of unacceptable performance.

(4) A performance evaluation shall be completed for each regular status employee using the Local Health Department employee performance evaluation form (CH-40A), developed by the department in consultation with the agencies and the council.

(5) The CH-40A shall contain documented efforts made by the supervisor during the review period to correct unacceptable performance of the employee.

(6) At the beginning of the review period, the supervisor shall identify for each employee supervised:

(a) The performance competencies;

(b) Expectations;

(c) Goals; and

(d) Objectives.

(7) A supervisor shall develop an annual, written performance plan for each employee supervised.

(8) The supervisor and employee shall meet to discuss the identified performance competencies, expectations, goals, and objectives and decide on an individual development plan to assist the employee in performing the job. The annual performance plan shall include:

(a) An annual performance plan period;

(b) Job-related performance competencies, goals, and objectives that are consistent with the employee's position description and relate to the agency's goals and performance competencies. Each performance competency shall describe:

(1) Standards or indicators of success; and

(2) Measurable results and time frames if applicable; and

(c) Provisions for a minimum of one (1) interim performance plan review during the plan year to discuss performance progress, any deficiencies and plan updates as necessary.

(9) The supervisor, at the end of the review period, shall rate the performance of an employee on the identified performance competencies, indicating both the level of work performed and examples of the employee's work supporting the rating given on each measure and the final rating the employee will receive.

(10) The supervisor shall identify the performance competencies, goals, expectations, and objectives for the next plan year.

(11) The results of the employee performance evaluation may be submitted to the reviewer, if other than the appointing authority, and the appointing authority prior to meeting with the employee.

(12) The supervisor and the employee shall meet to discuss the supervisory ratings, performance competencies, goals, and expectations, objectives identified for the next review period and the employee's development plan for the next review period. The employee shall have the opportunity to provide input, examples of work and a self-evaluation for the supervisor's consideration.

(13) The employee shall have an opportunity to attach written comments concerning the rating of the supervisor's evaluation. The comments shall be provided to the supervisor no later than five (5) working days after the supervisor and employee meet to discuss the performance evaluation.

(14) An employee that disagrees with the performance rating conducted by the employee's supervisor may ask for a review with the reviewer. If the employee is not satisfied with the response of the reviewer, the employee may submit a grievance through the agency's grievance procedure.

Section 6. Employee Performance Evaluation Competencies.

(1) An employee shall be evaluated on at least the following performance competencies:

(a) Position knowledge;

(b) Communication;

(c) Concern for accuracy;

(d) Service orientation;

(e) Organizational awareness; and

(f) Performance orientation.

(2) A supervisor shall be evaluated on the following competencies in addition to those stated above:

(a) Staff development;

(b) Functional planning; and

(c) Decision making.

(3) In addition to the required competencies established in subsections (1) and (2) of this section, additional competencies may be added to the employee's or supervisor's evaluation that reflects the level of development of the employee, level of responsibility, degree of independence, complexity, and the overall scope of the employee's job duties.

Section 7. Employee Evaluation Rating Factors. The following ratings shall be used by the supervisor to evaluate an employee's job performance for the competencies identified:

5	Highly Commendable Performance
4	Proficient and Commendable Performance
3	Effective and Competent Performance
2	Needs Development Performance
1	Unacceptable Performance

[~~(1) Highly Commendable Performance;~~

~~(2) Proficient and Commendable Performance;~~

~~(3) Effective and Competent Performance;~~

~~(4) Needs Development Performance; or~~

~~(5) Unacceptable Performance.]~~

Section 8. Overall Performance Rating of the Employee. The supervisor shall provide an overall rating of the employee's performance based on the supervisor's judgment regarding the following levels of performance:

(1) Highly commendable performance rating level for the employee who:

(a) Consistently surpasses skill expectations in execution of the majority of critical job responsibilities and objectives;

(b) Makes exceptional contributions to the overall functioning of a department by demonstrating initiative, flexibility, and creativity in addressing issues or developing systems, procedures, or enhancements for greater efficiencies and effectiveness;

(c) Possesses superb skills and knowledge;

(d) Constantly anticipates or responds quickly to changing situations and departmental needs;

(e) Constantly contributes workable solutions to projects or problems;

(f) Demonstrates work of a superior quality; and

(g) Is a solution-oriented team player who maintains and promotes excellent working relationships.

(2) Proficient and commendable performance rating level for the employee who:

(a) Consistently demonstrates skill in the execution of the majority of critical job responsibilities and objectives;

(b) Makes important contributions to the overall functioning of a department by demonstrating solid performance with respect to productivity and quality;

(c) Possesses strong skills and knowledge; and

(d) Is a strong team player who maintains and promotes good working relationships.

(3) Effective and competent performance rating level for the employee who:

(a) Competently executes the majority of critical job responsibilities and objectives;

(b) Makes positive contributions to the overall functioning of an agency by demonstrating sufficient performance with respect to productivity and quality of work;

(c) Possesses appropriate level of skills and knowledge;

(d) Maintains and promotes positive working relationships as a team player;

(e) Works positively to influence the work group; and

(f) Adjusts readily to changing situations and work assign-

ments.

(4) Needs development performance rating level for the employee who:

(a) The overall performance to ensure consistent execution of all job responsibilities and objectives needs development;

(b) Demonstrates success in some areas but guidance in other areas has been needed; and

(c) Demonstrates performance competencies that need further development and consistent application.

(5) Unacceptable performance rating level for the employee whose overall performance indicates that:

(a) Job duties, responsibilities and objectives have not been consistently met;

(b) Employee's performance requires close monitoring and has not kept pace with job related requirements; and

(c) Successes have been only occasional or of minimal impact and performance has failed to demonstrate sufficient level of competencies required.

Section 9. Salary Adjustment for an Employee Based on the Levels of Performance. (1) If, in the judgment of the supervisor and appointing authority, an employee who receives an overall rating at the highly commendable or proficient and commendable level, the employee shall receive:

(a) The annual employee performance rate adopted by the Board of Health at the beginning of the fiscal year not to exceed five (5) percent of the employee's salary; and

(b) An additional lump sum payment that was adopted by the Board of Health at the beginning of the fiscal year not to exceed three (3) percent of the employee's salary provided adequate documented justification is provided to the department for approval.

(c) The lump sum payment shall be effective the same date as the annual increment was awarded.

(2) If, in the judgment of the supervisor and appointing authority, an employee receives a performance rating at the effective and competent level, the employee shall receive the annual employee performance rate adopted by the Board of Health at the beginning of the fiscal year not to exceed five (5) percent of the employee's salary.

(3)(a) If, in the judgment of the supervisor and appointing authority, an employee receives a rating at the needs development level after appropriate supporting documentation has been made, the employee shall be entitled to receive a salary adjustment equivalent to fifty (50) percent of the annual performance evaluation rate adopted by the Board of Health at the beginning of the fiscal year not to exceed five (5) percent of the employee's salary.

(b) An appointing authority shall require a special evaluation to be conducted no later than 120 days following the annual evaluation to determine if the employee's level of performance has improved.

(c) If the employee's performance has improved to the effective and competent level, the appointing authority shall approve the employee's receipt of the additional fifty (50) percent over the remainder of the evaluation period.

(d) For the employee who shows no improvement in performance or whose performance deteriorates, the appointing authority shall:

1. Remove the fifty (50) percent salary increment; and

2. Initiate appropriate disciplinary action as found in 902 KAR 8:100.

(4)(a) If, in the judgment of the supervisor and appointing authority, an employee receives a rating at the unacceptable level, the appointing authority shall not grant a salary increase except as provided in paragraph (d) of this subsection.

(b) The appointing authority shall initiate dismissal action if indicated by supporting documentation.

(c) If the supporting documentation does not indicate a dismissal action, the appointing authority shall initiate appropriate disciplinary action followed by a performance re-evaluation to be completed no later than 120 days after the disciplinary action was initiated.

(d) The appointing authority shall provide the employee a salary adjustment equivalent to fifty (5) percent of the annual performance evaluation rate at the needs development performance

level[.] if an employee improves the level of performance and satisfactorily meets the performance improvement objectives as determined by the re-evaluation.

(5) The employee performance salary adjustment shall be given to the eligible employee at the beginning of the first pay period following twenty-six (26) pay periods of service during which the employee was in pay status.

(6) An employee whose annual increment is denied shall be notified by the appointing authority in writing at least fourteen (14) calendar days prior to the annual increment date.

Section 10. Special Performance Evaluation. A special performance evaluation may be conducted at any time by the employee's supervisor to gauge the level of performance or to improve performance.

Section 11. Employee Rights and Responsibilities. (1) An employee shall have the opportunity to include written comments pertaining to an evaluation and may attach additional pages, as necessary.

(2) If the employee provides comments, the comments shall be attached to the evaluation form and made part of the employee personnel file.

(3) The employee shall sign the performance evaluation. However, the employee's signature shall not be required for the evaluation to be complete; the signature shall only indicate the evaluation has been discussed with the employee and shall not imply agreement or disagreement with the evaluation.

(4) An employee shall be provided with the basis of the evaluation and, upon written request, shall be provided a copy of documents which were considered in completing the evaluation.

(5) Upon written request to the next higher-level administrator, an employee with regular status shall be granted an opportunity to discuss any concerns regarding the evaluation.

Section 12 Incorporation by Reference. (1) "Form CH-40 A, Local Health Department Employee Performance Evaluation Form", 7/1/2006 Edition, Cabinet for Health and Family Services, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 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, 2011 at 9 a.m. in the Second Floor Board Room of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2011, 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 January 31, 2011. 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.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Debbie Garrison, 502-564-3796, ext.3655

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a performance evaluation program for local health department employees. The intent of this employee evaluation program is to provide for differentiation in compensation based on five levels of employee performance.

(b) The necessity of this administrative regulation: Kentucky revised statutes authorize the Cabinet for Health and Family Services to promulgate administrative regulations governing a personnel program for the local health departments in Kentucky. This administrative regulation defines a uniform employee evaluation program across the local health departments except Lexington/Fayette County, Northern Kentucky Independent District Health Department and the Louisville/Jefferson County Health Department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by implementing a uniform employee evaluation program for the local health department employees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 211.1755 identifies employee performance evaluation as part of the personnel program for local health departments. This administrative regulation describes a second evaluation system that the agency may choose to use in place of regulation 902 KAR 8:080.

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

(a) How the amendment will change this existing administrative regulation: The amendment is being revised to clarify options in providing employee evaluations in the local health personnel system.

(b) The necessity of the amendment to this administrative regulation: This amendment clarifies information and provides options for performing employee evaluations of local health personnel.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorized statute by providing a consistent employee performance evaluation program in accordance with KRS 211.1755(3)(a)7.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides for a consistent employee performance evaluation program applicable to all local health departments utilizing the forms and processes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect 54 local health jurisdictions and 3,600 employees except for the Lexington/Fayette County, the Louisville/Jefferson County and the Northern Kentucky District Health Departments.

(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 local health departments will need to be familiar with the amended evaluation procedure, including the number of days that an employee must have received their annual evaluation by before the approval of their annual increment.

(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 mandated cost to comply with this amendment. The cost to each agency affected would be determined by the agency's performance evaluation of each employee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments would benefit the agency by the agency being able to award their employees for performance improvement and outstanding service.

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

(a) Initially: No new funds are required to implement this regu-

lation in the first year.

(b) On a continuing basis: No new funds are required to implement this regulation in the first year.

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

No additional cost is required by the Cabinet to implement and enforce this administrative regulation. There would only be additional cost to the local health departments if they choose to take advantage of one of the higher evaluation scores which would give the employee a lump sum payment.

(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 new funding will be required to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes no fees directly or indirectly.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect each local health department in Kentucky and the fiscal courts they are authorized by excluding Louisville metro, Lexington/Fayette and the Northern Kentucky Independent District Health Departments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 211.1755(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 regulation amendment will not generate any revenue for any unit of state or local government in its first year of implementation.

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

(c) How much will it cost to administer this program for the first year? The cost to administer this program as defined in this regulation would be a local health department decision and controlled by the existing budget of each local health department.

(d) How much will it cost to administer this program for subsequent years? The salary adjustment amendments defined in this regulation would be a local health department decision and controlled by the existing budget of each local health department.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(Amendment)

902 KAR 8:100. Disciplinary procedures applicable for local health department employees.

RELATES TO: KRS 211.090(3), 211.170(1), 211.1751, (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the personnel program. This administrative regulation establishes separations and disciplinary procedures applicable to a local health department.

Section 1. Disciplinary Action. (1) An appointing authority may discipline an employee for:

- (a) Lack of good behavior; or
- (b) Unsatisfactory performance of a job duty.
- (2) A situation that may warrant disciplinary action shall include:
 - (a) Inefficiency or incompetency in the performance of a duty;
 - (b) Negligence in the performance of a duty;
 - (c) Careless, negligent, or improper use of local health department property or equipment;
 - (d) Excessive absenteeism;
 - (e) Habitual pattern of failure to report for duty at the assigned time and place;
 - (f) Failure to obtain or maintain a current license or certificate or other qualification required by law or rule as a condition of continued employment;
 - (g) Willful abuse or misappropriation of funds, property, or equipment;
 - (h) Falsification of an official document relating to or affecting employment;
 - (i) Disrupting, disturbing, or interfering with management of agency operation;
 - (j) Abusive behavior towards a patient, coworker, or the public in the performance of a duty;
 - (k) Insubordination;
 - (l) Reporting to work under the influence of alcohol or illegal drugs, or partaking of alcohol or illegal drugs on the job;
 - (m) Sleeping or failure to remain alert during working hours;
 - (n) Violation of confidential information policies of the agency or assigned program;
 - (o) Prohibited political activity;
 - (p) Unauthorized or unreported absence or absence for any period of working without notifying supervisor;
 - (q) Breach of state law, an agency rule, policy, or directive; and
 - (r) Performing an unauthorized duty~~or task~~, or performing a ~~duty/task~~ requiring special training, licensure, or certification, which the employee has not attained.

Section 2. Administering Disciplinary Actions. (1) A classified employee with regular status shall not be disciplined by the appointing authority except for cause.

(2) Except as provided by subsection (4) of this section, an appointing authority shall apply discipline in a progressive manner, with each disciplinary action more severe, in an effort to correct an employee's performance or behavior problem.

(3) Progressive discipline shall consist of the following actions:

- (a) Verbal admonishment;
- (b) Written admonishment or warning;
- (c) Demotion or suspension; and
- (d) Dismissal.

(4) One (1) or more of the disciplinary actions stated in subsection (3) of this section may be bypassed by the appointing authority based on the severity of the performance or behavior problem.

Section 3. Predisciplinary Action hearing. (1) Except as provided in Section 5(1) of this administrative regulation, prior to a

demotion provided by 902 KAR 8:090, Section 3(1)(c), suspension, or dismissal, a classified regular employee with status shall be notified in writing of the intent of the agency to demote, suspend or dismiss the employee. The notice shall also include the following:

(a) The specific reasons for the demotion, suspension, or dismissal including:

1. The statutory, regulatory, or agency policy violation; ~~and~~ ~~or~~
2. The specific action or activity on which the intent to demote, suspend, or dismiss is based;
- (b) The date, time, and place of the action or activity;
- (c) The name of each party involved; and
- (d) That the employee has the right to appear personally, or with counsel if the employee has retained counsel, to reply to the appointing authority regarding the intent to demote, suspend, or dismiss.

(2) A request in writing to appear to reply to the appointing authority shall be made within six (6) working days of receipt of the notice of intent to demote, suspend, or dismiss.

(3) The meeting shall be held within six (6) working days after receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.

(4) No later than five (5) working days after the employee appears to reply to the intent to demote, suspend, or dismiss, the appointing authority shall determine whether to demote, suspend, or dismiss the employee or to alter, modify, or rescind the intent to demote, suspend, or dismiss. The appointing authority shall notify the employee in writing of the decision.

(5) If the appointing authority decides to demote, suspend, or dismiss, the employee shall be notified of the following, in writing:

- (a) The effective date of the demotion, suspension, or dismissal; ~~and~~
- (b) The reason for the demotion, suspension, or dismissal, including the:
 1. Statutory, regulatory, or agency policy violation; ~~and~~~~or~~
 2. Specific action or activity on which the demotion, suspension, or dismissal is based;
 - (c) The date, time, and place of the action or activity;
 - (d) The name of each party or witness involved;
 - (e) Of his right to appeal the demotion, suspension, or dismissal;

(f) That an appeal shall be:

1. Prepared on a ["]Form CH-41 Request for Appeal["]; and
2. Filed with the Local Health Department Employment Personnel Council and submitted to the Administrative Hearings Branch within fifteen (15) calendar days of the effective date of the decision of the appointing authority. If an appeal is mailed to the council by certified mail, return receipt requested, it shall be considered filed on the date it is postmarked.

(6) The appointing authority shall provide the employee with the appeal request form.

Section 4. Conditions for Bypassing Progressive Discipline and the Issuance of a Notice of Intent for the Suspension or Dismissal of an employee. (1) An appointing authority may issue a notice of intent for the suspension or dismissal of an employee for a serious misconduct infraction.

(2) An example of a misconduct infraction that may be considered serious enough to merit an immediate intent of suspension or dismissal include the following:

(a) Threatening, assaulting, fighting with, or harassing a supervisor, another employee, or anyone encountered during the normal course of business;

(b) Stealing or deliberately damaging the property of:

1. The agency;
2. A client;
3. A patient; or
4. Another employee.
- (c) Carrying a concealed, deadly weapon at work;
- (d) Reporting to work under the influence of alcohol, narcotics, or other drugs, unless the drug was prescribed by a physician;
- (e) Taking unauthorized leave or failing to show up at work without notifying a supervisor for more than three (3) consecutive work days;
- (f) Engaging in a fraudulent activity;

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(g) Breach of the employee confidentiality agreement; or
(h) Performing a procedure on a patient or client for which the employee has neither been certified nor has the current credentials to perform.

(3) The employee shall be notified by the appointing authority regarding the intent to suspend or dismiss.

(4) If an employee wishes to reply to a notice he shall:

(a) Request to appear personally before the appointing authority. The request shall be:

1. In writing; and

2. Made within six (6) working days of receipt of the notice; and

(b) File the request with the appointing authority. If a request is mailed by certified mail, return receipt requested, it shall be considered filed on the date it is postmarked.

(5) An employee may be represented by counsel at an appearance before the appointing authority.

(6) The meeting shall be held within six (6) working days after receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.

(7) Within five (5) working days after the employee appears to reply to the intent to suspend or dismiss, the appointing authority shall determine whether to modify, or rescind the intent to suspend or dismiss. The appointing authority shall notify the employee in writing of the decision.

(8) If the appointing authority decides to suspend or dismiss immediately following the meeting; the employee shall be notified of the following, in writing:

(a) The effective date of the suspension or dismissal; and

(b) The reason for the suspension or dismissal, including the:

1. Statutory, regulatory, or agency policy violation; and

2. Specific action or activity on which the suspension or dismissal is based;

(c) The date, time, and place of the action or activity;

(d) The name of each party or witness involved;

(e) Of his right to appeal the suspension or dismissal;

(f) That an appeal shall be:

1. Prepared on a ["]Form CH-41 Request for Appeal["]; and

2. Filed with the Local Health Department Employment Personnel Council and submitted to the Administrative Hearings Branch within fifteen (15) calendar days of the effective date of the suspension or dismissal. If an appeal is mailed to the Council by certified mail, return receipt requested, it shall be considered filed on the date it is postmarked.

Section 5. Directive to Vacate Premises. (1) If an employee has committed a serious misconduct infraction and there is a need to diffuse a presently dangerous or disruptive situation, a supervisor may direct the offending employee to vacate the premises. The appointing authority shall, by the most immediate means, contact the department and relate the action taken.

(2) A pre-termination hearing shall be provided within three (3) working days after removal.

(3) The employee may be placed on leave using accumulated leave or on immediate suspension without pay.

Section 6. Incorporation by Reference. (1) "Form CH-41 Request for Appeal", 1/98 Edition, Cabinet for Health and Family Services, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM D. HACKER, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 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, 2011 at 9:00 a.m. in the Second Floor Board Room of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2011, 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 January 31, 2011. 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) 564-7572.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Debbie Garrison 502-564-3796, ext.3655

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for a consistent disciplinary process for all the health departments throughout the state except for Northern Kentucky, Lexington/Fayette and Louisville/Jefferson.

(b) The necessity of this administrative regulation: Kentucky revised statutes authorize the Cabinet for Health and Family Services to promulgate administrative regulations governing a personnel program for the local health departments in Kentucky. This administrative regulation is necessary to establish consistent guidelines in the disciplinary process across the local health departments except Lexington/Fayette County, Northern Kentucky Independent District Health Department and the Louisville/Jefferson County Health Department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 211.1755 (1) to administer a personnel program for local health departments based on the principles of merit governing the recruitment, examination, appointment, discipline, removal, and other incidents of employment for county, city-county, and district agencies. This amendment describes provisions related to discipline covered by that statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment provides consistent disciplinary processes for the employees of the local health departments.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes formatting and technical improvements for clarity purposes regarding the appeal process used in employee discipline.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to clarify content and inform the employees that the appeals are sent to the Administrative Hearings Branch.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation provides consistent standards for the disciplinary processes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides consistent standards for disciplinary actions for all local health employees covered by the statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect 54 local health jurisdictions and 3,600 employees except for the Lexington/Fayette County, the Louisville/Jefferson County and the Northern Kentucky District Health Departments.

(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 local health departments will need to be familiar with the process of the disciplinary process and the steps for appeal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not cost the entities identified in number 3 any funds to implement; they must only become familiar with the disciplinary and appeal process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit from consistently applied standards regarding the employee appeal process.

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

(a) Initially: No new funds are required to implement this regulation in the first year.

(b) On a continuing basis: No new funds are required to implement this 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: Implementation and enforcement of this regulation will be with existing funds. There would be no additional cost to the Cabinet or to the local health departments 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 fees or new funding will be required to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes no fees directly or indirectly.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect each local health department in Kentucky and the fiscal courts they are authorized by excluding Louisville Metro, Lexington/Fayette and the Northern Kentucky Independent District health Departments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The state statute that requires or authorizes this administrative regulation amendment is KRS 211.1755.

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

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

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

(c) How much will it cost to administer this program for the first year? This regulation amendment will not require any additional costs to implement in its first year of implementation.

(d) How much will it cost to administer this program for subsequent years? This regulation amendment will not require any additional costs to implement in its first year of implementation.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Administration and Financial Management (Amendment)

902 KAR 8:110. Disciplinary appeal process applicable for local health department employees.

RELATES TO: KRS 211.170(1), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050(1), 211.1752, 211.1755

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755 and 211.1752 requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. KRS 211.1752 provides for an appeal process for employees who are disciplined, applicants or employees who allege discrimination in personnel actions and eligibles who question their rating in the examination process. This administrative regulation provides for the specific appeal process.

Section 1. Appeals. (1) An employee with status who is demoted according to 902 KAR 8:090, Section 3(c) suspended, or dismissed shall have the right to appeal the action. The appeal shall be:

(a) In writing, on a "Form CH-41 Request for Appeal"; and

(b) Filed with or mailed to the department by certified mail, return receipt requested within fifteen (15) days of the demotion, suspension, or dismissal.

(2) An applicant who has taken an oral or written examination may appeal his rating in any part of an examination to assure rating procedures have been applied fairly and equitable. The appeal shall be in writing and mailed to the department no later than thirty (30) days after the date on which the notification of removal was mailed to the eligible.

(3) An eligible whose name has been removed from a register for any of the reasons specified in administrative regulation 902 KAR 8:070, Section 4. Item (5) (a, b, c, d, e, f, g, h, and i)[4](8) may appeal the action. The appeal shall be mailed to the department within thirty (30) days after the date on which the notification of removal was mailed to the eligible.

(4) An applicant or employee may appeal within thirty (30) days of the alleged discrimination if he believes that he has been discriminated against in a personnel action because of:

(a) Sex;

(b) Religious opinion or affiliation;

(c) Political opinion or affiliations;

(d) Race;

(e) National origin;

(f) Disability; or

(g) Age.

(5) An appeal shall be conducted in accordance with procedures as set forth in Section 2 of this administrative regulation.

Section 2. Hearing Process. (1) The department shall schedule an administrative hearing upon an appeal to be held within sixty (60) days of receipt of the appeal. Notice of the hearing and conduct of the proceedings shall be in accordance with the requirements of KRS Chapter 13B.

(2) The hearing shall be conducted by a designated hearing officer and the decision will be submitted to the Local Health Department Employment Personnel Council ~~or a designated hearing officer~~.

(3) Within the time allowed by KRS Chapter 13B, the Administrative Hearings Branch ~~Local Health Department Employment Personnel Council~~ shall:

(a) Make findings of fact and conclusions of law; and

(b) Issue a recommended ~~final~~ order, based on the record.

(4) Designate a hearing officer to hear the appeal and ~~If a~~

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~~hearing officer is designated to hear the appeal,]~~ the hearing officer shall:

- (a) Make findings of fact and conclusions of law; and
- (b) Recommend a final order to the Local Health Department Employment Personnel Council at its next meeting.
- (5) The Local Health Department Employment Personnel Council may:
 - (a) Adopt the report as submitted;
 - (b) Amend the findings and recommendations based on the evidence contained in the report; or
 - (c) ~~Remand the appeal to the hearing officer for further appropriate action; or]~~
 - ~~[(d)]~~ Rehear the appeal.
- (6) The decision of the Local Health Department Employment Personnel Council shall be a final order, binding upon the employee and appointing authority.

Section 3. Hearing Process (1) "Form CH-41 Request for Appeal", (1/98 Edition) Cabinet for Health and Family Services, is incorporated by reference.

(2) ~~This material~~ [H] may be inspected, copied or obtained at the Department for Public Health, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM D. HACKER, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 at 4 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2011 at 9:00 a.m. in the Second Floor Board Room of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2011, 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 January 31, 2011. 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: Debbie Garrison 502-564-3796 ext.3655

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes an appeal process for employees who are disciplined as well as applicants or employees who allege discrimination in personnel actions.
 - (b) The necessity of this administrative regulation: This administrative regulation establishes the appeal process that is commonly used throughout the state for the Local Health Departments of Kentucky excluding Northern Kentucky Health Department District, Lexington/Fayette County health Department and Louisville/Jefferson County Health Department.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 211.1755 to administer a personnel program for local health departments based on the principles of the merit system governing Local Health Personnel. This amendment conforms to that statute by defining appeal process for employees who are disciplined.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment provides consistent standards for the appeal process for

applicants as well as 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: This amendment clarifies the appeal process of employees who are disciplined.

(b) The necessity of the amendment to this administrative regulation: The amendment provides a mechanism of establishing consistent appeal process for the Local Health Departments of Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 211.1755 to administer a personnel program for local health departments based on the principles of the merit system governing Local Health Personnel. This amendment conforms to that statute by defining appeal process for employees who are disciplined.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides consistent standards for the appeal process and review and approval by the Local Health Personnel Council.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect 54 local health jurisdictions and 3,600 employees except for the Lexington/Fayette County, the Louisville/Jefferson County and the Northern Kentucky District Health Departments.

(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 local health departments will need to be aware of the appeal process for their employees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not cost the entities identified in number 3 any funds to implement; they must only become familiar with the appeal process and how to handle such.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Uniform appeal rights will be updated and applied across the state for all local health departments.

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

(a) Initially: No new funds are required to implement this regulation in the first year.

(b) On a continuing basis: No new funds are required to implement this 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: Currently budgeted funds will be used to implement and enforce this regulation. There would be no additional cost to the Cabinet 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 fees or new funding will be required to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes no fees directly or indirectly.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect each local health department in Kentucky and the fiscal courts they are authorized by excluding Louisville metro,

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Lexington/Fayette and the Northern Kentucky Independent District Health Departments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The following state statutes require or authorize this administrative regulation amendment: The Cabinet has responsibility under KRS 211.1755 to administer a personnel program for local health departments based on the principles of the merit system governing Local Health Personnel.

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

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

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

(c) How much will it cost to administer this program for the first year? This regulation will not increase the administrative costs for any unit of state or local government in its first year of implementation.

(d) How much will it cost to administer this program for subsequent years? This regulation will not increase the administrative costs for any unit of state or local government in subsequent years of implementation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Administration and Financial Management (Amendment)

902 KAR 8:120. Leave provisions applicable to employees of local health departments.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870, Chapter 337, 29 C.F.R. Part 825, 29 U.S.C. 206

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the local health department personnel program. This administrative regulation establishes work hours, leave and compensatory time provisions for employees of local health departments.

Section 1. Hours of Work. (1) The normal work week shall consist of thirty-seven and one-half (37.5) hours per week.

(a) The appointing authority shall establish the hours and days of work for the agency or for specific employees. The work schedule may be changed by the appointing authority to provide for flexibility in meeting particular work requirements of the agency or specific employees whose schedules may require them to work different hours.

(2) Hours worked in excess of the thirty-seven and one-half (37.5) hours during the established work week shall be:

(a) Approved by the appointing authority; and

(b) Subject to compensatory time and overtime provisions of this administrative regulation.

(3) The standard pay period shall consist of seventy-five (75) hours.

(4) An appointing authority, with department approval, may establish a position having special conditions of employment based

on the needs of the agency.

(5) The employee who requests and receives consideration for special conditions shall acknowledge acceptance of the special conditions in writing.

(6) Special conditions may include the following:

(a) Earning annual leave and sick leave at a rate based on the hours worked;

(b) ~~A method of payment of earned compensation that may be prorated; and~~

(c) An arrangement for handling nonwork time that may occur with the specific job responsibilities.

Section 2. Earning of Annual Leave. (1) Except for a seasonal, temporary, or emergency employee, a full-time employee shall earn annual leave credit at the following rate:

Years of Service	Annual Leave Hours Earned Per Pay Period/Per Year of Twenty-six (26) Pay Periods
0 to 5 years	3.5 hours per pay period/91.0 hours per year
5 to 10 years	4.4 hours per pay period/114.4 hours per year
10 to 15 years	5.2 hours per pay period/135.2 hours per year
15 to 20 years	6.1 hours per pay period/158.6 hours per year
20 years or more	7.0 hours per pay period/182 hours per year

(2) Annual leave for a full-time employee shall not accrue unless the employee has been in pay status at least thirty-seven and one-half (37.5) hours of the standard pay period. The employee shall be credited with additional leave credit upon the first day of the pay period following the pay period in which the leave was earned.

(3) Except for a ~~seasonal~~ temporary, or emergency employee, a part-time employee, who is designated as serving on a part-time 100 hour basis and is in pay status at least twenty-three (23) hours each pay period, shall earn annual leave credit at the following rate:

Years of Service	Annual Leave Hours Earned Per Pay Period/Per Year of Twenty-six (26) Pay Periods
0 to 5 years	2.1 hours per pay period/54.6 hours per year
5 to 10 years	2.6 hours per pay period/67.6 hours per year
10 to 15 years	3.1 hours per pay period/80.6 hours per year
15 to 20 years	3.6 hours per pay period/93.6 hours per year
20 years or more	4.2 hours per pay period/109.2 hours per year

(4) In computing years of total service for determining the rate of earning annual leave for designated part-time 100 hour employees, only those months shall be used during which the employee was designated as a full-time, part-time 100 hour, or was on educational leave with pay.

(5) An employee who has retired from a position covered by a state retirement system, is receiving retirement benefits, and returns to an agency, shall not receive credit for months of service prior to retirement.

(6) An employee who has resigned from one agency and returns to another agency as an original appointment shall not receive credit for months of service prior to resignation.

(7) Annual leave shall not accrue unless an employee is working or on authorized leave with pay. Annual leave shall not accrue if an employee is on authorized education leave with pay.

(8) ~~(7)~~ The maximum amount of annual leave earned by a full-time employee that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

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Years of Service	Maximum Amount of Annual Leave Earned by Full Time Employees
0 to 5 years	225.0 hours
5 to 10 years	277.5 hours
10 to 15 years	337.5 hours
15 to 20 years	390.0 hours
Over 20 years	450.0 hours

(9)(9) The maximum amount of annual leave for a designated part-time 100 hour employee who works an average of 100 hours per month that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

Years of Service	Maximum Amount of Annual Hours Earned by Designated Part-time 100 Employees
0 - 5 years	120 hours
5 - 10 years	148 hours
10 - 15 years	180 hours
15 - 20 years	208 hours
Over 20 years	240 hours

(10)(9) Except as provided for in Section 3(8) of this administrative regulation, annual leave earned in excess of that which is allowed to be accumulated shall be converted to sick leave and credited during the first pay period following the end of the calendar year. Annual leave shall not be granted in excess of that earned.

Section 3. Use of Annual Leave Credit. (1) An employee who has accumulated annual leave credit, upon timely request and subsequent approval of the appointing authority, shall be granted leave subject to the operating requirements of the agency.

(2) An employee shall not be charged with annual leave for absence except on a day upon which they would otherwise work and receive pay.

(3) Absence for a fraction or part of a day that is chargeable to annual leave shall be charged in fifteen (15) minute periods.

(4) An employee shall be paid a lump sum for accumulated annual leave, not to exceed the maximum amounts established in Section 2 of this administrative regulation, if separated by proper resignation, layoff, retirement, or change from full-time or part-time 100 hour to part time. Following payment of annual leave, leave remaining after the payment of the maximum provided in Section 2 of this administrative regulation shall be removed from the balance.

(5) Upon the death of an employee, the employee's estate shall be entitled to be paid for the unused portion of the employee's accumulated annual leave, ~~not to exceed the maximum amount allowable~~.

(6) Annual leave shall not be advanced or taken until it is earned.

(7) An absence due to sickness, injury, or disability in excess of accumulated sick leave, may be charged against annual leave if approved by the appointing authority.

(8) An employee who has accumulated annual leave in excess of 275 hours may request payment of an amount of annual leave not to exceed seventy-five (75) hours during the fiscal year of the agency. The requested annual leave payment, if approved by the appointing authority, shall not reduce the employee's balance of annual leave below 275 hours and shall be paid in a manner convenient to the agency.

(9) An appointing authority may require an employee who has a balance of compensatory leave hours to use compensatory leave before the employee's request to use annual leave balance is granted, unless the employee's annual leave balance will exceed the maximum number of hours that may be carried forward pursuant to Section 2(7) and (8) of this administrative regulation.

Section 4. Earning of Sick Leave. (1) A full-time employee, except an emergency employee, shall earn sick leave at the rate of three and one-half (3.5) hours per pay period.

(a) An employee shall have worked or been in pay status for at

least thirty-seven and one-half (37.5) hours of the seventy-five (75) standard hours in each pay period in order to accumulate sick leave.

(b) The employee shall be credited with sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(2) An employee designated as a part-time 100 hour employee, except an emergency employee, who is in pay status at least twenty-three (23) hours in a pay period shall earn sick leave at the rate of two and one-tenth (2.1) hours per pay period. A part-time 100 hour employee shall be credited with additional sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(3) A full-time employee completing ten (10) years of total service with an agency shall be credited with seventy-five (75) additional hours of sick leave.

(4) An employee designated as a part-time 100 hour employee completing ten (10) years of total service with an agency shall be credited with forty-five (45) additional hours of sick leave.

(5) A full time employee completing 240 months of total service with one (1) or more agencies shall be credited with an additional seventy-five (75) hours of sick leave.

(6) An employee designated as a part-time 100 hour employee completing 240 months of total service with one (1) or more agencies shall be credited with forty-five (45) additional hours of sick leave.

Section 5. Uses of Sick Leave Credit. (1) The appointing authority, upon proper request, may grant sick leave with pay to a full-time or designated part-time 100 hour employee with sufficient leave credit, if the employee:

(a) Receives medical, psychiatric, dental, or optical examination or treatment;

(b) Is disabled by sickness or injury;

(c) Is required to provide care for a sick or injured spouse, child, ~~step-child~~, parent, ~~step-parent~~, brother, ~~step-brother~~, sister, ~~step-sister~~, grandparent, ~~step-grandparent~~, ~~or~~ grandchild, ~~step-grandchild~~, ~~or~~ mother- or father-in-law, or daughter- or son-in-law;

(d) Would jeopardize the health of others at his or her workstation ~~(duty)~~ post because of exposure to a contagious disease;

(e) Has lost by death a spouse, ~~parent~~, child, ~~step-child~~, ~~parent~~, ~~step-parent~~, brother, ~~step-brother~~, sister, ~~step-sister~~, grandparent, ~~step-grandparent~~, grandchild, ~~step-grandchild~~, mother- or father-in-law, or daughter- or son-in-law; or

(f) Is required to take the employee's spouse, child, ~~step-child~~, parent, ~~step-parent~~, brother, ~~step-brother~~, sister, ~~step sister~~ ~~mother- or father-in-law~~, grandparent, ~~step-grandparent~~, ~~or~~ grandchild, ~~step-grandchild~~, mother- or father-in-law, or daughter- or son-in-law; for medical, psychiatric, dental, or optical examination or treatment.

(2) Sick leave granted for death in the employee's family, as described in subsection (1) of this section, shall be limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(3) An employee shall file a written request application for sick leave with or without pay within a reasonable time. An employee shall request advance approval for sick leave for medical, dental or optical examination and for sick leave without pay.

(4) Except for an unexpected absence from work because of an illness, the employee shall notify the employee's supervisor or other designated person. Failure to do so in a reasonable time period may be cause for denial of the sick leave for the period of absence or for disciplinary action.

(5) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave for the days or hours sick leave that is requested. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required signed by a licensed practitioner and certifying to the incapacity, examination, and treatment during the time for which sick leave was taken. An appointing authority may grant sick leave if the application is supported by acceptable evidence.

(6) ~~The following licensed practitioners shall be used in provid-~~

ing verification of an absence:

- (a) Doctor of medicine;
- (b) Doctor of osteopathy;
- (c) Pediatrician;
- (d) Dentist;
- (e) Clinical psychologist;
- (f) Optometrist;
- (g) Chiropractor;
- (h) Nurse practitioner;
- (i) Nurse midwife; or
- (j) Christian Science practitioner, certified by the Church of Christ, Scientist.

(7) If an employee requests leave in excess of five (5) working days, a statement from the employee's licensed practitioner shall accompany the request for leave. The statement shall contain the following:

- (a) The licensed practitioner's judgement that the employee is incapable of performing the essential duties of the job;
- (b) Estimate of the length of time that the employee's illness or disability will last;
- (c) Restrictions which would render the employee incapable of performing the essential duties of the job; and
- (d) Recommendation for special considerations to accommodate the employee once released to return to work.

(7)(4) An appointing authority may place an employee on sick leave if:

- (a) The employee's health might jeopardize others;
- (b) The employee's health prevents performance of his duties and responsibilities;
- (c) The employee fails to produce a satisfactory medical certificate upon request; or
- (d) The employee exhibits behavior that disrupts the agency's ability to function in providing services or that might endanger the employee himself or others.

(8)(9) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in fifteen (15) minute periods.

(9)(40) An employee who is transferred or otherwise changed from one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(10)(44) A former employee who is reinstated or reemployed shall have his previous rate of earning annual leave and unused sick leave balances reinstated upon successful completion of probation, if applicable.

(11)(42) Sick leave may be utilized in cases of absence due to illness or injury for which worker's compensation benefits are received for lost time to the extent of the differences between these benefits and the employee's regular salary.

Section 6. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, Pub.L. 103-3, and the federal regulations implementing the Act, 29 C.F.R. Part 825.

Section 7. Maternity Leave. (1) The appointing authority shall grant a maternity leave of absence to an employee because of pregnancy or the adoption of a child. Maternity leave shall not exceed twelve (12) weeks, unless the appointing authority approves additional maternity leave. However, the total leave shall not exceed twenty-six (26) pay periods.

(2) The employee on maternity leave shall use accumulated sick leave credit if available, only for the period of time medically necessary to be absent from work as indicated by the certification of a licensed practitioner.

(a) If sick leave is not available, the employee shall use accumulated annual or compensatory leave if available.

(b) If leave credit is exhausted, the employee shall be placed on leave without pay.

(3) Accumulated annual and compensatory time shall be used for maternity leave that extends beyond the period of absence that is medically necessary for the employee as certified by the employee's medical practitioner.

(4) The employee shall submit a written request for maternity absence, which shall include a statement from a licensed practitioner indicating the expected date of delivery.

(a) The request shall be submitted to the appointing authority as soon as practical to allow for adjustments in the work schedule during the employee's absence.

(b) Additional information from the employee's licensed practitioner may be required if there are complications and the period of absence begins sooner than agreed, extends further than agreed, or requires the use of maternity leave beyond twelve (12) weeks.

Section 8.[7-] Workers' Compensation. (1) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick or annual leave may[shall] be used to maintain full salary.

(2) If paid leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the agency for the period of time the employee received paid leave.

(3) The employee's sick and annual leave shall be immediately reinstated to the extent that workers compensation benefits are assigned. An employee shall not receive paid sick and annual leave and workers compensation pay for the same period of time.

Section 9.[8-] Sick Leave Without Pay. (1) An appointing authority may approve sick leave without pay upon appropriate request of an employee for reasons provided for in this section and in Section 6 of this administrative regulation.

(2) An employee shall have used accumulated annual, sick, and compensatory leave credit prior to approved leave without pay.

(3) The amount of continuous sick leave without pay approved by an appointing authority shall not exceed twenty-six (26) pay periods.

(4) If an employee approved for leave with pay exhausts accumulated annual, sick, and compensatory leave credit, the employee shall be placed on sick leave without pay, if the total absence does not exceed twenty-six (26) pay periods.

(5) The appointing authority may require periodic statements from a licensed practitioner during the sick leave without pay period attesting to the employee's inability to perform the essential functions of the employee's job duties with or without reasonable accommodation.

Section 10. [9-] Return from Sick Leave With or Without Pay.

(1) At the termination of sick leave with pay not exceeding thirteen (13) pay periods, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding thirteen (13) pay periods, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstance permit. If the employee is unable to perform the essential functions of the position and there is no other vacant position for which the employee qualifies and is able to perform the employee may be laid off.

(2) If an employee on approved sick leave without pay for less than twenty-six (26) pay periods has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. If the employee is unable to perform the essential functions of the position and there is no other vacant position for which the employee qualifies and is able to perform the employee may be laid off.

(3) An employee shall be considered to have resigned if the employee:

(a) Has been on continuous sick leave without pay for twenty-six (26) pay periods; and

(b) Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave; and

(c) Is unable to return to work; or

(d) Has been given priority consideration by the appointing authority for a vacant position with the agency, for which the employee qualifies and is capable of performing its essential functions with or without reasonable accommodation; and

(e) The appointing authority has been unable to place the employee in a vacant position.

Section 11.[40-] Sharing of Sick Leave. (1) An employee of the

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local health department (LHD) who has accrued a sick leave balance of more than seventy-five (75) hours may, with the approval of the appointing authority, request the transfer of a specified amount of the employee's sick leave balance in excess of seventy-five (75) hours to another named employee who is authorized to receive sick leave.

(2) The appointing authority may approve the amount of sick leave received under this section, if any, if:

(a) The employee or a member of his immediate family suffers from a medically certified illness, injury, impairment, or physical or psychiatric condition which has caused, or is likely to cause, the employee to go on leave for at least ten (10) consecutive working days;

(b) The employee's need for absence and use of leave are certified by a licensed practitioner; and

(c) The employee has exhausted his accumulated sick leave, annual leave, and compensatory leave balances.

(3) Leave may be transferred from an employee of one agency to an employee within the same agency or may be transferred from an employee of one (1) agency to an employee of another agency. The department shall maintain records of leave transferred between employees and the utilization of transferred leave.

(4) If an employee is on leave transferred under this section, he shall receive the same treatment with respect to salary, wages, and employee benefits.

(5) Salary and wage payments made to an employee while on leave transferred under this section shall be made by the agency employing the person receiving the leave. Leave transferred under this section which remains unused shall be returned, on a prorated basis, to the employees who transferred the leave if the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the illness or injury for which the leave was transferred to an employee in his agency.

(6) An employee shall not intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, either directly or indirectly, another employee for the purpose of interfering with the employee's right to voluntarily contribute leave as authorized under this section.

Section 12.[44-] Court Leave. An employee shall be entitled to a leave of absence, without loss of pay or time, for each day during which the employee is subpoenaed by a court to serve as a juror or witness, except in a case where the employee or a member of the employee's family is a party plaintiff. If relieved from duty as a juror or witness during normal working hours, the employee shall return to work. An employee shall retain the fees earned while serving as a potential juror.

Section 13[42-] Military Leave. (1) Upon request an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from duty without the loss of pay or time, upon request, to serve under orders on training duty for a period of up to ten (10) working days, not to exceed seventy five (75) hours in any one (1) federal fiscal (October 1 to September 30) calendar year. The appointing authority, before granting military leave, may require a copy of the orders requiring the attendance of the employee.

(2) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of active duty not to exceed six (6) years. Accumulated annual leave and compensatory leave may be paid in lump sum at the request of the employee, upon being placed on leave.

(3) A Part Time 100 or Full Time status employee, who is a spouse or a member of the U.S. Armed Forces, including a member of a state National Guard or a Reserve component on federal duty shall receive, one (1) day off, with pay, from work when the member is deployed and one (1) day off, with pay, from work when the member returns.

Section 14.[43-] Voting Leave. The appointing authority shall allow each employee four (4) hours ~~[ample time]~~ to vote, if re-

quested in advance. The absence shall not be charged against accumulated leave.

Section 15.[44-] Special Leave of Absence. (1) An appointing authority may grant special leave for education, training or for other circumstances.

(2) Leave may be granted for a period not to exceed twenty-six (26) pay periods.

(3) Leave may be granted with or without pay.

(4) Leave for attendance at a college, university, vocational or business school shall be for training in subjects that:

(a) Relate to the employee's work; and

(b) Will benefit the agency.

Section 16.[45-] Special Leave for Investigative Purposes. (1) An appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(2) Leave shall not exceed thirty (30) working days.

(3) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(4) If the investigation reveals no misconduct by the employee:

(a) The employee shall be made whole for the period of the leave; and

(b) Records relating to the investigation shall be purged from agency files.

(5) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. Notification shall be made to the employee, whether the employee has remained with the agency, or has voluntarily resigned during the interim between being placed on special leave for investigative purposes and the completion of the investigation. ~~[Section 16- Family and Medical Leave. An agency shall comply with the Family and Medical Leave Act, Pub.L. 103-3 and C.F.R. 29 Part 825, if applicable.]~~

Section 17. Absence Without Leave. (1) An employee who is absent from duty without approval shall report the reason for the absence to the employee's supervisor immediately.

(2) Unauthorized or unreported absence shall be considered absence without leave and deduction of pay may be made by the appointing authority for each period of absence.

(3) Absence without leave may constitute grounds for disciplinary action.

(4) An employee who has been absent without leave or notice to the supervisor for more than three (3) working days shall be considered to have resigned the employee's position.

Section 18. Holidays. (1) Agency full-time employees shall be given a holiday on the following days:

(a) The first day of January and one (1) extra day;

(b) The third Monday in January;

(c) One-half (1/2) day for Good Friday (3.75 hours);

(d) The last Monday in May;

(e) The fourth day of July;

(f) The first Monday in September;

(g) The 11th day of November;

(h) The fourth Thursday in November plus one (1) extra day;

(i) The 25th of December and one (1) extra day;

(j) Presidential election day.

(2) If a day enumerated in subsection (1) of this section falls on a Saturday, the preceding Friday shall be observed as the holiday. If the day enumerated falls on a Sunday, the following Monday shall be observed as the holiday. If an extra day is provided for it shall be observed as stated by the department.

(3) A full-time employee shall be in pay status on the work day prior to the holiday in order to receive the holiday benefit.

(4) Full-time exempt employees required to work on a holiday shall accrue compensatory time for the time worked.

Section 19. Absences Due to Adverse Weather. (1) An employee who chooses not to report to work, or who leaves early, in the event of adverse weather conditions, he shall have the ab-

sence:

(a) Charged to annual leave; or
(b) Taken as leave without pay, if annual and compensatory leave has been exhausted.

(2) An employee who is on prearranged annual, compensatory, or sick leave shall charge leave as originally requested.

(3) If catastrophic, life-threatening weather conditions occur, such as that created by hurricane, tornado, flood, or blizzard, and it becomes necessary for authorities to order evacuation or shut-down of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to Section 20 of this administrative regulation.

Section 20. Earning of Compensatory Time. (1) An employee determined to be exempt under the provisions of the Fair Labor Standards Act, 29 U.S.C. 206, and Kentucky Wage and Labor Law, KRS Chapter 337, authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours of duty in one (1) week shall accumulate compensatory time in fifteen (15) minute periods for excess time worked. The maximum amount of compensatory time accumulated shall be 200 hours.

(2) An employee shall have the prior approval of the appointing authority or the employee's immediate supervisor before compensatory leave may be earned.

(3) A nonexempt employee authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours shall be paid at the employee's current salary for each hour not subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. 206, and Kentucky Wage and Labor Law, KRS Chapter 337.

Section 21. Using Accumulated Compensatory Time. (1) An employee who has accrued compensatory time shall be permitted by the appointing authority to take compensatory time off if practical and upon proper request by the employee.

(2) An employee who has accumulated at least thirty (30) hours of compensatory time may be paid for the accumulated leave by the appointing authority upon written request. If payment is approved by the appointing authority, it shall be at the employee's regular rate of pay and in thirty (30) hour increments.

(3) If an employee has accumulated the maximum amount of compensatory leave, the appointing authority shall pay the employee for at least fifty (50) hours of accumulated compensatory leave at the employee's regular rate of pay and shall reduce the employee's compensatory leave balance accordingly.

(4) Upon separation from service or transfer to another agency, unused compensatory time shall be reimbursed in a lump sum payment to the employee.

(5) Upon the death of an employee, the employee's estate shall be paid for unused accumulated compensatory time.

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 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, 2011 at 9 a.m. in the Second Floor Board Room of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 14, 2011, 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 pro-

posed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2011. 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: Debbie Garrison, 502-564-3796, ext.3655

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for commonly used language of Local Health Personnel.

(b) The necessity of this administrative regulation: This administrative regulation establishes definitions that are commonly used throughout the state for the Local Health Departments of Kentucky excluding Northern Kentucky Health Department District, Lexington/Fayette County Health Department and Louisville/Jefferson County Health Department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 211.1755 to administer a personnel program for local health departments based on the principles of the merit system governing Local Health Personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the definitions for the rest of the regulations in this chapter.

(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 regulation updates definitions. This amendment will add new definitions to this regulation in order to help the Local Health Department staff be familiar with Local Health Personnel terminology.

(b) The necessity of the amendment to this administrative regulation: This regulation is being amended as required by the Local Health Departments in order to assist them in the different definitions of the Local Health Personnel Merit System.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment provides a mechanism of establishing consistent verbiage and definitions for the Local Health Departments of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides for a consistent vocabulary applicable to the personnel program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect 54 local health jurisdictions and 3,600 employees except for the Lexington/Fayette County, the Louisville/Jefferson County and the Northern Kentucky District Health Departments.

(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 local health departments will need to be familiar with the new definitions contained in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not cost the entities identified in number 3 any funds to implement, they must only become familiar with the new definitions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Uniform definitions will be updated and applied across the state for all administrative regulation involving local health departments.

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

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(a) Initially: It will cost no new funds are required to implement this regulation in the first year.

(b) On a continuing basis: No new funds are required to implement this 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: Current agency funding will be used to implement and enforce this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes no fees directly or indirectly.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect each local health department in Kentucky and the fiscal courts they are authorized by excluding Louisville Metro, Lexington/Fayette and the Northern Kentucky Independent District Health Departments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The following state statutes require or authorize this administrative regulation amendment: This administrative regulation defines the common language used by the local health departments governed by it as per KRS 211.1755.

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 amendment will not generate any revenue for any unit of state or local government in its first year of implementation.

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

(c) How much will it cost to administer this program for the first year? This regulation amendment will not generate any cost for any unit of state or local government in its first year of implementation.

(d) How much will it cost to administer this program for subsequent years? This regulation amendment will not generate any revenue for any unit of state or local government 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 Public Health

Division of Administration and Financial Management (Amendment)

902 KAR 8:140. Appointment of a health officer or a health department director of a local health department.

RELATES TO: KRS 211.170(1), (2), 212.270

STATUTORY AUTHORITY: KRS 194.050, 212.170, 212.870
NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. This administrative regulation establishes the process for appointing a health officer or health department director and the provisions of the merit system.

Section 1. Appointment of Health Officer. (1) An agency shall appoint a health officer in accordance with the provisions of KRS 212.170, 212.230, or 212.870.

(2) The health officer shall be an unclassified employee and hold office at the pleasure of both the board of health of the agency and the department.

(3) The health officer in the unclassified service shall be subject to the following administrative regulations:

(a) 902 KAR 8:060, Classification and compensation plans for local health departments of Kentucky; and

(b) 902 KAR 8:070, Recruitment, examination and certification of eligibles for local health departments; and

(c) 902 KAR 8:080, Initial appointment, probationary period and performance evaluation; and

(d) 902 KAR 8:120, Leave provisions applicable to employees of local health departments; and

(e) 902 KAR 8:140, Appointment of a health officer or a health department director of a local health department.

(4) An individual promoted to the position of health officer shall receive a salary increase, which shall be the greater of the following:

(a) Fifteen (15) percent above current salary; or

(b) The minimum of the grade assigned to the health officer; or

(c) Three (3) percent per grade not to exceed midpoint of grade.

Section 2. Appointment of Health Department Director. (1) In the absence of a health officer provided for in this administrative regulation, an agency shall be under the direction of a health department director who shall meet minimum qualification of education and experience established by the department.

(2) A qualified individual appointed or promoted to the position of health department director after the effective date of this administrative regulation, shall be employed in the unclassified service and hold office at the pleasure of both the board of health of the agency and the department.

(3) Individuals who are in the position of physician director or health department director shall maintain their status after the effective date of this administrative regulation.

(4) A health department director in the unclassified service shall be subject to the following administrative regulations:

(a) 902 KAR 8:060, Classification and compensation plans for local health departments of Kentucky; and

(b) 902 KAR 8:070, Recruitment, examination and certification of eligibles for local health departments; and

(c) 902 KAR 8:080, Initial appointment, probationary period and performance evaluation; and

(d) 902 KAR 8:120, Leave provisions applicable to employees of local health departments; and

(e) 902 KAR 8:140, Appointment of a health officer or a health department director of a local health department.

(5) An individual promoted to the position of health department director shall receive a salary increase, which shall be the greater of the following:

(a) Fifteen (15) percent above current salary; or

(b) The minimum of the grade assigned to the health officer; or

(c) Three (3) percent per grade not to exceed midpoint of grade.

Section 3. Removal of a Health Officer or Health Department Director in the Unclassified Service. (1) Except as provided for in Section 2 (3) and (4) of this administrative regulation, if a health officer and/or health department director in the unclassified service is removed by the board of health or the department he shall be notified in writing, and within fourteen (14) days may make a written request for a pre-termination conference.

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(2) If no request for a pre-termination conference is made, the removal shall become effective upon the expiration of fourteen (14) days.

(3) If a request for a pre-termination conference is made, the pre-termination conference shall be held at the office of the agency within fourteen (14) calendar days after the request is received by the board of health of the agency.

(4) The health officer or director of health shall not be removed until the pre-termination conference has been held and a decision rendered by the board of health of the agency and the department.

(5) Upon termination of employment, an employee who was promoted to the health officer or health department director position may revert to the position from which he was promoted or may be considered for a vacant position for which he qualifies in the agency. The employee shall have had at least five (5) years of continuous service with the agency prior to the promotion to be considered for reversion. The reversion shall be subject to the approval of the board of health of the agency.

(6) An employee originally appointed to the health officer or health department director position shall not be reverted to a position in the classified service unless he qualifies.

WILLIAM D. HACKER, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 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, 2011 at 9 a.m. in the Second Floor Board Room of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2011, 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 January 31, 2011. 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: Debbie Garrison 502-564-3796, ext.3655

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes an appointment process for employees who are appointed as Health Department Directors and Health Officers in the local health departments.

(b) The necessity of this administrative regulation: This administrative regulation establishes the appointment process for the local health department directors and health officers that is used throughout the state for the Local Health Departments of Kentucky excluding Northern Kentucky Health Department District, Lexington/Fayette County Health Department and Louisville/Jefferson County Health Department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 211.1755 to administer a personnel program for local health departments based on the principles of the merit system governing Local Health Personnel. This amendment conforms to that statute by defining the appointment process of local health department Directors and Health Officers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment provides consistent standards for the appointment of a health officer or health department director.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the appointment process for local health department directors as well as health officers.

(b) The necessity of the amendment to this administrative regulation: This amendment provides a mechanism of establishing consistent appointment process for appointing local health department directors and health officers.

(c) How the amendment conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 211.1755 to administer a personnel program for local health departments based on the principles of the merit system governing Local Health Personnel. This amendment conforms to that statute by defining the appointment process of local health department directors and health officers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides consistent standards for the appointment of local health department directors and health officers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect 54 local health jurisdictions and 3,600 employees except for the Lexington/Fayette County, the Louisville/Jefferson County and the Northern Kentucky District Health Departments.

(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 local health departments will need to be familiar with the new cap of the director's salary based on prior experience.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not cost the entities identified in number 3 any funds to implement; they must only be familiar with how to figure a newly appointed health officer or health department director's salary.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Uniform standards will be applied across the state for all local health departments.

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

(a) Initially: No new funds are required to implement this regulation in the first year.

(b) On a continuing basis: No new funds are required to implement this 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: Currently budgeted funds will be used to implement and enforce this regulation. There would be no additional cost to the Cabinet 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 fees or new funding will be required to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes no fees directly or indirectly.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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regulation will affect each local health department in Kentucky and the fiscal courts they are authorized by excluding Louisville Metro, Lexington/Fayette and the Northern Kentucky Independent District Health Departments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The following state statutes require or authorize this administrative regulation amendment: The Cabinet has responsibility under KRS 211.1755 to administer a personnel program for local health departments based on the principles of the merit system governing Local Health Personnel.

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

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

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

(c) How much will it cost to administer this program for the first year? This regulation will not increase the administrative costs for any unit of state or local government in its first year of implementation.

(d) How much will it cost to administer this program for subsequent years? This regulation will not increase the administrative costs for any unit of state or local government in subsequent years of implementation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 50:110. Grade A milk and milk products standards.

RELATES TO: KRS 217C.010-217C.990

STATUTORY AUTHORITY: KRS 194A.050, 211.090, 217C.040, 217C.040[~~EO-2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.~~] KRS 217C.040 requires the cabinet to promulgate administrative regulations concerning the production, transportation, processing, handling, sampling, examination, grading, sale and such other matters relating to Grade A milk and milk products as may be necessary to protect the public health. This administrative regulation establishes uniform permit requirements and sanitary standards for Grade A milk producers, processors, handlers and distributors, Grade A dry and condensed milk, Grade A dry and condensed whey and the fabrication of single-service containers and closures for milk and milk products.

Section 1. Grade A Milk and Milk Products. The permit requirements, sanitary and quality requirements for the production, processing, handling and distribution of Grade A milk and milk products shall be the same as the requirements established in the publication entitled, "Grade A Pasteurized Milk Ordinance", 2009 edition, [2003] recommendations of the United States Public Health Service/Food and Drug Administration.

Section 2. Incorporation by Reference. (1) "Grade A Pasteurized Milk Ordinance", 2009 edition, [(2003 edition)] is incorporated by reference. [(a) "Grade A Pasteurized Milk Ordinance", (2003 edition).]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [(3) Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

WILLIAM D. HACKER, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 10, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2011 at 9 a.m. in Conference Suite C of the 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, 2011, 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 January 31, 2011. 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: Lewis Ramsey, Milk Safety Branch Manager

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation required by KRS 217.040 and establishes standards that regulate the production, transportation, processing, handling, sampling, examination, grading, sale of Grade A milk and milk products required to protect public health.

(b) The necessity of this administrative regulation: The Cabinet for Health and Family Services is required 217C.040 to establish uniform permit requirements and sanitary standards for Grade A milk producers, processors, handlers and distributors, Grade A dry and condensed milk, Grade dry and condensed whey and the fabrication of single-service containers and closures for milk and milk products. How this administrative regulation conforms to the content of the authorizing statutes:

(c) How this administrative regulation conforms to the content of the authorizing statutes: Statutes KRS 194.050, 211.090 and 211.180 provides the statutory authority necessary to regulate and control the safe handling of food and food products. This regulation provides the necessary update to maintain that safety.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation will assure that the most current regulations concerning the production, transportation, processing, handling, sampling, examination, grading, and sale of Grade A milk and milk products are in agreement with the U.S. Public Health Service, Food and Drug Administration Pasteurized Milk Ordinance.

(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 changes the edition date of the Pasteurized Milk Ordinance that is incorporated by reference to the 2009 edition, the most current version. The Pasteurized Milk Ordinance is published by the U.S. Public Health Service, Food and Drug Administration and establishes the federal recommendations

for Grade A milk and milk products which we follow.

(b) The necessity of the amendment to this administrative regulation: The amendment ensures that Grade A milk is produced in accord with the best science and standards available and ensures continuity between state and federal regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 194.050 and 211.090 provide the statutory authority necessary to regulate and control the safe handling of food and food products. This regulation provides the necessary update to maintain that safety.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by letting the regulated community know of the most recent federal standards required for the milk industry in Kentucky and bringing them into compliance across the state.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the entire Grade A dairy industry in Kentucky, specifically 1020 Milk Industry entities including 959 farms, 46 milk haulers, 3 transfer stations, and 12 milk processing plants..

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: Each regulated entity listed in (3) above will need to be aware that the permits and standards for the industry have been updated to conform to federal standards.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities listed in (3) above, by complying with this amendment will be in conformance with federal standards for the dairy industry and can continue to offer their product for sale.

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

(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional funding needed to implement or enforce this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no additional funding needed to implement or enforce this administrative regulation.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Public Health, Division of Public Health Protection and Safety, Milk Safety Branch will be affected by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217C.010 - 217C.990, KRS 194A.050, 211.090,

217 C.040, and the United States Public Health Service, Food and Drug Administration's Pasteurized Milk Ordinance, authorizes 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. The Milk Safety Branch which administers this administrative regulation is funded through the general fund. This amendment to the administrative regulation does not change the scope of duties of that branch and is merely a clerical change to update the edition of the Pasteurized Milk Ordinance under which the program operates. There will be no effect on state expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(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 for state or local governments will be generated by this amendment.

(c) How much will it cost to administer this program for the first year? No additional costs to the current state budget will be required to administer this regulation as amended.

(d) How much will it cost to administer this program for subsequent years? No additional costs to the current state budget will be required to administer this regulation as amended.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 2009 Pasteurized Milk Ordinance.

2. State compliance standards. The Pasteurized Milk Ordinance is adopted by reference by 902 KAR 50:110.

3. Minimum or uniform standards contained in the federal mandate. The Pasteurized Milk Ordinance establishes national uniform standards for the production, transportation, processing, handling, sampling, examination, grading and sale of Grade A milk and milk products.

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 imposes no stricter or additional requirements than federal requirement.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The Pasteurized Milk Ordinance is updated every two years. Updating of our administrative regulation to include the most current edition of the Pasteurized Milk Ordinance insures uniformity between Kentucky and other states and is critical to the inspection process of the Milk Safety Branch.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 100:010. Definitions for 902 KAR Chapter 100.

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. 20.1003-20.1005, NCRP Report 141

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 211.844, 10 C.F.R. 20.1003-20.1005

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 authorizes the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes definitions for 902 KAR Chapter 100.

Section 1. Definitions. (1) "A₁" and "A₂":

(a) "A₁" means the maximum activity of special form radioac-

tive material permitted in a Type A package;

(b) "A₂" means the maximum activity of radioactive material, other than special form radioactive material, LSA, and SCO material, permitted in a Type A package;

(c) These values are listed in 10 C.F.R. 71 Appendix A [902 KAR 100:070, Section 21], or may be derived under the procedure prescribed in 10 C.F.R. 71 Appendix A [902 KAR 100:070, Section 29].

(2) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).

(3) "Accelerator" means a machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one (1) MeV, such as the cyclotron, synchrotron, synchrocyclotron, betatron, linear accelerator, and Van de Graaff electrostatic generator.

(4) "Accessible surface" means the external surface of the enclosure or housing provided by the manufacturer.

(5) "Act" is defined at KRS 211.840 as the "Kentucky Radiation Control Act of 1978".

(6) "Activity" means the rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).

(7) "Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, used or stored.

(8) "Adult" means an individual eighteen (18) or more years of age.

(9) "Agreement state" means a state with which the United States Nuclear Regulatory Commission or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

(10) "Airborne radioactive material" means radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(11) "Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive material, composed wholly or partly of radioactive material, exists in concentrations:

(a) In excess of the derived air concentrations specified in 10 C.F.R. 20 Appendix B [902 KAR 100:049, Section 44]; or

(b) That an individual present in the area without respiratory protective equipment may exceed an intake of six-tenths (0.6) percent of the annual limit on intake or twelve (12) DAC hours.

(12) "Air kerma (K)" means the kinetic energy released in air by ionizing radiation. Kerma is determined as the quotient of dE by dM, where dE is the sum of the initial kinetic energies of all the charged ionizing particles liberated by uncharged ionizing particles in air of mass dM. The SI unit of air kerma is joule per kilogram and the special name for the unit of kerma is the gray (Gy).

(13) "Air-purifying respirator" means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(14) ~~[(42)]~~ "Alert" means the notice given when an event may occur, is in progress, or has occurred that may lead to a release of radioactive material, but the release is not expected to require a response by an off-site response organization in order to protect persons offsite.

~~(15) [(43)]~~ "Aluminum equivalent" means the thickness of type 1100 aluminum, which is composed of at least ninety-nine (99.0) percent aluminum, 0.12 percent copper, affording the same attenuation, under specified conditions, as the material for which it is substituted.

~~(16) [(44)]~~ "Analytical x-ray system" means a system which utilizes x-rays for the examination of the structure of materials, such as x-ray diffraction and spectrographic equipment.

~~(17) [(45)]~~ "Annual limit on intake" or "ALI" means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of annual intake of a given radionuclide by the reference man that would result in:

(a) A committed effective dose equivalent of five (5) rems, or

0.05 Sv; or

(b) A committed dose equivalent of fifty (50) rems, or five-tenths (0.5) Sv, to an individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in 10 C.F.R. 20 Appendix B [902 KAR 100:049, Section 44, Table 1, Columns 1 and 2].

~~(18) [(46)]~~ "Area of use" means a portion of a physical structure that has been set aside for the purpose of receiving, using or storing radioactive material.

~~(19) [(47)]~~ "As low as reasonably achievable" or "ALARA" means making every reasonable effort to maintain exposures to radiation as far below the dose limits established in 902 KAR 100:019 as practical, consistent with the purpose for which the licensed activity is undertaken. ALARA shall take into account the state of technology, the economics of improvement in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, in relation to the utilization of nuclear energy and radioactive materials in the public interest.

~~(20) "Assigned protection factor" or "APF" means the expected workplace level of respirator protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration may be estimated by dividing the ambient airborne concentration by the APF.~~

~~(21) "Atmosphere-supplying respirator" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.~~

~~(22) [(48)]~~ "Attenuation" means the reduction of exposure rate upon passage of radiation through matter.

~~(23) [(49)]~~ "Attenuation block" means a block or stack, having dimensions twenty (20) centimeters by twenty (20) centimeters by three and eight-tenths (3.8) centimeters, of type 1100 aluminum alloy or other materials having equivalent attenuation.

~~(24) "Authorized medical physicist" means an individual who:~~

~~(a) Meets the requirements in 902 KAR 100:072, Sections (63) and 65(1); or~~

~~(b) Is identified as an authorized medical physicist or teletherapy physicist on:~~

~~1. A specific medical use licensee issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state;~~

~~2. A medical use permit issued by a U.S. Nuclear Regulatory Commission master material licensee;~~

~~3. A permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state broad scope medical use licensee; or~~

~~4. A permit issued by the U.S. Nuclear Regulatory Commission master material license broad scope medical use permittee.~~

~~(25) [(20)]~~ "Authorized nuclear pharmacist" means a pharmacist who ~~is:~~

~~(a) Meets the requirements in 902 KAR 100:072, Sections 63 and 66(1) [Board-certified as a nuclear pharmacist by the Board of Pharmaceutical Specialties]; or~~

~~(b) Is identified as an authorized nuclear pharmacist on a:~~

~~1. Specific license issued by the cabinet, ~~[agreement]~~ state, or U.S. Nuclear Regulatory Commission ~~[license]~~ that authorizes the medical use or ~~[of radioactive material in]~~ the practice of nuclear pharmacy;[-]~~

~~2. Permit issued by a U.S. Nuclear Regulatory Commission master material licensee that authorizes medical use or the practice of nuclear pharmacy;~~

~~3. Permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or agreement state broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or~~

~~4. Permit issued by a U.S. Nuclear Regulatory Commission master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy.~~

~~(c) Is identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or~~

~~(d) Is designated as an authorized nuclear pharmacist under 902 KAR 100:058, Section 9(2)(c).~~

(26) "Authorized user" means a physician, dentist, or podiatrist who:

(a) Meets the requirements in 902 KAR 100:072, Sections 63 and 68(1), 69(1), 71(1), 72(1), 74(1), 76(1), and 77(1); or

(b) Is identified as an authorized user on:

1. The cabinet's, U.S. Nuclear Regulatory Commission's, or an agreement state's license that authorizes the medical use of radioactive material;

2. A permit issued by a U.S. Nuclear Regulatory Commission master material

licensee that is authorized to permit the medical use of radioactive material;

3. A permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or agreement state licensee of broad scope that is authorized to permit the medical use of radioactive material; or

4. A permit issued by a U.S. Nuclear Regulatory Commission master material license broad scope permittee that is authorized to permit the medical use of radioactive material.

(27)(24) "Automatic exposure control" means a device which automatically controls one (1) or more technique factors in order to obtain, at a preselected location, a required quantity of radiation.

(28)(22) "Authorized user" means a physician, dentist, or podiatrist, identified as an authorized user on a cabinet, U.S. Nuclear Regulatory Commission, or other agreement state license that authorizes the medical use of radioactive material.

(23) "Background radiation" means radiation not under the control of the licensee, including:

(a) From cosmic sources;

(b) Naturally occurring radioactive materials;

(c) Radon that is not a decay product of source or special nuclear material; and

(d) Global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents. Background radiation shall not include radiation from radioactive materials regulated by the Cabinet for Human Resources.

(29)(24) "Beam axis" means the axis of rotation of the beam limiting device [a line from the source through the centers of the x-ray fields].

(30)(25) "Beam limiting device" or "collimator" means a device which provides a means to restrict the dimensions of the x-ray field.

(31)(26) "Beam monitoring system" means a system designed to detect and measure the radiation present in the useful beam.

(32) "Beam scattering foil" means a thin piece of material (usually metallic) placed in the beam to scatter a beam of electrons in order to provide a more uniform electron distribution in the useful beam.

(33)(27) "Becquerel" means a unit, in the International System of Units (SI), of measurement of radioactivity equal to one (1) transformation per second.

(34)(28) "Bioassay" or "radiobioassay" means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body.

(35)(29) "Brachytherapy" means a method of radiation therapy in which an encapsulated source or group of sources is utilized to deliver radiation at a distance to a few centimeters, by surface, intracavitary, or interstitial application.

(36)(30) "Broker" or "waste broker" means a person who takes possession of low-level waste solely for the purposes of consolidation and shipment.

(37)(34) "By-product material" means:

(a) Radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; or

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes.

Underground ore bodies depleted by these solution extraction operations shall not constitute by-product material within this definition.

(38)(32) "Cabinet" means Cabinet for Health Services, or its duly authorized representatives.

(39)(33) "Cabinet radiography" means industrial radiography conducted in an enclosure or cabinet shielded so that radiation levels at every location on the exterior meet the limitations specified in 902 KAR 100:019, Section 11.

(40)(34) "Cabinet x-ray system" means an x-ray system with the x-ray tube installed or used in a permanent enclosure in which the enclosure is intended to contain at least that portion of the material being irradiated. The enclosure:

(a) May be the architectural structure or may be independent of the architectural structure;

(b) Shall provide attenuation of the radiation to meet the requirements of 902 KAR 100:105; and

(c) Shall exclude personnel from its interior during the generation of x-radiation. This definition shall not include x-ray systems used by licensed practitioners of the healing arts.

(41)(35) "Calendar quarter" means between twelve (12) and fourteen (14) consecutive weeks.

(a) The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be arranged so that no day is included in more than one (1) calendar quarter and no day in a one (1) year period is omitted from inclusion within a calendar quarter.

(b) A licensee or registrant shall not change the method observed of determining calendar quarters, except at the beginning of a calendar year.

(42)(36) "Calibration" means the determination of:

(a) The response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) The strength of a source of radiation relative to a standard.

(43)(37) "Carrier" [means] is defined at KRS 174.405(1).

(44)(38) "Cephalometric device" means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

(45) "Certificate holder" means a person who has been issued a certificate of compliance or other package approval by the U.S. Nuclear Regulatory Commission.

(46) "Certificate of Compliance (CoC)" means the certificate issued by the U.S. Nuclear Regulatory Commission under 10 C.F.R. Part 71, which approves the design of a package for the transportation of radioactive material.

(47)(39) "Certified cabinet x-ray system" means an x-ray system which has been certified under 21 C.F.R. 1010.2 as being manufactured and assembled according to the provisions of 21 C.F.R. 1020.40.

(48)(40) "Certified component" means a component of an x-ray system subject to 21 C.F.R. Subchapter J.

(49)(44) "Certified system" means an x-ray system which has one (1) or more certified component.

(50)(42) "C.F.R." means Code of Federal Regulations.

(51)(43) "Changeable filters" means a filter, exclusive of inherent filtration, which can be removed from the useful beam through an electronic, mechanical, or physical process.

(52) "Chemical description" means a description of the principal chemical characteristics of a low-level radioactive waste.

(53)(44) "Class" or "lung class" or "inhalation class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials shall be classified as D, W, or Y, which applies to a range of clearance half-times:

(a) For Class D (Days) of less than ten (10) days;

(b) For Class W (Weeks) from ten (10) to 100 days; and

(c) For Class Y (Years) of greater than 100 days.

(54) "Close reflection by water" means immediate contact by water of sufficient thickness for maximum reflection of neutrons.

(55)(45) "Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(56)(46) "Collimator" means a device used to limit the size, shape, and direction of the primary radiation beam.

(57)(47) "Commission" means the U.S. Nuclear Regulatory

Commission or its duly authorized representatives.

(58)[(48)] "Committed dose equivalent ($H_{T,50}$)" means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the fifty (50) year period following the intake.

(59)[(49)] "Committed effective dose equivalent ($H_{E,50}$)" means the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to these organs or tissues ($H_{E,50} = \sum W_T H_{T,50}$).

(60) "Computer-readable medium" means the cabinet's computer can transfer the information from the medium into its memory.

(61)[(60)] "Computed tomography" or "CT" means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

(62) "Consignee" means the designated receiver of the shipment of low-level radioactive waste.

(63) "Consignment" means each shipment of a package or groups of packages or load of radioactive material offered by a shipper for transport.

(64)[(64)] "Constraint" or "dose constraint" means a value above which specified licensee actions are required.

(65)[(62)] "Contact therapy system" means an x-ray system used for therapy with the x-ray tube port placed in contact with or within five (5) centimeters of the surface being treated.

(66) "Containment system" means the assembly of components of the package intended to retain the radioactive material during transport.

(67)[(63)] "Controlled area" means an area, outside of a restricted area but inside the site boundary, to which access can be limited by the licensee or registrant for a stated reason.

(68)[(64)] "Cooling curve" means the graphical relationship between heat units stored and cooling time.

(69) "Conveyance" means:

(a) For transport by public highway or rail, any transport vehicle or large freight container.

(b) For transport by water, any vessel, or any hold, compartment, or defined deck area of a vessel including any transport vehicle on board the vessel; or

(c) Transportation by any aircraft.

(70)[(66)] "Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(71) "Criticality Safety Index or "CSI", means the dimensionless number, rounded up to the next tenth, assigned to and placed on the label of a fissile material package, to designate the degree of control of accumulation of packages containing fissile material during transportation. Determination of the criticality safety index is described in 10 C.F.R. 71.22, 71.23 and 71.59.

(72)[(66)] "Curie" means a quantity of radioactivity.

(a) One (1) curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7×10^{10} disintegrations per second (dps).

(b) Commonly used submultiples of the curie are the millicurie and the microcurie.

1. One (1) millicurie (mCi) = 0.001 curie = 3.7×10^7 dps.

2. One (1) microcurie (uCi) = 0.000001 curie = 3.7×10^4 dps.

(73)[(67)] "Dead man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

(74)[(68)] "Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

(75)[(69)] "Decommission" means the:

(a) Safe removal from service of a facility or site;

(b) Termination of license; and

(c) Reduction of residual radioactivity to a level permitting release of the property:

1. For unrestricted use; or

2. Under restricted conditions.

(76) "Decontamination facility" means a facility operating under the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state license whose principal purpose is decontamination of equipment or materials to accomplish recycle, reuse, or other waste management objectives, and is not considered to be a consignee for LLW shipments.

(77)[(60)] "Dedicated check source" means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years. The source may also be used for other purposes.

(78)[(64)] "Deep-dose equivalent (H_d)" which applies to external whole-body exposure, means the dose equivalent at a tissue depth of one (1) centimeter (cm) (1000 mg/cm^2).

(79) "Demand respirator" means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

(80)[(62)] "Derived air concentration" or "DAC" means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one (1) ALI.

(a) "Light work" produces an inhalation rate of one and two-tenths (1.2) cubic meters (1.2 m^3) of air per hour.

(b) DAC values are given in 10 C.F.R. 20 Appendix B [902 KAR 100:019, Section 44, Table I, Column 3].

(81)[(63)] "Derived air concentration-hour" or "DAC-hour" means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent one (1) ALI, equivalent to a committed effective dose equivalent of five (5) rems (0.05 Sv).

(82)[(64)] "Diagnostic clinical procedure manual" means the collection of written procedures, methods, instructions, and precautions by which the licensee performs diagnostic clinical procedures, where each diagnostic clinical procedure:

(a) Has been approved by the authorized user; and

(b) Includes the radiopharmaceutical name, dosage, and route of administration.

(83)[(66)] "Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

(84)[(66)] "Diagnostic-type protective tube housing" means an x-ray tube housing so constructed that the leakage radiation measured at a distance of one (1) meter from the source cannot exceed 100 milliroentgens in one (1) hour if the tube is operated at its maximum continuous rated current for the maximum tube potential.

(85)[(67)] "Diagnostic x-ray system" means an x-ray system designed for irradiation of a part of the human body for the purpose of diagnosis or visualization.

(86)[(68)] "Direct scatter radiation" means that scattered radiation which has been deviated in direction only by materials irradiated by the useful beam. (See also "scattered radiation").

(87) "Disposable container" means a container principally used to confine low-level radioactive waste during disposal operations at a land disposal facility. (See also "high integrity container".) For some shipments, the disposal container may be transport package.

(88) "Disposable respirator" means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Disposal respirator may include, but not limit to a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

(89)[(69)] "Disposal" means the disposition of waste as authorized by 902 KAR 100:021.

(90)[(70)] "Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentrations of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurements technology, survey, and statistical techniques.

(91)[(74)] "Dose" or "radiation dose" means:

- (a) Absorbed dose;
- (b) Dose equivalent;
- (c) Effective dose equivalent;
- (d) Committed dose equivalent;
- (e) Committed effective dose equivalent; or
- (f) Total effective dose equivalent.

(92)(72) "Dose commitment" means the total radiation dose to a part of the body that results from retention in the body of radioactive material. Estimation assumes the period of exposure to retained material to be less than fifty (50) years.

(93)(73) "Dose equivalent (H_T)" means the product of the absorbed dose in tissue, the quality factor, and other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

(94) Dose monitor unit (DMU)" means a unit response from the beam monitoring system from which the absorbed dose can be calculated.

(95)(74) "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring equipment in order to determine the radiation dose delivered to the equipment.

(96) "DOT " means the U.S. Department of Transportation.

(97)(75) "Effective dose equivalent (H_E)" means the sum of the products of the dose equivalent to the organ or tissue (H_T) and the weighting factors (W_T) applicable to each of the body organs or tissues that are irradiated ($H_E = W_T H_T$).

(98)(76) "Embryo or fetus" means the developing human organism from conception until the time of birth.

(99) "Energy compensation source or "ECS" means a small sealed source, with an activity not exceeding 100 microcuries (3.7 MBq), used within a logging tool, or other tool components, to provide a reference standard to maintain the tool's calibration when in use.

(100)(77) "Entrance or access point" means a location through which an individual may gain access to a radiation area or radioactive material, including an entry or exit portal of sufficient size to permit human entry, irrespective of its intended use.

(101)(78) "Entrance exposure rate" means the roentgens per unit time at the point the center of the useful beam enters the patient.

(102) "Environmental Protection Agency "EPA" Identification number" means the number received by a transporter following application to the EPA as required by 40 C.F.R. Part 263.

(103)(79) "Exclusive use" means the sole use of a conveyance by a single consignor in which initial, intermediate, and final loading and unloading are carried out under the direction of the consignor or consignee.

(a) Consignor and carrier shall each ensure that loading and unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment.

(b) Consignor shall include with the shipping paper information provided to the carrier, specific written instructions for maintenance of exclusive use shipment controls.

(104)(80) "Exposure" means being exposed to ionizing radiation or to radioactive material.

(105)(84) "Exposure rate" means the exposure per unit of time.

(106) "External beam radiation therapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

(107)(82) "External dose" means that portion of the dose equivalent received from radiation sources outside the body.

(108)(83) "Extremity" means hand, elbow, arm below the elbow, foot, knee, or leg below the knee.

(109)(84) "Eye dose equivalent". See "lens dose equivalent".

(110)(85) "Facility" means a location at which one (1) or more devices or sources are installed or located within one (1) building, vehicle, or under one (1) roof, under the same administrative control.

(111)(86) "Field emission equipment" means equipment which uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

(112) "Field-flattening filter" means a filter used to homogenize the absorbed dose rate over the radiation field.

(113)(87) "Field station" means a facility where radioactive sources may be stored or used and from which equipment is dispatched to temporary job sites.

(114)(88) "Filter" means the material in the useful beam which usually absorbs preferentially the less penetrating radiations.

(a) "Inherent filtration" means the filter permanently in the useful beam. It includes the window of the x-ray tube and the permanent tube enclosure.

(b) "Added filter" means the filter added to the inherent filtration.

(c) "Total filter" means the sum of the inherent and added filters.

(115) "Filtering facepiece (dust mask)" means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

(116)(89)(a) "Fissile material" means the: [special nuclear material consisting of or containing one (1) or more fissile radionuclides.]

1. Radionuclides uranium-233, uranium-235, plutonium-239, and plutonium-241, or any combination of these radionuclides; and

2. Fissile nuclides themselves, not material containing fissile nuclides.

(b) Fissile [This] material does not include unirradiated natural and depleted uranium; and natural or depleted uranium that has been irradiated in thermal reactors only; [Fissile radionuclides are plutonium-238, plutonium-239, plutonium-241, uranium-233, and uranium-235.]

(c) Fissile material also excludes certain controls as provided in 10 C.F.R. 70.15. (117)(90) "Fissile material package" means a fissile material packaging together with its fissile material contents.

(118) "Fit factor" means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

(119) "Fit test" means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

(120)(94) "Fluoroscopic imaging assembly" means a component that comprises a reception system in which x-ray photons produce a fluoroscopic image. It includes equipment housings, electrical interlocks if present, the primary protective barrier, and structural material providing linkage between the image receptor and the diagnostic source assembly.

(121)(92) "Focal spot" means the area projected on the anode of the x-ray tube by the electrons accelerated from the cathode and from which the useful beam originates.

(122)(93) "Former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

(123) "Gantry" means that part of a radiation producing machine supporting and allowing movements of the radiation head about a center of rotation.

(124)(94) "General purpose radiographic x-ray system" means a radiographic x-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

(125)(95) "Generally applicable environmental radiation standards" means standards issued by the Environmental Protection Agency (EPA) under the authority of 42 U.S.C. sec. 2011 et seq., that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(126)(96) "Generator" or ["waste generator"] means a licensee operating under the cabinet, U.S. Nuclear Regulatory Commission or an agreement state who:

(a) Is a waste generator as defined in this administrative regulation; or

(b) Is the licensee to whom waste can be attributed within the context of the Low Level Radioactive Waste Policy Amendments Act of 1985, such as, waste generated as a result of decontamination or recycle activities ~~[person who produces or possesses low-level radioactive waste in the course of manufacturing, power generation, processing, medical diagnosis and treatment, research, education or other activity]~~.

(127)[(97)] "Gonad shield" means a protective barrier for the testes or ovaries.

(128)[(98)] "Gray" or "Gy" means the SI unit of absorbed dose. One (1) gray equals an absorbed dose of one (1) Joule/kilogram (100 rads).

(129)[(99)] "Half-value layer" or "HVL" means the thickness of specified material which attenuates the beam of radiation to one-half (1/2) of its original air kerma rate, exposure rate or absorbed dose rate. This excludes the contribution of scattered radiation, other than that which might be present initially in the beam concerned.

(130)[(100)] "Healing arts screening" means the testing of human beings using x-ray machines for the detection or evaluation of health indications if these tests are not specifically and individually ordered by a licensed practitioner of the healing arts legally authorized to prescribe these x-ray tests for the purpose of diagnosis or treatment.

(131)[(101)] "Heat unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes, and seconds.

(132) "Helmet" means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

(133) "High integrity container or "HIC" means a container commonly designated to meet the structural stability requirements of 10 C.F.R. 61.56, and to meet the U.S. Department of Transportation requirements for a Type A package.

(134)[(102)] "High radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body may result in an individual receiving a dose equivalent in excess of one-tenth (0.1) rem (1m Sv) in one (1) hour at thirty (30) centimeters from the radiation source or thirty (30) centimeters from a surface that the radiation penetrates.

(135) "Hood" means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(136)[(103)] "Human use" means the internal or external administration of radiation or radioactive materials to human beings.

(137)[(104)] "Image intensifier" means a device that converts instantaneously, by means of photoemissive surfaces and electronic circuitry, an x-ray pattern into a light pattern of greater intensity than would have been produced by the original x-ray pattern.

(138)[(105)] "Image receptor" means a device that transforms incident radiation into a visual image or into another form which can be made into a visual image by further transformations.

(139)[(106)] "Image receptor support" means, for mammographic systems, that part of the system designed to support the image receptor in a horizontal plane during a mammographic examination.

(140)[(107)] "Individual" means a human being.

(141)[(108)] "Individual monitoring" means the assessment of:

(a) Dose equivalent by the use of an individual monitoring device;

(b) Committed effective dose equivalent by:

1. Bioassay; or

2. Determination of the time-weighted air concentrations to which an individual has been exposed; or

(c) Dose equivalent by the use of survey data.

(142)[(109)] "Individual monitoring device" or "individual monitoring equipment" means a device designed to be worn by a ~~[a]~~ single individual for the assessment of dose equivalent, such as film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(143)[(110)] "Industrial radiography" means the examination of the macroscopic structure of materials by nondestructive methods utilizing sources of radiation.

(144)[(111)] "Injection tool" means a device used for controlled subsurface injection of radioactive tracer material.

(145) "Interlock" means a device preventing the start or continued operation of equipment unless certain predetermined conditions prevail.

(146)[(112)] "Internal dose" means that portion of the dose equivalent received

from radioactive material taken into the body.

(147)[(113)] "Irradiation" means the exposure of matter to ionizing radiation.

(148) "Kilovolt (kV) [kilo electron volt (keV)]" means the energy equal to that acquired by a particle with one electron charge in passing through a potential difference of one thousand volts in a vacuum. [Note: current convention is to use kV for photons and keV for electrons.]

(149)[(114)] "Kilovolt peak" or "kVp" means the crest value in kilovolts of the potential difference of a pulsating potential generator. If only one-half (1/2) of the wave is used, the value refers to the useful half of the wave.

(150)[(115)] "Lead equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(151)[(116)] "Leakage radiation" means radiation emanating from the diagnostic or therapeutic source assembly, except for the useful beam.

(152)[(117)] "Leakage technique factor" means, with respect to different tube housing assemblies:

(a) For capacitor energy storage equipment: the maximum rated number of exposures in an hour for operation at the maximum rated peak tube potential, with a charge per exposure of ten (10) milliamperes seconds (mAs) or the minimum obtainable from the unit, whichever is larger.

(b) For field emission equipment rated for pulsed operation: the maximum rated number of x-ray pulses in an hour for operation at the maximum rated peak tube potential.

(c) For all other equipment: the maximum rated continuous tube current for the maximum rated peak tube potential.

(153)[(118)] "Lens dose equivalent" or "LDE" means the ~~[dose equivalent, upon]~~ external exposure of the lens of the eye, and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm²).

(154)[(119)] "License" means a license issued by the cabinet under 902 KAR Chapter 100.

(155)[(120)] "Licensed material" means radioactive material, source material, or special nuclear material received, possessed, used, or transferred, [or disposed] under a general or specific license issued by the cabinet, U.S. Nuclear Regulatory Commission or an agreement state.

(156) "Light field" means the area illuminated by light, simulating the radiation field.

(157)[(121)] "Limits" or "dose limits" means the permissible upper bounds of radiation doses.

(158)[(122)] "Lixiscope" means a portable light-intensified imaging device using a sealed source.

(159)[(123)] "Logging assistant" means an individual who, under the personal supervision of a logging supervisor:

(a) Handles sealed sources or tracers that are not in logging tools or shipping containers; or

(b) Uses survey instruments in well-logging activities.

(160)[(124)] "Logging supervisor" means the individual who provides personal supervision of the utilization of sources of radiation at the well site.

(161)[(125)] "Logging tool" means a device used subsurface to perform well-logging.

(162) "Loose-fitting facepiece" means a respiratory inlet covering that is designed to form a partial seal with the face.

(163)[(126)] "Lost or missing licensed material" means licensed material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

(164)[(127)] "Low-level radioactive waste" means radioactive waste not classified as:

- (a) High-level radioactive waste;
- (b) Transuranic waste;
- (c) Spent nuclear fuel; or
- (d) By-product material as defined in Section 11e(2) of the Atomic Energy Act of 1954, 42 U.S.C. 2014.

~~(165)(429)~~ "Low specific activity" or "LSA" means radioactive material with limited specific activity, which is nonfissile or is excepted under 10 C.F.R. 70.15 and that satisfies the descriptions and limits established in paragraphs (a), (b), and (c) of this subsection. Shielding materials surrounding the LSA material shall not be considered in determining the estimated average specific activity of the package contents. LSA material shall be in one (1) of three (3) groups:

(a) LSA-I:

1. Uranium and thorium ores, [containing only naturally occurring radionuclides (e.g., uranium, thorium) and] uranium or thorium concentrates of such ores, and other ores containing naturally occurring radioactive radionuclides which are not intended to be processed for the use of these radionuclides; [or]

2. Solid unirradiated natural or depleted uranium or natural thorium or their solid[s] or liquid compounds or mixtures; [or]

3. Radioactive material, [other than fissile material,] for which the A_2 value is unlimited; or

4. Other radioactive material in which the activity is distributed throughout [Mill tailings, contaminated earth, concrete, rubble, other debris, and activated material in which the radioactive material is essentially uniformly distributed,] and the estimated average specific activity does not exceed thirty (30) times the value for exempt material activity concentration determined in 10 C.F.R. 71 Appendix A [$10^{-6} A_2/\text{gram}$].

(b) LSA-II:

1. Water with tritium concentration up to 20.0 curies/liter (0.8 TBq/liter); or

2. Material in which the radioactive material is distributed throughout, and the average specific activity does not exceed $10^{-4} A_2/\text{gram}$ for solids and gases, and $10^{-5} A_2/\text{gram}$ for liquids.

(c) LSA-III: Solids (e.g., consolidated wastes, activated materials), excluding powders, that satisfy the requirements of 10 C.F.R. 71.77 in which:

1. The radioactive material is distributed throughout a solid or a collection of solid objects; [or]

2. Is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.); [and]

3. The radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even under loss of packaging, the loss of radioactive material per package by leaching, when placed in water for seven (7) days, would not exceed 0.1 A_2 ; and the average specific activity of the solid does not exceed $2 \times 10^{-3} A_2/\text{gram}$; and [-]

4. The average specific activity of the solid does not exceed $2 \times 10^{-3} A_2/\text{gram}$.

~~(166)(429)~~ "Low toxicity alpha emitter" means natural uranium, depleted uranium, natural thorium, uranium-235, uranium-238, thorium-232, thorium-228 or thorium-230 when contained in ores or physical or chemical concentrates or tailings; or alpha emitters with a half-life of less than ten (10) days.

~~(167)(430)~~ "mA" means milliamperes.

~~(168)(434)~~ "Management" means the chief executive officer or that individual's designee.

~~(169)(432)~~ "mAs" means milliamperes second.

~~(170)(433)~~ "Maximum normal operating pressure" means the maximum gauge pressure that would develop in the containment system in a period of one (1) year under the heat condition specified in 10 C.F.R. Part 71.71(c)(1), in the absence of venting, external cooling by an ancillary system, or operational controls during transport.

~~(171)(434)~~ "Medical institution" means an organization in which several medical disciplines are practiced.

~~(172)(435)~~ "Medical use" means the intentional internal or external administration of radioactive material, or the radiation therefrom, to patients or human research subjects under the su-

pervision of an authorized user.

~~(173)(436)~~ "Member of the public" means an individual except when the individual is receiving an occupational dose.

~~(174)(437)~~ "Microscopic analytical x-ray equipment" means a device which utilizes x-rays for examining the microscopic structure of materials. This includes x-ray diffraction and spectrographic equipment.

~~(175)(438)~~ "Mineral logging" means logging performed for the purpose of mineral exploration other than oil or gas.

~~(176)(439)~~ "Minor" means an individual less than eighteen (18) years of age.

~~(177)(440)~~ "Misadministration" means the administration of:

(a) A radiopharmaceutical dosage greater than thirty (30) microcuries of sodium iodide I-125 or I-131:

1. Involving the wrong patient or human research subject or the wrong radiopharmaceutical; or

2. If both the administered dosage differs from the prescribed dosage by more than twenty (20) percent of the prescribed dosage and the difference between the administered dosage and prescribe dosage exceeds thirty (30) microcuries.

(b) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131:

1. Involving the wrong patient, human research subject, radiopharmaceutical, or route of administration; or

2. If the administered dosage differs from the prescribed dosage by more than twenty (20) percent of the prescribed dosage.

(c) A gamma stereotactic radiosurgery radiation dose:

1. Involving the wrong patient, human research subject, or treatment site; or

2. If the calculated total administered dose differs from the total prescribed dose by more than ten (10) percent.

(d) A teletherapy radiation dose:

1. Involving the wrong patient, human research subject, mode of treatment, or treatment site;

2. If the treatment consists of three (3) or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than ten (10) percent;

3. If the calculated weekly administered dose is thirty (30) percent greater than the weekly prescribed dose; or

4. If the calculated total administered dose differs from the total prescribed dose by more than twenty (20) percent.

(e) A brachytherapy radiation dose:

1. Involving the wrong patient, human research subject, radioisotope, or treatment site except for permanent implant seeds that were implanted in the correct site but migrated outside the treatment site;

2. Involving a sealed source that is leaking;

3. If, for a temporary implant, one (1) or more sealed sources are not removed upon completion of the procedure; or

4. If the calculated administered dose differs from the prescribed dose by more than twenty (20) percent.

(f) A diagnostic radiopharmaceutical dosage, other than quantities greater than thirty (30) microcuries of sodium iodide I-125 or I-131:

1. Involving the wrong patient, human research subject, radiopharmaceutical, or route of administration, or if the administered dosage differs from the prescribed dosage; and

2. If the dose to the patient or human research subject exceeds five (5) rems effective dose equivalent or fifty (50) rems dose equivalent to an individual organ.

~~(178)(444)~~ "Mobile nuclear medicine service" means the transportation and medical use of radioactive material.

~~(179)~~ "Monitor unit (MU)" (See "Dose monitor unit").

~~(180)(442)~~ "Monitoring" or "radiation monitoring" or "radiation protection monitoring" means the measurement of radiation levels, concentrations, surface area concentrations or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses.

~~(181)~~ "Moving beam radiation therapy" means radiation therapy with any planned displacement of radiation field or patient rela-

tive to each other, or with any planned change of absorbed dose distribution. It includes arc, skip, conformal, intensity modulation and rotational therapy.

(182)(1443) "Natural thorium" means thorium with the naturally occurring distribution of thorium isotopes; that is, 100 weight percent thorium-232.

(183) "Negative pressure respirator (tight fitting)" means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

(184) "Nominal treatment distance" means:

(a) For electron irradiation, the distance from the scattering foil, virtual source, or exit window of the electron beam to the entrance surface of the irradiated object along the central axis of the useful beam.

(b) For x-ray irradiation, the virtual source or target to isocenter distance along the central axis of the useful beam. For non-isocentric equipment, this distance shall be that specified by the manufacturer.

(185)(1444) "Nonstochastic effect" or "deterministic effect" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist.

(186)(1445) "Normal form radioactive material" means radioactive material that has ~~does~~ not been demonstrated to qualify as "special form radioactive material."

(187)(1446) "NRC" means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

(188)(a) "NRC Forms 540, 540A, 541, 541A, 542, and 542A" means official NRC forms as referenced in 902 KAR 100:021.

(b) Licensees need not use originals of these forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size, and location of information.

(c) Upon agreement between the shipper and consignee, NRC Forms 541, 541A, 542, and 542A may be completed, transmitted, and stored in electronic media.

(d) The electronic media shall have the capability for producing legible, accurate, and complete records in the format of the uniform manifest.

(189)(1447) "Occupational dose" means dose received by an individual in the course of employment in which the individual's assigned duties for the licensee or registrant involve exposure to sources of radiation, whether in the possession of the licensee, registrant, or other person. Occupational dose shall not include dose received:

- (a) From background radiation;
- (b) As a medical patient;
- (c) From voluntary participation in a medical research program;
- (d) As a member of the public; or
- (e) From exposure to individuals administered radioactive material and released in accordance with 902 KAR 100:072 [073], Section 27 [25].

(190)(1448) "Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions.

(191)(1449) "Operating procedures" means detailed written instructions, such as:

- (a) Normal operation of equipment and movable shielding;
- (b) Closing of interlock circuits;
- (c) Manipulation of controls;
- (d) Radiation monitoring procedures for personnel and areas;
- (e) Testing of interlocks; and
- (f) Recordkeeping requirements.

(192)(1450) "Package" means the packaging together with its radioactive contents as presented for transport;[-]

Fissile material package or Type AF package, Type BF package, Type B(U)F package, or Type B(M)F package are all fissile material packaging types together with its fissile material complete.

(b) Type A package means a Type A packaging together with its radioactive contents. A Type A package is defined and shall comply with the DOT regulations in 49 C.F.R. Part 173.

(c) Type B package means a Type B packaging together with its radioactive contents.

(i) On approval, a Type B package design is designated by the U.S. Nuclear Regulatory Commission as B(U) unless the package

has a maximum normal operating pressure of more than 100 pounds/in² (700 kPa) gauge or a pressure relief device that would allow the release of radioactive material to the environment under the tests specified in 10 C.F.R. Part 71.73 (hypothetical accident conditions), in which case it will receive a designation B(M).

(ii) B(U) refers to the need for unilateral approval of international shipments.

(iii) B(M) refers to the need for multilateral approval of international shipments.

(iv) There is no distinction made in how packages with these designations may be used in domestic transportation.

(v) To determine their distinction for international transportation, refer to U.S. Department of Transportation Regulations in 49 C.F.R. Part 173.

(vi) A Type B package approved before September 6, 1983, was designated only as Type B. Limitations on its use are specified in 902 KAR 100:070, Section 7.

(193)(1451) "Packaging" means the assembly of components necessary to ensure compliance with the requirements of 902 KAR 100:070.

(a) It may consist of one (1) or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks.

(b) The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

(194)(1452) "Patient" means an individual subjected to healing arts examination, diagnosis, or treatment.

(195)(1453) "Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

(196) "Periodic quality assurance check" means a procedure which is performed to ensure that a previous calibration continues to be valid.

(197)(1454) "Permanent radiographic installation" means an installation or structure designed or intended for radiography and in which radiography is regularly performed.

(198)(1455) "Person" is defined at KRS 216B.015(16).

(199)(1456) "Personal supervision" means guidance and instruction by the supervisor who is physically present at the job site and watching the performance of the operation in proximity so that contact can be maintained and immediate assistance given as required.

(200)(1457) "Personnel monitoring equipment" means a device designed to be worn or carried by an individual for the purpose of estimating the dose received by the individual.

(201)(1458) "Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation.

(202)(1459) "Phototimer" means a method for controlling radiation exposures to image receptors by the amount of radiation which reaches a radiation monitoring device. The radiation monitoring device is part of an electronic circuit which controls the duration of time the tube is activated. See "automatic exposure control".

(203) "Physical description" means the items called for on NRC Form 541 to describe low-level radioactive waste.

(204)(1460) "Physician" is defined at KRS 311.720(9).

(205)(1461) "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual dose limits.

(206)(1462) "Position indicating device" means a device on dental x-ray equipment used to indicate the beam position and to establish a definite source-surface (skin) distance. It may or may not incorporate or serve as a beam-limiting device.

(207) "Positive pressure respirator" means a respirator in which the pressure inside the respirator inlet covering exceeds the ambient air pressure outside the respirator.

(208) "Powered air-purifying respirator or "PAPR" means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

(209) "Preceptor" means an individual who provides, directs, or verifies the training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, or a Radiation Safety Officer.

(210) "Pressure demand respirator" means a positive pressure

atmosphere-

supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

(211)(463) "Preregistrant" means a person who is preregistered with the cabinet for the intent of obtaining a radiation producing machine registerable under 902 KAR 100:110.

(212)(464) "Preregistration" means preregistration with the cabinet as specified in 902 KAR 100:110.

(213)(465) "Prescribed dosage" means the quantity of radio-pharmaceutical activity as documented:

- (a) In a written directive;
- (b) In the diagnostic clinical procedures manual; or
- (c) In an appropriate record in accordance with the directions of the authorized user for diagnostic procedures.

(214)(466) "Prescribed dose" means:

- (a) For gamma stereotactic radiosurgery, the total dose as documented in the written directive;
- (b) For teletherapy, the total dose and dose per fraction as documented in the written directive; or
- (c) For brachytherapy, the total source strength and exposure time or the total dose, as documented in the written directive.

(215)(467) "Primary dose monitoring system" means a system that:

- (a) Monitors the useful beam during irradiation; and
- (b) Terminates irradiation if a preselected number of dose monitor units have been acquired.

(216)(468) "Principal activities" means activities authorized by the license which are essential to achieving the purpose for which the license was issued or amended. "Principal activities" do not include:

- (a) Storage during which no licensed material is accessed for use or disposal; and
- (b) Activities incidental to decontamination or decommissioning.

(217)(469) "Protective apron" means an apron made of radiation absorbing materials of at least 0.25 mm lead equivalency; that is, if the HVL of the apron is not less than 0.25 mm lead at normal operating voltages.

(218)(470) "Protective barrier" means a barrier of radiation absorbing material used to reduce radiation exposure.

(a) "Primary protective barrier" means a barrier sufficient to attenuate the useful beam to the required degree.

(b) "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to the required degree.

(219)(474) "Protective glove" means a glove made of radiation absorbing materials of at least 0.25 mm lead equivalency; that is, if the HVL of the glove is not less than 0.25 mm lead at normal operating voltages.

(220)(472) "Public dose" means the dose received by a member of the public from sources of radiation from licensed or registered operations. It shall not include radiation received:

- (a) As an occupational dose;
- (b) From background radiation;
- (c) As a medical patient;
- (d) From voluntary participation in a medical research program;

or

(e) From exposure to an individual administered radioactive material and released in accordance with 902 KAR 100:072 [073], Section 27 [25].

(221)(473) "Qualified expert" means an individual who has demonstrated to the satisfaction of the cabinet that he possesses the knowledge and training to:

- (a) Measure ionizing radiation;
- (b) Evaluate safety techniques; and
- (c) Advise regarding radiation protection needs.

(222) "Qualitative fit test or "QFT" means a pass or fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

(223)(474) "Quality factor" or "Q" means the modifying factor used to derive dose equivalent from absorbed dose.

- (a) Quality factors and absorbed dose equivalencies:

Type of Radiation	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent ^a
X-, gamma, or beta radiation	1	1
Alpha particles, multiple-charged particles, fission fragments, and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

^aAbsorbed dose in rad equal to one (1) rem or the absorbed dose in gray equal to one (1) sievert.

(b) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in rems per hour or sieverts per hour, as provided in paragraph (a) of this subsection, one (1) rem (0.01 sievert) of neutron radiation of unknown energies may, for purposes of the regulations in this part, be assumed to result from a total fluence of twenty-five (25) million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee may use the fluence rate per unit dose equivalent or the appropriate Q value from paragraph (c) of this subsection to convert a measured tissue dose in rads to dose equivalent in rems.

(c) Mean quality factors, Q, and fluency per unit dose equivalent for monoenergetic neutrons:

	Neutron Energy (MeV)	Quality Factor ^a (Q)	Fluency per Unit Dose Equivalent ^b (neutrons cm ⁻² rem ⁻¹)
(thermal)	2.5 x 10 ⁻⁸	2	980 x 10 ⁶
	1 x 10 ⁻⁷	2	980 x 10 ⁶
	1 x 10 ⁻⁶	2	810 x 10 ⁶
	1 x 10 ⁻⁵	2	810 x 10 ⁶
	1 x 10 ⁻⁴	2	840 x 10 ⁶
	1 x 10 ⁻³	2	980 x 10 ⁶
	1 x 10 ⁻²	2.5	1010 x 10 ⁶
	1 x 10 ⁻¹	7.5	170 x 10 ⁶
	5 x 10 ⁻¹	11	39 x 10 ⁶
	1	11	27 x 10 ⁶
	2.5	9	29 x 10 ⁶
	5	8	23 x 10 ⁶
	7	7	24 x 10 ⁶
	10	6.5	24 x 10 ⁶
	14	7.5	17 x 10 ⁶
	20	8	16 x 10 ⁶
	40	7	14 x 10 ⁶
	60	5.5	16 x 10 ⁶
	1 x 10 ²	4	20 x 10 ⁶
	2 x 10 ²	3.5	19 x 10 ⁶
	3 x 10 ²	3.5	16 x 10 ⁶
	4 x 10 ²	3.5	14 x 10 ⁶

^a Value of quality factor (Q) at the point at which the dose equivalent is maximum in a thirty (30)-cm diameter cylinder tissue-equivalent phantom.

^b Monoenergetic neutrons incident normally on a thirty (30)-cm diameter cylinder tissue-equivalent phantom.

(224) "Quantitative fit test "QNFT" means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

(225)(475) "Quarter" is defined at KRS 341.080(1)(b).

(226)(476) "Rad" means the special unit of absorbed dose. One (1) rad equals an absorbed dose of 0.01 joule per kilogram (0.01 gray) or 100 ergs per gram.

(227)(477) "Radiation" means ionizing radiation.

(a) It includes the following:

- 1. Gamma rays;
- 2. X-rays;
- 3. Alpha particles;

4. Beta particles;
5. High speed electrons;
6. Neutrons;
7. High-speed protons; and
8. Other atomic particles capable of producing ions.

(b) It excludes nonionizing radiations, such as:

1. Sound;
2. Microwaves;
3. Radiowaves; or
4. Visible, infrared, or ultraviolet light.

(c) The following are specific forms of radiation:

1. "Leakage radiation" means radiation coming from within the tube or source housing except the useful beam.

2. "Scattered radiation" means radiation that, during passage through matter, has been deviated in direction, and may have been modified by a decrease in energy.

3. "Useful radiation" or "primary beam" means radiation which passes through the window, aperture, cone, or other beam limiting device of the tube or source housing.

4. "Stray radiation" means the sum of leakage and scattered radiation.

(228)(478) "Radiation area" means an area, accessible to individuals, in which there exists radiation at levels that an individual may receive in excess of five (5) millirems (0.05 mSv) in one (1) hour at thirty (30) centimeters from the radiation source or from a surface that the radiation penetrates.

(229) "Radiation detector" means a device which, in the presence of radiation, by either direct or indirect means, provides a signal or other indication suitable for use in measuring one (1) or more quantities of incident radiation.

(230) "Radiation head" means the structure from which the useful beam emerges.

(231)(479) "Radiation machine" means a device capable of producing radiation, except a device that produces radiation only from radioactive material.

(232)(480) "Radiation safety officer" means an individual who:

(a) Has the knowledge and responsibility to apply appropriate radiation protection administrative regulations; and

(b) For licenses issued under 902 KAR 100:072, meets the requirements in 902 KAR 100:072, Sections 63 and 64(1) and (3)(a).

1. A specific medical use licensee issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state; or

2. A medical use permit issued by a U.S. Nuclear Regulatory Commission master material licensee.

(233)(484) "Radiation therapy simulation system" means a fluoroscopic or radiographic x-ray system intended for:

(a) Localizing the volume to be exposed during radiation therapy; and

(b) Confirming the position and size of the therapeutic irradiation field.

(234)(482) "Radioactive marker" means radioactive material placed subsurface or on a structure intended for subsurface use for the purpose of depth determination or direction orientation.

(235)(483) "Radioactive material" means a solid, liquid, or gas, which emits radiation spontaneously.

(236)(484) "Radioactivity" means the disintegration of unstable atomic nuclei by the emission of radiation.

(237)(485) "Radiograph" means an image receptor on which the image is created directly or indirectly by an x-ray pattern and results in a permanent record.

(238)(486) "Radiographer" means an individual who performs or who, in attendance at the site where sources of radiation are being used, personally supervises industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of administrative regulations and license conditions.

(239)(487) "Radiographer's assistant" means an individual who, under the personal supervision of a radiographer, uses sources of radiation, related handling tools, or survey instruments in industrial radiography.

(240)(488) "Radiographer instructor" means a radiographer

who has been authorized by the cabinet to provide on-the-job training to radiographer trainees under 902 KAR 100:100, Section 14(4)(4).

(241)(489) "Radiographer trainee" means an individual who, under the personal supervision of a radiographer instructor, uses sources of radiation, related handling tools, or radiation survey instruments during the course of instruction.

(242)(490) "Radiographic exposure device" means an instrument containing a sealed source fastened or contained within, in which the sealed source or its shielding may be moved, or otherwise changed, from a shielded to an unshielded position for purposes of making a radiographic exposure.

(243)(491) "Radiographic imaging system" means a system designed to record a permanent or semipermanent image on an image receptor by the action of ionizing radiation.

(244)(492) "Radiographic personnel" means a:

- (a) Radiographer;
- (b) Radiographer instructor; or
- (c) Radiographer trainee.

(245)(493) "Rating" means the operating limits specified by the component manufacturer.

(246)(494) "Recordable event" means the administration of:

(a) A radiopharmaceutical or radiation without a written directive, if a written directive is required;

(b) A radiopharmaceutical or radiation if a written directive is required without daily recording of each administered radiopharmaceutical dosage or radiation dose in the appropriate record;

(c) A radiopharmaceutical dosage greater than thirty (30) microcuries of sodium iodide I-125 or I-131 if:

1. The administered dosage differs from the prescribed dosage by more than twenty (20) ~~ten (10)~~ percent; and

2. The difference between the administered dosage and prescribed dosage exceeds fifteen (15) microcuries;

(d) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131, if the administered dosage differs from the prescribed dosage by more than twenty (20) ~~ten (10)~~ percent;

(e) A teletherapy radiation dose, if the calculated weekly administered dose is fifteen (15) percent greater than the weekly prescribed dose; or

(f) A brachytherapy radiation dose, if the calculated administered dose differs from the prescribed dose by more than twenty (20) ~~ten (10)~~ percent.

(247)(495) "Recording" means producing a permanent form of an image resulting from x-ray photons.

(248)(496) "Reference man" means a hypothetical aggregation of human

physical and physiological characteristics arrived at by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base.

(249)(497) "Registrant" means a person who is registered with the cabinet and is legally obligated to register with the cabinet under 902 KAR 100:110.

(250)(498) "Registration" means registration with the cabinet under 902 KAR 100:110.

(251)(499) "Regulations of the U.S. Department of Transportation" means the regulations in 49 C.F.R. Parts 100-189.

(252)(500) "Rem" means a special unit of quantities expressed as dose equivalent. The dose equivalent in rems is equal to the absorbed dose in rads multiplied by the quality factor (one (1) rem = 0.01 sievert).

(253)(501) "Research and development" means:

- (a) Theoretical analysis, exploration, or experimentation; or
- (b) The extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

(254)(502) "Residential location" means an area where structures for human habitation are located.

(255)[(203)] "Residual radioactivity" means low-level radioactive waste resulting from processing or decontamination activities that cannot be easily separated into distinct batches attributable to specific waste generators. This waste is attributable to the processor or decontamination facility, as applicable [radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive material remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 902 KAR 100.019].

(256)[(204)] "Respiratory protective device" means an apparatus used to reduce an individual's intake of airborne radioactive materials.

(257)[(205)] "Restricted area" means an area access to which is limited by the licensee or registrant for purposes of protection of individuals against undue risks from exposure to radiation and radioactive materials. A restricted area shall not include areas used as residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

(258)[(206)] "Roentgen" or "R" means the special unit of exposure. One (1) roentgen (R) equals 2.58×10^{-4} coulombs per kilogram of air. See "Exposure".

(259)[(207)] "Sanitary sewerage" means a system of public sewers for carrying off waste, water, and refuse, but excludes sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

(260)[(208)] "Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent leakage or escape of the radioactive material.

(261)[(209)] "Secondary dose monitoring system" means a system which terminates irradiation upon failure of the primary system.

(262) "Self-contained breathing apparatus "SCBA" means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(263)[(240)] "Shallow-dose equivalent (H_s)", with respect to external exposure of the skin of the whole body or the skin of an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (seven (7) mg/cm²) [averaged over an area of one (1) square centimeter].

(264)[(244)] "Shielded position" means the location within the radiographic exposure device or storage container which, by manufacturer's design, is the proper location for storage of the sealed source.

(265)[(242)] "Shielded-room radiography" means industrial radiography conducted in a room shielded so that radiation levels at every location on the exterior meet the limitations specified in 902 KAR 100.019, Section 10.

(266) "Shipper" means the licensed entity, the generator that offers low-level radioactive waste for transportation, and may consign the waste to a licensed waste collector, waste processor, or land disposal facility operator.

(267) "Shipping paper" means NRC Form 540, and if required, 540A, or their equivalent, and includes the information required by the U.S. Department of Transportation in 49 C.F.R. Part 172.

(268)[(243)] "Shutter" means a device attached to the tube housing assembly which can totally intercept the useful beam and which has a lead equivalency not less than that of the tube housing assembly.

(269)[(244)] "Sievert" means:

(a) The International System (SI) unit of quantities expressed as dose equivalent. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor (1 Sv=100 rems).

(b) See the table in the definition of "quality factors" for the quality factors to convert absorbed dose to dose equivalent.

(270)[(245)] "Site area emergency" means the existence of situation where an event may occur, is in progress, or has occurred

that may:

(a) Lead to a significant release of radioactive material; and
(b) Require a response by an off-site response organization to protect persons off site.

(271)[(246)] "Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(272)[(247)] "Source" means the focal spot of the x-ray tube.

(273)[(248)] "Source changer" means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those source changers also used for transporting and storage of sealed sources.

(274)[(249)] "Source holder" means a housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source.

(275)[(220)] "Source image receptor distance" or "SID" means the distance from the source to the center of the input surface of the image receptor.

(276)[(224)] "Source material" means:

(a) Uranium or thorium, or a combination thereof, in a physical or chemical form; or

(b) Ores which contain by weight 0.05 percent or more of:

1. Uranium;

2. Thorium; or

3. A combination of uranium and thorium.

(c) Source material does not include special nuclear material.

(277)[(222)] "Source of radiation" means a radioactive material or device, or equipment emitting or capable of producing radiation.

(278)[(223)] "Special form radioactive material" means radioactive material which satisfies the following conditions:

(a) It is a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) The piece or capsule has at least one (1) dimension not less than five (5) millimeters (0.197 inch); and

(c) 1. It satisfies the test requirements specified by the NRC in 10 C.F.R. Part 71.75.

2. A special form encapsulation designed under the NRC requirements in 10 C.F.R. 71.4 in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used.

3. A special form encapsulation designed in accordance with the NRC requirements in 10 C.F.R. 71.4 in effect on March 31, 1996, and constructed before April 1, 1998 may continue to be used [or constructed after June 30, 1985 shall meet requirements of this definition applicable if it is designed or constructed].

4. Any other special form encapsulation shall meet the specifications of this definition.

(279)[(224)] "Special nuclear material" means:

(a) Plutonium, uranium 233, uranium enriched in the isotope U-233 or in the isotope U-235, and other material which the Governor declares by order to be special nuclear material after the United States Nuclear Regulatory Commission, or successor thereto, has determined the material to be special nuclear material, but does not include source material; or

(b) Material artificially enriched by one (1) of the foregoing, but does not include source material.

(280)[(226)] "Special nuclear material in quantities not sufficient to form a critical mass" means:

(a) Uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235;

(b) U-233 in quantities not exceeding 200 grams;

(c) Plutonium in quantities not exceeding 200 grams; or

(d) A combination of them as specified by the following formula:

1. For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material.

2. The sum of these ratios for the different kinds of special nuclear material in combination shall not exceed one (1).

3. For example, the following quantities in combination would not exceed the limitation and are within the formula:

$$\frac{175 \text{ (grams contained U-235)}}{350} +$$

$$\frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} = 1$$

(281)(226) "Special purpose x-ray system" means a radiographic x-ray system which, by design, is limited to radiographic examination of a specific anatomical region.

(282)(227) "Specific activity" means the radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

(283)(228) "Spot check" means a procedure which is performed to assure that a previous calibration continues to be valid.

(284)(229) "Spot film" means a radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure.

(285)(230) "Spot-film device" means a device intended to transport or position a radiographic image receptor between the x-ray source and fluoroscopic image receptor. It includes a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

(286)(231) "SSD" means the distance between the source and the skin of the patient.

(287) "Stationary beam radiation therapy" means radiation therapy without displacement of one (1) or more mechanical axes relative to the patient during irradiation.

(288)(232) "Stochastic effect" means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose plus threshold factors.

(289)(233) "Storage" or "waste storage" means the holding of waste for treatment or disposal for a period of twenty-four (24) hours or more.

(290)(234) "Storage area" means:

(a) A location, facility, or vehicle used to store, transport, or secure a radiographic exposure device, storage container, or sealed source if the source is not in use; and

(b) Which is locked or has a physical barrier to prevent accidental exposure, tampering with, or unauthorized removal of the device, container, or source.

(291)(235) "Storage container" means a device in which a sealed source is transported or stored.

(292)(236) "Stray radiation" means the sum of leakage and scattered radiation.

(293)(237) "Subsurface tracer study" means the release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the well-bore or adjacent formation.

(294) "Supplied-air respirator "SAR" "airline respirator" means an atmosphere-supplying respirator for which the source of breathing air is not designated to be carried by the user.

(295)(238) "Surface contaminated object" or "SCO" means a solid object that is

not classed as radioactive material, but which has radioactive material distributed on a surface. SCO must be in one (1) of two (2) groups with surface activity not exceeding the following limits:

(a) SCO-I: A solid object on which:

1. The nonfixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 10⁻⁴ microcurie/cm² (4 Bq/cm²) for beta and gamma and low toxicity alpha emitters, or 10⁻⁵ microcurie/cm² (0.4 Bq/cm²) for all other alpha emitters;

2. The fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 1.0 microcurie/cm² (4x10⁴ Bq/cm²) for beta and gamma and low toxicity alpha emitters, or 0.1 microcurie/cm² (4x10³ Bq/cm²) for all other alpha emitters; and

3. The nonfixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm² (or the area of the

surface if less than 300 cm²) does not exceed 1 microcurie/cm² (4x10⁴ Bq/cm²) for beta and gamma and low toxicity alpha emitters, for 0.1 microcurie/cm² (4x10³ Bq/cm²) for all other alpha emitters.

(b) SCO-II: A solid object on which the limits for SCO-I are exceeded and on which:

1. The nonfixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 10⁻² microcurie/cm² (400 Bq/cm²) for beta and gamma and low toxicity alpha emitters or 10⁻³ microcurie/cm² (40 Bq/cm²) for all other alpha emitters;

2. The fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 20 microcuries/cm² (8x10⁵ Bq/cm²) for beta and gamma and low toxicity alpha emitters, or 2 microcuries/cm² (8x10⁴ Bq/cm²) for all other alpha emitters; and

3. The nonfixed contamination plus the fixed contamination on the inaccessible

surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 20 microcuries/cm² (8x10⁵ Bq/cm²) for beta and gamma and low toxicity alpha emitters, or 2 microcuries/cm² (8x10⁴ Bq/cm²) for all other alpha emitters.

(296)(239) "Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. If appropriate, the evaluation shall include at least:

(a) A physical survey of the location of sources of radiation; and

(b) Measurements or calculations of levels of radiation or concentrations or quantities of radioactive material present.

(297) "Target" means that part of an x-ray tube or accelerator onto which a beam of accelerated particles is directed to produce ionizing radiation or other particles.

(298)(240) "Technique factors" means the conditions of operation. They are specified as follows:

(a) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs.

(b) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses.

(c) For CT x-ray systems designed for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan, or the product of tube current, x-ray pulse width, and the number of x-ray pulses in mAs;

(d) For CT x-ray systems not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time if the scan time and exposure time are equivalent; and

(e) For other equipment, peak tube potential in kV and tube current in mA and exposure time in seconds or the product of tube current and exposure time in mAs.

(299) "Technically Enhanced Naturally Occurring Radioactive Material "TENORM" means N.O.R.M. which has been separated to various degrees from the original ore or other material, refining or implementing it.

(300)(241) "Teletherapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

(301)(242) "Teletherapy physicist" means the individual identified as the teletherapy physicist on a cabinet license.

(302)(243) "Temporary job site" means a location to which radioactive material has been dispatched to perform a job, operation, or study other than the location listed in a specific license or certificate of registration.

(303) "Tenth-value layer (TVL)" means the thickness of a specified material which attenuates X-radiation or gamma radiation to an extent such that the air kerma rate, exposure rate, or absorbed dose rate is reduced to one-tenth of the value measured without the material at the same point.

(304)(244) "Termination of irradiation" means the stopping of irradiation in a fashion which does not permit continuance of irradiation without the resetting of operating conditions at the control panel.

(305)(245) "Tests" means the process of verifying compliance

with an applicable regulation.

(306) "Therapeutic radiation machines" means x-ray or electron-producing equipment designed and used for external beam radiation therapy.

(307)[(246)] "Therapeutic-type protective tube housing" means:

(a) For x-ray therapy equipment not capable of operating at 500 kVp or above: an x-ray tube housing so constructed that the leakage radiation at a distance of one (1) meter from the target does not exceed one (1) roentgen in one (1) hour if the tube is operated at its maximum rated tube potential;

(b) For x-ray therapy equipment capable of operating at 500 kVp or above: an x-ray tube housing so constructed that the leakage radiation at a distance of one (1) meter from the target does not exceed one-tenth (0.1) percent of the useful beam exposure rate at one (1) meter from the target, for its operating conditions;

(c) Small areas of reduced protection are acceptable providing the average reading over a 100 square centimeter area at one (1) meter distance from the target does not exceed the values given above.

(308) "Tight-fitting facepiece" means a respiratory inlet covering that forms a complete seal with the face.

(309)[(247)] "Tomogram" means the depiction of the x-ray attenuation properties of a section through the body.

(310)[(248)] "Total effective dose equivalent" or "TEDE" means the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

(311)[(249)] "Traceable to a national standard" means that a quantity or a measurement has been compared to a national standard directly or indirectly through one (1) or more intermediate steps and that comparisons have been documented.

(312)[(250)] "Transport container" means a package that is designed to provide radiation safety and security if sealed sources are transported and which meets the requirements of the 49 C.F.R. 173, Subpart I.

(313)[(254)] "Transport index" means:

(a) The dimensionless number that designates the degree of control to be exercised by the carrier during transportation, rounded up to the next tenth ~~[first decimal place]~~ required to be placed on the label of a package.

(b) The transport index is determined by multiplying the maximum radiation level in millisievert (mSv) per hour at one (1) meter (3.3 feet) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour at one (1) meter (3.3 feet) [as follows:

(a) ~~For nonfissile material packages, the number determined by multiplying the maximum radiation level in millisievert (mSv) per hour at one (1) meter (3.3 feet) from the external surface by 100 (equivalent to the maximum radiation level in millirem per hour at one (1) meter (3.3 feet); or~~

~~(b) For fissile material packages, the number determined by multiplying the maximum radiation level in millisievert per hour at one (1) meter (3.3 feet) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour at one (1) meter (3.3 feet), or, for criticality control purposes, the number obtained as described in 10 C.F.R. Part 71.60, whichever is larger].~~

(314)[(252)] "Treatment" or "waste treatment" means a method, technique, or process, including storage for radioactive decay, designed to change the physical, chemical, or biological characteristics or composition of a waste in order to render the waste for transport, storage or disposal, amendable to recovery, convertible to another usable material, or reduced in volume.

(315) "Tritium neutron generator target source" means a tritium source used within a neutron generator tube to produce neutrons.

(316)[(253)] "Tube" means an x-ray tube, unless otherwise specified.

(317)[(254)] "Tube housing assembly" means the tube housing with tube installed. It includes high-voltage or filament transformers and other appropriate elements if they are contained within the tube housing.

(318)[(255)] "Tube rating chart" means the set of curves which

specify the rated limits of operation of the tube in terms of the technique factors.

(319)[(256)] "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A₁ for special form radioactive material or A₂ for normal form radioactive material, where A₁ and A₂ are given in 10 C.F.R. 71 Appendix A [902 KAR 100:070, Section 24], or may be determined by procedures described in 10 C.F.R. 71 Appendix A.

(320) [902 KAR 100:070, Section 20.

~~(257) "Type B package" means a Type B packaging together with its radioactive contents. On approval a Type B package design is designated by NRC as B(U) unless the package has a maximum normal operating pressure of more than 700 kPa (100 lb/in²) gauge or a pressure relief device that would allow the release of radioactive material to the environment under the tests specified in 10 C.F.R. Part 71.73 (hypothetical accident conditions), in which case it will receive a designation B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, refer to U.S. Department of Transportation regulations in 49 C.F.R. Part 173. A Type B package approved prior to September 6, 1983, was designated only as Type B. Limitations on its use are specified in 902 KAR 100:070, Section 6.~~

~~(258) "Type B packaging" means a packaging designed to retain the integrity of containment and shielding required by U.S. Nuclear Regulatory Commission regulations if subjected to the normal conditions of transport and hypothetical accident test conditions established in 10 C.F.R. Part 71.~~

~~(321)[(259)] "Type B quantity" means a quantity of radioactive material greater than a Type A quantity.~~

~~(322) "Uniform low-level radioactive waste manifest" or "uniform manifest" means the combination of NRC Forms 540, 541, and if necessary, 542, or their equivalents, and their respective continuation sheets as needed, or equivalent.~~

~~(323) "Unirradiated uranium" means uranium containing not more than 2x10⁵ Bq of plutonium per gram of uranium-235, not more than 9 x 10⁶ Bq of fission products per gram of uranium-235, and not more than 5 x 10⁻³ gram of uranium-236 per gram of uranium-235.~~

~~(324)[(260)] "U.S. Department of Energy" means the Department of Energy established by 42 U.S.C. 7101 et seq., to the extent that the department exercises functions formerly vested in the U.S. Atomic Energy Commission, its chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof and retransferred to the Secretary of Energy in 42 U.S.C. 7151, effective October 1, 1977.~~

~~(325)[(264)] "Unrefined and unprocessed ore" means ore in its natural form prior to processing, such as grinding, roasting, beneficiating, or refining.~~

~~(326)[(262)] "Unrestricted area" means an area access to which is not controlled or limited by the licensee or registrant for purposes of protection of individuals from exposure to radiation and radioactive material.~~

~~(327)[(263)] "Uranium - natural, depleted, enriched" means:~~

~~(a) "Natural uranium" means uranium with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238);~~

~~(b) "Depleted uranium" means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes;~~

~~(c) "Enriched uranium" means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.~~

~~(328)[(264)] "Uranium fuel cycle" means the operations of milling of uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity by a light-water-cooled nuclear power plant using uranium fuel, and reprocessing of spent uranium fuel to the extent that these activities directly support the production of electrical power for public use. Uranium fuel cycle shall not include mining opera-~~

tions, operations at waste disposal sites, transportation of radioactive material in support of these operations, and the reuse of recovered nonuranium special nuclear and byproduct materials from the cycle.

(329)(265) "Useful beam" means the radiation which passes through the tube housing port and the aperture of the beam limiting device if the exposure switch or timer is activated.

(330)(266) "User" means an individual who personally utilizes or manipulates a source of radiation.

(331) "User seal check (fit check)" means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamylacetate check.

(332)(267) "Variable-aperture beam limiting device" means a beam limiting device which has capacity for stepless adjustment of the x-ray field size at a given SID.

(333)(268) "Vendor" means a person who sells radiation producing machines or accelerators registerable with the cabinet as specified by 902 KAR 100:110.

(334)(269) "Vendor registrant" means a vendor who is registered with the cabinet.

(335)(270) "Vendor registration" means registration of a vendor with the cabinet described by 902 KAR 100:110.

(336)(274) "Very high radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body may result in an individual receiving an absorbed dose in excess of 500 rads (five (5) grays) in one (1) hour at one (1) meter from a radiation source or one (1) meter from a surface that the radiation penetrates.

(337) "Virtual source" means a point from which radiation appears to originate.

(338) [At very high doses received at high dose rates, units of absorbed dose (such as rads and grays) are appropriate, rather than units of dose equivalent (such as rems and sieverts).]

(272) "Visible area" means that portion of the input surface of the image receptor over which incident x-ray photons are producing a visible image.

(339)(273) "Visiting authorized nuclear pharmacist" means a nuclear pharmacist who is not identified on the license of the licensee being visited.

(340)(274) "Visiting authorized user" means an authorized user who is not identified on the license of the licensee being visited.

(341)(275) "Waste". See "low-level radioactive waste".

(342) "Waste collector" means an entity, operating under the cabinet, U.S. Nuclear Regulatory Commission or agreement state license whose principal purpose is to collect and consolidate low level waste generated by others, and to transfer this waste, without processing or repackaging the collected waste, to another licensed waste collector, licensed waste processor, or licensed land disposal facility.

(343) "Waste description" means the physical, chemical and radiological description of a low-level radioactive waste as called for on NRC Form 541.

(344) "Waste generator" means an entity, operating under the cabinet, U.S. Nuclear Regulatory Commission, or agreement state license, who:

(a) Possesses any material or component that contains radioactivity or is radioactively contaminated for which the licensee foresees no further use; and

(b) Transfers this material or component to a licensed land disposal facility or to a licensed waste collector or processor for handling or treatment prior to disposal. A licensee performing processing or decontamination services may be waste generator if the transfer of low-level radioactive waste from its facility is defined as "residual waste".

(345) "Waste processor" means an entity, operating under a cabinet, U.S. Regulatory Commission or agreement state license, whose principal purpose is to process, repackage, or treat low-level radioactive material or waste generated by others prior to eventual transfer of waste to a licensed low-level radioactive waste

land disposal facility.

(346) "Waste type" means a waste within a disposal container having a unique physical description, such as a specific waste descriptor code or description, or a waste sorbed on or solidified in a specifically defined media.

(347)(276) "Wedge filter" means an added filter effecting continuous progressive attenuation on the useful beam or a part thereof.

(348)(277) "Week" means seven (7) consecutive days starting on Sunday.

(349)(278) "Weighting factor (W_T)", for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects if the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of (W_T) are:

Organ Dose Weighting Factors	
Organ or tissue	W_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	¹ 0.30
Whole Body	² 1.00

¹0.30 results from 0.06 for each of five (5) "remainder" organs (excluding the skin and the lens of the eye) that receive the highest doses.

²For the purpose of weighting the external whole body dose (for adding it to the internal dose), a single weighting factor, $W_T=1.0$, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until a time as specific guidance is issued.

(350)(279) "Well-bore" means a drilled hole in which wire line service operations and subsurface tracer studies are performed.

(351)(280) "Well-logging" means the lowering and raising of measuring devices or tools which may contain sources of radiation in well-bores or cavities for the purpose of obtaining information about the well or adjacent formations.

(352)(284) "Whole body" means, for purposes of external exposure, head, trunk (including male gonads), arms above the elbow, or legs above the knee.

(353)(282) "Wire line" means a cable containing one (1) or more electrical conductors which is used to lower and raise logging tools in the well-bore.

(354)(283) "Wire line service operation" means an evaluation or mechanical service which is performed in the well-bore using devices on a wire line.

(355)(284) "Worker" means an individual engaged in activities licensed or registered by the cabinet and controlled by a licensee or registrant, but does not include the licensee or registrant.

(356)(285) "Working level" or "WL" means a combination of short-lived radon daughters (for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212) in one (1) liter of air that results in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy.

(357)(286) "Working level month" or "WLM" means an exposure to one (1) working level for 170 hours (2,000 working hours per year/twelve (12) months per year = approximately 170 hours per month).

(358)(287) "Written directive" means an order in writing for a specific patient or human research subject, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation, except as specified in paragraph (f) of this subsection, and containing the following information:

(a) For an administration of quantities greater than thirty (30) microcuries of sodium iodide I-125 or I-131: the dosage;

(b) For a therapeutic administration of a radiopharmaceutical other than sodium iodide I-125 or I-131: the radiopharmaceutical, dosage, and route of administration;

(c) For gamma stereotactic radiosurgery: target coordinates, collimator size, plug pattern, and total dose;

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(d) For teletherapy: the total dose, dose per fraction, treatment site, and overall treatment period;

(e) For high-dose-rate remote afterloading brachytherapy: the radioisotope, treatment site, and total dose; or

(f) For all other brachytherapy:

1. Prior to implementation: the radioisotope, number of sources, and source strengths; and

2. After implantation, but prior to completion of the procedure: the radioisotope, treatment site, and total source strength and exposure time (or, equivalently, the total dose).

~~(359)~~~~(288)~~ "X-ray control" means a device which controls input power to the x-ray high-voltage generator or the x-ray tube. It includes timers, phototimers, automatic brightness stabilizers, and similar devices which control the technique factors of an x-ray exposure.

~~(360)~~~~(289)~~ "X-ray equipment" means an x-ray system, subsystem, or component thereof. X-ray equipment is further classified as:

(a) "Mobile" means x-ray equipment mounted on a permanent base with wheels or casters for moving while completely assembled.

(b) "Portable" means x-ray equipment designed to be hand-carried.

(c) "Stationary" means x-ray equipment which is installed in a fixed location.

(d) "Transportable" means x-ray equipment installed in a vehicle or trailer.

~~(361)~~~~(290)~~ "X-ray field" means that area of the intersection of the useful beam and one (1) of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth (1/4) of the maximum in the intersection.

~~(362)~~~~(294)~~ "X-ray high-voltage generator" means a device which transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tube, high-voltage switches, electrical protective devices, and other appropriate elements.

~~(363)~~~~(292)~~ "X-ray subsystem" means a combination of two (2) or more components of an x-ray system.

~~(364)~~~~(293)~~ "X-ray system" means an assemblage of components for the controlled production of x-rays. It includes an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

~~(365)~~~~(294)~~ "X-ray tube" means an electron tube designed to be used primarily for the production of x-rays.

~~(366)~~~~(295)~~ "Year" means the period of time, beginning in January, used to determine compliance with the provisions of 902 KAR Chapter 100. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant if:

(a) The change is made at the beginning of the year; and

(b) A day is not omitted or duplicated in consecutive years.

WILLIAM D. HACKER, MD FAAP, CPE

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 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, 2011 at 9 a.m. in Conference Suite C of the 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, 2011, 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 writ-

ten comments on the proposed administrative regulation. Written comments regarding this proposed administrative regulation may be submitted through January 31, 2011. 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: Matt McKinley (502) 564-3700, ext 3701

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes definitions for use in 902 KAR 100.

(b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:010 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By adding fifty-one (51) definitions and revising others, it will provide clear and objective information on which to base regulatory decisions.

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

(a) How the amendment will change this existing administrative regulation: It adds and revises various definitions within 902 KAR 100:010.

(b) The necessity of the amendment to this administrative regulation: To ensure compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How the amendment conforms to the content of the authorizing statutes: See KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. This amendment conforms to the statute by proving definitions for its implementation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the state regulations into conformance with federal regulations, thus making administration and enforcement more effective.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will assist all 430 licensees in clarifying the understanding of regulatory terms.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will need to be familiar with these new definitions. They already are familiar with them as they are federal definitions already in use.

(b) In complying with this administrative regulation or amend-

ment, how much will it cost each of the entities identified in question (3): There will be cost associated with implementing these regulation. The licensees are already in compliance with the federal regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will have consistent definitions between state and federal regulations.

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

(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds are used to operate this program. However, no additional funds will be required to implement this regulation.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation impacts all state or local governments where radioactive materials are in use.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:010 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

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 generate no revenue for state or local governments the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will generate no revenue for state or local governments in subsequent years.

(c) How much will it cost to administer this program for the first year? This program will not require any increase in funding for the first year.

(d) How much will it cost to administer this program for subsequent years? This program will not require any increase in funding for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 100:021. Disposal of radioactive material.

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. 20.2001-.2007, Appendix G-20.2001-.2401, 61[~~80(4)~~]

STATUTORY AUTHORITY: KRS 13B.170, 194A.050(1), 211.090(3), 211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of a source of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides waste disposal limitations for radioactive material, and shall apply to a person disposing of radioactive material or waste. ~~[This administrative regulation shall not establish standards governing naturally occurring radioactive material (NORM) and waste.]~~

Section 1. General Requirements. (1) A person or licensee shall dispose of radioactive material or waste only:

By transfer to an authorized recipient as provided in 902 KAR 100:040, Section 12 ~~[43]~~, or 902 KAR 100:022;

(b) By decay in storage;

(c) By release in an effluent within the limits in 902 KAR 100:019, Section 10; or

(d) As authorized by Sections 2, 3, 4, or 5 of this administrative regulation.

(2) A person shall be specifically licensed to receive waste containing radioactive material or waste from other persons for:

(a) Treatment prior to disposal;

(b) Treatment or disposal by incineration;

(c) Decay in storage; or

(d) Disposal at a land disposal facility licensed under 902 KAR 100:022.

Section 2. Method for Obtaining Approval of Proposed Disposal Procedures. A person, licensee, or applicant for a license may apply to the cabinet for approval of a proposed procedure, not authorized in 902 KAR 100:019 ~~[100:020]~~, 100:021, 100:022, 100:050, and 100:072 ~~[100:073]~~, to dispose of radioactive material or waste generated by their activity. An application shall include:

(1) A description of the waste containing radioactive material to be disposed of, including the:

(a) Physical and chemical properties important to risk evaluation; and

(b) Proposed manner and conditions of waste disposal;

(2) An analysis and evaluation of pertinent information on the nature of the environment;

(3) The nature and location of other potentially affected licensed and unlicensed facilities; and

(4) An analysis and a procedure to ensure doses are maintained ALARA and within the dose limits in 902 KAR 100:019, Sections 3, 8, 9, and 10.

Section 3. Disposal by Release into Sanitary Sewerage. (1) A person or licensee may discharge licensed material into sanitary

sewerage under the following conditions:

(a) The material shall be readily soluble, or shall be readily dispersible biological material, in water;

(b) The quantity of licensed or other radioactive material that the licensee released into the sewer in one (1) month, divided by the average monthly volume of water released into the sewer by the licensee, shall not exceed the concentration in 10 C.F.R. 20 Appendix B [902 KAR 100-019, Section 44, Table III];

(c) For the release of more than one (1) radionuclide, the following conditions shall be satisfied:

1. The licensee shall determine the fraction of the limit in 10 C.F.R. 20 Appendix B [902 KAR 100-019, Section 44, Table III], represented by discharges into the sanitary sewerage by dividing the actual monthly average concentration of each radionuclide released by the licensee into the sewer by the concentration of that radionuclide in 10 C.F.R. 20 Appendix B [902 KAR 100-019, Section 44, Table III]; and

2. The sum of the fractions for each radionuclide required by subsection (1)(c)1 of this section shall not exceed unity; and

(d) The total quantity of licensed and other radioactive material that the licensee releases into the sewerage system in a year shall not exceed five (5) curies (185 GBq) of hydrogen-3, one (1) curie (37 GBq) of carbon-14, and one (1) curie of other radioactive materials combined.

(2) Excreta from an individual undergoing medical diagnosis or therapy with radioactive material shall not be subject to the limitations contained in subsection (1) of this section.

Section 4. Treatment or Disposal by Incineration. A licensee may treat or dispose of licensed material by incineration only:

(1) In the amounts and forms specified in Section 5 of this administrative regulation; or

(2) As specifically approved by the cabinet and authorized by Section 2 of this administrative regulation.

Section 5. Disposal of Specific Wastes. (1) A person or licensee may dispose of the following radioactive material without regard to its radioactivity:

(a) 0.05 microcurie or less of hydrogen-3, or tritium, carbon-14, or iodine-125 per gram of medium used for liquid scintillation counting or in vitro clinical or in vivo laboratory testing; and

(b) 0.05 microcurie (1.85 kBq) or less of hydrogen-3, carbon-14, or iodine-125 per gram of animal tissue averaged over the weight of the entire animal.

(2) A licensee shall not dispose of tissue pursuant to subsection (1)(b) of this section in a manner that may permit its use as food for a human or as animal feed.

(3) A licensee shall maintain records required by Section 11 of this administrative regulation.

(4) A licensee shall comply with other applicable federal, state, and local regulations governing other toxic or hazardous properties of these materials.

Section 6. Classification of Radioactive Waste for Near-Surface Disposal. (1) Considerations. Determination of the classification of waste shall be given the following considerations:

(a)1. The concentration of long-lived radionuclides, and their shorter-lived

precursors, whose potential hazard shall persist long after a precaution such as an institutional control, improved waste form, and deeper disposal have ceased to be effective.

2. The precaution delays the time long-lived radionuclides may cause an exposure.

3. The magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure; and

(b) The concentration of a shorter-lived radionuclide for which a requirement on an institutional control, waste form, and disposal methods are effective.

(2) Classes of waste.

(a)1. Class A waste shall be segregated from other waste classes at the disposal site, except for waste described at subparagraph 2 of this paragraph.

2. The physical form and characteristics of Class A waste shall meet the minimum requirements in Section 7 of this administrative regulation.

3. If Class A waste also meets the stability requirements in Section 7(2) of this administrative regulation, it shall not be necessary to segregate Class A waste for disposal.

(b)1. Class B waste shall meet more rigorous requirements on waste form to ensure stability after disposal.

2. The physical form and characteristics of Class B waste shall meet both the minimum and stability requirements in Section 7 of this administrative regulation.

(c)1. Class C waste shall meet more rigorous requirements on waste form to ensure stability and shall require additional measures at the disposal facility to protect against inadvertent intrusion.

2. The physical form and characteristics of Class C waste shall meet both the minimum and stability requirements in Section 7 of this administrative regulation.

(3) Classification determined by long-lived radionuclides. If the waste contains only a radionuclide in Table 1 of this subsection, classification shall be determined as follows:

(a) If the concentration does not exceed one-tenth (0.1) times the value in Table 1, the waste shall be Class A.

(b) If the concentration exceeds one-tenth (0.1) times the value, but does not exceed the value in Table 1, the waste shall be Class C.

(c) If the concentration exceeds the value in Table 1, the waste shall not generally be acceptable for near-surface disposal.

(d) For waste containing a mixture of radionuclides in Table 1, the total concentration shall be determined by the sum of fractions rule described in subsection (7) of this section.

TABLE 1	
Radionuclide	Concentration curies/cubic meter
C-14	8
C-14 in activated metal	80
Ni-59 in activated metal	220
Nb-94 in activated metal	0.2
Tc-99	3
I-129	0.08
Alpha emitting transuranic radionuclides with half-life greater than five (5) years	100*
Pu-241	3500*
Cm-242	20000*
Ra-226	100*

*Units are nanocuries per gram.

(4) Classification determined by short-lived radionuclides. If the waste contains none of the radionuclides in Table 1 of subsection (3) of this section, classification shall be determined based on the concentrations shown in Table 2 of this subsection. If a radionuclide is not in Table 2, it shall not be considered in determining the waste class.

(a) If the concentration does not exceed the value in Column 1, the waste shall be Class A.

(b) If the concentration exceeds the value in Column 1, but does not exceed the value in Column 2, the waste shall be Class B.

(c) If the concentration exceeds the value in Column 2, but does not exceed the value in Column 3, the waste shall be Class C.

(d) If the concentration exceeds the value in Column 3, the waste shall not generally be acceptable for near-surface disposal.

(e) For waste containing a mixture of the radionuclides in Table 2, the total concentration shall be determined by the sum of fractions rule described in subsection (7) of this section.

TABLE 2			
Radionuclide	Concentration, curies/cubic meter		
	Column 1	Column 2	Column 3

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Total of all radionuclides with less than five (5) year half-life	700	*	*
H-3	40	*	*
Co-60	700	*	*
Ni-63	3.5	70	700
Ni-63 in activated metal	35	700	7000
Sr-90	0.04	150	7000
Cs-137	1	44	4600

* Limits have not been established for a radionuclide in Class B or C waste. Practical considerations, such as the effects of external radiation and internal heat generation on transportation, handling, and disposal, limit the concentrations for these wastes. This waste shall be Class B unless the concentrations of other radionuclides in Table 2 determine the waste to be Class C independent of these radionuclides.

(5) Classification determined by both long-lived and short-lived radionuclides.

(a) If the waste contains a mixture of radionuclides, some in Table 1 of this section, and some in Table 2 of this section, classification shall be determined as follows:

(b) If the concentration of a radionuclide in Table 1 does not exceed one-tenth (0.1) times the value in Table 1, the class shall be determined by the concentration of a radionuclide in Table 2.

(c) If the concentration of a radionuclide in Table 1 exceeds one-tenth (0.1) times the value, but does not exceed the value in Table 1, the waste shall be Class C, if the concentration of a radionuclide in Table 2 does not exceed the value shown in Column 3 of Table 2.

(6) Classification of waste with a radionuclide other than those in Tables 1 and 2. If the waste contains none of the radionuclides in Table 1 or 2 of this section, the waste shall be Class A.

(7) The sum of fractions rule for mixtures of radionuclides. The following shall be considered in determining classification for waste that contains a mixture of radionuclides:

(a) The sum of fractions shall be determined by dividing each radionuclide concentration by the appropriate limit and adding the resulting values.

(b) The appropriate limit shall be taken from the same column of the same table.

(c) The sum of the fractions for the column shall be less than one (1.0) if the waste class is determined by that column.

(d) Example: A waste contains Sr-90 in a concentration of fifty (50) curies/cubic meter and Cs-137 in a concentration of twenty-two (22) curies/cubic meter. Since the concentrations both exceed the values in Column 1, Table 2, they shall be compared to Column 2 values. For Sr-90 fraction, $50/150 = 0.33$; for Cs-137 fraction, $22/44 = 0.5$; the sum of the fractions = 0.83. Since the sum is less than one (1.0), the waste shall be Class B.

(8) Determination of concentrations in waste.

(a) If there is reasonable assurance that an indirect method may be correlated with an actual measurement, the concentration of a radionuclide may be determined by an indirect method, such as use of a scaling factor which relates the inferred concentration of one (1) radionuclide to another that is measured or radionuclide material accountability.

(b) If the units are expressed as nanocuries per gram, the concentration of a radionuclide may be averaged over the volume or weight of the waste.

Section 7. Radioactive Waste Characteristics. (1) The following minimum requirements for each class of waste are intended to facilitate handling and provide protection of health and safety of personnel at the disposal site:

(a) Waste shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste shall be shipped. If the conditions of the site license are more restrictive than the provisions of this administrative regulation, the site license conditions shall govern.

(b) Waste shall not be packaged for disposal in a cardboard or fiberboard box.

(c) Liquid waste shall be solidified or packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(d) Solid waste containing liquid shall contain as little freestanding and noncorrosive liquid as is reasonably achievable. The liquid shall not exceed one (1) percent of the volume.

(e) Waste shall not be readily capable of:

1. Detonation;

2. Explosive decomposition or reaction at normal pressures and temperatures; or

3. Explosive reaction with water.

(f) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to a person transporting, handling, or disposing of the waste. This shall not apply to radioactive gaseous waste packaged in accordance with paragraph (h) of this subsection.

(g) Waste shall not be pyrophoric. Pyrophoric material contained in waste shall be treated, prepared, and packaged to be nonflammable.

(h) Waste in a gaseous form shall be packaged at a pressure that shall not exceed one and five-tenths (1.5) atmospheres at twenty (20) degrees Centigrade. Total activity shall not exceed 100 curies per container.

(i) Waste containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce to the maximum extent practicable the potential hazard from the nonradiological material.

(2) Stability shall ensure that the waste shall not structurally degrade and affect overall stability of the site through slumping, collapse, or other failure of the disposal unit and lead to water infiltration. Stability shall also be a factor in limiting exposure to an inadvertent intruder, since it provides a recognizable and nondispersible waste. The following requirements shall provide stability of the waste:

(a) Waste shall have structural stability.

1. A structurally-stable waste form shall maintain its physical dimension and its form under expected disposal conditions, such as:

a. Weight of overburden and compaction equipment;

b. Presence of moisture and microbial activity; and

c. Internal factors such as radiation effects and chemical changes.

2. Structural stability may be provided by:

a. The waste form itself;

b. Processing the waste to a stable form; or

c. Placing the waste in a disposal container or structure that provides stability after disposal.

(b) Unless otherwise exempted in subsection (1)(c) and (d) of this section, liquid waste, or waste containing liquid, shall be converted into a form that contains as little free standing and noncorrosive liquid as is reasonably achievable. The liquid shall not exceed one (1) percent of the volume of the waste if the waste is in a disposal container designed to ensure stability, or five-tenths (0.5) percent of the volume of the waste for waste processed to a stable form.

(c) Void spaces within and between the waste and its package shall be eliminated.

Section 8. Labeling. Each package of waste shall be clearly labeled to identify if it is Class A, Class B, or Class C waste, in accordance with Section 6 of this administrative regulation.

Section 9. Transfer for Disposal and Manifests. (1) The requirements of this section and Section 10 of this administrative regulation shall:

(a) Control transfers of low-level radioactive waste by any waste generator, waste collector, or waste processor licensee, as defined in 902 KAR 100:010, who ships low-level waste either directly or indirectly through a waste collector or waste processor, to a licensed low-level waste [intended for disposal at a] land disposal facility as established in 902 KAR 100:022;

(b) Establish a manifest tracking system; and

(c) Supplement existing requirements concerning transfers and recordkeeping for the wastes being transferred.

(2) Any licensee shipping radioactive material [A shipment of radioactive waste] intended for ultimate disposal at a licensed land disposal facility shall document the information required on U.S. Nuclear Regulatory Commission's Uniform Low-Level Radioactive

Waste Manifest, or its equivalent, and transfer this recorded manifest information to the intended consignee in accordance with [be accompanied by a shipment manifest as specified in] Section 10[(4)] of this administrative regulation.

(3) The shipment manifest shall include a certification by the waste generator as specified in Section 10(12) of this administrative regulation.

(4) A person involved in the transfer for disposal and disposal of waste, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in Section 10(13) of this administrative regulation.

Section 10. Requirements for Low-level Waste Transfers Intended for Disposal at Land Disposal Facilities and Manifests. (1) A waste generator, collector, or processor who transports, or offers for transportation, low-level radioactive waste intended for ultimate disposal at a licensed low-level radioactive waste land disposal facility shall prepare a manifest reflecting information requested on the following applicable forms, or their equivalent:

(a) NRC Form 540, Uniform Low-Level Radioactive Waste Manifest, Shipping Paper;

(b) NRC Form 541, Uniform Low-Level Radioactive Waste Manifest, Container and Waste Description; and

(c) If necessary, NRC Form 542, Uniform Low-Level Radioactive Waste Manifest, Manifest Index and Regional Compact Tabulation.

(2) NRC Forms 540 and 540A shall be completed and shall physically accompany the pertinent low-level waste shipment.

(3) Upon agreement between shipper and consignee, NRC Forms 541, 541A, 542 and 542A may be completed, transmitted, and stored in electronic media with the capability for producing legible, accurate, and complete records on the respective forms.

(4) A licensee shall not be required by the cabinet to comply with the manifesting requirements of this section, if they ship:

(a) LLW for processing and expect its return for storage as prescribed by their license, prior to disposal at a licensed land disposal facility;

(b) LLW that is being returned to the licensee who is the waste generator or generator, as defined in 902 KAR 100.010; or

(c) Radioactive contaminated [~~radioactive~~] material to a waste processor that becomes the processor's residual waste.

(5) For guidance in completing a form, refer to instructions that accompany the form.

(6) A copy of a manifest required by this section may be legible carbon copies, photocopies, or computer printouts that reproduce the data in the format of the uniform manifest.

(7) Information on hazardous, medical, or other waste, required to meet U.S. Environmental Protection Agency regulations, for example, 40 C.F.R. Parts 259 and 261, is not addressed in this section, and shall be provided on the required EPA form. The required EPA form shall accompany the Uniform Low-Level Radioactive Waste Manifest required by this section.

(8) The shipper of the radioactive waste, shall provide the following information on the uniform manifest:

(a) The name, facility address, and telephone number of the licensee shipping the waste;

(b) An explicit declaration indicating whether the shipper shall be acting as a waste generator, collector, processor, or a combination of these identifiers for purposes of the manifested shipment; and

(c) The name, address, and telephone number, or the name and U.S. Environmental Protection Agency hazardous identification number, for the carrier transporting the waste.

(d) The shipper of the radioactive waste shall provide, on the uniform manifest, the following information:

1. The date of the waste shipment;

2. The total number of packages or disposal containers;

3. The total disposal volume and disposal weight in the shipment;

4. The total radionuclide activity in the shipment;

5. The activity of each of the radionuclides, hydrogen-3, carbon-14, technetium-99, and iodine-129 contained in the shipment;

6. The total masses of uranium-233, uranium-235, and plutonium in special nuclear material; and

7. The total mass of uranium and thorium in source material.

(9) The shipper of the radioactive waste shall provide the following information on the uniform manifest regarding the waste and disposal container of waste in the shipment:

(a) An alphabetic or numeric identification that uniquely identifies each disposal container in the shipment;

(b) A physical description of the disposal container, including the manufacturer and model of a high integrity container;

(c) The volume displaced by the disposal container;

(d) The gross weight of the disposal container, including the waste;

(e) For waste consigned to a disposal facility, the maximum radiation level at the surface of each disposal container;

(f) A physical and chemical description of the waste;

(g) The total weight percentage of a chelating agent for waste containing more than one-tenth (0.1) percent of a chelating agent by weight, and the identity of the

principal chelating agent;

(h) The approximate volume of waste within a container;

(i) The sorbing or solidification media, if present, and the identity of the

solidification media vendor and brand name;

(j)1. The identity and activity of a radionuclide contained in each container;

2. The masses of uranium-233, uranium-235, and plutonium in special nuclear material;

3. The masses of uranium and thorium in source material; and

4. The identity and activity of each radionuclide associated with, or contained in, discrete waste types within a disposal container, such as:

a. Activated materials;

b. Contaminated equipment;

c. Mechanical filters; [?]

d. Sealed sources or devices; and

e. Wastes in solidification or stabilization media;

(k) The total radioactivity within each container;

(l) The classification of the waste in accordance with Section 6 of this administrative regulation, for wastes consigned to a disposal facility; and

(m) Identification of waste not meeting the structural stability requirements of Section 7(2) of this administrative regulation.

(10) The shipper of the radioactive waste shall provide the following information on the uniform manifest regarding a waste shipment delivered without a disposal container:

(a) The approximate volume and weight of the waste;

(b) A physical and chemical description of the waste;

(c) The total weight percentage of a chelating agent if the chelating agent exceeds one-tenth (0.1) percent by weight, and the identity of the principal chelating agent;

(d) The classification of the waste in accordance with Section 6 of this

administrative regulation for waste consigned to a disposal facility;

(e) Identification of waste not meeting the structural stability requirements of Section 7(2) of this administrative regulation;

(f)1. The identity and activity of a radionuclide contained in the waste;

2. The masses of uranium-233, uranium-235, and plutonium in special nuclear material;

3. The masses of uranium and thorium in source material; and

(g) For a waste consigned to a disposal facility, the maximum radiation level at the surface of the waste.

(11)(a) The origin of the LLW resulting from activities of a processor may be attributable to one (1) or more generators, including a waste generator. The requirements in this subsection apply to:

1. A disposal container enclosing a mixture of waste originating from different generators; and

2. A mixture of waste shipped in a form without a disposal container, for which portions of the mixture within the shipment originate from different generators.

(b) For a homogeneous mixture of a waste, such as incinerator ash, provide the:

1. Waste description applicable to the mixture; and

2. Volume of the waste attributed to each generator;

(c) For a heterogeneous mixture of a waste such as:

1. The combined products from a large compactor, identify each generator contributing waste to the disposal container; and

2. A discrete waste type, for example, activated materials, contaminated equipment, mechanical filters, sealed sources or devices, and wastes in solidification or stabilization media, the identity and activity of individual radionuclides contained on the waste type within the disposal container;

(d) For a generator, the following information shall be provided:

1. The volume of waste within the disposal container;

2. A physical and chemical description of the waste, including, if present, the solidification agent;

3. The total weight percentage of a chelating agent for a disposal container containing more than one-tenth (0.1) percent of a chelating agent by weight, plus the identity of the principal chelating agent;

4. The sorbing or solidification media, if present, and the identity of the solidification media vendor and brand name if the media is claimed to meet stability requirements in Section 7(2) of this administrative regulation; and

5.a. Radionuclide identity and activity contained in the waste;

b. The mass of uranium-233, uranium-235, and plutonium in special nuclear material; and

c. The mass of uranium and thorium in source material if contained in the waste.

(12)(a) An authorized representative of the waste generator, processor, or collector shall certify, by signing and dating the shipment manifest, that the transported materials are:

1. Properly classified;

2. Described;

3. Packaged;

4. Marked;

5. Labeled; and

6. In proper condition for transportation according to the applicable administrative regulations of the Department of Transportation and 902 KAR 100:070; and

(b) A collector in signing the certification shall certify that nothing has been done to the collected waste which would invalidate the waste generator's certification.

(13) A licensee who transfers waste to a licensed waste processor for waste treatment or repackaging shall comply with the requirements of paragraphs (d) through (l) of this subsection. A licensee who transfers waste to a land disposal facility or a licensed waste collector shall:

(a) Prepare waste to meet a classification in Section 6 of this administrative regulation and the waste characteristics requirements in Section 7 of this administrative regulation;

(b) Label each disposal container, or transport container if potential radiation hazards preclude labeling of the individual disposal container, of waste to identify if the waste is Class A, Class B, Class C, or greater than Class C waste, in accordance with Section 6 of this administrative regulation;

(c) Conduct a quality assurance program including, management evaluation of audits to assure compliance with Sections 6 and 7 of this administrative regulation.

(d) Prepare the NRC Uniform Low-Level Radioactive Waste Manifest as required by this subsection;

(e) Forward a copy or electronically transfer the Uniform Low-Level Radioactive Waste Manifest to the intended consignee so that:

1. Receipt of the manifest precedes the LLW shipment;

2. The manifest and the waste are delivered to the consignee at the same time; or

3. Both methods of manifest delivery described in subparagraphs 1 and 2 of this paragraph are used.

(f) Include NRC Form 540 and Form 540A, if required, with the shipment, regardless of the option chosen in paragraph (e) of this subsection;

(g) Receive acknowledgment of the receipt of the shipment in the form of a signed copy of NRC Form 540;

(h) Retain a copy of or electronically store the Uniform Low-

Level Radioactive Waste Manifest and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by 902 KAR 100:040; and

(i) For a shipment, or parts of a shipment, for which acknowledgment of receipt has not been received within the times established in this section, conduct an investigation in accordance with subsection (17) of this section.

(14) A waste collector licensee who handles only prepackaged waste shall:

(a) Acknowledge receipt of the waste from the generator within one (1) week of receipt by returning a signed copy of NRC Form 540;

(b) Prepare a new manifest to reflect consolidated shipments that meet the requirements of this section, including identification of the generator of each container of waste in the shipment;

(c) Forward a copy or electronically transfer the Uniform Low-Level Radioactive Waste Manifest to the intended consignee so that either:

1. Receipt of the manifest precedes the LLW shipment; or

2. The manifest and the waste are delivered to the consignee at the same time; or

3. Both methods of manifest delivery described in subparagraphs 1 and 2 of this paragraph are used.

(d) Include NRC Form 540 and Form 540A, if required, with the shipment regardless of the option chosen in paragraph (c) of this subsection;

(e) Receive acknowledgement of the receipt of the shipment in the form of a signed copy of NRC Form 540;

(f) Retain a copy of or electronically store the Uniform Low-Level Radioactive Waste Manifest and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by 902 KAR 100:040;

(g) For a shipment, or parts of a shipment, for which acknowledgment of receipt is not received within the time established in this section, conduct an investigation in accordance with subsection (17) of this section;

(h) Notify the shipper and the cabinet if a shipment, or part of a shipment, has not arrived within sixty (60) days after receipt of an advance manifest, unless notified by the shipper that the shipment has been cancelled.

(15) A licensed waste processor who treats or repackages waste shall:

(a) Acknowledge receipt of the waste from the shipper within one (1) week of receipt by returning a signed copy of the manifest or equivalent documentation;

(b) Prepare a new manifest that meets the requirements of this subsection:

1. Preparation of the new manifest shall reflect that the processor shall be responsible for meeting these requirements; and

2. For each container of waste in the shipment, the manifest shall identify the waste generators, the preprocessed waste volume, and other information required by subsection (11) of this section;

(c) Prepare waste to meet a classification in Section 6 of this administrative regulation and the waste characteristics requirement in Section 7 of this administrative regulation;

(d) Label each package of waste to identify the waste as Class A, Class B, or Class C, in accordance with Sections 6 and 8 of this administrative regulation;

(e) Conduct a quality control program to assure compliance with Sections 6 and 7 of this administrative regulation, including management evaluation of audits;

(f) Forward a copy or electronically transfer the Uniform Low-Level Radioactive Waste Manifest to the intended consignee so that:

1. Receipt of the manifest precedes the LLW shipment;

2. The manifest and the waste are delivered to the consignee at the same time; or

3. Both methods of manifest delivery described in subparagraphs 1 and 2 of this paragraph are used.

(g) Include NRC Form 540 and 540A, if required with the shipment regardless of the option chosen in subsection (15)(f) of this section;

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(h) Retain a copy of or electronically store the Uniform Low-Level Radioactive Waste Manifest and documentation of acknowledgment of receipt as the record of transfer of licensed material required by 902 KAR 100:040;

(i) Receive acknowledgment of the receipt of the shipment in the form of a signed copy of NRC Form 540;

(j) For a shipment or part of a shipment for which acknowledgment of receipt is not received within the time established in this section, conduct an investigation in accordance with subsection (17) of this section; and

(k) Notify the shipper and the cabinet when a shipment, or part of a shipment, has not arrived within sixty (60) days after receipt of an advance manifest, unless notified by the shipper that the shipment has been cancelled.

(16) The land disposal facility operator shall:

(a) Acknowledge receipt of the waste within one (1) week of receipt by returning a signed copy of the manifest or equivalent documentation to the licensee that last possessed the waste and transferred the waste to the operator. If the returned copy of the manifest or equivalent documentation indicates discrepancies between materials on the manifest and materials received, copies or electronic transfer of the affected forms shall be returned indicating the discrepancy;

(b) Maintain copies of completed manifests, or equivalent documentation, and electronically store the information required by 10 C.F.R. 61.80(l) until the cabinet terminates the license; and

(c) Notify the shipper, generator, collector, or processor and the cabinet if a shipment, or part of a shipment, has not arrived within sixty (60) days after the advance manifest was received, unless notified by the shipper that the shipment has been cancelled.

(17)(a) The shipper shall investigate a shipment or part of a shipment for which acknowledgment is not received within the time established in this section, if the shipper has not received notification of receipt within twenty (20) days after transfer.

(b) The investigation shall include tracing the shipment and filing a report with the cabinet.

(c) A licensee who conducts a trace investigation shall file a written report with the cabinet within two (2) weeks of completion of the investigation.

Section 11. Records. (1) A licensee shall maintain a record in the same units used in this administrative regulation.

(2) A record of disposal of licensed material required by this administrative regulation shall be maintained until the cabinet authorizes disposition, or in accordance with 902 KAR 100:072, Section 29 [902 KAR 100:073, Section 28].

(3) A licensee shall maintain a record of the disposal of licensed materials required by 902 KAR 100:022 and Sections 2, 3, 4, and 5 of this administrative regulation, and disposal by burial in soil, including burials authorized before January 28, 1981.

(4) A licensee shall retain the records required in subsection (3) of this section until the cabinet terminates each pertinent license requiring the record.

Section 12. Annual Report of Waste Generated. (1) A licensee issued a specific license, pursuant to 902 KAR 100:040, shall file an annual report with the cabinet containing information regarding low-level radioactive waste associated with activities authorized by the license. The report shall be filed if the licensee was, or was not, a waste generator during the reporting period.

(2) The report shall contain information regarding the waste for a period of one (1) calendar year and shall be filed no later than January 15 of the following year.

(3) The report shall be filed on a Low-Level Radioactive Waste (LLW) Report Form provided by the cabinet and shall contain types and amounts of generated waste and estimates of future wastes to be generated.

Section 13. Incorporation by Reference. (1) The following ma-

terial is incorporated by reference:

(a) "NRC Form 540, Uniform Low-Level Radioactive Waste Manifest, Shipping Paper, 7/2001";

(b) "NRC Form 540A, Uniform Low-Level Radioactive Waste Manifest, 3/1995";

(c) "NRC Form 541, Uniform Low-Level Radioactive Waste Manifest, Container and Waste Description, 7/2001";

(d) "NRC Form 541A, Uniform Low-Level Radioactive Waste Manifest, 3/1995";

(e) "NRC Form 542, Uniform Low-Level Radioactive Waste Manifest, Manifest Index and Regional Compact Tabulation, 7/2001";

(f) "NRC Form 542A, Uniform Low-Level Radioactive Waste Manifest, Manifest Index and Regional Compact Tabulation, 3/1995"; and

(g) "Low-Level Radioactive Waste (LLW) Report, 2001".

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

WILLIAM D. HACKER, MD FAAP, CPE

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 10, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2011 at 9 a.m. in Conference Suite C of the 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, 2011, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments regarding this proposed administrative regulation may be submitted through January 31, 2011. 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: Matt McKinley (502) 564-3700, ext. 3701

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation is being amended to clarify administrative requirements for radioactive waste manifests.

(b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:021 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and

the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will make radioactive waste shipment criteria compatible with the federal regulations. Given the interstate nature of this activity, this is essential to providing meaningful regulatory oversight.

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

(a) How the amendment will change this existing administrative regulation: It adds minor administrative requirements to Section 9 and removes the omission of NORM.

(b) The necessity of the amendment to this administrative regulation: To ensure compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste. This regulation will bring the state regulation into compliance with federal regulations.

(d) How the amendment will assist in the effective administration of the statutes: Regulations will be consistent between state and federal agencies thus making enforcement more consistent.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will assist all 430 licensees in preparing waste for shipment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required by the licensees in that they are currently following federal standards.

(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 regulated entities to comply with this regulation in that they currently are following federal standards.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will benefit from consistent standards between state and federal agencies.

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

(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds are used to operate this program. However, no additional costs will be incurred to implement and enforce this regulation.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state and local

units of government are impacted by this regulation if they are near where radioactive material is in use.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:021 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

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 regulation 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? No revenue will be generated by this regulation in subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program 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 Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 100:058. Specific licenses to manufacture, assemble, repair, or distribute products.

RELATES TO: KRS 211.842 to 211.852, 211.990(4), 10 C.F.R. 32.11, 32.51 to 32.74, 32.101 to 32.103, 32.110, 40.34, 40.35

STATUTORY AUTHORITY: KRS 13B.170, 194A.050, 211.090(3), 211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the Cabinet for Health and Family Services to regulate the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes requirements for issuing specific licenses to persons who manufacture, assemble, repair, or distribute commodities, products, or devices, which contain radioactive material.

Section 1. Registration of Product Information. (1) A manufacturer or initial distributor of a sealed source, or device containing a sealed source, whose product is intended for use under a specific

license, shall submit a request to the cabinet for evaluation of radiation safety information about its product and for its registration.

(2) The request for review of a sealed source or device shall include sufficient

information to provide reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property.

(3) The request shall include information on:

- (a) Design;
- (b) Manufacture;
- (c) Prototype testing;
- (d) Quality control program;
- (e) Labeling;
- (f) Proposed uses; and
- (g) Leak testing.

(4) For a device, the request shall also include sufficient information about:

- (a) Installation;
- (b) Service and maintenance;
- (c) Operating and safety instructions; and
- (d) Potential hazards.

(5) The cabinet shall evaluate a sealed source or device using radiation safety criteria in accepted industry standards. If the standards and criteria do not readily apply to a particular case, the cabinet shall formulate reasonable standards and criteria, with the help of the manufacturer or distributor. The cabinet shall use criteria and standards sufficient to ensure that the radiation safety properties of the device or sealed source are adequate to protect health and minimize danger to life and property.

(6) After completion of the evaluation, the cabinet shall issue a certificate of registration to the person making the request. The certificate shall acknowledge the availability of the submitted information for inclusion in an application for a specific license proposing use of the product.

(7) A person submitting the request for evaluation and registration of safety information about the product shall manufacture and distribute the product in accordance with:

- (a) The statements and representations, including quality control program, contained in the request; and
- (b) The provisions of the registration certificate.

Section 2. Licensing the Introduction of Radioactive Material into Products in Exempt Concentrations. (1) In addition to the requirements established in 902 KAR 100:040, Section 4, a specific license authorizing the introduction of radioactive material into a product or material owned by or in the possession of the licensee or another, to be transferred to a person exempt under 902 KAR 100:045, Section 2(1)(a) may be issued if:

(a) The applicant submits a description of the:

- 1. Product or material into which the radioactive material will be introduced;
- 2. Intended use of the radioactive material and the product or material into which it is introduced;
- 3. Method of introduction;
- 4. Initial concentration of the radioactive material in the product or material;
- 5. Control methods to assure that no more than the specified concentration is introduced into the product or material;
- 6. Estimated time interval between introduction and transfer of the product or material; and
- 7. Estimated concentrations of the radioactive material in the product or material at the time of transfer; and

(b) The applicant provides reasonable assurance that the:

- 1. Concentrations of the radioactive material at the time of transfer shall not exceed the concentrations established in 902 KAR 100:085;
- 2. Reconcentration of the radioactive material in concentrations exceeding those in 902 KAR 100:085 is not likely;
- 3. Use of lower concentrations is not feasible; and
- 4. Product or material is not likely to be incorporated in a food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(2) A person licensed pursuant to this administrative regulation shall:

- (a) Maintain records of transfer of radioactive material;
- (b) File an annual report with the cabinet which shall include the:

- 1. Type and quantity of a product or material into which radioactive material has been introduced during the reporting period;
- 2. Name and address of the person who owned or possessed the product or material into which radioactive material has been introduced at the time of introduction;
- 3. Type and quantity of radionuclide introduced into a product or material; and

- 4. Initial concentrations of the radionuclide in the product or material at the time of transfer of the radioactive material by the licensee;

(c) Indicate in the report if no transfers of radioactive material have been made during the reporting period;

(d) File a report by July 30 covering the year ending the previous June 30; and

(e) Maintain the record of a transfer for a period of one (1) year after the event is included in a report to the cabinet.

Section 3. Resins Containing Scandium-46 and Designed for Sand-Consolidation in Oil Wells: Requirements for License to Manufacture, or Initially Transfer for Sale or Distribution. An application for a specific license to manufacture, or initially transfer for sale or distribution, synthetic plastic resins containing scandium-46 for use as indicated in 902 KAR 100:045, Section 3(3), shall be approved if:

(1) The applicant satisfies the requirements specified in 902 KAR 100:040, Section 4;

(2) The product is designed to be used only for sand-consolidation in oil wells;

(3) The applicant submits the following information:

(a) A general description of the product to be manufactured or initially transferred; and

(b) A description of control procedures used to assure that the concentration of scandium-46 in the final product at the time of distribution shall not exceed 1.4×10^{-3} micro-curie/milliliter; and

(4) A container of the product bears a durable, legible label approved by the cabinet, which contains the following information:

- (a) The product name;
- (b) A statement that the product contains radioactive scandium and is designed and manufactured only for sand-consolidation in oil wells;
- (c) Instructions necessary for proper use; and
- (d) The manufacturer's name.

Section 4. Licensing the Manufacture and Distribution of a Device to a Person Generally Licensed under 902 KAR 100:050.

(1) In addition to the requirements established in 902 KAR 100:040, Section 4, an application for a specific license to distribute certain devices containing radioactive material, excluding special nuclear material, to a person generally licensed may be issued only if the applicant submits sufficient information relating to the:

- (a) Design;
- (b) Manufacture;
- (c) Prototype testing;
- (d) Quality control;
- (e) Labels;
- (f) Proposed uses;
- (g) Installation;
- (h) Servicing;
- (i) Leak testing;
- (j) Operating and safety instructions; and
- (k) Potential hazards of the device to provide reasonable assurance that:

1. Under accident conditions, such as fire and explosion associated with handling, storage, and use of the device, it is unlikely that a person would receive an external radiation dose or dose commitment in excess of the following organ doses:

- a. Whole body, head and trunk, active blood-forming organs, gonads, or lens of eye - 15 rems (150 mSv);
- b. Hands and forearms, feet and ankles, or localized areas

of skin averaged over areas no larger than one (1) square centimeter - 200 rems (2 Sv); or

c. Other organs - 50 rems (500 mSv).^[2]

2. Under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device shall not be released or inadvertently removed from the device, and it is unlikely that a person will receive in a period of one (1) calendar year a dose in excess of ten (10) percent of the limits specified in 902 KAR 100:019, Section 3; and

3. The device can be safely operated by individuals not having training in radiological protection.

(2) A device identified in subsection (1) of this section shall bear a durable, legible, clearly visible label or labels approved by the cabinet, which contain in a clearly identified and separate statement:

(a) Instructions and precautions necessary to assure safe installation, operation, and servicing of the device (documents such as operating and service manuals^[2] may be identified in the label and used to provide this information);

(b) The requirement, or lack of requirement, for leak testing^[2] or for testing an "on-off" mechanism and indicator, including the maximum time interval for the testing^[2] and the identification of radioactive material by:

1. Isotope;
2. Quantity of radioactivity; and
3. Date of determination of the quantity; and

(c) The information called for in the following statement, in the same or substantially similar form:

"The receipt, possession, use, and transfer of this device, Model _____, Serial No. _____, are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION - RADIOACTIVE MATERIAL

Name of manufacturer or distributor^[2]

The model, serial number, and name of the manufacturer or distributor may be omitted from this label if the information is elsewhere specified in labeling affixed to the device.

(3)(a) If the applicant desires that the device identified in subsection (1) of this section be required to be tested for proper operation of the "on-off" mechanism and indicator^[2] or for leakage of radioactive material, subsequent to the initial tests required by this administrative regulation at intervals longer than six (6) months but not exceeding three (3) years, the applicant shall include in the application sufficient information to demonstrate that the longer interval is justified by:

1. Performance characteristics of the device or similar devices; and
2. Design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator.

(b) In determining the acceptable interval for the test for leakage of radioactive

material, the cabinet may consider information which shall include:

1. Primary containment or source capsule;
2. Protection of primary containment;
3. Method of sealing containment;
4. Containment construction materials;
5. Form of contained radioactive material;
6. Maximum temperature withstood during prototype tests;
7. Maximum pressure withstood during prototype tests;
8. Maximum quantity of contained radioactive material;
9. Radiotoxicity of contained radioactive material; and
10. Operating experience with identical devices or similarly designed and constructed devices.

(4)(a) If the applicant desires authorization of the general licensee established in 902 KAR 100:050, Section 3, or pursuant to equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State, to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application:

1. Written instructions to be followed by the general licensee;
2. Estimated calendar quarter doses associated with the activity or activities; and
3. Basis ~~[Bases]~~ for the estimates.

(b) The information shall demonstrate that performance of the activity by an individual untrained in radiological protection, handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of ten (10) percent of the annual limits specified in 902 KAR 100:019, Section 3.

(5) A person licensed pursuant to this administrative regulation to distribute devices to generally licensed persons shall:

(a) Furnish a copy of the general license identified in 902 KAR 100:050, Section 3, to each person to whom the licensee, directly or through an intermediate person, transfers radioactive material in a device for use as authorized by a general license;

(b) Furnish a copy of the general license contained in the U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent to 902 KAR 100:050, Section 3, or alternatively, furnish a copy of the general license to each person to whom the licensee directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license of the U.S. Nuclear Regulatory Commission or the Agreement State. If a copy of the general license identified in 902 KAR 100:050, Section 3, is furnished to the person, it shall be accompanied by a note explaining that the use of the device is regulated by the U.S. Nuclear Regulatory Commission or Agreement State under requirements substantially the same as those in 902 KAR 100:050, Section 3;

(c) Report to the cabinet transfers of the devices to persons for use under the general license.

1. The report shall identify:
 - a. A general licensee by name and address;
 - b. An individual by name or position who may constitute a point of contact between the cabinet and the general licensee;
 - c. The type and model number of device transferred; and
 - d. The quantity and type of radioactive material contained in the device.

2. If one (1) or more intermediate persons possess the device temporarily at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user.

3. If no transfers have been made to persons generally licensed during the reporting period, the report shall so indicate.

4. The report shall cover a calendar quarter and shall be filed within thirty (30) days of the close of the quarter.

(d) Furnish reports to other agencies as follows:

1. Report to the U.S. Nuclear Regulatory Commission transfers of such devices to persons for use under the U.S. Nuclear Regulatory Commission general license in Section 31.5 of 10 C.F.R. Part 31; or

2. Report to the responsible state agency transfers of devices manufactured and distributed for use under a general license in that state's regulations equivalent to 902 KAR 100:050, Section 3; and

3. The reports shall identify:
 - a. A general licensee by name and address;
 - b. An individual by name or position who may constitute a point of contact between the agency and the general licensee;
 - c. The type and model of the device transferred; and
 - d. The quantity and type of radioactive material contained in the device^[2]

4. If one (1) or more intermediate persons possess the device temporarily at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user;

5. The report shall be submitted within thirty (30) days after the end of the calendar quarter in which the device is transferred to the generally licensed person;

6. If no transfers have been made to U.S. Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the U.S. Nuclear Regulatory Commission; and

7. If no transfers have been made to general licensees within a particular state during the reporting period, this information shall be reported to the responsible state agency upon request of that agency;

(e) Keep records showing the name, address, and the point of contact for a general licensee to which the licensee, directly or through an intermediate person, transfers radioactive material in devices for use as authorized by a general license or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. The records shall show:

1. The date of transfer;
 2. The radionuclide and the quantity of radioactivity in each device transferred;
 3. The identity of the intermediate person; and
 4. Compliance with the report requirements; and
- (f) Maintain the records required by paragraphs (c) and (d) of this subsection for a period of five (5) years from the date of the recorded transfer.

Section 5. Special Requirements for the Manufacture, Assembly, or Repair of Luminous Safety Devices for use in Aircraft. An application for a specific license to manufacture, assemble, or repair luminous safety devices containing tritium or promethium-147 for use in aircraft, for distribution to persons generally licensed pursuant to 902 KAR 100:050 shall be approved if:

- (1) The applicant satisfies the requirements specified in 902 KAR 100:040, Section 4; and
- (2) The applicant satisfies the requirements of U.S. Nuclear Regulatory Commission 10 C.F.R. Part 32, Sections 32.2(b), 32.53, 32.54, 32.55, 32.56, 32.101, and 32.110 or their equivalent.

Section 6. Special Requirements for License to Manufacture and Distribute Calibration Sources Containing Americium-241, Plutonium or Radium-226 for Distribution to Persons Generally Licensed pursuant to 902 KAR 100:050. An application for a specific license to manufacture or distribute calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed pursuant to 902 KAR 100:050 shall be approved if:

- (1) The applicant satisfies the requirements established in 902 KAR 100:040, Section 4; and
- (2) The applicant satisfies the requirements of U.S. Nuclear Regulatory Commission 10 C.F.R. Part 32, Sections 32.57, 32.58, 32.59, and 32.102 and 10 C.F.R. Part 70, Section 70.39, or their equivalent.

Section 7. Licensing the Manufacture and Distribution of Ice Detection Devices Containing Strontium-90. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed shall be approved if:

- (1) The applicant satisfies the requirements established in 902 KAR 100:040, Section 4; and
- (2) The criteria of U.S. Nuclear Regulatory Commission 10 C.F.R. Part 32, Sections 32.2(b), 32.61, 32.62, 32.103, and 32.110 are met.

Section 8. Manufacture and Distribution of Radioactive Material for Certain In Vitro Clinical or Laboratory Testing under a General License. An application for a specific license to manufacture or distribute radioactive material for use pursuant to the general license established in 902 KAR 100:050, Section 4, shall be approved if:

- (1) The applicant satisfies the general requirements specified in 902 KAR 100:040, Section 4;
- (2) The radioactive material is to be prepared for distribution in prepackaged units of:
 - (a) Iodine-125 in units not exceeding ten (10) microcuries (370 kBq) each;
 - (b) Iodine-131 in units not exceeding ten (10) microcuries (370 kBq) each;
 - (c) Carbon-14 in units not exceeding ten (10) microcuries (370 kBq) each;
 - (d) Hydrogen-3 (tritium) in units not exceeding fifty (50) micro-

curies (1.85 MBq) each;

(e) Iron-59 in units not exceeding twenty (20) microcuries (704 kBq) each;

(f) Selenium-75 in units not exceeding ten (10) microcuries (370 kBq) each;

(g) Mock iodine-125 in units not exceeding 0.05 microcurie (1.85 MBq) of iodine-129 and 0.005 microcurie (185 Bq) of americium-241 each; or

(h) Cobalt-57 in units not exceeding fifty (50) microcuries (370 kBq) each;

(3) Each prepackaged unit bears a durable, clearly visible label:

(a) Identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed:

1. Ten (10) microcuries (370 kBq) of iodine-131, iodine-125, selenium-75, cobalt-57, or carbon-14;
2. Fifty (50) microcuries (1.85 MBq) of hydrogen-3 (tritium);
3. Twenty (20) microcuries (740 kBq) of iron-59; or
4. Mock iodine-125 in units not exceeding 0.05 microcurie (1.85 kBq) of iodine-129 and 0.005 microcurie (185 Bq) of americium-241 each; and

(b) Displaying the radiation caution symbol described in 902 KAR 100:019, Section 23, and the words, "Caution, Radioactive Material" and "Not for Internal or External Use in Humans or Animals";

(4) The following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to a prepackaged unit, or appears in a leaflet or brochure which accompanies the package:

"This radioactive material may be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the administrative regulations and a general license or the equivalent of the United States Nuclear Commission or of an Agreement State. (Name of Manufacturer)"; and

(5) The label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information regarding precautions to be observed in handling and storing the radioactive material. For a mock iodine-125 reference or calibration source, the information accompanying the source shall contain directions to the licensee regarding the waste disposal requirements established in 902 KAR 100:021, Section 1.

Section 9. Manufacture and Distribution of Radiopharmaceuticals Containing Radioactive Material for Medical Use Under Specific Licenses. (1) An application for a specific license to manufacture, prepare or transfer for commercial distribution radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to 902 KAR 100:072 [973], shall be approved if the applicant:

(a) Satisfies the requirements specified in 902 KAR 100:040, Section 4;

(b) Submits evidence that the applicant is at least one (1) of the following:

1. Registered or licensed with the U.S. Food and Drug Administration (FDA) as a drug manufacturer;
2. Registered or licensed with a state agency as a drug manufacturer; ~~or~~
3. Licensed as a pharmacy by the State Board of Pharmacy; ~~or~~[-]

4. Operating as a nuclear pharmacy within the Federal medical institution.

(c) Submits information on:

1. The radionuclide;
2. Chemical and physical form;
3. Maximum activity per vial, syringe, generator, or other container of the radioactive drug; and
4. Shielding provided by the packaging of the radioactive material to show it is appropriate for safe handling and storage of radiopharmaceuticals

by medical use licensees; and

(d) Satisfies the following labeling requirements:

1. The label shall be affixed to the transport radiation shield, if it is constructed of lead, glass, plastic, or other material[;] of a radioactive drug to be transferred for commercial distribution. The label shall include:

- a. The radiation symbol;
- b. The words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL";
- c. The name of the radioactive drug or its abbreviation; and
- d. The quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

2. A label shall be affixed to a syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label shall include:

- a. The radiation symbol;
- b. The words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and
- c. An identifier that ensures the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(2) A licensee described by subsection (1)(b)3 of this section may:

(a) Prepare radioactive drugs for medical use, as defined in 902 KAR 100:010, if the radioactive drug is prepared by an authorized nuclear pharmacist, as specified in paragraphs (b) and (c) of this subsection, or an individual under the supervision of an authorized nuclear pharmacist, as specified in 902 KAR 100:072 [073], Section 12[8];

(b) Allow a pharmacist to work as an authorized nuclear pharmacist if the individual:

1. Qualifies as an authorized nuclear pharmacist as defined in 902 KAR 100:010;
2. Meets the requirements specified in 902 KAR 100:072 [073], Sections 63 [58] and 66 [59], and the licensee has received an approved license amendment identifying the individual as an authorized nuclear pharmacist; or
3. Is designated as an authorized nuclear pharmacist in accordance with paragraph (c) of this subsection.

(c) Designate a pharmacist as an authorized nuclear pharmacist if the individual is identified as an authorized user on a nuclear pharmacy license issued by the cabinet.

(3) The actions authorized in subsections (2)(a) and (b) of this section are permitted in spite of more restrictive language in license conditions.

(4) A licensee shall provide to the cabinet a copy of an individual's certification by the Board of Pharmaceutical Specialties, the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state license, and a copy of the state pharmacy licensure or registration, no later than thirty (30) days after the date that the licensee allows the individual to work as an authorized nuclear pharmacist, pursuant to subsection (2)(b)1 and 3 of this section.

(5) A licensee shall:

- (a) Possess and use instrumentation to measure the radioactivity of radioactive drugs;
- (b) Have procedures for use of the instrumentation;
- (c) Measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta- or photon-emitting radioactive drugs[;] prior to transfer for commercial distribution;
- (d) Perform accuracy, linearity, and geometry dependence tests on an instrument before initial use, periodically, and following repair, as appropriate for the instrument, and make necessary adjustments; and
- (e) Check an instrument for constancy and proper operation at the beginning of each day of use.

(6) Nothing in this section relieves a licensee from complying with applicable FDA, other federal, and state requirements governing radioactive drugs.

Section 10. Manufacture and Distribution of Sources or Devices Containing Radioactive Material for Medical Use. An application for a specific license to manufacture and distribute sources and

devices containing radioactive material to persons licensed as authorized by 902 KAR 100:072 [073] for use as a calibration, transmission, or reference source or for medical uses listed in 902 KAR 100:072, Sections 37, 45 and 46 shall be approved if:

(1) The applicant satisfies the requirements established in 902 KAR 100:040, Section 4;

(2) The applicant submits sufficient information regarding a type of source or device pertinent to an evaluation of its radiation safety, including:

- (a) The radioactive material contained, its chemical and physical form, and amount;
- (b) Details of design and construction of the source or device;
- (c) Procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents;
- (d) For devices containing radioactive material, the radiation profile of a prototype device;
- (e) Details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests;
- (f) Procedures and standards for calibrating sources and devices;
- (g) Legend and methods for labeling sources and devices as to their radioactive content; and
- (h) Instructions for handling and storing the source or device from the radiation safety standpoint. The instructions shall be included on a durable label attached to the source or device, or attached to a permanent storage container for the source or device. Instructions too lengthy for a label may be summarized on the label and printed in detail on a brochure which is referenced on the label;

(3) The label affixed to the source or device, or to the permanent storage container for the source or device, contains:

- (a) Information on the radionuclide;
- (b) Quantity; and

Date of assay; and

(d) A statement that the name of source or device is licensed by the cabinet for distribution to persons licensed as authorized by 902 KAR 100:072 [073], or under

equivalent licenses of the U.S. Nuclear Regulatory Commission or an Agreement State;

(4) If an applicant desires the source or device to be tested for leakage of radioactive material at intervals longer than six (6) months, he shall include in the application sufficient information to demonstrate that the longer interval is justified by:

- (a) Performance characteristics of the source or device, or similar sources or devices; and
- (b) Design features having a significant bearing on the probability or consequence of leakage of radioactive material from the source; and

(5) In determining the acceptable interval for tests of leakage of radioactive material, the cabinet shall consider information that includes:

- (a) Primary containment or source capsule;
- (b) Protection of primary containment;
- (c) Method of sealing containment;
- (d) Containment construction materials;
- (e) Form of contained radioactive material;
- (f) Maximum temperature withstood during prototype tests;
- (g) Maximum pressure withstood during prototype tests;
- (h) Maximum quantity of contained radioactive material;
- (i) Radiotoxicity of contained radioactive material; and
- (j) Operating experience with identical sources or devices, or similarly designed and constructed sources or devices.

Section 11. Requirements for License to Manufacture and Distribute Industrial Products Containing Depleted Uranium for Mass-volume Applications. (1) An application for a specific license to manufacture or distribute an industrial product or device containing depleted uranium for use authorized by 902 KAR 100:050, Section 2, or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State shall be approved if:

(a) The applicant satisfies the general requirements specified in 902 KAR 100:040, Section 4;

(b) The applicant submits sufficient information relating to the:

1. Design;
2. Manufacture;
3. Prototype testing;
4. Quality control procedures;
5. Labeling or marking;
6. Proposed uses; and
7. Potential hazards of the industrial product or device;

(c) The applicant provides reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive in a period of one (1) year a radiation dose in excess of ten (10) percent of the limits specified in 902 KAR 100:019, Section 3; and

(d) The applicant submits sufficient information regarding the industrial product or device, and the presence of depleted uranium for a mass-volume application in the product or device, to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(2) For an industrial product or device whose unique benefits are questionable, the cabinet may approve an application for a specific license pursuant to this section only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(3) The cabinet shall deny an application for a specific license pursuant to this section if the end use of the industrial product or device cannot reasonably be foreseen.

(4) A person licensed as authorized by this section shall:

(a) Maintain the level of quality control required by the license in:

1. Manufacture of the industrial product or device; and
2. Installation of the depleted uranium into the product or device;

(b) Label or mark each unit to identify:

1. The manufacturer of the product or device;
2. The number of the license under which the product or device was manufactured or distributed;
3. The fact that the product or device contains depleted uranium;
4. The quantity of depleted uranium in the product or device; and

5. That the receipt, possession, use, or transfer of the product or device is subject to a general license, or the equivalent, and the regulations of the U.S. Nuclear Regulatory Commission or an Agreement State;

(c) Assure that the depleted uranium, before being installed in a product or device, has been impressed with the legend "DEPLETED URANIUM" clearly legible through plating or other covering;

(d) Furnish a copy of the general license contained in:

1. 902 KAR 100:050 to a person to whom depleted uranium is transferred in a product or device for use authorized by the general license; or

2. The U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent to 902 KAR 100:050, and a copy of an applicable U.S. Nuclear Regulatory Commission's or Agreement State's certificate, to a person to whom depleted uranium is transferred in a product or device for use as authorized by the general license of the U.S. Nuclear Regulatory Commission or an Agreement State, with a note explaining that use of the product or device is regulated by the U.S. Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in 902 KAR 100:050;

(e) Furnish the following to either the cabinet, U.S. Nuclear Regulatory Commission, or agreement state:

1. A report of each transfer of an industrial product or device to a person for use pursuant to the general license in 902 KAR 100:050. The report shall identify:

- a. A general licensee by name and address;
- b. An individual, by name or position, who constitutes a point of contact between the cabinet and the general licensee;
- c. The type and model number of device transferred; and
- d. The quantity of depleted uranium contained in the product or device.

2. The report identified in subparagraph 1 of this paragraph shall be submitted within thirty (30) days after the end of a calendar quarter in which the product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed pursuant to 902 KAR 100:050 during the reporting period, the report shall so indicate; and

(f) Keep records showing the name, address, and point of contact for a general licensee to whom he transfers depleted uranium in an industrial product or device for use authorized by the general license provided in 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of three (3) years from the date of transfer and shall show the date of each transfer, the quantity of depleted uranium in a product or device transferred, and compliance with the report requirements of this section.

Section 12. Licensing the Distribution of Naturally Occurring and Accelerator Produced Radioactive Material (NARM) in Exempt Quantities. (1) An application for a specific license to distribute NARM to persons exempted from these regulations authorized by 902 KAR 100:045 shall be approved if:

(a) The radioactive material is not contained in a food, beverage, cosmetic, drug, or other commodity designed for ingestion or inhalation by, or application to, a human being;

(b) The radioactive material is in the form of processed chemical elements, compounds, or mixtures, tissue samples, bioassay samples, counting standards, plated or encapsulated sources, or similar substances, identified as radioactive and to be used for its radioactive properties, but is not incorporated into a manufactured or assembled commodity, product, or device intended for commercial distribution; and

(c) The applicant submits copies of prototype labels and brochures and the cabinet approves the labels and brochures.

(2) The license issued pursuant to this section is subject to the following conditions:

(a) No more than ten (10) exempt quantities shall be sold or transferred in a single transaction. However, an exempt quantity may be composed of fractional parts of one (1) or more of the exempt quantity, if the sum of the fractions does not exceed unity.

(b) An exempt quantity shall be packaged separately and individually. No more than ten (10) packaged exempt quantities shall be contained in an outer package for transfer to persons exempt as authorized by 902 KAR 100:045. The dose rate at the external surface of the outer package shall not exceed five-tenths (0.5) millirem per hour.

(c) The immediate container of each quantity or separately packaged fractional quantity of radioactive material shall bear a durable, legible label which:

1. Identifies the radionuclide and the quantity of radioactivity; and

2. Bears the words "Radioactive Material."

(d) In addition to the labeling information required by this subsection, the label affixed to the immediate container, or an accompanying brochure, shall:

1. State that the contents are exempt from licensing agency requirements;

2. Bear the words "Radioactive Material - Not for Human Use - Introduction into Foods, Beverages, Cosmetics, Drugs, or Medicinals, or into Products Manufactured for Commercial Distribution is Prohibited - Exempt Quantities Should Not Be Combined"; and

3. Establish appropriate additional radiation safety precautions and instructions relating to the handling, use, storage, and disposal of the radioactive material.

(3)(a) A person licensed pursuant to this section shall maintain records

identifying, by name and address, each person to whom radioactive material is transferred for use in accordance with 902 KAR 100:045 or the equivalent regulations of a licensing agency, and stating the kinds and quantities of radioactive material transferred.

(b) An annual summary report stating the total quantity of each radionuclide transferred under the specific license shall be filed with the cabinet.

(c) A report shall cover the year ending June 30[?] and shall be filed within thirty (30) days after June 30. If no transfers of radioac-

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tive material have been made, as authorized by this section, during the reporting period, the report shall so indicate.

Section 13. Licensing the Incorporation of Naturally Occurring and Accelerator Produced Radioactive Material (NARM) into Gas and Aerosol Detectors. An application for a specific license authorizing the incorporation of NARM into gas and aerosol detectors to be distributed to persons exempt pursuant to 902 KAR 100:045 shall be approved if the application satisfies requirements equivalent to those contained in U.S. Nuclear Regulatory Commission 10 C.F.R. Part 32.26. The maximum quantity of radium-226 in a device shall not exceed one-tenth (0.1) microcurie (3.7 kBq).

WILLIAM D. HACKER, MD FAAP, CPE
JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 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, 2011 at 9 a.m. in Conference Suite C of the 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, 2011, 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 January 31, 2011. 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: Matt McKinley (502) 564-3700, ext. 3701

(1) Provide a brief summary of:

(a) What this administrative regulation does: In 2005, 902 KAR 100:073 was superseded by 902 KAR 100:072 and was subsequently repealed. This regulation is being amended to update the previous 902 KAR 100:073 references to 902 KAR 100:072 references.

(b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:058 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will update sections of other regulations by reference with the correct reference.

(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: It updates references in section 9 and 10 and corrects the spelling of a word in Section 4.

(b) The necessity of the amendment to this administrative regulation: To ensure compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. This specific amendment is to bring the regulation into compliance with existing state regulations by reference.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.842(2) authorizes the Cabinet for Health and Family Services to issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. This amendment updates the regulations that govern those licenses.

(d) How the amendment will assist in the effective administration of the statutes: The amendment corrects the references to an existing regulation, thus making administration of the regulation accurate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 10 nuclear pharmacies and 2 distributors of industrial gauges licensed by the Kentucky Radiation Health Branch who actively conduct business in Kentucky and would be impacted 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: No action is required by the regulated entities. The regulation is correcting a reference to a known requirement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is required by the regulated entities. The regulation is correcting a reference to a known requirement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will have a correct regulation to refer to.

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

(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional cost will be incurred as a result of amending this administrative regulation.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. 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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. The U.S. Nuclear Regulatory Commission has amended

their regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:058 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not impact expenditures or revenues of state or local agencies

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:070. Transportation of radioactive material.

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. 71, 39 C.F.R. 111.1, 49 C.F.R. 170-189

STATUTORY AUTHORITY: KRS 13B.170, 194A.050, 211.090(3), 211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes requirements for transportation of radioactive material.

Section 1. Applicability. (1) Applies to a licensee authorized by a specific or general license issued by the cabinet to receive, possess, use, or transfer radioactive material, when:

The licensee delivers that material to a carrier for transport;

(b) Transports the material outside the site of usage as specified in the cabinet license; or

(c) Transports the material on public highways.

(2) No provision of this administrative regulation authorizes the possession of radioactive material.

Section 2. [4-] Requirement for a License. A person shall not

deliver radioactive material to a carrier for transport, or transport radioactive material, unless:

(1) Authorized in a general or specific license issued by the cabinet; or

(2) Exempted pursuant to Section 3[2] of this administrative regulation.

Section 3. [2-] Exemptions. (1) A licensee is exempt from all the requirements of this administrative regulation with respect to shipment or carriage of the following low-level materials:

(a) Natural material and ores containing naturally occurring radionuclides that are not intended to be processed for use of these radionuclides, provided the activity concentration of the material does not exceed ten (10) times the values specified in 10 C.F.R. 71 Appendix A; and

(b) Materials for which the activity concentration is not greater than the activity concentration values, or for which the consignment activity is not greater than the limit for an exempt consignment found in 10 C.F.R. 71 Appendix A. ~~[Common and contract carriers, freight forwarders, and warehousemen who are subject to the requirements of the U.S. Department of Transportation in 49 C.F.R. 170 through 189 or the U.S. Postal Service in the Domestic Mail Manual, Section C023.9-0, 39 C.F.R. 111.1, are exempt from these administrative regulations to the extent that they transport or store radioactive material in the regular course of their carriage for another or storage incident to the transportation and storage of radioactive material. Common and contract carriers who are not subject to the requirements of the U.S. Department of Transportation or U.S. Postal Service are subject to Section 1 of this administrative regulation and other applicable sections of these administrative regulations.]~~

(2) A licensee shall be exempt from requirements ~~[established]~~ in ~~[Section 4 of]~~ this administrative regulation, except for Sections 4 and 12 of this administrative regulation, with respect to shipment or carriage of the following packages, provided the packages do not contain any fissile material, or the material is exempt form classification as fissile material under Section 14:

A package that contains no more than a Type A quantity of radioactive material;

A package transported within the United States that contains no more than twenty (20) Curies (0.74 TBq) of special form plutonium-244; or

The package contains only LSA or SCO radioactive material, provided:

1. The LSA or SCO material has an external radiation dose of less than or equal to one (1) rem/hour (10 mSv/hour), at a distance of three (3) meters from the unshielded material; or

2. The package contains only LSA-1 or SCO-1 material [containing radioactive material having a specific activity not greater than 0.002 microcurie per gram (70 Bq/g).]

~~(3) A licensee shall be exempt from the requirements of this administrative regulation, except that the licensee shall not be exempt from the requirements of Sections 3 and 9 of this administrative regulation, with respect to shipment or carriage of the following, if the packages contain no fissile material, or the fissile material exemption standards of 10 C.F.R. 71.53 are satisfied:~~

~~(a) A package containing no more than Type A quantities of radioactive material;~~

~~(b) A package transported between locations within the United States which contain only americium or plutonium in special form, with an aggregate radioactivity not to exceed twenty (20) curies; or~~

~~(c) A package in which the only radioactive material is LSA material or SCOs, if the external radiation level at three (3) meters from the unshielded material or objects does not exceed one (1) rem/hour (10 mS/hr).~~

~~(4) A licensee shall be exempt from the requirements of this administrative regulation, other than Sections 3 and 9 of this administrative regulation, with respect to shipment or carriage of LSA material in group LSA-1, or SCOs in group SCO-1.]~~

~~(3) [(6-)] A physician licensed by the Commonwealth to dispense drugs in the practice of medicine shall be exempt from Section 4 [3] of this administrative regulation with respect to transport by the physician of radioactive material for use in the practice of medicine. However, a physician operating under this exemption~~

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shall be licensed pursuant to 902 KAR 100:072 [3] or equivalent regulations of the NRC or an agreement state.

Section 4. [3-] Transportation of Licensed Material. (1) A licensee who transports licensed material outside of the confines of his plant or other place of use specified in the cabinet license, or who transports on a public highway, or who delivers licensed material to a carrier for transport, shall:

(a) Comply with the applicable requirements, appropriate to the mode of transport, of the regulations of the U.S. Department of Transportation in 49 C.F.R. 107, 171[470-] through 189, and 390 through 397; and

(b) Assure that special instructions needed to open the package safely are sent to, or have been made available to, the consignee for the consignee's use in accordance with 902 KAR 100:019, Section 28(5).

(2) If the regulations of the U.S. Department of Transportation (DOT) are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the Department of Transportation regulations, specified in subsection (1)(a) of this section, to the same extent as if the shipment was subject to the DOT [administrative] regulations.

Section 5. [4-] General Licenses for Carriers. (1) A general license shall be issued to a common or contract carrier, not exempt under Section 3 [2] of this administrative regulation, to receive, possess, transport, and store radioactive material in the regular course of carriage for another, or storage incident to the transportation and storage, if the transportation and storage is in accordance with the applicable requirements, appropriate to the mode of transport, of the U.S. Department of Transportation relating to the loading and storage of packages, placarding of the transporting vehicle, and incident reporting.

(2) A general license shall be issued to a private carrier to transport radioactive material, if the transportation is in accordance with the applicable requirements, appropriate to the mode of transport, of the U.S. Department of Transportation relating to the loading and storage of packages, placarding of the transporting vehicle, and incident reporting.

(3) The notification of incidents referred to in the U.S. Department of Transportation requirements identified in subsection (1) of this section shall be filed with, or made to, the cabinet.

(4) A person authorized by a general license described in this section, who transports radioactive material, is exempt from the requirements of 902 KAR 100:019 and 902 KAR 100:165.

Section 6. [5-] General License: NRC Approved Packages. (1) A general license shall be issued to a licensee of the cabinet to transport, or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance (CoC), or other approval has been issued by the NRC.

(2) The general license shall apply only to a licensee who:

(a) Has a quality assurance program approved by the NRC as satisfying the provisions of 10 C.F.R. 71.101 through 137;

~~(b)[(a)]~~ Has a copy of the certificate of compliance, or other approval of the package, and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment;

~~(c)[(b)]~~ Complies with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of this administrative regulation and 10 C.F.R. 71.0 through 71.11, 71.81 through 71.100, and 71.101 through 71.137; ~~(e) Has registered with the NRC prior to first use of the package;~~

~~(d) Has a quality assurance program, as required by 10 C.F.R. 71.103 through 71.137, approved by the NRC; and~~

~~(d)[(e)]~~ Submits in writing to Document Control Desk, [the] Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, using an appropriate method listed in 10 C.F.R. 71.1(a), before the licensee's first use of the package, the licensee's name and license number and the package identification number specified in the package approval.

(3) The general license identified in subsection (1) of this section

shall apply only if the package approval authorizes use of the package under the general license.

(4) For a Type B or fissile material package, the design of which was approved by the NRC before April 1, 1996, the general license shall be subject to additional restrictions contained in Section 7 [6] of this administrative regulation.

Section 7. [6-] Previously Approved Type B Packages. (1) A Type B package previously approved by the NRC, but not designated as B(U) or B(M) in the NRC Certificate of Compliance, may be used under the general license of Section 6 [5] of this administrative regulation, with the following limitations:

(a) Fabrication of the packaging was satisfactorily completed before August 31, 1986, as demonstrated by its model number, in accordance with NRC regulations;

(b) The package shall not be used for a shipment to a location outside the United States after August 31, 1986, except under multilateral approval by the U.S. Department of Transportation, as defined in 49 C.F.R. 173.403; and

(2) A serial number that uniquely identifies each package that conforms to the approved design is assigned to, and legibly and durably marked on, the outside of each package.

(3) A Type B(U) package, a Type B(M) package, an LSA material package, or a fissile material package, previously approved by the NRC but without the designation "-85" in the identification number of the NRC Certificate of Compliance, may be used under the general license of Section 6 [5] of this administrative regulation, with the following conditions:

(a) Fabrication of the package shall have been satisfactorily completed by April 1, 1999, as demonstrated by its model number, in accordance with NRC regulations;

(b) A package used for shipment to a location outside the United States shall be subject to multilateral approval by the U.S. Department of Transportation, as defined in 49 C.F.R. 173.403; and

(c) A serial number that uniquely identifies each package that conforms to the approved design shall be assigned to, and legibly and durably marked on the outside of, each package.

Section 8. [7-] General License: DOT Specification Container.

(1) A general license shall be issued to a licensee of the cabinet to transport, or to deliver to a carrier for transport, licensed material in a specification container for fissile material, or for a Type B quantity of radioactive material, as specified in 49 C.F.R. Parts 173 and 178.

(2) The general license shall apply only to a licensee who:

(a) Has a quality assurance program approved by the cabinet as satisfying the requirements of 10 C.F.R. 71.101 [74.403] through 71.137 [74.436];

(b) Has a copy of the specification; and

(c) Complies with the terms and conditions of the specification, and the applicable requirements of this administrative regulation and 10 C.F.R. 71.0 through 71.11, 71.81 through 71.100, and 71.101 through 71.137.

(3) The general license shall be subject to the limitation that the specification container shall not be used for a shipment to a location outside the United States except by multilateral approval, as defined in 49 C.F.R. 173.403.

(4) This section expires October 1, 2008.

Section 9. [8-] General License: Use of Foreign Approved Package. (1)(a) A general license shall be issued to a licensee of the cabinet to transport, or to deliver to a carrier for transport, licensed material in a package, the design of which has been approved in a foreign national competent authority certificate and revalidated [validated] by the U.S. Department of Transportation as meeting the applicable requirements of 49 C.F.R. 171.12.

(b) Except as provided in this section, the general license shall apply only to a licensee who has a quality assurance program approved by the NRC as satisfying the applicable provisions of 10 C.F.R. 71.101 through 71.137.

(2) The general license shall apply only to shipments made to or from locations outside the United States.

(3) The general license shall apply to a licensee who:

(a) Has copies of the applicable certificate, the revalidation, the drawings, and other documents referenced in the certificate relating to the:

1. Use and maintenance of the packaging; and
2. Actions to be taken prior to shipment; and

(b) Complies with the terms and conditions of the certificate and revalidation [~~validation~~], and with the applicable requirements of this administrative regulation and 10 C.F.R. 71.0 through 71.11, 71.81 through 71.100, and 71.101 through 71.137.

(4) With respect to the quality assurance provisions of 10 C.F.R. 71.101 through 71.137, the licensee shall be exempt from design, construction, and fabrication considerations.

Section 10. [9.] Preliminary Determinations. Before the first use of a packaging for the shipment of radioactive material:

(1) The licensee shall ascertain that there are no cracks, pin-holes, uncontrolled voids, or other defects which may significantly reduce the effectiveness of the packaging;

(2) If the maximum normal operating pressure will exceed thirty-five (35) kilopascal (five (5) lbf/in²) gauge, the licensee shall test the containment system at an internal pressure at least fifty (50) percent higher than the maximum normal operating pressure [~~in order~~] to verify the capability of that system to maintain its structural integrity at that pressure; and[-]

(3) The licensee shall mark the packaging [~~package~~], conspicuously and durably, with its model number, serial number, gross weight, and a package identification number assigned by the NRC. Before applying the model number, the licensee shall determine that the packaging has been fabricated in accordance with the design approved by the NRC.

Section 11. [40.] Routine Determinations. Before making a shipment of licensed material, the licensee shall ensure that the package with its contents satisfies the applicable requirements of this administrative regulation and of the license. The licensee shall determine that:

(1) The package is proper for the contents to be shipped;

(2) The package is in unimpaired physical condition except for superficial defects, such as marks or dents;

(3) Each closure device of the packaging, including any required gasket, is properly installed and secured and free of defects;

(4) A system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;

(5) A pressure relief device is operable and set in accordance with written procedures;

(6) The package has been loaded and closed in accordance with written procedures;

(7) For fissile material, any moderator or neutron absorber, if required, is present and in proper condition;

(8) A structural part of the package which could be used to lift or tie down the package during transport is rendered inoperable for that purpose unless it satisfies design requirements specified by 10 C.F.R. 71.45.

(9) The level of nonfixed, or removable, radioactive contamination on the external surfaces of each package offered for shipment is ALARA, and within the limits specified by the U.S. Department of Transportation in 49 C.F.R. 173.443;

(10) External radiation levels around the package and around the vehicle, if applicable, shall not exceed the limits specified in 49 C.F.R. 71.47 during transportation.

(11) Accessible package surface temperatures shall not exceed the limits specified in 10 C.F.R. 71.43(g) at any time during transportation.

Section 12. [44.] Air Transport of Plutonium. In addition to the requirements of a general license and exemptions stated in this administrative regulation or included by citation of U.S. Department of Transportation regulations, as may be applicable, the licensee shall assure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless:

(1) The plutonium is contained in a medical device designed for individual human application;

(2) The plutonium is contained in a material in which the specific activity is less than or equal to the activity concentration values for plutonium specified in 10 C.F.R. 71 Appendix A [~~not greater than 0.002 microcurie per gram (70 Bq/g) of material~~] and in which the radioactivity is essentially uniformly distributed;

(3) The plutonium is shipped in a single package containing no more than an A₂ quantity of plutonium in an isotope or form and is shipped in accordance with Section 4 [3] of this administrative regulation;

(4) The plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the NRC; or

(5) For a shipment of plutonium by air which is subject to subsection (4) of this section, the licensee shall, through special arrangement with the carrier, require compliance with 49 C.F.R. 175.704, applicable to the air transport of plutonium; [-]

(6) Nothing in this section shall be interpreted as removing or diminishing the requirements of 10 C.F.R. 73.24.

Section 13. [42.] Advance Notification of Transport of Irradiated Reactor Fuel and Nuclear Waste. (1)(a) Before the transport of nuclear waste outside of the confines of the licensee's facility or other place of use or storage, or before the delivery of nuclear waste to a carrier for transport, a licensee shall provide advance notification of the transport to the governor, or governor's designee, of each state through which the waste will be transported.

(b) Advance notification shall be required for shipments of irradiated reactor fuel in quantities less than that subject to advance notification requirements in 10 C.F.R. 73.37(f).

(2) Advance notification shall also be required for licensed material, other than irradiated fuel, if:

(a) The nuclear waste is required to be in Type B packaging for transportation;

(b) The nuclear waste is being transported to, through, or across a state boundary to a disposal site, or to a collection point for transport to a disposal site; and

(c) The quantity of licensed material in a single package exceeds the least of the following:

1. 3,000 times the A₁ value of the radionuclides as specified in 10 C.F.R. 71 Appendix A [~~Section 13 of this administrative regulation~~] for special form radioactive material;

2. 3,000 times the A₂ value of the radionuclides as specified in 10 C.F.R. 71 Appendix A [~~Section 13 of this administrative regulation~~] for normal form radioactive material; or

3. 27,000 curies (1000 TBq).

(3) Each advance notification shall be in writing and contain the following information:

(a) The name, address, and telephone number of the shipper, carrier, and receiver of the shipment;

(b) A description of the nuclear waste contained in the shipment as required by 49 C.F.R. 172.202 and 172.203(d);

(c) The point of origin of the shipment and the seven (7) day period during which departure of the shipment is estimated to occur;

(d) The seven (7) day period during which arrival of the shipment at state boundaries is estimated to occur;

(e) The destination of the shipment, and the seven (7) day period during which arrival of the shipment is estimated to occur; and

(f) A point of contact with a telephone number for current shipment information.

(4) The notification shall be made in writing to the office of each appropriate governor or governor's designee and to the cabinet. A notification delivered by mail shall be postmarked at least seven (7) days before the beginning of the seven (7) day period during which departure of the shipment is estimated to occur. A notification delivered by messenger shall reach the office of the governor, or governor's designee, at least four (4) days before the beginning of the seven (7) day period during which departure of the shipment is estimated to occur. A copy of the notification shall be retained by the licensee for three (3) years.

(5) The licensee who finds that schedule information previously furnished will not be met, shall telephone a responsible individual in the office of the

governor, or governor's designee and the cabinet and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain for three (3) years a record of the name of the individual contacted.

(6) A licensee who cancels a nuclear waste shipment, for which advance notification has been sent, shall send a cancellation notice to the governor, or governor's designee, of each appropriate state and to the cabinet. The licensee shall state in the notice that it is a cancellation and shall identify the advance notification that is being cancelled. A copy of the notice shall be retained by the licensee for three (3) years.

Section 14. Exemption from Classification as Fissile Material. Fissile material meeting the requirements of at least one (1) of the subsections (1) through (6) of this section are exempt from classification as fissile material and from the fissile material package standards of 10 C.F.R. 71.55 and 71.59, but are subject to all other requirements of this administrative regulation, except as noted.

(1) Individual package containing two (2) grams or less fissile material;

(2) Individual or bulk packaging containing fifteen (15) grams or less of fissile material provided the package has at least 200 grams of solid nonfissile material for every gram of fissile material. Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but shall not be included in determining the required mass for solid nonfissile material;

(3)(a) Low concentrations of solid fissile material commingled with solid nonfissile material, provided that:

1. There is at least 2000 grams of solid nonfissile material for every gram of fissile material; and

2. There is no more than 180 grams of fissile material distributed within 360 kilograms of contiguous nonfissile material.

(b) Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but shall not be included in determining the required mass of solid nonfissile material.

(4) Uranium enriched in uranium-235 to a maximum of one (1) percent by weight, and with total plutonium and uranium content of up to one (1) percent of the mass of uranium-235, provided that the mass of any beryllium, graphite, and hydrogenous material enriched in deuterium constitutes less than five (5) percent of the uranium mass;

(5) Liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of two (2) percent by mass, with a total plutonium and uranium-233 content not exceeding two one-thousands (0.002) percent of the mass of uranium, and with a minimum nitrogen to uranium atomic ratio (N/U) of two (2). The material shall be contained in at least a DOT Type A package.

(6) Packages containing, individually, a total plutonium mass of not more than 1,000 grams, of which not more than twenty (20) percent by mass may consist of plutonium-239, plutonium-241, or any combination of these radionuclides.

Section 15. General License: Fissile Material (1) A general license is issued to any licensee of the cabinet to transport fissile material, or to deliver fissile material to a carrier for transport, if the material is shipped in accordance with this section of this administrative regulation. The fissile material need not be contained in a package which meets the standards of 10 C.F.R. 71.41 through 71.65 and 71.71 through 71.77, however, the material shall be contained in a Type A package. The Type A package shall also meet the DOT requirements of 49 C.F.R. 173.417(a).

(2) The general license shall apply only to a licensee who has a quality assurance program approved by the U.S. Nuclear Regulatory Commission as satisfying the provisions of 10 C.F.R. 71.101 through 71.137.

(3) The general license shall apply only when a package's contents:

(a) Contain less than a Type A quantity of radioactive material; and

(b) Contain less than 500 total grams of beryllium, graphite, or hydrogenous material enriched in deuterium.

(4) The general license shall apply only to packages containing

fissile material that are labeled with a Criticality Safety Index (CSI) which:

(a) Has been determined in accordance with subsection (5) of this section;

(b) Has a value less than or equal to ten (10); and

(c) For a shipment of multiple packages containing fissile material, the sum of the CSIs shall be less than or equal to fifty (50), for shipment on a nonexclusive use conveyance, and less than or equal to 100, for shipment on an exclusive use conveyance.

(5)(a) The value for the CSI shall be greater than or equal to the number calculated by the following equation:

$$CSI = 10 \left(\frac{\text{grams of U-235}}{X} + \frac{\text{grams of U-233}}{Y} + \frac{\text{grams of Pu}}{Z} \right)$$

(b) The calculated CSI shall be rounded up to the first decimal place;

(c) The values of X, Y, and Z used in the CSI equation shall be taken from 10 C.F.R. 71 Appendix A, Table A-1 or A.2, as appropriate;

(d) If Table A-2 is used to obtain the value of X, then the values of the terms in the equation for uranium-233 and plutonium shall be assumed to be zero (0); and

(e) Table A-1 values for X, Y, and X shall be used to determine the CSI if:

1. Uranium-233 is present in the package;

2. The mass of plutonium exceeds one (1) percent of the mass of uranium-235;

3. The uranium is of unknown uranium-235 enrichment or greater than twenty-four (24) percent enrichment; or

4. Substances having a moderating effectiveness (an average hydrogen density greater than water), such as, certain hydrocarbons oils or plastics, are present in any form, except as polyethylene used for packaging or wrapping.

Section 16. General License: Plutonium-beryllium Special Form Material. (1) A general license is issued to any licensee of the cabinet to transport fissile material in the form of plutonium-beryllium (Pu-Be) special form sealed sources, or to deliver Pu-Be sealed sources to a carrier for transport, if the material is shipped in accordance with this section of this administrative regulation. This material need not be contained in a package which meets the standards of 10 C.F.R. 71.41 through 71.65 and 71.71 through 71.77, however, the material shall be contained in a Type A package. The Type A package shall also meet the DOT requirements of 49 C.F.R. 173.417(a).

(2) The general license shall apply only to a licensee who has a quality assurance program approved by the U.S. Nuclear Regulatory Commission as satisfying the provisions of 10 C.F.R. 71 Subpart H.

(3) The general licensee applies only when a package's contents:

(a) Contain less than a Type A quantity of radioactive material; and

(b) Contain less than 1000 grams of plutonium, provided that plutonium-239, plutonium-241, or any combination of these radionuclides, constitutes less than 240 grams of the total quantity of plutonium in the package.

(4) The general license applies only to packages labeled with a CSI which:

(a) Has been determined in accordance with subsection (5) of this section;

(b) Has a value less than or equal to 100; and

(c) For a shipment of multiple packages containing Pu-Be sealed sources, the sum of the CSIs shall be less than or equal to fifty (50), for shipment on a nonexclusive use conveyance and less than or equal to 100, for shipment on an exclusive use conveyance.

(5)(a) The value for the CSI shall be greater than or equal to the number calculated by the following equation:

$$CSI = 10 \left(\frac{\text{Grams of Pu-239} + \text{grams of Pu-241}}{24} \right) \quad \text{and:}$$

(b) The calculated CSI shall be rounded up to the first decimal place.

Section 17. External Radiation Standards for all Packages. (1) Except as provided in subsection (2) of this section, a package of radioactive materials offered for transportation shall be designed and prepared for shipment so that under conditions normally incident to transportation the radiation level shall not exceed 200 millirem/hour (mrem/h) (2 millisieverts/h) (2 mSv/h) at any point on the external surface of the package, and the transport index shall not exceed ten (10).

(2) A package that exceeds the radiation level limits specified in subsection (1) of this section shall be transported by exclusive use shipment only, and the radiation levels for the shipment shall not exceed the following during transportation:

(a) 200 mrem/h (2 mSv/h) on the external surface of the package, unless the following conditions are met, in which case the limit is 1000 mrem/h (10 mSv/h):

1. The shipment is made in a closed transport vehicle;
2. The package is secured within the vehicle so that its position remains fixed during transportation; and
3. There are no loading or unloading operations between the beginning and end of the transportation;

(b) 200 mrem/h (2 mSv/h) at any point on the outer surface of the vehicle, including the top and underside of the vehicle, or in case of a flat-bed style vehicle, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load or enclosure, if used, and on the lower external surface of the vehicle; and

(c) 1. Ten (10) mrem/h (0.1 mSv/h) at any point eighty (80) inches (2 meters) from the outer lateral surface of the vehicle, excluding the top and underside of the vehicle; or

2. In the case of a flat-bed style vehicle, at any point six and six tenths (6.6) feet (2 meters) from the vertical planes projected by the outer edges of the vehicle, excluding the top and underside of vehicle; and

(d) Two (2) mrem/h (0.02 mSv/h) in any normally occupied space, except that this provision shall not apply to private carriers, if exposed personnel under their control wear radiation dosimetry devices as required by 902 KAR 100:019, Section 13.

(3) For shipments made under the provisions of subsection (2) of this section, the shipper shall provide specific written instructions to the carrier for maintenance of the exclusive use shipment controls. The instructions shall be included with the shipping paper information.

(4) The written instructions required for exclusive use shipments shall be sufficient so that, when followed, they will cause the carrier to avoid actions that will unnecessarily delay delivery or unnecessarily result in increased radiation levels or radiation exposure to transport workers or members of the general public.

Section 18. Assumption as to Unknown Properties. When the isotopic abundance, mass, concentration, degree of moderation, or other pertinent property of fissile material in any package is not known, the licensee shall package the fissile material as if the unknown properties have credible values that will cause the maximum neutron multiplication.

Section 19. Opening Instructions. Before delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to safely open the package have been sent to, or otherwise made available to, the consignee for the consignee's use in accordance with 902 KAR 100:019, Section 28(5).

Section 20. Quality Assurance Requirements. (1) The requirements in Sections 20 through 28 shall apply to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging important to safety. As used in this administrative regulation, quality assurance comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service.

(2) Quality assurance includes quality control, which comprises

those quality assurance actions related to control of the physical characteristics and quality of the material or component to pre-determined requirements.

(3) The licensee, certificate holder, and applicant for a CoC are responsible for the quality assurance requirements as they apply to design, fabrication, testing, and modification of packaging.

(4) A licensee is responsible for the quality assurance provision which applies to its use of a packaging for the shipment of licensed material subject to this administrative regulation.

(5) A licensee, certificate holder, and applicant for a CoC shall:
1. Establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of 10 C.F.R. 71.101 through 71.137 and satisfying any specific provisions that are applicable to the licensee's activities including procurement of packaging; and

2. Execute the applicable criteria in a graded approach to an extent that is commensurate with the quality assurance requirement's importance to safety.

(6) A licensee shall, before the use of a package for the shipment of licensed material subject to this administrative regulation, obtain U.S. Nuclear Regulatory Commission approval of its quality assurance program. Using an appropriate method listed in 10 C.F.R. 71.1(a), a licensee shall file a description of its quality assurance program, including a discussion of which requirements of this administrative regulation are applicable and how they will be satisfied, by submitting the description to: Attention: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

(7) A program for transport container inspection and maintenance limited to radiographic exposure devices, source changers, or packages transporting these devices and meeting the requirements of 902 KAR 100:100, Section 9(3) is deemed to satisfy the requirements of Section 6(2)(a) and subsection (5) of this section.

Section 21. Quality Assurance Organization. (1) The licensee, certificate holder, and applicant for a Certificate of Compliance (CoC) shall be responsible for the establishment and execution of the quality assurance program. The licensee, certificate holder, and applicant for a CoC may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part of the quality assurance program, but shall retain responsibility for the program. These activities include performing the functions associated with attaining quality objectives and the quality assurance functions.

(2) The quality assurance functions are:

(a) Assuring an appropriate quality assurance program is established and effectively executed; and

(b) Verifying, by procedures such as checking, auditing, and inspection, that activities affecting the functions that are important to safety have been correctly performed.

(3) The persons and organizations performing quality assurance functions shall have sufficient authority and organizational freedom to:

(a) Identify quality problems;

(b) Initiate, recommend, or provide solutions; and

(c) Verify implementation of solutions.

(4) While the term "licensee" is used, the requirements in this section shall be applicable to whatever design, fabrication, assembly, and testing of the package is accomplished with respect to a package before the time a package approval is issued.

Section 22. Quality Assurance Program. (1) The licensee, certificate holder, and applicant for a Certificate of Compliance (CoC) shall establish, at the earliest practicable time consistent with the schedule for accomplishing the activities, a quality assurance program that complies with the requirements of 10 C.F.R. 71.101 through 71.137. The licensee, certificate holder, and applicant for a CoC shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which the packaging is used. The licensee, certificate holder, and applicant for a CoC shall identify the material and components to be covered by the quality assurance program, the major organiza-

tions participating in the program and the designated functions of these organizations.

(2) The licensee, certificate holder, and applicant for a CoC, through its quality assurance program, shall provide control over activities affecting the quality of the identified materials and components to an extent consistent with their importance to safety, and as necessary to assure conformance to the approved design of each individual package used for the shipment of radioactive material. The licensee, certificate holder, and applicant for a CoC shall assure that activities affecting quality are accomplished under suitably controlled conditions. Controlled conditions include the use of appropriate equipment; suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and assurance that all prerequisites for the given activity have been satisfied. The licensee, certificate holder, and applicant for a CoC shall take into account the need for special controls, processes, test equipment, tools, and skills to attain the required quality, and the need for verification of quality by inspection and test.

(3) The licensee, certificate holder, and applicant for a CoC shall base the requirements and procedures of its quality assurance program on the following conditions concerning the complexity and proposed use of the package and its components:

(a) The impact of malfunction or failure of the item to safety;

(b) The design and fabrication complexity or uniqueness of the item;

(c) The need for special controls and surveillance over processes and equipment;

(d) The degree to which functional compliance can be demonstrated by inspection or test; and

(e) The quality history and degree of standardization of the item.

(4) The licensee, certificate holder, and applicant for a CoC shall provide for indoctrination and training of personnel performing activities affecting quality, as necessary, to assure that suitable proficiency is achieved and maintained.

(5) The licensee, certificate holder, and applicant for a CoC shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall review regularly the status and adequacy of that part of the quality assurance program they are executing.

Section 23. Handling, Storage, and Shipping Control. The licensee, certificate holder, and applicant for a CoC shall establish measures to control, in accordance with instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to be used in packaging to prevent damage or deterioration. When necessary for particular products, special protective environments, such as inert gas atmosphere, and specific moisture content and temperature levels shall be specified and provided.

Section 24. Inspection, Test and Operating Status. (1) The licensee, certificate holder, and applicant for a CoC shall establish measures to indicate, by the use of markings such as stamps, tags, labels, routing cards, or other suitable means, the status of inspections and tests performed upon individual items of the packaging. These measures shall provide for the identification of items that have satisfactorily passed required inspections and tests, where necessary to preclude inadvertent by passing of the inspections and tests.

(2) The licensee shall establish measures to identify the operating status of components of the packaging, such as tagging valves and switches, to prevent inadvertent operation.

Section 25. Nonconforming Materials, Parts, or Components. The licensee, certificate holder, and applicant for a CoC shall establish measures to control materials, parts, or components that do not conform to the licensee's requirements to prevent their inadvertent use or installation. These measures shall include, as appropriate, procedures for identification, documentation, segregation, disposition, and notification to affected organizations. Nonconforming items shall be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.

Section 26. Corrective Action. The licensee, certificate holder, and applicant for a CoC shall establish measures to assure that conditions adverse to quality, such as deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected. In the case of a significant condition adverse to quality, the measures shall assure that the cause of the condition is determined and corrective action taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken shall be documented and reported to appropriate levels of management.

Section 27. Quality Assurance Records. (1) The licensee, certificate holder, and applicant for a CoC shall maintain sufficient written records to describe the activities affecting quality. The records shall include the instructions, procedures, and drawings required by 10 C.F.R. 71.111 to prescribe quality assurance activities and shall include closely related specifications such as required qualifications of personnel, procedures, and equipment.

(2) The records shall include the instructions or procedures which establish a records retention program that is consistent with applicable regulations and designates factors such as duration, location, and assigned responsibility.

(3) The licensee, certificate holder, and applicant for a CoC shall retain these records for three (3) years beyond the date when the licensee, certificate holder, applicant for a CoC last engage in the activity for which the quality assurance program was developed. If any portion of the written procedures or instructions is superseded, the licensee, certificate holder, and applicant for CoC shall retain the superseded material for three (3) years after it is superseded.

Section 28. Audits. (1) The licensee, certificate holder, and applicant for a CoC shall carry out a comprehensive system of planned and periodic audits to verify compliance with all aspects of the quality assurance program and to determine the effectiveness of the program.

(2) The audits shall be performed in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the areas being audited.

(3) Audited records shall be documented and reviewed by management having responsibility in the area audited.

(4) Followup action, including reaudit of deficient areas, shall be taken where indicated.

Section 29. [Section 43.] Determination of A_1 and A_2 . (1) Values of A_1 and A_2 shall be determined as described in 10 C.F.R. 71 Appendix A for individual radionuclides, which are the bases for activity limits cited elsewhere in these administrative regulations, are established in Table A-1 of subsection (6) of this section. The curie (Ci) values specified shall be obtained by converting from the Terabecquerel (TBq) figure. The curie values shall be expressed to three (3) significant digits to assure that the difference in the TBq and Ci quantities is one tenth (.1) of one (1) percent or less. Where values of A_1 or A_2 are unlimited, it shall be for radiation control purposes only. For nuclear criticality safety, some materials shall be subject to controls placed on fissile material.

(2) For individual radionuclides with known identities, but not listed in Table A-1 of subsection (6) of this section, the determination of the values of A_1 and A_2 shall require commission approval, except that the values of A_1 and A_2 in Table A-2 may be used without obtaining cabinet approval.

(3) In the calculations of A_1 and A_2 for a radionuclide not in Table A-1 of subsection (6) of this section, a single radioactive decay chain, in which radionuclides are present in their naturally occurring proportions, and in which no daughter nuclide has a half-life either longer than ten (10) days, or longer than that of the parent nuclide, shall be considered as a single radionuclide, and the activity to be taken into account. The A_1 or A_2 value to be applied shall correspond to the parent nuclide of that chain. In the case of radioactive decay chains in which any daughter nuclide has a half-life either longer than ten (10) days, or greater than that of the parent nuclide, the parent and those daughter nuclides shall be

considered as mixtures of different nuclides.

(4) For mixtures of radionuclides the identities and respective activities of which are known, the following conditions shall apply:

(a) For special form radioactive material, the maximum quantity transported in a Type A package:

$$\sum \frac{Q(i)}{A_1(i)} \text{ less than or equal to } 1$$

(b) For normal form radioactive material, the maximum quantity

$$\sum \frac{B(i)}{A_2(i)}$$

transported in a Type A package: $\sum \frac{B(i)}{A_2(i)}$ less than or equal to 1
Where B(i) is the activity of radionuclide i and A₁(i) and A₂(i) are the A₁ and A₂ values for radionuclide i, respectively. Alternatively, an A₁ value for mixtures of special form material may be determined

$$\frac{1}{\sum \frac{f(i)}{A_1(i)}}$$

as follows: A₁ for mixture =

Where f(i) is the fraction of activity of nuclide i in the mixture and A₁(i) is the appropriate A₁ value for nuclide i. An A₂ value for mixtures of normal form material may be determined as follows:

$$\frac{1}{\sum \frac{f(i)}{A_2(i)}}$$

A₂ for mixture =

Where f(i) is the fraction of activity of nuclide i in the mixture and A₂(i) is the appropriate A₂ value for nuclide i.

(5) If the identity of each radionuclide is known, but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped and the lowest A₁ or A₂ value, as appropriate, for the radionuclides in each group may be used in applying the formulas in subsection (4) of this section. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest A₁ or A₂ values for the alpha emitters and beta/gamma.

(6) Table A-1: Values of A₁, A₂, and specific activities of radionuclides.

Symbol of Radionuclide	Element and atomic number	-		Specific Activity (Ci/g)
		A ₁ (Ci)	A ₂ (Ci)	
Ac-225	Actinium (89)	46.2	0.270	5.8x10 ⁴
Ac-227		1080	5.41x10 ⁻⁴	7.2x10 ⁴
Ac-228		46.2	10.8	2.2x10 ⁵
Ag-105	Silver (47)	54.1	54.1	3.0x10 ⁴
Ag-108m		46.2	46.2	2.6x10 ⁴
Ag-110m		40.8	10.8	4.7x10 ³
Ag-111		46.2	13.5	1.6x10 ⁵
Al-26	Aluminum (13)	10.8	10.8	1.9x10 ⁻³
Am-241	Americium (95)	54.1	5.41x10 ⁻³	3.4
Am-242m		54.1	5.41x10 ⁻³	1.0x10 ⁴
Am-243		54.1	5.41x10 ⁻³	2.0x10 ⁴
Ar-37	Argon (18)	1080	1080	9.9x10 ⁴
Ar-39		541	541	3.4x10 ⁴
Ar-41		46.2	46.2	4.2x10 ⁷
Ar-42		5.41	5.41	2.6x10 ²
As-72	Arsenic (33)	5.41	5.41	1.7x10 ⁵
As-73		1080	1080	2.2x10 ⁴
As-74		27.0	13.5	9.9x10 ⁴
As-76		5.41	5.41	1.6x10 ⁵
As-77		541	13.5	1.0x10 ⁵
At-211	Astatine (85)	811	54.1	2.1x10 ⁵
Au-193	Gold (79)	162	162	9.2x10 ⁵
Au-194		27.0	27.0	4.1x10 ⁵
Au-195		270	270	3.7x10 ⁵
Au-196		54.1	54.1	1.1x10 ⁵

Au-198		81.1	13.5	2.4x10 ⁵
Au-199		270	24.3	2.1x10 ⁵
Ba-131	Barium (56)	54.1	54.1	8.4 x10 ⁴
Ba-133m		270	24.3	6.1x10 ⁵
Ba-133		81.1	81.1	2.6x10 ²
Ba-140		10.8	10.8	7.3x10 ⁴
Be-7	Beryllium (4)	541	541	3.5x10 ⁵
Be-10		541	13.5	2.2x10 ⁻²
Bi-205	Bismuth (83)	16.2	16.2	4.2x10 ⁴
Bi-206		8.11	8.11	1.0x10 ⁵
Bi-207		18.9	18.9	5.2x10 ⁴
Bi-210m		8.11	0.811	5.7x10 ⁻⁴
Bi-210		16.2	13.5	1.2x10 ⁵
Bi-212		8.11	8.11	1.5x10 ⁷
Bk-247	Berkelium (97)	54.1	5.41x10 ⁻³	1.0
Bk-249		1080	2.16	1.6x10 ³
Br-76	Bromine (35)	8.11	8.11	2.5x10 ⁵
Br-77		81.1	81.1	7.1x10 ⁵
Br-82		10.8	10.8	1.1x10 ⁵
C-11	Carbon (6)	27	13.5	8.4x10 ⁵
C-14		1080	54.1	4.5
Ca-41	Calcium (20)	1080	1080	8.5x10 ⁻²
Ca-45		1080	24.3	1.8x10 ⁴
Ca-47		24.3	13.5	6.1x10 ⁵
Cd-109	Cadmium (48)	1080	27.0	2.6x10 ³
Cd-113m		541	2.43	2.2x10 ²
Cd-115m		8.11	8.11	2.5x10 ⁴
Cd-115		108	13.5	5.1x10 ⁵
Ce-139	Cerium (58)	162	162	6.8x10 ⁵
Ce-141		270	13.5	2.8x10 ⁴
Ce-143		16.2	13.5	6.6x10 ⁵
Ce-144		5.41	5.41	3.2x10 ³
Cf-248	Californium (98)	811	8.11x10 ⁻²	1.6x10 ³
Cf-249		54.1	5.41x10 ⁻³	4.1
Cf-250		135	1.35x10 ⁻²	1.1x10 ²
Cf-251		54.1	5.41x10 ⁻³	1.6
Cf-252		2.70	2.70x10 ⁻²	5.4x10 ²
Cf-253		1080	1.62	2.9x10 ⁴
Cf-254		8.11x10 ⁻²	1.62x10 ⁻²	8.5x10 ³
Cl-36	Chlorine (17)	541	13.5	3.3x10 ²
Cl-38		5.41	5.41	1.3x10 ⁵
Cm-240	Curium (96)	1080	0.541	2.0x10 ⁴
Cm-241		54.1	24.3	1.7x10 ⁴
Cm-242		1080	0.270	3.3x10 ³
Cm-243		81.1	8.11x10 ⁻³	5.2x10 ⁴
Cm-244		108	1.08x10 ⁻²	8.1x10 ⁴
Cm-245		54.1	5.41x10 ⁻³	1.7x10 ⁴
Cm-246		54.1	5.41x10 ⁻³	3.1x10 ⁴
Cm-247		54.1	5.41x10 ⁻³	9.3x10 ⁵
Cm-248		1.08	1.35x10 ⁻³	4.2x10 ³
Co-55	Cobalt (27)	13.5	13.5	3.1x10 ⁵
Co-56		8.11	8.11	3.0x10 ⁴
Co-57		216	216	8.4x10 ³
Co-58m		1080	1080	5.9x10 ⁵
Co-58		27.0	27.0	3.2x10 ⁴
Co-60		10.8	10.8	1.1x10 ³
Cr-51	Chromium (24)	811	811	9.2x10 ⁴
Cs-129	Cesium (55)	108	108	7.6x10 ⁵
Cs-131		1080	1080	1.0x10 ⁵
Cs-132		27.0	27.0	1.5x10 ⁵
Cs-134m		1080	243	8.0x10 ⁵
Cs-134		16.2	13.5	1.3x10 ³
Cs-135		1080	24.3	1.2x10 ³
Cs-136		13.5	13.5	7.3x10 ⁴
Cs-137		54.1	13.5	8.7x10 ⁴
Cu-64	Copper (29)	135	24.3	3.9x10 ⁵

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Cu-67		243	24.3	7.6x10 ⁵
Dy-169	Dysprosium (66)	541	541	5.7x10 ²
Dy-166		16.2	13.5	8.2x10 ⁵
Dy-166		8.11	8.11	2.3x10 ⁵
Er-169	Erbium (68)	1080	24.3	8.3x10 ⁴
Er-171		16.2	13.5	2.4x10 ⁵
Es-253	Einsteinium (99)	5400	5.41x10 ⁻¹	-
Es-254		811	8.11x10 ⁻²	-
Es-254m		16.2	10.8	-
Es-255		-	-	-
Eu-147	Europium (63)	54.1	54.1	3.7x10 ⁴
Eu-148		13.5	13.5	1.6x10 ⁴
Eu-149		541	541	9.4x10 ³
Eu-150		18.9	18.9	1.6x10 ⁵
Eu-152m		16.2	13.5	2.2x10 ⁵
Eu-152		24.3	24.3	1.8x10 ⁴
Eu-154		21.6	13.5	2.6x10 ²
Eu-155		541	54.1	4.9x10 ²
Eu-156		16.2	13.5	5.5x10 ⁴
F-18	Fluorine (9)	27.0	13.5	9.5x10 ⁻¹
Fe-52	Iron (26)	5.41	5.41	7.3x10 ⁵
Fe-55		1080	1080	2.4x10 ³
Fe-59		21.6	21.6	5.0x10 ⁴
Fe-60		1080	5.41	2.0x10 ⁻²
Fm-255	Fermium (100)	1080	21.6	-
Fm-257		270	2.16x10 ⁻¹	-
Ga-67	Gallium (31)	162	162	6.0x10 ⁵
Ga-68		8.11	8.11	4.1x10 ⁷
Ga-72		10.8	10.8	3.1x10 ⁵
Gd-146	Gadolinium (64)	10.8	10.8	1.9x10 ⁴
Gd-148		81.1	8.11x10 ⁻³	3.2x10 ⁴
Gd-153		270	135	3.5x10 ³
Gd-159		108	13.5	1.1x10 ⁵
Ge-68	Germanium (32)	8.11	8.11	7.1x10 ³
Ge-71		1080	1080	1.6x10 ⁵
Ge-77		8.11	8.11	3.6x10 ⁵
H-3	Hydrogen (1)	-	-	-
Hf-172	Hafnium (72)	13.5	8.11	1.1x10 ³
Hf-175		81.1	81.1	1.1x10 ⁴
Hf-181		54.1	24.3	1.7x10 ⁴
Hf-182		108	0.811	2.2x10 ⁻⁴
Hg-194	Mercury (80)	27.0	27.0	3.5
Hg-195m		135	135	4.0x10 ⁵
Hg-197m		270	24.3	6.7x10 ⁵
Hg-197		270	270	2.5x10 ⁵
Hg-203		108	24.3	1.4x10 ⁴
Ho-163	Holmium (67)	1080	1080	7.6x10 ⁴
Ho-166m		16.2	8.11	1.8
Ho-166		8.11	8.11	7.0x10 ⁵
I-123	Iodine (53)	162	162	1.9x10 ⁵
I-124		24.3	24.3	2.5x10 ⁵
I-125		541	54.1	1.7x10 ⁴
I-126		54.1	24.3	8.0x10 ⁴
I-129		Unlimited	Unlimited	1.8x10 ⁻⁴
I-131		81.1	13.5	1.2x10 ⁵
I-132		10.8	10.8	1.0x10 ⁷
I-133		16.2	13.5	1.1x10 ⁵
I-134		8.11	8.11	2.7x10 ⁻¹
I-135		16.2	13.5	3.5x10 ⁵
In-111	Indium (49)	54.1	54.1	4.2x10 ⁵
In-113m		108	108	1.7x10 ⁷
In-114m		8.11	8.11	2.3x10 ⁴
In-115m		162	24.3	6.1x10 ⁵
Ir-189	Iridium (77)	270	270	5.2x10 ⁴
Ir-190		18.9	18.9	6.2x10 ⁴

Ir-192		27.0	13.5	9.2x10 ³
Ir-193m		270	270	6.4x10 ⁴
Ir-194		5.41	5.41	8.4x10 ⁵
K-40	Potassium (19)	16.2	16.2	6.4x10 ⁵
K-42		5.41	5.41	6.0x10 ⁵
K-43		27.0	13.5	3.3x10 ⁵
Kr-81	Krypton (36)	1080	1080	2.1x10 ⁻²
Kr-85m		162	162	8.2x10 ⁵
Kr-85		541	270	3.9x10 ⁵
Kr-87		5.41	5.41	2.8x10 ⁷
La-137	Lanthanum (57)	1080	54.1	4.4x10 ⁻²
La-140		10.8	10.8	5.6x10 ⁵
Lu-172	Lutetium (71)	13.5	13.5	1.1x10 ⁵
Lu-173		216	216	1.5x10 ³
Lu-174m		541	216	5.3x10 ³
Lu-174		216	108	6.2x10 ²
Lu-177		811	24.3	1.1x10 ⁵
MFP	For mixed fission products, use formula for mixtures or Table A-2			
Mg-28	Magnesium (12)	5.41	5.41	5.4x10 ⁵
Mn-52	Manganese (25)	8.11	8.11	4.4x10 ⁵
Mn-53		Unlimited	Unlimited	1.8x10 ⁻³
Mn-54		27.0	27.0	7.7x10 ³
Mn-56		5.41	5.41	2.2x10 ⁻¹
Mo-93	Molybdenum (42)	1080	189	1.1
Mo-99		16.2	13.5	4.8x10 ⁵
N-13	Nitrogen (7)	16.2	13.5	1.5x10 ³
Na-22	Sodium (11)	13.5	13.5	6.3x10 ³
Na-24		5.41	5.41	8.7x10 ⁵
Nb-92m	Niobium (41)	18.9	18.9	1.4x10 ⁵
Nb-93m		1080	162	2.4x10 ²
Nb-94		16.2	16.2	1.9x10 ⁻¹
Nb-95		27.0	27.0	3.9x10 ⁴
Nb-97		16.2	13.5	2.7x10 ⁷
Nd-147	Neodymium (60)	108	13.5	8.1x10 ⁻¹
Nd-149		16.2	13.5	1.2x10 ⁷
Ni-59	Nickel (28)	1080	1080	8.0x10 ⁻²
Ni-63		1080	811	5.7x10 ⁻¹
Ni-65		8.11	8.11	1.9x10 ⁻¹
Np-235	Neptunium (93)	1080	1080	1.4x10 ³
Np-236		189	2.70x10 ⁻²	1.3x10 ⁻²
Np-237		54.1	5.41x10 ⁻³	7.1x10 ⁻⁴
Np-239		162	13.5	2.3x10 ⁵
Os-185	Osmium (76)	27.0	27.0	7.5x10 ³
Os-191m		1080	1080	1.3x10 ⁵
Os-191		270	24.3	4.4x10 ⁴
Os-193		16.2	13.5	5.3x10 ⁵
Os-194		5.41	5.41	3.1x10 ²
P-32	Phosphorus (15)	8.11	8.11	2.9x10 ⁵
P-33		1080	24.3	1.6x10 ⁵
Pa-230	Protactinium (91)	54.1	2.70	3.3x10 ⁻¹
Pa-231		16.2	1.62x10 ⁻³	4.7x10 ⁻²
Pa-233		135	24.3	2.1x10 ⁴
Pb-201	Lead (82)	27.0	27.0	1.7x10 ⁵
Pb-202		1080	54.1	3.4x10 ⁻³
Pb-203		81.1	81.1	3.0x10 ⁵
Pb-205		Unlimited	Unlimited	1.2x10 ⁻⁴
Pb-210		16.2	0.243	7.6x10 ⁻¹
Pb-212		8.11	8.11	1.4x10 ⁵
Pd-103	Palladium (46)	1080	1080	7.5x10 ⁴
Pd-107		Unlimited	Unlimited	5.1x10 ⁻⁴
Pd-109		16.2	13.5	2.1x10 ⁵

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Pm-143	Promethium (61)	81.1	81.1	3.4×10^3	Se-46		13.5	13.5	3.4×10^4
Pm-144		16.2	16.2	2.5×10^3	Se-47		24.3	24.3	8.3×10^5
Pm-145		81.1	189	1.4×10^5	Se-48		8.11	8.11	1.5×10^5
Pm-147		1080	24.3	9.3×10^2	Se-75	Selenium (34)	81.1	81.1	1.5×10^4
Pm-148m		13.5	13.5	2.1×10^4	Se-79		1080	54.1	7.0×10^2
Pm-149		16.2	13.5	4.0×10^5	Si-31	Silicon (14)	16.2	13.5	3.9×10^7
Pm-151		81.1	13.5	7.3×10^5	Si-32		1080	5.41	1.1×10^2
Po-208	Polonium (84)	1080	0.541	5.9×10^2	Sm-145	Samarium (62)	541	541	2.6×10^3
Po-209		1080	0.541	1.7×10^4	Sm-147		Unlimited	Unlimited	2.3×10^8
Po-210		1080	0.541	4.5×10^4	Sm-151		1080	108	2.6×10^4
Pr-142	Praseodymium (59)	5.41	5.41	1.2×10^5	Sm-153		108	13.5	4.4×10^5
Pr-143		108	13.5	6.7×10^4	Sn-113	Tin (50)	108	108	1.0×10^4
Pt-188	Platinum (78)	16.2	16.2	6.8×10^4	Sn-117m		162	54.1	8.2×10^4
Pt-191		81.1	81.1	2.4×10^5	Sn-119m		1080	1080	3.7×10^3
Pt-193m		1080	24.3	1.6×10^5	Sn-121m		1080	24.3	5.4×10^4
Pt-193		1080	1080	3.7×10^4	Sn-123		16.2	13.5	8.2×10^3
Pt-195m		270	54.1	1.7×10^5	Sn-125		5.41	5.41	1.1×10^5
Pt-197m		270	24.3	1.0×10^7	Sn-126		8.11	8.11	2.8×10^2
Pt-197		541	13.5	8.7×10^5	Sr-82	Strontium (38)	5.41	5.41	6.2×10^4
Pu-236	Plutonium (94)	189	1.89×10^2	5.3×10^2	Sr-85m		135	135	3.3×10^7
Pu-237		541	541	1.2×10^4	Sr-85		54.1	54.1	2.4×10^4
Pu-238		189	5.41×10^{-3}	1.7×10^4	Sr-87m		81.1	81.1	1.3×10^7
Pu-239		541	5.41×10^{-3}	6.2×10^2	Sr-89		16.2	13.5	2.9×10^4
Pu-240		54.1	5.41×10^{-3}	2.3×10^4	Sr-90		5.41	2.70	1.4×10^2
Pu-241		54.1	0.270	1.0×10^5	Sr-91		8.11	8.11	3.6×10^5
Pu-242		54.1	5.41×10^{-3}	3.9×10^3	Sr-92		21.6	13.5	1.3×10^7
Pu-244		1080	5.41×10^{-3}	1.8×10^5	T	Tritium (1)	1080	1080	9.7×10^3
Ra-223	Radium (88)	54.1	0.811	5.1×10^4	Ta-178	Tantalum (73)	27.0	27.0	1.1×10^3
Ra-224		8.11	1.62	1.6×10^5	Ta-179		811	811	1.1×10^5
Ra-225		16.2	0.541	3.9×10^4	Ta-182		21.6	13.5	6.2×10^5
Ra-226		8.11	0.541	1.0	Tb-157	Terbium (65)	1080	270	1.5×10^4
Ra-228		16.2	1.08	2.7×10^2	Tb-158		27.0	18.9	1.5×10^4
Rb-81	Rubidium (37)	54.1	24.3	8.4×10^5	Tb-160		24.3	13.5	1.1×10^4
Rb-83		54.1	54.1	1.8×10^4	Tc-95m	Technetium (43)	54.1	54.1	2.2×10^4
Rb-84		27.0	24.3	4.7×10^4	Tc-96m		10.8	10.8	3.8×10^7
Rb-86		8.11	8.11	8.1×10^4	Tc-96		10.8	10.8	3.2×10^5
Rb-87		Unlimited	Unlimited	8.6×10^{18}	Tc-97m		1080	1080	1.5×10^4
Rb (natural)		Unlimited	Unlimited	1.8×10^5	Tc-97		Unlimited	Unlimited	1.4×10^3
Re-183	Rhenium (75)	135	135	1.0×10^4	Tc-98		18.9	18.9	8.7×10^4
Re-184m		81.1	81.1	4.3×10^4	Tc-99m		216	216	5.3×10^5
Re-184		27.0	27.0	1.9×10^4	Tc-99		1080	24.3	1.7×10^2
Re-186		108	13.5	1.9×10^5	Tc-118	Tellurium (52)	5.41	5.41	1.8×10^5
Re-187		Unlimited	Unlimited	3.8×10^3	Tc-121m		135	135	7.0×10^3
Re-188		5.41	5.41	9.8×10^5	Tc-121		5.41	5.41	6.4×10^4
Re-189		108	13.5	6.8×10^5	Tc-123m		189	189	8.9×10^3
Re (natural)		Unlimited	Unlimited	2.4×10^{18}	Tc-125m		811	243	1.8×10^4
Rh-99	Rhodium (45)	54.1	54.1	8.2×10^4	Tc-127m		541	13.5	9.4×10^3
Rh-101		108	108	1.1×10^4	Tc-127		541	13.5	2.6×10^5
Rh-102m		54.1	24.3	6.2×10^3	Tc-129m		16.2	13.5	3.0×10^4
Rh-102		13.5	13.5	1.2×10^3	Tc-129		16.2	13.5	2.1×10^7
Rh-103m		1080	1080	3.3×10^7	Tc-131m		18.9	13.5	8.0×10^5
Rh-105		270	24.3	8.4×10^5	Tc-132		10.8	10.8	8.0×10^5
Rn-222	Radon (86)	5.41	0.108	1.5×10^5	Th-227	Thorium (90)	243	0.270	3.1×10^4
Ru-97	Ruthenium (44)	108	108	4.6×10^5	Th-228		8.11	1.08×10^2	8.2×10^2
Ru-103		54.1	24.3	3.2×10^4	Th-229		8.11	8.11×10^4	2.1×10^4
Ru-105		16.2	13.5	6.7×10^5	Th-230		54.1	5.41×10^3	2.1×10^2
Ru-106		5.41	5.41	3.3×10^3	Th-231		1080	24.3	5.3×10^5
S-35	Sulfur (16)	1080	54.1	4.3×10^4	Th-232		Unlimited	Unlimited	1.1×10^7
Sb-122	Antimony (51)	8.11	8.11	4.0×10^5	Th-234		5.41	5.41	2.3×10^4
Sb-124		16.2	13.5	1.7×10^4	Th (natural)		Unlimited	Unlimited	2.2×10^7
Sb-125		54.1	24.3	1.0×10^3	Ti-44	Titanium (22)	13.5	5.41	1.7×10^2
Sb-126		10.8	10.8	8.4×10^4	Tl-200	Thallium (81)	21.6	21.6	6.0×10^5
Sc-44	Scandium (21)	13.5	13.5	1.8×10^7	Tl-201		270	270	2.1×10^5
					Tl-202		54.1	54.1	5.3×10^4
					Tl-204		108	13.5	4.6×10^2

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Tm-167	Thallium (69)	189	189	8.5×10^{-4}
Tm-168		21.6	21.6	8.5×10^{-2}
Tm-170		408	43.5	6.0×10^{-3}
Tm-171		4080	270	4.4×10^{-3}
U-230	Uranium (92)	1080	0.270	2.7×10^{-4}
U-232		81.1	8.11×10^{-3}	2.2×10^{-1}
U-233		270	2.70×10^{-2}	9.7×10^{-3}
U-234		270	2.70×10^{-2}	6.2×10^{-3}
U-235		Unlimited	Unlimited	2.2×10^{-5}
U-236		270	2.70×10^{-2}	6.5×10^{-5}
U-238		Unlimited	Unlimited	3.4×10^{-7}
U (natural)		Unlimited	Unlimited	7.1×10^{-7}
U (enriched 5% or less)		Unlimited	Unlimited	(See Table A-3)
U (enriched more than 5%)		270	2.70×10^{-2}	(See Table A-3)
U (depleted)		Unlimited	Unlimited	(See Table A-3)
V-48	Vanadium (23)	8.11	8.11	1.7×10^{-5}
V-49		4080	4080	8.1×10^{-3}
W-178	Tungsten (74)	27.0	27.0	3.4×10^{-4}
W-181		811	811	6.0×10^{-5}
W-185		4080	24.3	9.4×10^{-5}
W-187		54.4	43.5	7.0×10^{-5}
W-188		5.44	5.44	1.0×10^{-4}
Xe-122	Xenon (54)	5.44	5.44	1.3×10^{-6}
Xe-123		5.44	5.44	1.2×10^{-7}
Xe-127		408	408	2.8×10^{-4}
Xe-131m		4080	4080	8.4×10^{-4}
Xe-133		544	544	1.9×10^{-5}
Xe-135		408	408	2.6×10^{-5}
Y-87	Yttrium (39)	54.4	54.4	4.5×10^{-5}
Y-88		40.8	40.8	1.4×10^{-4}
Y-90		5.44	5.44	5.4×10^{-5}
Y-91m		54.4	54.4	4.2×10^{-7}
Y-91		8.11	8.11	2.5×10^{-4}
Y-92		5.44	5.44	9.6×10^{-6}
Y-93		5.44	5.44	3.3×10^{-6}
Yb-169	Ytterbium (70)	81.1	81.1	2.4×10^{-4}
Yb-175		54.4	54.4	1.8×10^{-5}
Zn-65	Zinc (30)	54.4	54.4	8.2×10^{-4}
Zn-69m		54.4	43.5	3.3×10^{-5}
Zn-69		408	43.5	4.9×10^{-7}
Zr-88	Zirconium (40)	81.1	81.1	1.8×10^{-4}
Zr-93		4080	5.44	2.5×10^{-3}
Zr-95		27.0	24.3	2.4×10^{-4}
Zr-97		8.11	8.11	1.9×10^{-6}

^a International shipments of Einsteinium require multilateral approval of A_1 and A_2 values.

^b International shipments of Fermium require multilateral approval of A_1 and A_2 values.

^c 20 Ci for Me99 for domestic use.

(7) Table A-2: General values for A_1 and A_2

Contents	A_1 (Ci)	A_2 (Ci)
Only beta or gamma emitting nuclides are known to be present	5	0.5
Alpha emitting nuclides are known to be present, or no relevant data are available	2.70	5.41×10^{-4}

(8) Table A-3: Activity mass relationships for uranium.

Uranium Enrichment ¹ wt % U-235 present	Specific Activity Ci/g
0.45	5.0×10^{-7}
0.72	7.1×10^{-7}

1.0	7.6×10^{-7}
1.5	1.0×10^{-6}
5.0	2.7×10^{-6}
40.0	4.8×10^{-6}
20.0	1.0×10^{-5}
35.0	2.0×10^{-5}
50.0	2.5×10^{-5}
90.0	5.8×10^{-5}
93.0	7.0×10^{-5}
95.0	9.1×10^{-5}

¹The figures for uranium include representative values for the activity of the uranium-234 that is concentrated during the enrichment process.

WILLIAM D. HACKER, MD FAAP, CPE

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 10, 2010

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2011 at 9 a.m. in Conference Suite C of the 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, 2011, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments regarding this proposed administrative regulation may be submitted through January 31, 2011. 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: Matt McKinley (502) 564-3700, ext. 3701

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes guidelines for the transportation of radioactive material.

(b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:070 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By updating the Kentucky Administrative Regulations to be consistent with the Code of Federal Regulations thereby ensuring that Kentucky licensees are bound by the same requirements as their counterparts across the country.

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

(a) How the amendment will change this existing administrative regulation: It updates 902 KAR 100:070 to add exemptions for naturally occurring material in certain activity concentrations, create QA program requirements for the use of Nuclear Regulatory Commission approved packages, expands on requirements for transportation of fissile material, updates requirements for extensive QA program for manufacturers of transport packages and, removes A1/A2 table and adds reference to 10 C.F.R. 71 App. A.

(b) The necessity of the amendment to this administrative regulation: To ensure compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How the amendment conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. That authority includes ensuring compliance with federal regulations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will mean that all that read the changes will know it is on conformance with federal regulations. This will ensure compliance is uniform between the two regulating bodies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will assist all 430 radioactive material licensees in making Kentucky Administrative Regulations consistent with the Code of Federal Regulations.

(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: Knowledge of its compliance with federal regulations is all that is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The 430 radioactive material licensees will have the benefit of uniformity of compliance between state and federal regulators.

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

(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation.

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All that have a radioactive licensee in it.

3. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by this administrative regulation. The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:010 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

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 local expenditure or revenue will be impacted by this regulation.

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

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

(d) How much will it cost to administer this program for subsequent years? No additional cost will be incurred 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 Health Services Division of Public Health Protection and Safety (Amendment)

902 KAR 100:072. Use of radionuclides in the health arts.

RELATES TO: KRS 211.842 to 211.852, 211.990(4), 10 C.F.R. 35

STATUTORY AUTHORITY: KRS 194A.050, 211.090, 211.844, 10 C.F.R. 35, EO 1996-862, EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: ~~[EO 2004-726 effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.]~~ KRS 211.844 requires the Cabinet for Health and Family Services to promulgate administrative regulations for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes requirements and provisions for the use of radioactive material in the healing arts, for issuance of licenses authorizing the medical use of radioactive material, and for specific licensees to possess, use, and transfer radioactive material for medical uses.

Section 1. Implementation. (1) A licensee shall implement the

provisions in this administrative regulation on or before October 24, 2005, with the exception of the requirements listed in subsection (2) of this section.

(2) A licensee shall implement the training requirements in Sections 63, ~~64~~, 65, 66, ~~67, 68~~, 69, ~~70~~, 71, 72, 73, 74, ~~75~~, 76, and 77 of this administrative regulation on or before October 25, ~~2007~~ [2005].

(3) Prior to October 25, ~~2007~~ [2005], a licensee shall satisfy the training requirements of this administrative regulation for a Radiation Safety Officer, an authorized medical physicist, an authorized nuclear pharmacist, or an authorized user by complying with either:

(a) The appropriate training requirements in Sections 63, ~~64~~, 65, 66, ~~67, 68~~, 69, ~~70~~, 71, 72, 73, 74, ~~75~~, 76, and 77 of this administrative regulation; or

(b) The appropriate training requirements in Section 78 of this administrative regulation.

(4) If a license condition exempted a licensee from a provision of this administrative regulation on October 24, 2005, then the license condition continues to exempt the licensee from the provision of 902 KAR 100:072.

(5) If a requirement in this administrative regulation differs from the requirement in an existing license condition, the requirement in this administrative regulation shall govern.

(6) A licensee shall continue to comply with any license condition that requires it to implement procedures required by Sections 49, 55, 56, and 57 of this administrative regulation until there is a license amendment or renewal that modifies the license condition.

Section 2. License Required. (1) A person may manufacture, produce, acquire, receive, possess, prepare, use, or transfer radioactive material for medical use only in accordance with a specific license issued by the cabinet, the U.S. Nuclear Regulatory Commission, or another agreement state, or as allowed in subsection (2)(a) or (b) of this section.

(2) A specific license is not needed for an individual who:

(a) Receives, possesses, uses, or transfers radioactive material in accordance with the administrative regulations in this chapter under the supervision of an authorized user as provided in Section 12 of this administrative regulation unless prohibited by license condition; or

(b) Prepares unsealed radioactive material for medical use in accordance with the administrative regulations in this chapter under the supervision of an authorized nuclear pharmacist or authorized user as provided in Section 12 of this administrative regulation unless prohibited by license condition.

Section 3. Maintenance of Records. Each record required by this administrative regulation shall be legible throughout the retention period specified by each section. The record may be the original or a reproduced copy or a microform if the copy or microform is authenticated by authorized personnel and the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications shall include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

Section 4. Application for License, Amendment, or Renewal.

(1) An application shall be signed by the applicant's or licensee's management.

(2) An application for a license for medical use of radioactive material as described in Sections 30, 31, 33, ~~37~~, ~~36~~, 45, 46 and 62 of this administrative regulation and must be made by:

(a) Filing an original and one (1) copy of Form ~~RPS[RAPS]-7~~, "Application for Radioactive Material License," that includes the facility diagram, equipment, and training and experience qualifications of the Radiation Safety Officer, authorized user(s), authorized medical physicist(s), and authorized nuclear pharmacist(s); and

(b) Submitting procedures required by Sections 49, 55, 56, and 57, of this administrative regulation as applicable.

(3) A request for a license amendment or renewal shall be

made by:

(a) Submitting an original and one (1) copy of either:

1. Form ~~RPS[RAPS]-7~~, "Application for Radioactive Material License"; or

2. A letter requesting the amendment or renewal; and

(b) Submitting procedures required by Sections 49, 55, 56, and 57 of this administrative regulation as applicable.

(4) In addition to the requirements in subsections (2) and (3) of this section, an application for a license or amendment for medical use of radioactive material as described in Section 62 of this administrative regulation shall also include information regarding any radiation safety aspects of the medical use of the material that is unique to the evolving technology.

(a) The applicant shall also provide specific information on:

1. Radiation safety precautions and instructions;

2. Methodology for measurement of dosages or doses to be administered to patients or human research subjects; and

3. Calibration, maintenance, and repair of instruments and equipment necessary for radiation safety.

(b) The applicant or licensee shall also provide any other information requested by the cabinet in its review of the application.

(5) An applicant that satisfies the requirements specified in 902 KAR 100:052 of this chapter may apply for a Type A specific license of broad scope.

Section 5. License Amendments. A licensee shall apply for and receive a license amendment:

(1) Before the licensee receives, prepares, or uses radioactive material for a type of use that is permitted under this chapter, but that is not authorized on the licensee's current license issued under this chapter;

(2) Before it permits anyone to work as an authorized user, authorized nuclear pharmacist, or authorized medical physicist under the license, except:

(a) For an authorized user, an individual who meets the requirements in Sections ~~63, 68(1)~~, 69(1), 70(1), 71(1), 72(1), ~~74(1)~~, ~~73(1)~~, 76(1), 77(1), 78(2)(a), 78(3)(a), 78(4)(a), 78(7)(a), 78(9)(a), and 78(10)(a) of this administrative regulation;

(b) For an authorized nuclear pharmacist, an individual who meets the requirements in ~~902 KAR 100:072~~, Sections ~~63 and 66(67)(1)~~ or 78(12)(a) ~~and 62~~;

(c) For an authorized medical physicist, an individual who meets the requirements in Sections ~~63 and 65~~ ~~Section 66~~ (1) or 78(11)(a) or (b) ~~and 62~~ of this administrative regulation;

(d) An individual who is identified as an authorized user, an authorized nuclear pharmacist, or authorized medical physicist:

1. On ~~a cabinet~~, an agreement state or U.S. Nuclear Regulatory Commission license or other equivalent permit or license recognized by the cabinet that authorizes the use of radioactive material in medical use or in the practice of nuclear pharmacy;

2. On a permit issued by ~~the cabinet~~, an agreement state or U.S. Nuclear Regulatory Commission specific license of broad scope that is authorized to permit the use of radioactive material in medical use or in the practice of nuclear pharmacy;

3. On a permit issued by a U.S. Nuclear Regulatory Commission master material licensee that is authorized to permit the use of radioactive material in medical use or in the practice of nuclear pharmacy; or

4. By a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists.

(3) Before it changes Radiation Safety Officers, except as provided in Section 10(3) of this administrative regulation;

(4) Before it receives radioactive material in excess of the amount or in a different form, or receives a different radionuclide than is authorized on the license;

(5) Before it adds to or changes the areas of use identified in the application or on the license, except for areas of use where radioactive material is used only in accordance with either Section 30 or 31 of this administrative regulation;

(6) Before it changes the address(es) of use identified in the application or on the license; or

(7) Before it revises procedures required by Sections 49, 55, 56 and 57 of this administrative regulation as applicable, where the revision reduces radiation safety; ~~and [-]~~

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(8) Before conducting research involving human research subjects using radioactive material, ~~the licensee shall submit provisions for implementing the following requirements with the application for amendment:~~

~~—(a) The research shall be conducted, funded, supported, or regulated by a federal agency that has implemented the federal policy for the protection of human subjects;~~

~~(b) Informed consent shall be obtained from the human subjects; and~~

~~(c) Prior review and approval of the research activities shall be obtained from an institutional review board as defined and described in the federal policy for the protection of human subjects].~~

Section 6. Notifications. (1) A licensee shall provide the cabinet a copy of the board certification, the cabinet, U.S. Nuclear Regulatory Commission or agreement state license, the permit issued by a U.S. Nuclear Regulatory Commission master material licensee, the permit issued by a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state licensee of broad scope, or the permit issued by a U.S. Nuclear Regulatory Commission master material license broad scope ~~permittee~~ permute for each individual no later than thirty (30) days after the date that the licensee permits the individual to work as an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist under Section 5(2)(a) through (d) of this administrative regulation.

(2) A licensee shall notify the cabinet by letter no later than thirty (30) days after:

(a) An authorized user, an authorized nuclear pharmacist, a Radiation Safety Officer, or an authorized medical physicist permanently discontinues performance of duties under the license or has a name change;

(b) The licensee's mailing address changes;

(c) The licensee's name changes, but the name change does not constitute a transfer of control of the license as described in 902 KAR 100:040, Section 6(2) of this chapter; or

(d) The licensee has added to or changed the areas of use identified in the application or on the license if radioactive material is used in accordance with either Section 30 or 31 of this administrative regulation.

(3) The licensee shall mail the documents required in this section to the Cabinet for Health and Family Services, Radiation Health ~~[and Toxic Agents Control]~~ Branch, Manager, 275 East Main Street, Mailstop HS1C-A, Frankfort, Kentucky 40621.

Section 7. Exemptions Regarding Type A Specific Licenses of Broad Scope. A licensee possessing a Type A specific license of broad scope for medical use, issued under 902 KAR 100:052 of this chapter, is exempt from:

(1) Section 4(4) of this administrative regulation regarding the need to file an amendment to the license for medical use of radioactive material, as described in Section 62 of this administrative regulation;

(2) The provisions of Section 5(2) of this administrative regulation;

(3) The provisions of Section 5(5) of this administrative regulation regarding additions to or changes in the areas of use at the addresses identified in the application or on the license;

(4) The provisions of Section 6(1) of this administrative regulation;

(5) The provisions of Section 6(2)(a) of this administrative regulation for an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist;

(6) The provisions of Section 6(2)(d) of this administrative regulation regarding

additions to or changes in the areas of use identified in the application or on the license if radioactive material is used in accordance with either Section 30 or 31 ~~[29 or 30]~~ of this administrative regulation; and

(7) The provisions of Section 36~~[48]~~(1) of this administrative regulation.

Section 8. License Issuance. (1) The cabinet shall issue a license for the medical use of radioactive material if:

(a) The applicant has filed RPS~~[RAPS]~~-7 "Application for Ra-

dioactive Material License" in accordance with the instructions in Section 4 of this administrative regulation;

(b) The applicant has paid any applicable fee as provided in 902 KAR 100:012 of this chapter;

(c) The cabinet finds the applicant equipped and committed to observe the safety standards established by the cabinet in this Chapter for the protection of the public health and safety; and

(d) The applicant meets the requirements of 902 KAR 100:040, 902 KAR 100:041, 100:042, and 100:045 of this chapter.

(2) The cabinet shall issue a license for mobile medical service if the applicant:

(a) Meets the requirements in subsection (1) of this section; and

(b) Assures that individuals or human research subjects to whom unsealed radioactive material or radiation from implants containing radioactive material will be administered may be released following treatment in accordance with Section 27 of this administrative regulation.

Section 9. Specific Exemptions. The cabinet may, upon application of any interested person or upon its own initiative, grant exemptions from the regulations in this chapter that it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

Section 10. Authority and Responsibilities for the Radiation Protection Program. (1) In addition to the radiation protection program requirements of 902 KAR 100:019 of this administrative regulation ~~[chapter]~~, a licensee's management shall approve in writing:

(a) Requests for a license application, renewal, or amendment before submittal to the cabinet;

(b) Any individual before allowing that individual to work as an authorized user, authorized nuclear pharmacist, or authorized medical physicist; and

(c) Radiation protection program changes that do not require a license amendment and are permitted in under Section 11 of this administrative regulation

(2) A licensee's management shall appoint a Radiation Safety Officer, who agrees, in writing, to be responsible for implementing the radiation protection program. The licensee, through the Radiation Safety Officer, shall ensure that radiation safety activities are being performed in accordance with licensee-approved procedures and regulatory requirements.

(3) For up to sixty (60) days each year, a licensee may permit an authorized user or an individual qualified to be a Radiation Safety Officer, under Sections 63 and 64~~[65]~~, of this administrative regulation to function as a temporary radiation safety officer and to perform the functions of a Radiation Safety Officer, as provided in subsection (7) of this section, if the licensee takes the actions required in subsections (2), (5), (7), and (8) of this section and notifies the cabinet in accordance with Section 6 of this administrative regulation.

(4) A licensee may simultaneously appoint more than one (1) temporary radiation safety officer in accordance with subsection (3) of this section, if needed to ensure that the licensee has a temporary radiation safety officer that satisfies the requirements to be a Radiation Safety Officer for each of the different types of uses of radioactive material permitted by the license.

(5) A licensee shall establish the authority, duties, and responsibilities of the Radiation Safety Officer in writing.

(6) Licensees that are authorized for two (2) or more different types of uses of radioactive material under Sections 33, 37, and 46 of this administrative regulation or two (2) or more types of units under Section 46 of this administrative regulation shall establish a Radiation Safety Committee to oversee all uses of radioactive material permitted by the license. The committee shall include an authorized user of each type of use permitted by the license, the Radiation Safety Officer, a representative of the nursing service, and a representative of management who is neither an authorized user nor a Radiation Safety Officer. The committee may include other members the licensee considers appropriate.

(7) A licensee shall provide the radiation safety officer sufficient

authority, organizational freedom, time, resources, and management prerogative to:

- (a) Identify radiation safety problems;
- (b) Initiate, recommend, or provide corrective actions;
- (c) Stop unsafe operations; and
- (d) Verify implementation of corrective actions.

(8) A licensee shall retain a record of actions taken under subsections (1), (2), and (5) of this section as follows:

(a) A licensee shall retain a record of actions taken by the licensee's management in accordance with subsection (1) of this section, for five (5) years. The record shall include a summary of the actions taken and a signature of licensee management.

(b) The licensee shall retain a copy of both authority, duties, and responsibilities of the Radiation Safety Officer, as required in subsection (5) of this section, and a signed copy of each Radiation Safety Officer's agreement to be responsible for implementing the radiation safety program, as required in subsection (5) of this section.

for the duration of the license. The records shall include the signature of the radiation safety officer and licensee management.

Section 11. Radiation Protection Program Changes. (1) A licensee may revise its radiation protection program without cabinet approval if:

(a) The revision does not require a license amendment under Section 5 of this administrative regulation;

(b) The revision is in compliance with the administrative regulations and the license;

(c) The revision has been reviewed and approved by the radiation safety officer and licensee management; and

(d) The affected individuals are instructed on the revised program before the changes are implemented.

(2) A licensee shall retain a record of each radiation protection program change made in accordance with subsection (1) of this section for five (5) years. The record shall include a copy of the old and new procedures; the effective date of the change; and the signature of the licensee management that reviewed and approved the change.

Section 12. Supervision. (1) A licensee that permits the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user, as allowed by Section 2(2)(a) of this administrative regulation shall:

(a) In addition to the requirements in 902 KAR 100:165, instruct the supervised individual in the licensee's written radiation protection procedures, written directive procedures, administrative regulations of this chapter, and license conditions with respect to the use of radioactive material; and

(b) Require the supervised individual to follow the instructions of the supervising authorized user for medical uses of radioactive material, written radiation protection procedures established by the licensee, written directive procedures, administrative regulations of this chapter, and license conditions with respect to the medical use of radioactive material.

(2) A licensee that permits the preparation of radioactive material for medical use by an individual under the supervision of an authorized nuclear pharmacist or physician who is an authorized user, as allowed by Section 2(2)(b) of this administrative regulation shall:

(a) In addition to the requirements in 902 KAR 100:165, instruct the supervised individual in the preparation of radioactive material for medical use, as appropriate to that individual's involvement with radioactive material; and

(b) Require the supervised individual to follow the instructions of the supervising authorized user or authorized nuclear pharmacist regarding the preparation of radioactive material for medical use, written radiation protection procedures established by the licensee, the administrative regulations of this chapter, and license conditions.

(3) A licensee that permits supervised activities under subsections (1) and (2) of this section is responsible for the acts and omissions of the supervised individual.

Section 13. Written Directives. (1) A written directive shall be dated and signed by an authorized user before the administration of I-131 sodium iodide greater than 1.11 Megabecquerels (MBq) (Thirty (30) microcuries (μCi)), any therapeutic dosage of unsealed radioactive material or any therapeutic dose of radiation from radioactive material.

(a) If, because of the emergent nature of the patient's condition, a delay in order

to provide a written directive would jeopardize the patient's health, an oral directive shall be acceptable. The information contained in the oral directive shall be documented as soon as possible in writing in the patient's record.

(b) A written directive shall be prepared within forty-eight (48) hours of the oral directive.

(2) The written directive shall contain the patient or human research subject's name and the following information:

(a) For any administration of quantities greater than 1.11 MBq (30 μCi) of sodium iodide I-131: the dosage;

(b) For an administration of a therapeutic dosage of unsealed radioactive material other than sodium iodide I-131: the radioactive drug, dosage, and route of administration;

(c) For gamma stereotactic radiosurgery: the total dose, treatment site, and values for the target coordinate settings per treatment for each anatomically distinct treatment site;

(d) For teletherapy: the total dose, dose per fraction, number of fractions, and treatment site;

(e) For high dose-rate remote afterloading brachytherapy: the radionuclide, treatment site, dose per fraction, number of fractions, and total dose; or

(f) For all other brachytherapy, including low, medium, and pulsed dose rate remote afterloaders:

1. Before implantation: treatment site, the radionuclide, and dose; and

2. After implantation but before completion of the procedure: the radionuclide, treatment site, number of sources, and total source strength and exposure time (or the total dose).

(3) A written revision to an existing written directive may be made if the revision is dated and signed by an authorized user before the administration of the dosage of unsealed radioactive material, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next fractional dose.

(a) If, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive shall be acceptable. The oral revision shall be documented as soon as possible in the patient's record.

(b) A revised written directive shall be signed by the authorized user within forty-eight (48) hours of the oral revision.

(4) The licensee shall retain a copy of the written directive as required by this section for three (3) years.

Section 14. Procedures for Administrations Requiring a Written Directive. (1) For any administration requiring a written directive, the licensee shall develop, implement, and maintain written procedures to provide high confidence that:

(a) The patient's or human research subject's identity is verified before each administration; and

(b) Each administration is in accordance with the written directive.

(2) At a minimum, the procedures required by subsection (1) of this section shall address the following items that are applicable to the licensee's use of radioactive material:

(a) Verifying the identity of the patient or human research subject;

(b) Verifying that the administration is in accordance with the treatment plan, if applicable, and the written directive;

(c) Checking both manual and computer-generated dose calculations; and

(d) Verifying that any computer-generated dose calculations are correctly transferred into the consoles of therapeutic medical units authorized by Section 46 or 62 of this administrative regulation.

tion.

(3) A licensee shall retain a copy of the procedures required under subsection (1) for the duration of the license.

Section 15. Report and Notification of Medical Events. (1) A licensee shall report any event, except for an event that results from patient intervention, in which the administration of radioactive material or radiation from radioactive material results in:

(a) A dose that differs from the prescribed dose or dose that would have resulted from the prescribed dosage by more than 0.05 Sv (5 rem) effective dose equivalent, five-tenths (0.5) Sv (50 rem) to an organ or tissue, or five-tenths (0.5) Sv (50 rem) shallow dose equivalent to the skin; and[;]

1. The total dose delivered differs from the prescribed dose by twenty (20) percent or more;

2. The total dosage delivered differs from the prescribed dosage by twenty (20) percent or more or falls outside the prescribed dosage range; or

3. The fractionated dose delivered differs from the prescribed dose, for a single fraction, by fifty (50) percent or more.

(b) A dose that exceeds 0.05 Sv (5 rem) effective dose equivalent, five-tenths

(0.5) Sv (50 rem) to an organ or tissue, or five-tenths (0.5) Sv (50 rem) shallow dose equivalent to the skin from any of the following:

1. An administration of a wrong radioactive drug containing radioactive material;

2. An administration of a radioactive drug containing radioactive material by the wrong route of administration;

3. An administration of a dose or dosage to the wrong individual or human research subject;

4. An administration of a dose or dosage delivered by the wrong mode of treatment; or

5. A leaking sealed source.

(c) A dose to the skin or an organ or tissue other than the treatment site that exceeds by five-tenths (0.5) Sv (fifty (50) rem) to an organ or tissue and fifty (50) percent or more of the dose expected from the administration defined in the written directive (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site).

(2) A licensee shall report any event resulting from intervention of a patient or human research subject in which the administration of radioactive material or radiation from radioactive material results or will result in unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

(3) The licensee shall notify the cabinet by telephone no later than the next calendar day after discovery of the medical event. The commercial telephone number of the Cabinet for Health and Family Services, Radiation Health [and Toxic Agents Control] Branch is (502) 564-3700. The twenty-four (24) hour emergency number is (800) 255-2587 [(502) 564-7815].

(4) The licensee shall submit a written report to the Cabinet for Health and Family Services [at Director], Radiation Health [and Toxic Agents Control] Branch, Manager, 275 East Main Street, Mailstop HS1C-A, Frankfort, Kentucky 40621, within fifteen (15) days after discovery of the medical event.

(a) The written report shall include:

1. The licensee's name;

2. The name of the prescribing physician;

3. A brief description of the event;

4. Why the event occurred;

5. The effect, if any, on the individual(s) who received the administration;

6. What actions, if any, have been taken or are planned to prevent recurrence; and

7. Certification that the licensee notified the individual (or the individual's responsible relative or guardian), and if not, why not.

(b) The report shall not contain the individual's name or any other information that could lead to identification of the individual.

(5) The licensee shall provide notification of the event to the referring physician and also notify the individual who is the subject of the medical event no later than twenty-four (24) hours after its

discovery, unless the referring physician personally informs the licensee either that he or she will inform the individual or that, based on medical judgment, telling the individual would be harmful. The licensee shall not be required to notify the individual without first consulting the referring physician. If the referring physician or the affected individual cannot be reached within twenty-four (24) hours, the licensee shall notify the individual as soon as possible thereafter. The licensee shall not delay any appropriate medical care for the individual, including any necessary remedial care as a result of the medical event, because of any delay in notification. To meet the requirements of this paragraph, the notification of the individual who is the subject of the medical event may be made instead to that individual's responsible relative or guardian. If a verbal notification is made, the licensee shall inform the individual, or appropriate responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide this written description if requested.

(6) Aside from the notification requirement, nothing in this section shall affect any rights or duties of licensees and physicians in relation to each other, to individuals affected by the medical event, or to that individual's responsible relatives or guardians.

(7) A licensee shall:

(a) Annotate a copy of the report provided to the cabinet with the:

1. Name of the individual who is the subject of the event; and

2. Social Security number or other identification number, if one (1) has been assigned, of the individual who is the subject of the event; and

(b) Provide a copy of the annotated report to the referring physician, if other than the licensee, no later than fifteen (15) days after the discovery of the event.

Section 16. Report and Notification of a Dose to an Embryo/fetus or a Nursing Child. (1) A licensee shall report any dose to an embryo/fetus that is greater than fifty (50) mSv (five (5) rem) dose equivalent that is a result of an administration of radioactive material or radiation from radioactive material to a pregnant individual unless the dose to the embryo/fetus was specifically approved, in advance, by the authorized user.

(2) A licensee shall report any dose to a nursing child that is a result of an administration of radioactive material to a breast-feeding individual that:

(a) Is greater than fifty (50) mSv (five (5) rem) total effective dose equivalent; or

(b) Has resulted in unintended permanent functional damage to an organ or a physiological system of the child, as determined by a physician.

(3) The licensee shall notify the cabinet by telephone no later than the next calendar day after discovery of a dose to the embryo/fetus or nursing child that requires a report in subsections (1) or (2) of this section. The commercial telephone number of the Cabinet for Health and Family Services, Radiation Health [and Toxic Agents Control] Branch is (502) 564-3700. The twenty-four (24) hour emergency number is (800) 255-2587 [(502) 564-7815].

(4) The licensee shall submit a written report to the Cabinet for Health and Family Services [at Director], Radiation Health [and Toxic Agents Control] Branch, Manager, 275 East Main Street, Mailstop HS1C-A, Frankfort, Kentucky 40621, within fifteen (15) days after discovery of a dose to the embryo/fetus or nursing child that requires a report in subsections (1) or (2) in this section.

(a) The written report shall include:

1. The licensee's name;

2. The name of the prescribing physician;

3. A brief description of the event;

4. Why the event occurred;

5. The effect, if any, on the embryo/fetus or the nursing child;

6. What actions, if any, have been taken or are planned to prevent recurrence; and

7. Certification that the licensee notified the pregnant individual or mother (or the mother's or child's responsible relative or guardian), and if not, why not.

(b) The report shall not contain the individual's or child's name

or any other information that could lead to identification of the individual or child.

(5) The licensee shall provide notification of the event to the referring physician and also notify the pregnant individual or mother, both hereafter referred to as the mother, no later than twenty-four (24) hours after discovery of an event that would require reporting under subsection (1) or (2) of this section, unless the referring physician personally informs the licensee either that he or she will inform the mother or that, based on medical judgment, telling the mother would be harmful. The licensee shall not be required to notify the mother without first consulting with the referring physician. If the referring physician or mother cannot be reached within twenty-four (24) hours, the licensee shall make the appropriate notifications as soon as possible thereafter. The licensee shall not delay any appropriate medical care for the embryo/fetus or for the nursing child, including any necessary remedial care as a result of the event, because of any delay in notification. To meet the requirements of this paragraph, the notification may be made to the mother's or child's responsible relative or guardian instead of the mother. If a verbal notification is made, the licensee shall inform the mother, or the mother's or child's responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide this written description if requested.

(6) A licensee shall:

(a) Annotate a copy of the report provided to the cabinet with the:

1. Name of the pregnant individual or the nursing child who is the subject of the event; and

2. Social Security number or other identification number, if one (1) has been assigned, of the pregnant individual or the nursing child who is the subject of the event; and

(b) Provide a copy of the annotated report to the referring physician, if other than the licensee, no later than fifteen (15) days after the discovery of the event.

Section 17. Provisions for the Protection of Human Research Subjects. (1) A licensee may conduct research involving human research subjects only if it uses the radioactive materials specified on its license for the uses authorized on its license.

(2) If the research is conducted, funded, supported, or regulated by another Federal agency that has implemented the Federal Policy for the Protection of Human Subjects (Federal Policy), the licensee shall, before conducting research:

(a) Obtain review and approval of the research from an "Institutional Review Board," as defined and described in the Federal Policy; and

(b) Obtain "informed consent", as defined and described in the Federal Policy, from the human research subject.

(3) If the research will not be conducted, funded, supported, or regulated by another Federal agency that has implemented the Federal Policy, the licensee, shall before conducting research, apply for and receive a specific amendment to its cabinet medical use license. The amendment request shall include a written commitment that the licensee shall, before conducting research:

(a) Obtain review and approval of the research from an "Institutional Review Board", as defined and described in the Federal Policy; and

(b) Obtain "informed consent", as defined and described in the Federal Policy, from the human research subject.

(4) Nothing in this section relieves the licensees from complying with the other requirements in this administrative regulation. [Report and Notification of a Dose Greater Than Fifty (50) mSv (5 rem) to an Individual From a Patient Released Under Section 27 of this Chapter.

~~(1) A licensee shall notify the Cabinet for Health and Family Services, Radiation Health and Toxic Agents Branch and file a report, if required, for any dose greater than fifty (50) mSv (5 rem) total effective dose equivalent that an individual receives from a patient released under this section.~~

~~(2) The licensee shall notify by telephone the Cabinet for Health and Family Services, Radiation Health and Toxic Agents Branch (502) 564-3700 no later than the next calendar day after the licensee becomes aware of an event that requires a report in~~

~~subsection (1) of this section.~~

~~(3) The licensee shall submit a written report to the Cabinet for Health and Family Services, Radiation Health and Toxic Agents Branch, 275 East Main Street, Frankfort, Kentucky 40601, within fifteen (15) days after the licensee becomes aware of an event that requires a report in subsection (1) of this section. The individual(s) receiving this dose from an event as described in subsection (1) is hereafter referred to as identified exposed individual(s). The written report shall include:~~

~~(a) The name of the licensee;~~

~~(b) The estimated dose(s) to the exposed individual(s);~~

~~(c) A brief description of the event;~~

~~(d) Why the event occurred;~~

~~(e) What actions, if any, have been taken or are planned to prevent recurrence; and~~

~~(f) Certification that the licensee notified the identified exposed individual(s).~~

~~(4) The report shall not contain the names of the identified exposed individual(s) or the individual released under subsection (1) of this section or any other information that could lead to the identification of the exposed individual(s) or the individual released under subsection (1) of this section.~~

~~(5) The licensee shall provide notification of the event to the identified exposed individual(s) no later than twenty-four (24) hours after the licensee becomes aware of an event that would require reporting under subsection (1) of this section.~~

~~(6) The licensee shall provide the identified exposed individual(s) with a copy of the report submitted to the cabinet.]~~

Section 18. Report of a Leaking Source. A licensee shall file a report within five (5) days if a leak test required by Section 24, of this administrative regulation reveals the presence of 185 Bq (0.005 μ Ci) or more of removable contamination. The report shall be filed with the Cabinet for Health and Family Services [at Director], Radiation Health [and Toxic Agents Control] Branch, Manager, 275 East Main Street, Frankfort, Kentucky 40621, with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0004. The written report shall include the model number and serial number, if assigned, of the leaking source; the radionuclide and its estimated activity; the results of the test; the date of the test; and the action taken.

Section 19. Quality Control of Diagnostic Equipment. A licensee shall establish written quality control procedures for diagnostic equipment used for radionuclide studies.

(1) As a minimum, the procedures shall include:

(a) Quality control procedures recommended by equipment manufacturers; or

(b) Procedures approved by the cabinet.

(2) The licensee shall conduct quality control procedures in accordance with written procedures.

Section 20. Possession, Use, and Calibration of Instruments Used to Measure the Activity of Unsealed Radioactive Material. (1) For direct measurements performed in accordance with Section 22, of this administrative regulation a licensee shall possess and use instrumentation to measure the activity of unsealed radioactive material before it is administered to each patient or human research subject.

(2) A licensee shall calibrate the instrumentation required in subsection (1) of this section in accordance with nationally-recognized standards or the manufacturer's instructions.

(3) A licensee shall maintain a record of instrument calibrations, required by this section, for three (3) years. The records shall include the model and serial number of the instrument, the date of the calibration, the results of the calibration, and the name of the individual who performed the calibration.

Section 21. Calibration of Survey Instruments. (1) A licensee shall calibrate the survey instruments used to show compliance with this administrative regulation [section] and 902 KAR 100:019 before first use, annually, and following a repair that affects the

calibration. A licensee shall:

- (a) Calibrate all scales with readings up to ten (10) mSv (1000 mrem) per hour with a radiation source;
- (b) Calibrate two (2) separated readings on each scale or decade that will be used to show compliance; and
- (c) Conspicuously note on the instrument the apparent dose rate from a dedicated check source as determined at the time of calibration, and the date of calibration.

(2) A licensee shall not use survey instruments if the difference between the indicated exposure rate and the calculated exposure rate is more than twenty (20) percent.

(3) A licensee shall maintain a record of each radiation survey instrument calibrations for three (3) years. The record shall include the model and serial number of the instrument, the date of the calibration, the results of the calibration, and the name of the individual who performed the calibration.

Section 22. Determination of Dosages of Unsealed Radioactive Material for Medical Use. (1) A licensee shall determine and record the activity of each dosage before medical use.

(2) For a unit dosage, this determination shall be made by:

- (a) Direct measurement of radioactivity; or
- (b) A decay correction, based on the activity or activity concentration determined by:

1. A manufacturer or preparer licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements; or

2. A cabinet, [Aa] U.S. Nuclear Regulatory Commission, [NRC] or equivalent agreement state license [licensee] for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA;[-]

(3) For other than unit dosages, this determination shall be made by:

- (a) Direct measurement of radioactivity;
- (b) Combination of measurement of radioactivity and mathematical calculations; or
- (c) Combination of volumetric measurements and mathematical calculations, based on the measurement made by a manufacturer or preparer licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, ~~[or] U.S. Nuclear Regulatory Commission~~, or equivalent agreement state requirements; ~~or[-]~~

(4) Unless otherwise directed by the authorized user, a licensee shall not use a dosage if the dosage does not fall within the prescribed dosage range or if the dosage differs from the prescribed dosage by more than twenty (20) percent.

(5) A licensee shall retain a record of the dosage determination, required by this section, for three (3) years. The record shall contain:

- (a) The radiopharmaceutical;
- (b) The patient's or human research subject's name, or identification number if one (1) has been assigned;
- (c) The prescribed dosage, the determined dosage, or a notation that the total activity is less than 1.11 MBq (30 µCi);
- (d) The date and time of the dosage determination; and
- (e) The name of the individual who determined the dosage.

Section 23. Authorization for Calibration, Transmission, and Reference Sources. Any person authorized by Section 2 of this administrative regulation for medical use of radioactive material may receive, possess, and use any of the following radioactive material for check, calibration, transmission, and reference use.

(1) Sealed sources, not exceeding 1.11 GBq (30 mCi) each, manufactured and distributed by a person licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, ~~[or] U.S. Nuclear Regulatory Commission~~, or equivalent agreement state requirements.

(2) Sealed sources, not exceeding 1.11 GBq (30 mCi) each, redistributed by a licensee authorized to redistribute the sealed sources manufactured and distributed by a person licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, ~~[or] U.S. Nuclear Regulatory Commission~~, or equivalent agreement state re-

quirements, providing ~~[if]~~ the redistributed sealed sources are in the original packaging and shielding and are accompanied by the manufacturer's approved instructions.

(3) Any radioactive material with a half-life not longer than 120 days in individual amounts not to exceed 0.56 GBq (15 mCi).

(4) Any radioactive material with a half-life longer than 120 days in individual

amounts not to exceed the smaller of 7.4 MBq (200 µCi) or 1000 times the quantities in 902 KAR 100:030.

(5) Technetium-99m in amounts as needed.

Section 24. Requirements for Possession of Sealed Sources and Brachytherapy Sources. (1) A licensee in possession of any sealed source or brachytherapy source shall follow the radiation safety and handling instructions supplied by the manufacturer.

(2) A licensee in possession of a sealed source shall:

(a) Test the source for leakage before its first use unless the licensee has a certificate from the supplier indicating that the source was tested within six (6) months before transfer to the licensee; and

(b) Test the source for leakage at intervals not to exceed six (6) months or at other intervals approved by the ~~cabinet~~, U.S. Nuclear Regulatory Commission, or equivalent [another] agreement state in the Sealed Source and Device Registry.

(3) To satisfy the leak test requirements of this section, the licensee shall measure the sample so that the leak test can detect the presence of 185 Bq (0.005 µCi) of radioactive material in the sample.

(4) A licensee shall retain leak test records in accordance with subsection (8)(a) of this section.

(5) If the leak test reveals the presence of 185 Bq (0.005 µCi) or more of removable contamination, the licensee shall:

(a) Immediately withdraw the sealed source from use and store, dispose, or cause it to be repaired in accordance with the requirements in ~~[902 KAR 100:006, 902 KAR 100:016, and] 902 KAR 100:019, 100:021, 100:040, and 100:058~~; and

(b) File a report within five (5) days of the leak test in accordance with 902 KAR 100:072, Section 18.

(6) A licensee need not perform a leak test on the following sources:

- (a) Sources containing only radioactive material with a half-life of less than thirty (30) days;
- (b) Sources containing only radioactive material as a gas;
- (c) Sources containing 3.7 MBq (100 µCi) or less of beta or gamma-emitting material or 0.37 MBq (10 µCi) or less of alpha-emitting material;
- (d) Seeds of iridium-192 encased in nylon ribbon; and
- (e) Sources stored and not being used. However, the licensee shall test each source for leakage before any use or transfer unless it has been leak tested within six (6) months before the date of use or transfer.

(7) A licensee in possession of sealed sources or brachytherapy sources, except for gamma stereotactic radiosurgery sources, shall conduct a semiannual physical inventory of all these sources in its possession. The licensee shall retain each inventory record in accordance with subsection (8)(b) of this section.

(8) A licensee shall keep records of leaks tests and inventory of sealed sources and brachytherapy sources as follows:

(a) A licensee shall retain records of leak tests for three (3) years. The records shall include the model number, and serial number if one (1) has been assigned, of each source tested; the identity of each source by radionuclide and its estimated activity; the results of the test; the date of the test; and the name of the individual who performed the test.

(b) A licensee shall retain records of the semiannual physical inventory of sealed sources and brachytherapy sources for three (3) years. The inventory records shall contain the model number of each source, and serial number if one (1) has been assigned, the identity of each source by radionuclide and its nominal activity, the location of each source, and the name of the individual who performed the inventory.

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Section 25. Labeling of Vials and Syringes. Each syringe and vial that contains unsealed radioactive material shall be labeled to identify the radioactive drug. Each syringe shield and vial shield shall also be labeled unless the label on the syringe or vial is visible when [if] shielded.

Section 26. Surveys of Ambient Radiation Exposure Rate. (1) In addition to the surveys required by 902 KAR 100:019, a licensee shall survey with a radiation detection survey instrument at the end of each day of use. A licensee shall survey all areas where unsealed radioactive material requiring a written directive was prepared for use or administered.

(2) A licensee does not need to perform the surveys required by subsection (1) of this section in an area(s) where patients or human research subjects are confined when they cannot be released under Section 27 of this administrative regulation.

(3) A licensee shall retain a record of each survey for three (3) years. The record shall include the date of the survey, the results of the survey, the instrument used to conduct the survey, and the name of the individual who performed the survey.

Section 27. Release of Individuals Containing Unsealed Radioactive Material or Implants Containing Radioactive Material. (1) A licensee may authorize the release from its control of any individual who has been administered unsealed radioactive material or implants containing radioactive material if the total effective dose equivalent to any other individual from exposure to the released individual is not likely to exceed five (5) mSv (five-tenths (0.5) rem). NUREG-1556, Vol. 9 [draft], "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Medical Licenses," describes methods for calculating doses to other individuals and contains tables of activities not likely to cause doses exceeding five (5) mSv (0.5 rem).

(2) A licensee shall provide the released individual, or the individual's parent or guardian, with instructions, including written instructions, on actions recommended to maintain doses to other individuals as low as is reasonably achievable if the total effective dose equivalent to any other individual is likely to exceed one (1) mSv (one-tenth (0.1) rem). If the total effective dose equivalent to a nursing infant or child could exceed one (1) mSv (one-tenth (0.1) rem) assuming there were no interruption of breast-feeding, the instructions shall also include:

1. Guidance on the interruption or discontinuation of breast-feeding; and

2. Information on the potential consequences, if any, of failure to follow the guidance.

(3) A licensee shall retain a record of the basis for authorizing the release of an individual in accordance with this section, if the total effective dose equivalent is calculated by:

(a) Using the retained activity rather than the activity administered;

(b) Using an occupancy factor less than 0.25 at one (1) meter;

(c) Using the biological or effective half-life; or

(d) Considering the shielding by tissue.

(4) A licensee shall retain a record that the instructions, required by subsection (92) of this section, were provided to a breast-feeding female if the radiation dose to the infant or child from continued breast-feeding could result in a total effective dose equivalent exceeding five (5) mSv (five-tenths (0.5) rem).

(5) The records required by subsections (3), and (4) of this section shall be retained for three (3) years after the date of release of the individual.

(6) A report shall be filed in accordance with Section 15[47] of this chapter and submitted to the cabinet if a dose greater than 50 mSv (5 rem) is received by an individual from a patient released under this section.

Section 28. Provision of Mobile Medical Service. (1) A licensee providing mobile medical service shall:

(a) Obtain a letter signed by the management of each client for which services are rendered that permits the use of byproduct material at the client's address and clearly delineates the authority and responsibility of the licensee

and the client;

(b) Check instruments used to measure the activity of unsealed radioactive

material for proper function before medical use at each client's address or on each day of use, whichever is more frequent. At a minimum, the check for proper function required by this paragraph shall include a constancy check;

(c) Check survey instruments for proper operation with a dedicated check source before use at each client's address; and

(d) Before leaving a client's address, survey all areas of use to ensure compliance with the requirements in 902 KAR 100:019.

(2) A mobile medical service shall not have radioactive material delivered from

the manufacturer or the distributor to the client unless the client has a license allowing possession of the byproduct material. Radioactive material delivered to the client shall be received and handled in conformance with the client's license.

(3) A licensee providing mobile medical services shall retain the letter required in subsection (1)(a) and the record of each survey required in subsection (1)(d) of this section respectively:

(a) A licensee shall retain a copy of each letter required in subsection (1)(a) that permits the use of radioactive material at a client's address. Each letter shall clearly delineate the authority and responsibility of the licensee and the client and shall be retained for three (3) years after the last provision of service.

(b) A licensee shall retain the record of each survey required by subsection (1)(d) for three (3) years. The record shall include the date of the survey, the results of the survey, the instrument used to make the survey, and the name of the individual who performed the survey.

(4) The cabinet shall license mobile medicine services in accordance with this administrative regulation and applicable requirements of 902 KAR 100:012, 100:015, 100:019, 100:021, 100:040, 100:050, 100:060, 100:070, and 100:165.

Section 29. Decay-in-storage. (1) A licensee may hold radioactive material with a physical half-life of less than 120 days for decay-in-storage before disposal without regard to its radioactivity if it;

(a) Holds radioactive material for decay a minimum of ten (10) half-lives;

(b) Monitors radioactive material at the surface before disposal and determines that its radioactivity cannot be distinguished from the background radiation level with an appropriate radiation detection survey meter set on its most sensitive scale and with no interposed shielding; and

(c) Removes or obliterates all radiation labels, except for radiation labels on materials that are within containers and that will be managed as biomedical waste after they have been released from the licensee.

(2) A licensee shall retain a record of each disposal for three (3) years. The record shall include the:

(a) Date of the disposal;

(b) Date on which the radioactive material was placed in storage;

(c) Radionuclides disposed;

(d) Model and serial number of the survey instrument used;

(e) Background dose rate;

(f) Radiation dose rate measured at the surface of each waste container; and

(g) Name of the individual who performed the disposal.

Section 30. Use of Unsealed Radioactive Material for Uptake, Dilution, and Excretion Studies for Which a Written Directive is Not Required. Except for quantities that require a written directive under Section 13(2), of this administrative regulation a licensee may use any unsealed radioactive material prepared for medical use for uptake, dilution, or excretion studies that is:

(1) Obtained from a manufacturer or preparer licensed under 902 KAR 100:040 and 902 KAR 100:058 of this chapter, [the] U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements;

(2) Prepared by;

(a) An authorized nuclear pharmacist;

(b) A [;]physician who is an authorized user and who meets the requirements specified in Section 69 or 70 and Section 69(3)(a)2.g [74] of this administrative regulation; or

(c) An individual under the supervision of either as specified in Section 12 of this administrative regulation; or

(3) Obtained from and prepared by a licensee of the cabinet, U.S. Nuclear Regulatory Commission, or equivalent ~~[another]~~ agreement state for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA; or

(4) Prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.

Section 31. Use of Unsealed Radioactive Material for Imaging and Localization Studies for Which a Written Directive is Not Required. Except for quantities that require a written directive under Section 13(2) of this administrative regulation a licensee may use any unsealed radioactive material prepared for medical use for imaging and localization studies that is:

(1) Obtained from a manufacturer or preparer licensed under 902 KAR 100:040 or 100:058 of this chapter, ~~[or]~~ U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements;

(2) Prepared by:

A[a]n authorized nuclear pharmacist; ~~[;]~~

A[a] physician who is an authorized user and who meets the requirements specified in Sections 69 or 70 [74] and Section 69(3)(a)2.g. of this administrative regulation; or

A[a]n individual under the supervision, ~~[of either]~~ as specified in Section 12 of this administrative regulation;

(3) Obtained from and prepared by a cabinet, U.S. Nuclear Regulatory Commission, or equivalent ~~[another]~~ agreement state licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA; or

(4) Prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.

Section 32. Permissible Radionuclide Contaminant Concentration. (1) A licensee shall not administer to humans a radiopharmaceutical containing more than:

(a) 0.15 kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m (0.15 microcurie of molybdenum-99 per millicurie of technetium-99m); or

(b) More than 0.02 kilobecquerel of strontium-82 per megabecquerel of rubidium-82 chloride injection (0.02 microcurie of strontium-82 per millicurie of rubidium-82 chloride); or

(c) More than 0.02 kilobecquerel of strontium-85 per megabecquerel of rubidium-82 chloride injection (0.2 microcurie of strontium-85 per millicurie of rubidium-82 chloride);

(2) A licensee preparing radiopharmaceuticals from radionuclide generators shall measure the concentration of radionuclide contaminant of the first eluate after receipt of a generator to demonstrate compliance with limits specified in subsection (1) of this section.

(3) A licensee required to measure radionuclide contaminant concentration, in this section, shall retain a record of each measurement for three (3) years;

(a) The record shall include, for each elution or extraction tested, the:

1. Measured activity of the radiopharmaceutical expressed in millicuries;

2. Measured activity of contaminant expressed in microcuries;

3. Ratio of the measurements in subsection (1)(4)(a), ~~[and]~~ (b), and (c) of this section expressed as microcuries of contaminant per millicurie of radiopharmaceutical;

4. Date of the test; and

5. Initials of the individual who performed the test.

(b) A licensee shall report immediately to the cabinet each

occurrence of contaminant concentration exceeding the limits specified in this section.

Section 33. Use of Unsealed Radioactive Material for Which a Written Directive is Required. A licensee may use any unsealed radioactive material prepared for medical use and for which a written directive is required that is:

(1) Obtained from a manufacturer or preparer licensed under 902 KAR 100:040 or 902 KAR 100:058 of this chapter, ~~[or]~~ U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements;

(2) Prepared by an authorized nuclear pharmacist; ~~[;]~~ a physician who is an authorized user and who meets the requirements specified in Section 69 or 70 [74]

of this administrative regulation, or an individual under the supervision, ~~[of either]~~ as specified in Section 12 of this administrative regulation;

(3) Obtained from and prepared by a cabinet, U.S. Nuclear Regulatory Commission, or equivalent ~~[another]~~ agreement state licensee for use in research in accordance with an Investigational New Drug (IND) protocol accepted by FDA; or

(4) Prepared by the licensee for use in research in accordance with an Investigational New Drug (IND) protocol accepted by FDA.

Section 34. Safety Instruction. (1) In addition to 902 KAR 100:165, a licensee shall provide radiation safety instruction, initially and at least annually, to personnel caring for the patient or the human research subjects receiving radiopharmaceutical therapy and hospitalized for compliance with Section 27 of this administrative regulation. To satisfy this requirement, the instruction shall describe the licensee's procedures for:

(a) Patient or human research subject control;

(b) Visitor control:

1. Routine visitation to hospitalized individuals in accordance with 902 KAR 100:019, Section 10(1)(a) of this chapter; and

2. Visitation authorized in accordance with 902 KAR 100:019, Section 10(6)(3) of this chapter;

(c) Contamination control;

(d) Waste control; and

(e) Notification of the Radiation Safety Officer, or his or her designee, and the

authorized user if the patient or the human research subject has a medical emergency or dies.

(2) A licensee shall retain a record of individuals receiving safety instructions ~~[required by Sections 34, 40, and 49 of this administrative regulation]~~ for three (3) years. The record shall include a list of the topics covered, the date of the instruction, the name(s) of the attendee(s), and the name(s) of the individual(s) who provided the instruction.

Section 35. Safety Precautions. (1) For each patient or human research subject who cannot be released under Section 27 of this administrative regulation a licensee shall:

(a) Quarter the patient or the human research subject either in:

1. A private room with a private sanitary facility; or

2. A room, with a private sanitary facility, with another individual who also has received therapy with unsealed radioactive material and who also cannot be released under Section 27 of this administrative regulation;

(b) Visibly post the patient's or the human research subject's room with a "Radioactive Materials" sign;

(c) Note on the door or in the patient's or human research subject's chart where

and how long visitors may stay in the patient's or the human research subject's room; and

(d) Either monitor material and items removed from the patient's or the human research subject's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle the material

and items as radioactive waste.

(2) A licensee shall notify the radiation safety officer, or his or

her designee, and the authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

Section 36. Suppliers for Sealed Sources or Devices for Medical Use. For medical use, a licensee shall only use:

(1) Sealed sources or devices manufactured, labeled, packaged, and distributed in accordance with a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent ~~[requirements of another]~~ agreement state;

(2) Sealed sources or devices noncommercially transferred from a 902 KAR 100:072 license, U.S. Nuclear Regulatory Commission, or equivalent State Medical License~~[licensee]~~; or

(3) Teletherapy sources manufactured and distributed in accordance with a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent ~~[requirements of another]~~ agreement state.

Section 37. Use of Sources for Manual Brachytherapy. A licensee shall use only brachytherapy sources for therapeutic medical uses:

(1) As approved in the Sealed Source and Device Registry; or
(2) In research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA if the requirements of Section 36(1) of this administrative regulation are met.

Section 38. Surveys After Source Implant and Removal. (1) Immediately after implanting sources in a patient or a human research subject, the licensee shall make a survey to locate and account for all sources that have not been implanted.

(2) Immediately after removing the last temporary implant source from a patient or a human research subject, the licensee shall make a survey of the patient or the human research subject with a radiation detection survey instrument to confirm that all sources have been removed.

(3) A licensee shall retain a record of the surveys required by subsections (1) and (2) of this section for three (3) years. Each record shall include the date and results of the survey, the survey instrument used, and the name of the individual who made the survey.

Section 39. Brachytherapy Sources Accountability. (1) A licensee shall maintain accountability at all times for all brachytherapy sources in storage or use.

(2) As soon as possible after removing sources from a patient or a human research subject, a licensee shall return brachytherapy sources to a secure storage area.

(3) A licensee shall maintain a record of the brachytherapy source accountability for three (3) years for:

(a) Temporary implants, the record shall include:

1. The number and activity of sources removed from storage, the time and date they were removed from storage, the name of the individual who removed them from storage, and the location of use; and

2. The number and activity of sources returned to storage, the time and date they were returned to storage, and the name of the individual who returned them to storage.

(b) Permanent implants, the record shall include:

1. The number and activity of sources removed from storage, the date they were removed from storage, and the name of the individual who removed them from storage;

2. The number and activity of sources not implanted, the date they were returned to storage, and the name of the individual who returned them to storage; and

3. The number and activity of sources permanently implanted in the patient or human research subject.

Section 40. Safety Instruction. In addition to the requirements of 902 KAR 100:165 of this chapter. (1) The licensee shall provide radiation safety instruction, initially and at least annually, to personnel caring for patients or human research subjects who are receiving brachytherapy and cannot be released under Section 27 of this administrative regulation. To satisfy this requirement, the

instruction shall be commensurate with the duties of the personnel and shall include the:

- (a) Size and appearance of the brachytherapy sources;
- (b) Safe handling and shielding instructions;
- (c) Patient or human research subject control;
- (d) Visitor control, including both:

1. Routine visitation of hospitalized individuals in accordance with 902 KAR

100:019, Section 10(1)(a) of this chapter; and

2. Visitation authorized in accordance with 902 KAR 100:019, Section 10(6)(3) of this chapter; and

(e) Notification of the Radiation Safety Officer, or his or her designee, and an authorized user if the patient or the human research subject has a medical emergency or dies.

(2) A licensee shall retain a record of individuals receiving instruction for three (3) years. The record shall include a list of the topics covered, the date of the instruction, the name(s) of the attendee(s), and the name(s) of the individual(s) who provided the instruction.

Section 41. Safety Precautions. (1) For each patient or human research subject who is receiving brachytherapy and cannot be released under Section 27 of this administrative regulation a licensee shall:

(a) Not quarter the patient or the human research subject in the same room as an individual who is not receiving brachytherapy;

(b) Visibly post the patient's or human research subject's room with a "Radioactive Materials" sign; and

(c) Note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room.

(2) A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source:

(a) Dislodged from the patient; and

(b) Lodged within the patient following removal of the source applicators.

(3) A licensee shall notify the Radiation Safety Officer, or his or her designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

Section 42. Calibration Measurements of Brachytherapy Sources. (1) Before the first medical use of a brachytherapy source on or after October 24, 2005, a licensee shall have:

(a) Determined the source output or activity using a dosimetry system that meets the requirements of Section 51(1) of this administrative regulation;

(b) Determined source positioning accuracy within applicators; and

(c) Used published protocols currently accepted by nationally recognized bodies to meet the requirements of subsection (1)(a) and (b) of this section.

(2) A licensee may use measurements provided by the source manufacturer or by a calibration laboratory accredited by the American Association of Physicists in Medicine that are made in accordance with subsection (1) of this section.

(3) A licensee shall mathematically correct the outputs or activities determined in subsection (1) of this section for physical decay at intervals consistent with one (1) percent physical decay.

(4) A licensee shall retain a record of each calibration of brachytherapy sources required by this section for three (3) years after the last use of the source. The record shall include:

(a) The date of the calibration;

(b) The manufacturer's name, model number, and serial number for the source and the instruments used to calibrate the source;

(c) The source output or activity;

(d) The source positioning accuracy within the applicators; and

(e) The name of the individual, source manufacturer, or the calibration laboratory that performed the calibration ~~[signature of the authorized medical physicist]~~.

Section 43. Decay of strontium-90 sources for ophthalmic

treatments. (1) Only an authorized medical physicist shall calculate the activity of each strontium-90 source that is used to determine the treatment times for ophthalmic treatments. The decay shall be based on the activity determined under Section 42 of this administrative regulation.

(2) A licensee shall retain a record of the activity of each strontium-90 source for the life of the source. The record shall include:

- (a) The date and initial activity of the source as determined under Section 42 of this administrative regulation; and
- (b) For each decay calculation, the date and the source activity as determined under subsection (1) of this section.

Section 44. Therapy-related computer systems. The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally-recognized bodies. At a minimum, the acceptance testing shall include, as applicable, verification of:

- (1) The source-specific input parameters required by the dose calculation algorithm;
- (2) The accuracy of dose, dwell time, and treatment time calculations at representative points;
- (3) The accuracy of isodose plots and graphic displays; and
- (4) The accuracy of the software used to determine sealed source positions from radiographic images.

Section 45. Use of Sealed Sources for Diagnosis. A licensee shall use only sealed sources for diagnostic medical uses as approved in the Sealed Source and Device Registry.

Section 46. Use of a Sealed Source in a Remote Afterloader Unit, Teletherapy Unit, or Gamma Stereotactic Radiosurgery Unit. A licensee shall use sealed sources in photon emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units for therapeutic medical uses:

- (1) As approved in the Sealed Source and Device Registry; or
- (2) In research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA provided [if] the requirements of Section 36(1) of this administrative regulation are met.

Section 47. Surveys of Patients and Human Research Subjects Treated with a Remote Afterloader Unit. (1) Before releasing a patient or a human research subject from licensee control, a licensee shall survey the patient or the human research subject and the remote afterloader unit with a portable radiation detection survey instrument to confirm that the source(s) has been removed from the patient or human research subject and returned to the safe shielded position.

(2) A licensee shall retain a record of the surveys for three (3) years. Each record shall include the date and results of the survey, the survey instrument used, and the name of the individual who made the survey.

Section 48. Installation, Maintenance, Adjustment, and Repair.

(1) Only a person specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent ~~[another]~~ agreement state shall install, maintain, adjust, or repair a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit that involves work on the source(s) shielding, the source(s) driving unit, or other electronic or mechanical component that could expose the source(s), reduce the shielding around the source(s), or compromise the radiation safety of the unit or the source(s).

(2) Except for low dose-rate remote afterloader units, only a person specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent ~~[another]~~ agreement state shall install, replace, relocate, or remove a sealed source or source contained in other remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units.

(3) For a low dose-rate remote afterloader unit, only a person specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent ~~[another]~~ agreement state or an authorized medical physicist shall install, replace, relocate, or remove a sealed source(s) contained in the unit.

(4) A licensee shall retain a record of the installation, maintenance, adjustment, and repair of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units for three (3) years. For each installation, maintenance, adjustment and repair, the record shall include the date, description of the service, and name(s) of the individual(s) who performed the work.

Section 49. Safety Procedures and instructions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units. (1) A licensee shall:

- (a) Secure the unit, the console, the console keys, and the treatment room when not in use or unattended;
- (b) Permit only individuals approved by the authorized user, Radiation Safety Officer, or authorized medical physicist to be present in the treatment room during treatment with the source(s);
- (c) Prevent dual operation of more than one (1) radiation producing device in a treatment room if applicable; and
- (d) Develop, implement, and maintain written procedures for responding to an abnormal situation when the operator is unable to place the source(s) in the shielded position, or remove the patient or human research subject from the radiation field with controls from outside the treatment room. These procedures shall include:

1. Instructions for responding to equipment failures and the names of the individuals responsible for implementing corrective actions;

2. The process for restricting access to and posting of the treatment area to minimize the risk of inadvertent exposure; and

3. The names and telephone numbers of the authorized users, the authorized medical physicist, and the radiation safety officer to be contacted if the unit or console operates abnormally.

(2) A copy of the procedures required by subsection (1)(d) of this section shall be physically located at the unit console.

(3) A licensee shall post instructions at the unit console to inform the operator of:

- (a) The location of the procedures required by subsection (1)(d) of this section; and
- (b) The names and telephone numbers of the authorized users, the authorized medical physicist, and the radiation safety officer to be contacted if the unit or console operates abnormally.

(4) A licensee shall provide instruction, initially and at least annually, to all individuals who operate the unit, as appropriate to the individual's assigned duties, in:

- (a) The procedures identified in paragraph (1)(d) of this section; and
- (b) The operating procedures for the unit.

(5) A licensee shall ensure that operators, authorized medical physicists, and authorized users participate in drills of the emergency procedures, initially and at least annually.

(6) A licensee shall retain a record of individuals receiving instructions for three (3) years. The record shall include a list of the topics covered, the date of the instruction, the name(s) of the attendee(s), and the name(s) of the individual(s) who provided the instruction.

(7) A licensee shall retain a copy of the procedures until the licensee no longer possesses the remote afterloader, teletherapy unit, or gamma stereotactic radiosurgery unit.

Section 50. Safety Precautions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units.

(1) A licensee shall control access to the treatment room by a door at each entrance.

(2) A licensee shall equip each entrance to the treatment room with an electrical interlock system that will:

- (a) Prevent the operator from initiating the treatment cycle unless each treatment room entrance door is closed;
- (b) Cause the source(s) to be shielded when an entrance door is opened; and
- (c) Prevent the source(s) from being exposed following an interlock interruption until all treatment room entrance doors are closed and the source(s) on-off control is reset at the console.

(3) A licensee shall require any individual entering the treatment room to assure, through the use of appropriate radiation

monitors, that radiation levels have returned to ambient levels.

(a) Each radiation monitor shall be equipped with a backup power supply separate from the power supply to the unit. This backup power supply may be a battery system.

(b) If the radiation monitor is inoperable, the licensee shall require any individual entering the treatment room to use a survey instrument or audible alarm personal dosimeter to monitor for any malfunction of the source exposure mechanism that may result in an exposed or partially exposed source. The instrument or dosimeter shall be checked with a dedicated check source for proper operation at the beginning of each day of use. The licensee shall keep a record as described in this section.

(c) A licensee shall promptly repair or replace the radiation monitor if it is inoperable.

(4) Except for low-dose remote afterloader units, a licensee shall construct or equip each treatment room with viewing and intercom systems to permit continuous observation of the patient or the human research subject from the treatment console during irradiation.

(5) For licensed activities where sources are placed within the patient's or human research subject's body, a licensee shall only conduct treatments which allow for expeditious removal of a decoupled or jammed source.

(6) In addition to the requirements specified in subsections (1) through (5) of this section, a licensee shall:

(a) For medium dose-rate and pulsed dose-rate remote afterloader units, require:

1. An authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit to be physically present during the initiation of all patient treatments involving the unit; and

2. An authorized medical physicist and either an authorized user or an individual, under the supervision of an authorized user, who has been trained to remove the source applicator(s) in the event of an emergency involving the unit, to be immediately available during continuation of all patient treatments involving the unit.

(b) For high dose-rate remote afterloader units, require:

1. An authorized user and an authorized medical physicist to be physically present during the initiation of all patient treatments involving the unit; and

2. An authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit, to be physically present during continuation of all patient treatments involving the unit.

(c) For gamma stereotactic radiosurgery units, require an authorized user and an authorized medical physicist to be physically present throughout all patient treatments involving the unit.

(d) Notify the Radiation Safety Officer, or his/her designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

(7) A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source:

(a) Remaining in the unshielded position; or

(b) Lodged within the patient following completion of the treatment.

Section 51. Dosimetry Equipment. (1) Except for low dose-rate remote afterloader sources where the source output or activity is determined by the manufacturer, a licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one (1) of the following two (2) conditions shall be met:

(a) The system shall have been calibrated using a system or source traceable to the National Institute of Science and Technology (NIST) and published protocols accepted by nationally recognized bodies; or by a calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration shall have been performed within the previous two (2) years and after any servicing that may have affected system calibration; or

(b) The system shall have been calibrated within the previous four (4) years. Eighteen (18) to thirty (30) months after that calibration, the system shall have been intercompared with another dosimetry system that was calibrated within the past twenty-four (24) months by NIST or by a calibration laboratory accredited by the AAPM. The results of the intercomparison shall indicate that the calibration factor of the licensee's system had not changed by more than two (2) percent. The licensee shall not use the intercomparison result to change the calibration factor. If intercomparing dosimetry systems to be used for calibrating sealed sources for therapeutic units, the licensee shall use a comparable unit with beam attenuators or collimators, as applicable, and sources of the same radionuclide as the source used at the licensee's facility.

(2) The licensee shall have a dosimetry system available for use for spot-check output measurements, if applicable. To satisfy this requirement, the system may be compared with a system that has been calibrated in accordance with subsection (1) of this section. This comparison shall have been performed within the previous year and after each servicing that may have affected system calibration. The spot-check system may be the same system used to meet the requirement in subsection (1) of this section.

(3) The licensee shall retain a record of each calibration, intercomparison, and comparison in accordance with this section for the duration of the license. For each calibration, intercomparison, or comparison, the record shall include:

(a) The date;

(b) The manufacturer's name, model numbers and serial numbers of the instruments that were calibrated, intercompared, or compared as required by subsections (1) and (2) of this section;

(c) The correction factor that was determined from the calibration or comparison or the apparent correction factor that was determined from an intercomparison; and

(d) The names of the individuals who performed the calibration, intercomparison, or comparison.

Section 52. Full Calibration Measurements on Teletherapy Units. (1) A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit:

(a) Before the first medical use of the unit;

(b) Before medical use under the following conditions:

1. Whenever spot-check measurements indicate that the output differs by more than five (5) percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

2. Following replacement of the source or following reinstallation of the teletherapy unit in a new location; or

3. Following any repair of the teletherapy unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and

(c) At intervals not exceeding one (1) year.

(2) To satisfy the requirement of subsection (1) of this section, full calibration measurements shall include determination of:

(a) The output within \pm three (3) percent for the range of field sizes and for the distance or range of distances used for medical use;

(b) The coincidence of the radiation field and the field indicated by the light beam localizing device;

(c) The uniformity of the radiation field and its dependence on the orientation of the useful beam;

(d) Timer accuracy and linearity over the range of use;

(e) On-off error; and

(f) The accuracy of all distance measuring and localization devices in medical use.

(3) A licensee shall use the dosimetry system described in Section 51(1) of this administrative regulation to measure the output for one (1) set of exposure conditions. The remaining radiation measurements required in subsection (2)(a) of this section may be made using a dosimetry system that indicates relative dose rates.

(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally-recognized bodies.

(5) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section for physical decay for intervals not exceeding one (1) month for cobalt-60, six (6) months for cesium-137, or at intervals consistent with one (1) percent decay for all other nuclides.

(6) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (5) of this section shall be performed by the authorized medical physicist.

(7) A licensee shall retain a record of each calibration for three (3) years. The record shall include:

- (a) The date of the calibration;
- (b) The manufacturer's name, model number, and serial number of the teletherapy, remote afterloader, and gamma stereotactic radiosurgery unit(s), the source(s), and the instruments used to calibrate the unit(s);
- (c) The results and an assessment of the full calibrations;
- (d) The results of the autoradiograph required for low dose-rate remote afterloader units; and
- (e) The signature of the authorized medical physicist who performed the full calibration.

Section 53. Full calibration measurements on remote afterloader units. (1) A licensee authorized to use a remote afterloader unit for medical use shall perform full calibration measurements on each unit:

- (a) Before the first medical use of the unit;
- (b) Before medical use under the following conditions:
 1. Following replacement of the source or following reinstallation of the unit in a new location outside the facility; and
 2. Following any repair of the unit that includes removal of the source or major repair of the components associated with the source exposure assembly;
- (c) At intervals not exceeding one (1) quarter for high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader units with sources whose half-life exceeds seventy-five (75) days; and
- (d) At intervals not exceeding one (1) year for low dose-rate remote afterloader units.

(2) To satisfy the requirement of subsection (1) of this section, full calibration measurements shall include, as applicable, determination of:

- (a) The output within \pm five (5) percent;
- (b) Source positioning accuracy to within \pm one (1) millimeter;
- (c) Source retraction with backup battery upon power failure;
- (d) Length of the source transfer tubes;
- (e) Timer accuracy and linearity over the typical range of use;
- (f) Length of the applicators; and
- (g) Function of the source transfer tubes, applicators, and transfer tube-applicator interfaces.

(3) A licensee shall use the dosimetry system described in Section 51[subsection] (1) of this administrative regulation to measure the output.

(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally-recognized bodies.

(5) In addition to the requirements for full calibrations for low dose-rate remote afterloader units in subsection (2) of this section, a licensee shall perform an autoradiograph of the source(s) to verify inventory and source(s) arrangement at intervals not exceeding one (1) quarter.

(6) For low dose-rate remote afterloader units, a licensee may use measurements provided by the source manufacturer that are made in accordance with subsections (1) through (5) of this section.

(7) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section for physical decay at intervals consistent with one (1) percent physical decay.

(8) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (7) of this section shall be performed by the authorized medical physicist.

(9) A licensee shall retain a record of each calibration for three (3) years. The record shall include:

- (a) The date of the calibration;
- (b) The manufacturer's name, model number, and serial number of the teletherapy, remote afterloader, and gamma stereotactic radiosurgery unit(s), the source(s), and the instruments used to calibrate the unit(s);

- (c) The results and an assessment of the full calibrations;
- (d) The results of the autoradiograph required for low dose-rate remote afterloader units; and
- (e) The signature of the authorized medical physicist who performed the full calibration.

Section 54. Full calibration measurements on gamma stereotactic radiosurgery units (1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform full calibration measurements on each unit:

- (a) Before the first medical use of the unit;
- (b) Before medical use under the following conditions:
 1. Whenever spot-check measurements indicate that the output differs by more than five (5) percent from the output obtained at the last full calibration corrected.
 2. Following replacement of the sources or following reinstallation of the gamma mathematically for radioactive decay; stereotactic radiosurgery unit in a new location; and
 3. Following any repair of the gamma stereotactic radiosurgery unit that includes removal of the sources or major repair of the components associated with the source assembly; and
- (c) At intervals not exceeding one (1) year, with the exception that relative helmet factors need only be determined before the first medical use of a helmet and following any damage to a helmet.
- (2) To satisfy the requirement of subsection (1) of this section, full calibration measurements shall include determination of:
 - (a) The output within \pm three (3) percent;
 - (b) Relative helmet factors;
 - (c) Isocenter coincidence;
 - (d) Timer accuracy and linearity over the range of use;
 - (e) On-off error;
 - (f) Trunnion centricity;
 - (g) Treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;
 - (h) Helmet microswitches;
 - (i) Emergency timing circuits; and
 - (j) Stereotactic frames and localizing devices (trunnions).

(3) A licensee shall use the dosimetry system described in Section 51(1) of this administrative regulation to measure the output for one (1) set of exposure conditions. The remaining radiation measurements required in subsection (2)(a) of this section may be made using a dosimetry system that indicates relative dose rates.

(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally recognized bodies.

(5) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section at intervals not exceeding one (1) month for cobalt-60 and at intervals consistent with one (1) percent physical decay for all other radionuclides.

(6) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (5) of this section shall be performed by the authorized medical physicist.

(7) A licensee shall retain a record of each calibration for three (3) years. The record shall include:

- (a) The date of the calibration;
- (b) The manufacturer's name, model number, and serial number of the teletherapy, remote afterloader, and gamma stereotactic radiosurgery unit(s), the source(s), and the instruments used to calibrate the unit(s);
- (c) The results and an assessment of the full calibrations;
- (d) The results of the autoradiograph required for low dose-rate remote afterloader units; and
- (e) The signature of the authorized medical physicist who performed the full calibration.

Section 55. Periodic Spot-checks for Teletherapy Units. (1) A licensee authorized to use teletherapy units for medical use shall perform output spot-checks on each teletherapy unit once in each calendar month that shall include determination of:

- (a) Timer accuracy, and timer linearity over the range of use;
- (b) On-off error;
- (c) The coincidence of the radiation field and the field indicated by the light beam localizing device;

(d) The accuracy of all distance measuring and localization devices used for medical use;

(e) The output for one (1) typical set of operating conditions measured with the dosimetry system described in Section 51(2) of this administrative regulation; and

(f) The difference between the measurement made in subsection (1)(e) of this section and the anticipated output, expressed as a percentage of the anticipated output (i.e., the value obtained at last full calibration corrected mathematically for physical decay).

(2) A licensee shall perform measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual shall not be required to actually perform the spot-check measurements.

(3) A licensee shall have the authorized medical physicist review the results of each spot-check within fifteen (15) days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(4) A licensee authorized to use a teletherapy unit for medical use shall perform safety spot-checks of each teletherapy facility once in each calendar month and after each source installation to assure proper operation of:

(a) Electrical interlocks at each teletherapy room entrance;

(b) Electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation (restriction of source housing angulation or elevation, carriage or stand travel and operation of the beam on-off mechanism);

(c) Source exposure indicator lights on the teletherapy unit, on the control console, and in the facility;

(d) Viewing and intercom systems;

(e) Treatment room doors from inside and outside the treatment room; and

(f) Electrically assisted treatment room doors with the teletherapy unit electrical power turned off.

(5) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(6) A licensee shall retain a record of each spot-check for teletherapy units for three (3) years. The record shall include:

(a) The date of the spot-check;

(b) The manufacturer's name, model number, and serial number of the teletherapy unit, source and instrument used to measure the output of the teletherapy unit;

(c) An assessment of timer linearity and constancy;

(d) The calculated on-off error;

(e) A determination of the coincidence of the radiation field and the field indicated by the light beam localizing device;

(f) The determined accuracy of each distance measuring and localization device;

(g) The difference between the anticipated output and the measured output;

(h) Notations indicating the operability of each entrance door electrical interlock,

each electrical or mechanical stop, each source exposure indicator light, and the viewing and intercom system and doors; and

(i) The name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.

(7) A licensee shall retain a copy of the procedures required by subsection (2) of this section until the licensee no longer possesses the teletherapy unit.

Section 56. Periodic Spot-checks for Remote Afterloader Units.

(1) A licensee authorized to use a remote afterloader unit for medical use shall perform spot-checks of each remote afterloader facility and on each unit:

(a) Before the first use of a high dose-rate, medium dose-rate, or pulsed dose-rate remote afterloader unit on a given day;

(b) Before each patient treatment with a low dose-rate remote afterloader unit; and

(c) After each source installation.

(2) A licensee shall perform the measurements required by

subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual shall not be required to actually perform the spot check measurements.

(3) A licensee shall have the authorized medical physicist review the results of each spot-check within fifteen (15) days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(4) To satisfy the requirements of subsection (1) of this section, spot-checks shall, at a minimum, assure proper operation of:

(a) Electrical interlocks at each remote afterloader unit room entrance;

(b) Source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;

(c) Viewing and intercom systems in each high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader facility;

(d) Emergency response equipment;

(e) Radiation monitors used to indicate the source position;

(f) Timer accuracy;

(g) Clock (date and time) in the unit's computer; and

(h) Decayed source(s) activity in the unit's computer.

(5) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(6) A licensee shall retain a record of each spot-check for remote afterloader units for three (3) years. The record shall include, as applicable:

(a) The date of the spot-check;

(b) The manufacturer's name, model number, and serial number for the remote afterloader unit and source;

(c) An assessment of timer accuracy;

(d) Notations indicating the operability of each entrance door electrical interlock, radiation monitors, source exposure indicator lights, viewing and intercom systems, and clock and decayed source activity in the unit's computer; and

(e) The name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.

(7) A licensee shall retain a copy of the procedures required by subsection (2) of

this section until the licensee no longer possesses the remote afterloader unit.

Section 57. Periodic Spot-checks for Gamma Stereotactic Radiosurgery Units. (1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform spot-checks of each gamma stereotactic radiosurgery facility and on each unit:

(a) Monthly;

(b) Before the first use of the unit on a given day; and

(c) After each source installation.

(2) A licensee shall:

(a) Perform the measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual shall not be required to actually perform the spot check measurements.

(b) Have the authorized medical physicist review the results of each spot-check within fifteen (15) days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(3) To satisfy the requirements of subsection (1)(a) of this section, spot-checks shall, at a minimum:

(a) Assure proper operation of:

1. Treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;

2. Helmet microswitches;

3. Emergency timing circuits; and

4. Stereotactic frames and localizing devices (trunnions).

(b) Determine:

1. The output for one (1) typical set of operating conditions measured with the dosimetry system described in Section 51(2) of this administrative regulation;

2. The difference between the measurement made in subsection (3)(b)1. of this section and the anticipated output, expressed as a percentage of the anticipated output (i.e., the value obtained at last full calibration corrected mathematically for physical decay);

3. Source output against computer calculation;

4. Timer accuracy and linearity over the range of use;

5. On-off error; and

6. Trunnion centricity.

(4) To satisfy the requirements of subsection (1)(b) and (c) of this section, spot-checks shall assure proper operation of:

(a) Electrical interlocks at each gamma stereotactic radiosurgery room entrance;

(b) Source exposure indicator lights on the gamma stereotactic radiosurgery unit, on the control console, and in the facility;

(c) Viewing and intercom systems;

(d) Timer termination;

(e) Radiation monitors used to indicate room exposures; and

(f) Emergency off buttons.

(5) A licensee shall arrange for the repair of any system identified in subsection (3) of this section that is not operating properly as soon as possible.

(6) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(7) A licensee shall retain a record of each spot-check for gamma stereotactic radiosurgery units required by this section for three (3) years. The record shall include:

(a) The date of the spot-check;

(b) The manufacturer's name, model number, and serial number for the gamma stereotactic radiosurgery unit and the instrument used to measure the output of the unit;

(c) An assessment of timer linearity and accuracy;

(d) The calculated on-off error;

(e) A determination of trunnion centricity;

(f) The difference between the anticipated output and the measured output;

(g) An assessment of source output against computer calculations;

(h) Notations indicating the operability of radiation monitors, helmet microswitches, emergency timing circuits, emergency off buttons, electrical interlocks, source exposure indicator lights, viewing and intercom systems, timer termination, treatment table retraction mechanism, and stereotactic frames and localizing devices (trunnions); and

(i) The name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.

(8) A licensee shall retain a copy of the procedures required by subsection (2) of this section until the licensee no longer possesses the gamma stereotactic radiosurgery unit.

Section 58. Additional Technical Requirements for Mobile Remote Afterloader Units. (1) A licensee providing mobile remote afterloader service shall:

(a) Check survey instruments before medical use at each address of use or on each day of use, whichever is more frequent; and

(b) Account for all sources before departure from a client's address of use.

(2) In addition to the periodic spot-checks required by Section 56 of this administrative regulation a licensee authorized to use mobile afterloaders for medical use shall perform checks on each remote afterloader unit before use at each address of use. At a minimum, checks shall be made to verify the operation of:

(a) Electrical interlocks on treatment area access points;

(b) Source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;

(c) Viewing and intercom systems;

(d) Applicators, source transfer tubes, and transfer tube-applicator interfaces;

(e) Radiation monitors used to indicate room exposures;

(f) Source positioning (accuracy); and

(g) Radiation monitors used to indicate whether the source has returned to a safe shielded position.

(3) In addition to the requirements for checks in subsection (2) of this section, a licensee shall ensure overall proper operation of the remote afterloader unit by conducting a simulated cycle of treatment before use at each address of use.

(4) If the results of the checks required in subsection (2) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(5) A licensee shall retain a record of each check for mobile remote afterloader units for three (3) years. The record shall include:

(a) The date of the check;

(b) The manufacturer's name, model number, and serial number of the remote afterloader unit;

(c) Notations accounting for all sources before the licensee departs from a facility;

(d) Notations indicating the operability of each entrance door electrical interlock, radiation monitors, source exposure indicator lights, viewing and intercom system, applicators, source transfer tubes, and transfer tube applicator interfaces, and source positioning accuracy; and

(e) The signature of the individual who performed the check.

Section 59. Radiation Surveys. (1) In addition to the survey requirement in 902 KAR 100:019, Section 12, a person licensed under this administrative regulation shall conduct surveys to ensure that the maximum radiation levels and average radiation levels from the surface of the main source safe with the source(s) in the shielded position do not exceed the levels stated in the Sealed Source and Device Registry.

(2) The licensee shall conduct the survey required by subsection (1) of this section at installation of a new source and following repairs to the source(s) shielding, the source(s) driving unit, or other electronic or mechanical component that could expose the source, reduce the shielding around the source(s), or compromise the radiation safety of the unit or the source(s).

(3) A licensee shall maintain a record of radiation surveys of treatment units for the duration of use of the unit. The record shall include:

(a) The date of the measurements;

(b) The manufacturer's name, model number and serial number of the treatment unit, source, and instrument used to measure radiation levels;

(c) Each dose rate measured around the source while the unit is in the off position and the average of all measurements; and

(d) The signature of the individual who performed the test.

Section 60. Five (5) year Inspection for Teletherapy and Gamma Stereotactic Radiosurgery Units. (1) A licensee shall have each teletherapy unit and gamma stereotactic radiosurgery unit fully inspected and serviced during source replacement or at intervals not to exceed five (5) years, whichever comes first, to assure proper functioning of the source exposure mechanism.

(2) This inspection and servicing may only be performed by persons specifically licensed to do so by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent ~~another~~ agreement state.

(3) A licensee shall maintain a record of the five (5) year inspections for teletherapy and gamma stereotactic radiosurgery units for the duration of use of the unit. The record shall contain:

(a) The inspector's radioactive materials license number;

(b) The date of inspection;

(c) The manufacturer's name and model number and serial number of both the treatment unit and source;

(d) A list of components inspected and serviced, and the type of service; and

(e) The signature of the inspector.

Section 61. Therapy-related Computer Systems. The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum,

the acceptance testing shall include, as applicable, verification of:

- (1) The source-specific input parameters required by the dose calculation algorithm;
- (2) The accuracy of dose, dwell time, and treatment time calculations at representative points;
- (3) The accuracy of isodose plots and graphic displays;
- (4) The accuracy of the software used to determine sealed source positions from radiographic images; and
- (5) The accuracy of electronic transfer of the treatment delivery parameters to the treatment delivery unit from the treatment planning system.

Section 62. Other Medical Uses of Radioactive Material or Radiation from Radioactive Material. A licensee may use radioactive material or a radiation source approved for medical use which is not specifically addressed in Sections 30, 31, 33, 37, 45, and 46 of this administrative regulation if:

- (1) The applicant or licensee has submitted the information required by Section 4(2) through (4) of this administrative regulation; and
- (2) The applicant or licensee has received written approval from the cabinet in a license or license amendment and uses the material in accordance with the administrative regulations and specific conditions the cabinet considers necessary for the medical use of the material.

Section 63. Recentness of Training. The training and experience specified in Sections ~~64~~ [65] through ~~77~~ [78] of this administrative regulation shall have been obtained within the seven (7) years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

Section 64. ~~Visiting Authorized User, Visiting Authorized Medical physicist, and Visiting Authorized Nuclear Pharmacist.~~

~~(1) A licensee may permit a visiting authorized user, visiting authorized medical physicist, or visiting authorized nuclear pharmacist to use licensed material for medical use under the terms of the licensee's license for sixty (60) days each year if:~~

~~(a) The visiting authorized user has the prior written permission of the licensee's management and, if the use occurs on behalf of an institution, the institution's Radiation Safety Committee, if applicable;~~

~~(b) The licensee has a copy of the cabinet, U.S. Nuclear Regulatory Commission, or another agreement state license that identifies the visiting authorized user by name as an authorized user for medical use or the visiting authorized nuclear pharmacist as an authorized nuclear pharmacist for nuclear pharmacy use, or the visiting authorized medical physicist for similar types of therapeutic medical units for which the individual is requesting authorized medical physicist status. The supervising authorized user shall not be required to be present for each use of radioactive material; and~~

~~(c) Only those procedures for which the visiting authorized user, or visiting authorized medical physicist, or visiting authorized nuclear pharmacist is specifically authorized by the cabinet, U.S. Nuclear Regulatory Commission, or another agreement state license are performed by that individual.~~

~~(2) A licensee need not apply for a license amendment in order to permit a visiting authorized user, or visiting authorized medical physicist, or visiting authorized nuclear pharmacist to use licensed material as described in this section.~~

~~(3) A licensee shall retain copies of the records specified in this section for five (5) years from the date of the last visit.~~

~~Section 65.] Training for Radiation Safety Officer. Except as provided in Section 67 [68] of this administrative regulation, the licensee shall require an individual fulfilling the responsibilities of the radiation safety officer as provided in 902 KAR 100:072, Section 10 to be an individual who:~~

~~(1) Is certified by a specialty board whose certification process [includes all of the requirements in subsection (1) of this section and whose certification] has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [another] agreement state and who meets the requirements in subsections (4) and~~

~~(5) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to: [or]~~

~~(a)1. Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of twenty (20) college credits in physical science;~~

~~2. Have five (5) or more years of professional experience in health physics (graduate training may be substituted for no more than two (2) years of the required experience) including at least three (3) years in applied health physics; and~~

~~3. Pass an examination administered by diplomats of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurements of radioactivity, radiation biology, and radiation dosimetry; or~~

~~(b)1. Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;~~

~~2. Have two (2) years of full-time practical training and/or supervised experience in medical physics;~~

~~a. Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the Cabinet, U.S. Nuclear Regulatory Commission, or equivalent Agreement State; or~~

~~b. In clinical nuclear medicine facilities providing diagnostic and/or therapeutic services under the direction of physicians who meet the requirements for authorized users in 902 KAR 100:072, Sections 67, 69, or 70 of this administrative regulation;~~

~~3. Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety; or~~

~~(2)(a) Has completed a structured educational program consisting of both:~~

~~1. 200 hours of classroom and laboratory [didactic] training in the following areas:~~

- a. Radiation physics and instrumentation;
- b. Radiation protection;
- c. Mathematics pertaining to the use and measurement of radioactivity;
- d. Radiation biology; and
- e. Radiation dosimetry; and

~~2. One (1) year of full-time radiation safety experience under the supervision of the individual identified as the radiation safety officer on a cabinet, U.S. Nuclear Regulatory Commission, or equivalent [another] agreement state license or permit issued by a Commission master material licensee that authorizes similar type(s) of use(s) of radioactive material involving the following:~~

- a. Shipping, receiving, and performing related radiation surveys;
- b. Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure radionuclides;
- c. Securing and controlling radioactive material;
- d. Using administrative controls to avoid mistakes in the administration of radioactive material;
- e. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;
- f. Using emergency procedures to control radioactive material; and

~~g. Disposing of radioactive material; or~~

~~(3)(a) Is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state under 902 KAR 100:072, Section 65(1), and has experience in radiation safety for similar types of use of radioactive material for which the licensee is seeking the approval of the individual as Radiation Safety Officer, and who meets the requirements in subsections (4) and (5) of this section; or~~

~~(b) Is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the licensee's license and has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual has radiation~~

safety officer responsibilities, and

(4) Has obtained written attestation, signed by a preceptor Radiation Safety Officer, that the individual has satisfactorily completed the requirements in subsections (5) and in (1)(a)1 and 2 or (1)(b)1 and 2 or (2)(a) or (3)(a) of this section, and has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee; and

(5) Has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by a radiation safety officer, authorized medical physicist, authorized nuclear pharmacist, or authorized user, as appropriate, who is authorized for the type(s) of use for which the licensee is seeking approval. ~~(b) Has obtained written certification, signed by a preceptor radiation safety officer, that the individual has satisfactorily completed the requirements in subsection (2)(a) of this section and has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee or~~

~~(c) Is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the licensee's license and has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual has radiation safety officer responsibilities.]~~

Section ~~65~~, ~~[66-]~~ Training for an Authorized Medical Physicist. Except as provided in Section ~~67~~ ~~[68]~~ of this administrative regulation the licensee shall require the authorized medical physicist to be an individual who:

(1) Is certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state and who meets the ~~[includes all of the training and experience]~~ requirements in subsection (2)(b) and (3) of this section ~~[and whose certification has been recognized by the cabinet, U.S. Nuclear Regulatory Commission or another agreement state]~~. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(b) Have a two (2) years of full-time practical training and/or supervised experience in medical physics;

1. Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state; or

2. In clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to one (1) million electron volts) and brachytherapy services under the direction of physicians who meet the requirements of authorized users in Section 67, 74, or 77 of this administrative regulation, and

(c) Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

(2)(a) Holds a master's or doctor's degree in physics, ~~[biophysics, radiological physics,]~~ medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; ~~[or health physics]~~ and has completed one (1) year of full-time training in medical physics ~~[therapeutic radiological physics]~~ and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type(s) of use for which the individual is seeking authorization. This training and work experience shall be conducted in clinical radiation facilities that provides high-energy, external beam therapy (photons and electrons with energies greater than or equal to one (1) million electron volts) and brachytherapy services and shall include:

1. Performing sealed source leak test and inventories;

2. Performing decay corrections;

3. Performing full calibration and periodic spot checks of exter-

nal beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

4. Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(b) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (3), and (1)(a) and (b), or subsection (2)(a) and (3) of this section, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation shall be signed by a preceptor authorized medical physicist who meets the requirements in Sections 65 or 67 of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent Agreement State requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

(3) Has training for the type(s) of use for which authorization is sought that includes hands-on device operation, safety operations, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type(s) of use for which the individual is seeking authorization. ~~[at a medical institution that includes the tasks listed in Sections 24, 43, 52, 53, 54, 55, 56, 57 and 59 of this administrative regulation as applicable; and~~

~~(3) Has obtained written certification that the individual has satisfactorily completed the requirements in subsection (2)(a) of this section and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written certification shall be signed by a preceptor authorized medical physicist who meets the requirements of this section or equivalent agreement state requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status.]~~

Section ~~66~~, ~~[67-]~~ Training for an Authorized Nuclear Pharmacist. Except as provided in Section ~~67~~ ~~[68]~~ of this administrative regulation the licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

(1) Is certified ~~[as a nuclear pharmacist]~~ by a specialty board whose certification process ~~[includes all of the requirements in subsection (2) of this section and whose certification]~~ has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent ~~[another]~~ agreement state and who meets the requirements in subsection (2)(b) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Have graduated from a pharmacy program accredited by the American Council on Pharmaceutical Education (ACPE) or have passed the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination;

(b) Hold a current, active license to practice pharmacy;

(c) Provide evidence of having acquired at least 4,000 hours of training and experience in nuclear pharmacy practice. Academic training may be substituted for no more than 2,000 hours of the required training and experience; and

(d) Pass an examination in nuclear pharmacy administered by diplomats of the specialty board, that assesses knowledge and competency in procurement, compounding, quality assurance, dispensing, distribution, health and safety, radiation safety, provision of information and consultation, monitoring patient outcomes, research and development; or

(2)(a) Has completed 700 hours in a structured educational program consisting of both:

1. 200 hours of classroom and laboratory ~~[Didactic]~~ training in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of

radioactivity;

- d. Chemistry of radioactive material for medical use; and
- e. Radiation biology; and
- 2. Supervised practical experience in a nuclear pharmacy involving:

a. Shipping, receiving, and performing related radiation surveys;

b. Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

c. Calculating, assaying, and safely preparing dosages for patients or human research subjects;

d. Using administrative controls to avoid medical events in the administration of radioactive material; and

e. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures; and

(b) ~~(c)~~ Has obtained written attestation ~~[certification]~~, signed by a preceptor authorized nuclear pharmacist, that the individual has satisfactorily completed the requirements in subsections (1)(a), (1)(b) and (1)(c) or (2)(a) ~~[subsection (2)(a)]~~ of this section and has achieved a level of competency sufficient to function independently as an authorized nuclear pharmacist.

Section 67, ~~[68-]~~ Training for Experienced Radiation Safety Officer, Teletherapy or Medical Physicist, Authorized Medical Physicist, Authorized User, ~~and~~ Nuclear Pharmacist and Authorized Nuclear Pharmacist. (1)(a) An individual identified as a Radiation Safety Officer, a teletherapy or medical physicist, or a nuclear pharmacist on a cabinet, U.S. Nuclear Regulatory Commission, or equivalent ~~another~~ agreement state license or a permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent ~~another~~ agreement state broad scope licensee or master material license permit or by a master material license permittee of broad scope before October 24, 2005 shall not be required to comply with the training requirements of Section 64, 65, or 66, ~~or 67~~ of this administrative regulation respectively;

(b) An individual identified as a radiation safety officer, an authorized medical physicist, or an authorized nuclear pharmacist on a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state license or a permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or agreement state broad scope licensee or master material license permit or master material license permittee of broad scope between October 24, 2002 and April 29, 2005 need not comply with the training requirements of Section 64, 65, or 66 of this administration regulation respectively.

(2)(a) Physicians, dentists, or podiatrists identified as authorized users for the medical use of radioactive material on a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent ~~another~~ agreement state, a permit issued by a Commission master material licensee, a permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent ~~another~~ agreement state broad scope licensee, or a permit issued by a Commission master material license broad scope permittee before October 24, 2002 ~~[2005]~~ who perform only those medical uses for which they were authorized on that date shall not be required to comply with the training requirements of 902 KAR 100:072, Sections 68 ~~[69]~~ through 77.

(b) Physicians, dentists, or podiatrists identified as authorized users for the medical use of radioactive material on a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state, a permit issued by a master material licensee, a permit issued by the cabinet, U.S. Nuclear Regulatory Commission or agreement state broad scope licensee or a permit issued by a U.S. Nuclear Regulatory Commission master material license broad scope permittee who performs only those medical uses for which they were authorized between October 24, 2002 and April 29, 2005 need not comply with the training requirements of Sections 68 through 77.

Section 68, ~~[69-]~~ Training for Uptake, Dilution, and Excretion Studies. Except as provided in Section 67 ~~[68]~~ of this administrative

regulation the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under Section 30 of this administrative regulation to be a physician who:

(1)(a) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3)(b) of this section and who ~~[whose certification]~~ has been recognized by the cabinet, U.S. Nuclear Regulatory Commission or equivalent ~~an~~ agreement state and who meets the requirements in subsection (3)(b) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

1. Complete sixty (60) hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies as described in subsection (3)(a)1 through (3)(a)2 of this section; and

2. Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

(2) Is an authorized user under Section 69 or 70 ~~or 74~~, of this administrative regulation or U.S. Nuclear Regulatory Commission or equivalent agreement state requirements; or

(3)(a) Has completed sixty (60) hours of training and experience, including a minimum of eight (8) hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience shall include:

1. Classroom and laboratory training, in the following areas:

- a. Radiation physics and instrumentation;
- b. Radiation protection;
- c. Mathematics pertaining to the use and measurement of radioactivity;
- d. Chemistry of radioactive material for medical use; and
- e. Radiation biology; and

2. Work experience, under the supervision of an authorized user who meets the requirements in Section 67, 68, 69, or 70, ~~or 74~~ of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements, involving:

- a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- b. Performing quality control procedures on ~~[Calibrating]~~ instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
- c. Calculating, measuring, and safely preparing patient or human research subject dosages;
- d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
- e. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and
- f. Administering dosages of radioactive drugs to patients or human research subjects; and

(b) Has obtained written attestation ~~[certification]~~, signed by a preceptor

authorized user who meets the requirements in Section 67, 68, 69, or 70 ~~[or 74]~~ of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) or (3)(a) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under Section 30 of this administrative regulation.

Section 69, ~~[70-]~~ Training for Imaging and Localization Studies. Except as provided in Section 67 ~~[68]~~ of this administrative regulation the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under Section 31 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process [includes all of the requirements in subsection (3)(b) of this section and whose certification] has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent ~~an~~

agreement state and who meets the requirements in subsection (3)(b) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Complete 700 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for imaging and localization studies that includes the topics listed in subsection (3)(a)1 through 2.g of this section; and

2. Pass an examination, administered by diplomats of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

(2) Is an authorized user under Section 70 [74] of this administrative regulation and meets the requirements in subsection (3)(a)2.g of this section, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements; or

(3) (a) Has completed 700 hours of training and experience, including a minimum of eighty (80) hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience shall include, at a minimum:

1. Classroom and laboratory training[.] in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Chemistry of radioactive material for medical use; and

e. Radiation biology; and

2. Work experience, under the supervision of an authorized user, who meets the requirements in Section 67, 69 or 70 and Section 69(3)(a)2.g, [or Section 74] of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements, involving:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

b. Performing quality control procedures on [Calibrating] instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

c. Calculating, measuring, and safely preparing patient or human research subject dosages;

d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

e. Using procedures to safely contain spilled radioactive material and using proper decontamination procedures;

f. Administering dosages of radioactive drugs to patients or human research subjects; and

g. Eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

(b) Has obtained written attestation [certification], signed by a preceptor authorized user who meets the requirements in Sections 67, 69, or 70 or Section 69(3)(a)2.g [74] of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) or (3)(a) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under Sections 30 and 31 of this administrative regulation.

Section 70.[74-] Training for Use of Unsealed Radioactive Material for Which a Written Directive Is Required. Except as provided in Section 67 [68] of this administrative regulation the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under Section 33 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process [includes all of the requirements in subsection (2)(a)2.g and (2)(b) [(3)] of this section and whose certification] has been recognized by the cabinet, U.S. Nuclear Regulatory Commission or equivalent [another] agreement state, and who meets the requirements in subsection (2)(a)2.f and (b) of this section. To be recognized, a specialty board shall require all candidates for certification

to:

(a) Successfully complete residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty. These residency training programs shall include 700 hours of training and experience as described in subsection (2)(a)1 through 2.e of this section. Eligible training programs shall be approved by: [-or]

1. Residency Review Committee of the Accreditation Council for Graduate Medical Education;

2. Royal College of Physicians and Surgeons of Canada; or

3. Committee on Post-Graduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by the diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed radioactive material for which a written directive is required; or

(2)(a) Has completed 700 hours of training and experience, including a minimum or 200 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience shall include:

1. Classroom and laboratory training in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Chemistry of radioactive material for medical use; and

e. Radiation biology; and

2. Work experience, under the supervision of an authorized user who meets the requirements of Sections 67 and 70 of this administrative regulation, or [subsections (1) and (2) of this section], U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements. A supervising authorized user, who meets the requirements in Section 70[74](2) of this administrative regulation, shall have experience in administering dosages in the same dosage category or categories (i.e., Section 70[74](2)(a)2.[g(i), (ii), (iii), or (iv)] of this administrative regulation as the individual requesting authorized user status. The work experience shall involve:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

b. Performing quality control procedures on [Calibrating] instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;

c. Calculating, measuring, and safely preparing patient or human research subject dosages;

d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

e. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;

f. [Eluting generator systems, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

g.] Administering dosages of radioactive drugs to patients or human research subjects involving a minimum of three (3) cases in each of the following categories for which the individual is requesting authorized user status:

(i) Oral administration of less than or equal to 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131, for which a written directive is required;

(ii) Oral administration of greater than 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131;

(iii) Parenteral administration of any beta emitter or a photon-emitting radionuclide with a photon energy less than 150 keV, for which a written directive is required; and/or

(iv) Parenteral administration of any other radionuclide, for which a written directive is required; and

(b) Has obtained written attestation [certification] that the individual has satisfactorily completed the requirements in subsection (1)(2)(a) and (2)(a)2.f or (2)(a) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under Section 33 of this administrative regulation. The written attestation [certification]

shall be signed by a preceptor authorized user who meets the requirements ~~[of subsections (1) and (2)]~~ of this section, and section 67 of this administrative regulation or U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements. The preceptor authorized user, who meets the requirements ~~in~~ of subsection (2) of this section, shall have experience in administering dosages in the same dosage category or categories (i.e., Section 70[74](2)(a)2.f.~~(g)(i), (ii), (iii), or (iv)]~~) of this administrative regulation as the individual requesting authorized user status.

Section 71.~~[72.]~~ Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 Gigabecquerels (33 millicuries). Except as provided in Section 67~~[68]~~ of this administrative regulation, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 Gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3)(a) and (b) of this section and whose certification has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [another] agreement state and who meets the requirements in subsection (3)(c) of this section;

(2) Is an authorized user under Section 70 [74(1), 74(2)] of this administrative regulation for uses listed in Section 70[74](2)(a)2.f.~~(g)(i) [or (ii)],~~ or Section 72 of this administrative regulation, ~~[or] U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements; or~~

(3) (a) Has successfully completed eighty (80) hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training shall include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity;
4. Chemistry of radioactive material for medical use; and
5. Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in Section 67, 70, 71.~~[(4), 74(2)], or 72[73]~~ of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements. A supervising authorized user who meets the requirements in Section 70 [74](2)(a) of this administrative regulation shall have experience in administering dosages as specified in Section 70[74](2)(a)2.f.~~(g)(i) or (ii)]~~ of this administrative regulation. The work experience shall involve:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
2. Performing quality control procedures on [Calibrating] instruments used to determine the activity of dosages and performing checks for proper operation for survey meters;
3. Calculating, measuring, and safely preparing patient or human research subject dosages;
4. Using administrative controls to prevent a medical event involving the use of radioactive material;
5. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

6. Administering dosages to patients or human research subjects, that includes at least three (3) cases involving the oral administration of less than or equal to 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Has obtained written attestation [certification] that the individual has satisfactorily completed the requirements in subsection (3)~~[paragraphs]~~(a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under Section 33 of this administrative regulation. The written attestation [certification] shall be signed by a preceptor authorized user who meets the requirements in Section 67, 70, 71 ~~[(4), 74(2)], or 72[73]~~ of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements. A preceptor authorized user,

who meets the requirement in Section 70[74](2) of this administrative regulation shall also have experience in administering dosages as specified in Section 70(2)(a)2.f.~~(g)(i) or (ii)]~~ of this administrative regulation.

Section 72.~~[73.]~~ Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries). Except as provided in Section 67 ~~[68]~~ of this administrative regulation the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3)(a) and (b) of this section, and whose certification has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [another] agreement state and who meets the requirements in subsection of (3)(c) of this section; or

(2) Is an authorized user under Section 70 [74(1), 74(2)] of this administrative regulation for uses listed in Section 70(2)(a)2.f.~~(g)(ii)]~~ of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements; or

(3)(a) Has successfully completed eighty (80) hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training shall include:

1. Radiation physics and instrumentation;
2. Radiation protection; and
3. Mathematics pertaining to the use and measurement of radioactivity;
4. Chemistry of radioactive material for medical use; and
5. Radiation biology;

(b) Has work experience, under the supervision of an authorized user who meets the requirements in Section 67, 70 and 72 [71(4), 74(2), 73] of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements. A supervising authorized user, who meets the requirements in Section 70[74](2) of this administrative regulation, shall also have experience in administering dosages as specified in Section 70[74](2)(a)2.f.~~(ii) [g-(4)]~~ of this administrative regulation. The work experience shall involve:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
2. Performing quality control procedures on [Calibrating] instruments used to determine the activity of dosages and performing checks for proper operation for survey meters;
3. Calculating, measuring, and safely preparing patient or human research subject dosages;
4. Using administrative controls to prevent a medical event involving the use of radioactive material;
5. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and
6. Administering dosages to patients or human research subjects, that includes at least three (3) cases involving the oral administration of greater than 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Has obtained written attestation [certification] that the individual has satisfactorily completed the requirements in subsection (3)~~[paragraphs]~~(a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under Section 33 of this administrative regulation. The written attestation [certification] shall be signed by a preceptor authorized user who meets the requirements in Section 67, 70 or 72 [74(1), 74(2), 72, or 73] of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements. A preceptor authorized user, who meets the requirements in Section 70[74](2) of this administrative regulation, shall have experience in administering dosages as specified in ~~[902 KAR 100.072.]~~ Section 70(2)(a)2.f.~~(g)(ii)]~~.

Section 73. Training for the Parenteral Administration of Unsealed Radioactive Material Requiring a Written Directive. Except as provided in Section 67 of this administrative regulation, the li-

censee shall require an authorized user for the parenteral administration requiring a written directive, to be a physician who:

(1) Is an authorized user under Section 70 for uses listed in Section 70(2)(a)2.f.(iii) or Section 70(2)(a)2.f.(iv) or of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent Agreement State regulations; or

(2) Is an authorized user under Sections 74 or 77 of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent Agreement State and who meets the requirements in subsection (4) of this section; or

(3) Is certified by a medical specialty board whose certification process has been recognized by the Cabinet, U.S. Nuclear Regulatory Commission, or equivalent Agreement State under Sections 74 or 77 of this administrative regulation; and who meets the requirements in subsection (4) of this section.

(4)(a) Has successfully completed eighty (80) hours of classroom and laboratory training, applicable to parenteral administrations, for which a written directive is required, of any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. The training shall include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity;
4. Chemistry of radioactive material for medical use; and
5. Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in Sections 67, 70, and 73 of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent Agreement State, in the parenteral administration, for which a written directive is required, of any beta emitter, or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. A supervising authorized user who meets the requirements in Section 70 shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(iii) and/or Section 70(2)(a)2.f.(iv). The work experience shall involve:

1. Ordering, receiving, and unpacking radioactive materials safely, and performing the related radiation surveys;
2. Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;
3. Calculating, measuring, and safely preparing patient or human research subjects dosages;
4. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
5. Using procedures to contain spilled radioactive material safely, and using proper decontamination procedures; and
6. Administering dosages to patients or human research subjects, that include at least three (3) cases involving the parenteral administration, for which a written directive is required, of any beta emitter, or photon-emitting radionuclide with a photon energy less than 150 keV and/or at least three (3) cases involving the parenteral administration of any other radionuclide, for which a written directive is required; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (2) or (3) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed radioactive material requiring a written directive. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Sections 67, 70, or 73 of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent Agreement State. A preceptor authorized user, who meets the requirements in Section 70, shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(iii) and/or Section 70(2)(a)2.f.(iv) of this administrative regulation.

Section 74. [75.] Training for Use of Manual Brachytherapy Sources. Except as provided in Section 67 [68] of this administrative regulation, the licensee shall require an authorized user of a

manual brachytherapy source for the uses authorized under Section 37 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process [includes all of the requirements in subsection (2)(c) of this section and whose certification] has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [another] agreement state and who meets the requirements in (2)(c) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a minimum of three (3) years of residency training in a radiation oncology program approved by the:

1. Residency Review Committee of the Accreditation Council for Graduate Medical Education; or
2. Royal College of Physicians and Surgeons of Canada; or
3. Committee on Post-Graduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by diplomats of the specialty board, that tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or

(2)(a) Has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources that includes:

1. 200 hours of classroom and laboratory training in the following areas:
 - a. Radiation physics and instrumentation;
 - b. Radiation protection;
 - c. Mathematics pertaining to the use and measurement of radioactivity; and
 - d. Radiation biology; and
2. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in Sections 67 and 74 of this administrative regulation, [of this section] U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements at a medical institution, involving:

- a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- b. Checking survey meters for proper operation;
- c. Preparing, implanting, and removing brachytherapy sources;
- d. Maintaining running inventories of material on hand;
- e. Using administrative controls to prevent a medical event involving the use of radioactive material; [and]
- f. Using emergency procedures to control radioactive material; and

(b) Has completed [obtained] three (3) years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in sections 67 and 74 of this administrative regulation [of this section], U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subsection (2)(a)2. of this section; and

(c) Has obtained written attestation [certification], signed by a preceptor authorized user who meets the requirements of this section and Sections 67 and 74 of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) or (2)(a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized under Section 37 of this administrative regulation.

Section 75. Training for Ophthalmic Use of Strontium-90. Except as provided in Section 67 [68] of this administrative regulation the licensee shall require the authorized user of strontium-90 for ophthalmic radiotherapy to be a physician who:

(1) Is an authorized user under Section 74 of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent

agreement state requirements; or

(2)(a) Has completed twenty-four (24) hours of classroom and laboratory training applicable to the medical use of strontium-90 for ophthalmic radiotherapy. The training shall include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity; and

4. Radiation biology; and

(b) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution, clinic, or private practice that includes the use of strontium-90 for the ophthalmic treatment of five (5) individuals. This supervised clinical training shall involve:

1. Examination of each individual to be treated;
2. Calculation of the dose to be administered;
3. Administration of the dose; and
4. Follow up and review of each individual's case history; and

(c) Has obtained written attestation ~~[certification]~~, signed by a preceptor authorized user who meets the requirements in Sections 67, 74, and 75 of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (1) and (2) of this section and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

Section 76. Training for use of sealed sources for diagnosis. Except as provided in Section 67 ~~[68]~~ of this administrative regulation, the licensee shall require the authorized user of a diagnostic sealed source for use in a device authorized under Section 45 of this administrative regulation to be a physician, dentist, or podiatrist who:

(1) Is certified by a specialty board whose certification process includes all of the requirements in subsection (2) and (3) of this section and whose certification has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent ~~[another]~~ agreement state; or

(2) Has completed ~~[had]~~ eight (8) hours of classroom and laboratory training in basic radionuclide handling techniques specifically applicable to the use of the device. The training shall include:

- (a) Radiation physics and instrumentation;
- (b) Radiation protection;
- (c) Mathematics pertaining to the use and measurement of radioactivity; and
- (d) Radiation biology; and

(3) Has completed ~~(e)~~ training in the use of the device for the uses requested.

Section 77. Training for use of Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units. Except as provided in Section 67 ~~[68]~~ of this administrative regulation, the licensee shall require an authorized user of a sealed source for a use authorized under Section 46 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process ~~[includes all of the requirements in subsection (2) of this section and whose certification]~~ has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent ~~[another]~~ agreement state and who meets the requirements in (2)(c) and (3) of this section. To have its certification recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a minimum of three (3) years of residency training in a radiation therapy program approved by the:

1. Residency Review Committee of the Accreditation Council for Graduate Medical Education;
2. Royal College of Physicians and Surgeons of Canada; or
3. Committee on Post-Graduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, remote after-

loaders and external beam therapy; or

(2)(a) Has completed a structured educational program in basic radionuclide techniques applicable to the use of a sealed source in a therapeutic medical unit that includes:

1. 200 hours of classroom and laboratory training in the following areas:

- a. Radiation physics and instrumentation;
- b. Radiation protection;
- c. Mathematics pertaining to the use and measurement of radioactivity; and
- d. Radiation biology; and

2. 500 hours of work experience, under the supervision of an authorized user

who meets the requirements in Sections 67 and 77 of this administrative regulation ~~[of this section]~~, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements at a medical institution, involving:

- a. Reviewing full calibration measurements and periodic spot-checks;
- b. Preparing treatment plans and calculating treatment doses and times;
- c. Using administrative controls to prevent a medical event involving the use of radioactive material;
- d. Implementing emergency procedures to be followed in the event of the abnormal operation of the medical unit or console;
- e. Checking and using survey meters; and
- f. Selecting the proper dose and how it is to be administered;

and

(b) Has completed three (3) years of supervised clinical experience in radiation therapy ~~[oncology]~~, under an authorized user who meets the requirements in Sections 67 and 77 of this administrative regulation, U.S. Nuclear Regulatory Commission, ~~[of this]~~ or equivalent agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subsection (2)(a)2 of this section; and

(c) Has obtained written attestation ~~[certification]~~ that the individual has satisfactorily completed the requirements in subsection (1)(a) or (2)(a) and (b), and (3) ~~[(2)(a) and (b)]~~ of this section, and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation ~~[certification]~~ shall be signed by a preceptor authorized user who meets the requirements in Sections 67 and 77 of this administrative regulation ~~[of this section]~~, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

3. Has received training in device operation, safety procedures, and clinical use for the type(s) of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type(s) of use for which the individual is seeking authorization.

Section 78. Alternative Training. During a two (2) year period after the effective date of October 24, 2005, alternative training and experience requirements shall be available. Licensees shall have the option of complying with either the training requirements of Section 78 of this administrative regulation or the new requirements in Sections 65 through 77 of this administrative regulation. After October 24, 2007 ~~[2005]~~, licensee shall not have the option of using Section 78 of this administrative regulation. Except as provided in Section 67 ~~[68]~~ of this administrative regulation, the licensee shall require for:

(1) A Radiation Safety Officer, an individual fulfilling the responsibilities of the radiation safety officer as provided in Section 10 of this administrative regulation to be an individual who:

- (a) Is certified by the:

1. American Board of Health Physics in Comprehensive Health Physics;
 2. American Board of Radiology;
 3. American Board of Nuclear Medicine;
 4. American Board of Science in Nuclear Medicine;
 5. Board of Pharmaceutical Specialties in Nuclear Pharmacy;
 6. American Board of Medical Physics in radiation oncology physics;
 7. Royal College of Physicians and Surgeons of Canada in nuclear medicine;
 8. American Osteopathic Board of Radiology; or
 9. American Osteopathic Board of Nuclear Medicine;
- (b) Has had classroom and laboratory training and experience as follows:
1. 200 hours of classroom and laboratory training that includes:
 - a. Radiation physics and instrumentation;
 - b. Radiation protection;
 - c. Mathematics pertaining to the use and measurement of radioactivity;
 - d. Radiation biology; and
 - e. Radiopharmaceutical chemistry; and
 2. One (1) year of full time experience as a radiation safety technologist at a medical institution under the supervision of the individual identified as the radiation safety officer on a cabinet, U.S. Nuclear Regulatory Commission, or equivalent ~~(another)~~ agreement state license that authorizes the medical use of radioactive material; or
- (c) Is an authorized user identified on the licensee's license.
- (2) Authorized user of a radiopharmaceutical for uptake, dilution, and excretion in Section 30(1) of this administrative regulation to be a physician who:
- (a) Is certified in:
1. Nuclear medicine by the American Board of Nuclear Medicine;
 2. Diagnostic radiology by the American Board of Radiology;
 3. Diagnostic radiology or radiology by the American Osteopathic Board of Radiology;
 4. Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or
 5. American Osteopathic Board of Nuclear Medicine in nuclear medicine;
- (b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, and supervised clinical experience as follows:
1. Forty (40) hours of classroom and laboratory training that includes:
 - a. Radiation physics and instrumentation;
 - b. Radiation protection;
 - c. Mathematics pertaining to the use and measurement of radioactivity;
 - d. Radiation biology; and
 - e. Radiopharmaceutical chemistry; and
 2. Twenty (20) hours of supervised clinical experience under the supervision of an authorized user and that includes:
 - a. Examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;
 - b. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;
 - c. Administering dosages to patients or human research subjects and using syringe radiation shields;
 - d. Collaborating with the authorized user in the interpretation of radioisotope test results; and
 - e. Patient or human research subject follow up; or
 - (c) Has successfully completed a six (6) month training program in nuclear medicine as part of a training program that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in paragraph (b) of this section.
- (3) Authorized user for imaging and localization studies using a

- radiopharmaceutical, generator, or reagent kit in Section 31(1) of this administrative regulation to be a physician who:
- (a) Is certified in:
1. Nuclear medicine by the American Board of Nuclear Medicine;
 2. Diagnostic radiology by the American Board of Radiology;
 3. Diagnostic radiology or radiology by the American Osteopathic Board of Radiology;
 4. Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or
 5. American Osteopathic Board of Nuclear Medicine in nuclear medicine;
- (b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, supervised work experience, and supervised clinical experience as follows:
- (c) 1. 200 hours of classroom and laboratory training that includes:
- a. Radiation physics and instrumentation;
 - b. Radiation protection;
 - c. Mathematics pertaining to the use and measurement of radioactivity;
 - d. Radiopharmaceutical chemistry; and
 - e. Radiation biology;
2. 500 hours of supervised work experience under the supervision of an authorized user that includes:
- a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
 - b. Calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;
 - c. Calculating and safely preparing patient or human research subject dosages;
 - d. Using administrative controls to prevent the medical event of radioactive material;
 - e. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and
 - f. Eluting technetium-99m from generator systems, measuring and testing the eluate for molybdenum-99 and alumina contamination, and processing the eluate with reagent kits to prepare technetium-99m labeled radiopharmaceuticals; and
3. 500 hours of supervised clinical experience under the supervision of an authorized user that includes:
- a. Examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;
 - b. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;
 - c. Administering dosages to patients or human research subjects and using syringe radiation shields;
 - d. Collaborating with the authorized user in the interpretation of radioisotope test results; and
 - e. Patient or human research subject follow up; or
- (c) Has successfully completed a six (6) month training program in nuclear medicine that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in paragraph (b) of this section.
- (4) The authorized user of radiopharmaceuticals for therapeutic use in Section 33 of this administrative regulation to be a physician who:
- (a) Is certified by:
1. The American Board of Nuclear Medicine;
 2. The American Board of Radiology in radiology, therapeutic radiology, or radiation oncology;
 3. The Royal College of Physicians and Surgeons of Canada in nuclear medicine; or
 4. The American Osteopathic Board of Radiology after 1984; or
- (b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of therapeutic

radiopharmaceuticals, and supervised clinical experience as follows:

1. Eighty (80) hours of classroom and laboratory training that includes:

- a. Radiation physics and instrumentation;
- b. Radiation protection;
- c. Mathematics pertaining to the use and measurement of radioactivity; and
- d. Radiation biology; and

2. Supervised clinical experience under the supervision of an authorized user at a medical institution that includes:

- a. Use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in ten (10) individuals; and
- b. Use of iodine-131 for treatment of thyroid carcinoma in three (3) individuals.

(5) The authorized user of only iodine-131 for the treatment of hyperthyroidism to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating hyperthyroidism, and supervised clinical experience as follows:

(a) Eighty (80) hours of classroom and laboratory training that includes:

- 1. Radiation physics and instrumentation;
- 2. Radiation protection;
- 3. Mathematics pertaining to the use and measurement of radioactivity; and
- 4. Radiation biology; and

(b) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for diagnosis of thyroid function, and the treatment of hyperthyroidism in ten (10) individuals.

(6) The authorized user of only iodine-131 for the treatment of thyroid carcinoma to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating thyroid carcinoma, and supervised clinical experience as follows:

(a) Eighty (80) hours of classroom and laboratory training that includes:

- 1. Radiation physics and instrumentation;
- 2. Radiation protection;
- 3. Mathematics pertaining to the use and measurement of radioactivity; and
- 4. Radiation biology; and

(b) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for the treatment of thyroid carcinoma in three (3) individuals.

(7) The authorized user of a brachytherapy source in Section 36 of this administrative regulation for therapy to be a physician who:

(a) Is certified in:

- 1. Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;
- 2. Radiation oncology by the American Osteopathic Board of Radiology;
- 3. Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or
- 4. Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(b) Is in the active practice of therapeutic radiology, has had classroom and laboratory training in radioisotope handling techniques applicable to the therapeutic use of brachytherapy sources, supervised work experience, and supervised clinical experience as follows:

- 1. 200 hours of classroom and laboratory training that includes:
 - a. Radiation physics and instrumentation;
 - b. Radiation protection;
 - c. Mathematics pertaining to the use and measurement of radioactivity; and
 - d. Radiation biology;

2. 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:

- a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- b. Checking survey meters for proper operation;
- c. Preparing, implanting, and removing sealed sources;
- d. Maintaining running inventories of material on hand;
- e. Using administrative controls to prevent a medical event involving radioactive material; and
- f. Using emergency procedures to control radioactive material; and

3. Three (3) years of supervised clinical experience that includes one (1) year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and an additional two (2) years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:

- a. Examining individuals and reviewing their case histories to determine their suitability for brachytherapy treatment, and any limitations or contraindications;
- b. Selecting the proper brachytherapy sources and dose and method of administration;
- c. Calculating the dose; and
- d. Post-administration follow-up and review of case histories in collaboration with the authorized user.

(8) The authorized user of only strontium-90 for ophthalmic radiotherapy to be a physician who is in the active practice of therapeutic radiology or ophthalmology, and has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of strontium-90 for ophthalmic radiotherapy, and a period of supervised clinical training in ophthalmic radiotherapy as follows:

(a) Twenty-four (24) hours of classroom and laboratory training that includes:

- 1. Radiation physics and instrumentation;
- 2. Radiation protection;
- 3. Mathematics pertaining to the use and measurement of radioactivity; and
- 4. Radiation biology; and

(b) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution that includes the use of strontium-90 for the ophthalmic treatment of five individuals that includes:

- 1. Examination of each individual to be treated;
- 2. Calculation of the dose to be administered;
- 3. Administration of the dose; and
- 4. Follow up and review of each individual's case history.

(9) The authorized user of a sealed source for diagnosis in a device listed in Section 45 of this administrative regulation to be a physician, dentist, or podiatrist who:

(a) Is certified in:

- 1. Radiology, diagnostic radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;
- 2. Nuclear medicine by the American Board of Nuclear Medicine;
- 3. Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or
- 4. Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(b) Has had eight (8) hours of classroom and laboratory training in basic radioisotope handling techniques specifically applicable to the use of the device that includes:

- 1. Radiation physics, mathematics pertaining to the use and measurement of radioactivity, and instrumentation;
- 2. Radiation biology;
- 3. Radiation protection; and
- 4. Training in the use of the device for the uses requested.

(10) The authorized user of a sealed source for therapeutic medical devices listed in Section 46 of this administrative regulation to be a physician who:

(a) Is certified in:

- 1. Radiology, therapeutic radiology, or radiation oncology by

the American Board of Radiology;

2. Radiation oncology by the American Osteopathic Board of Radiology;

3. Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology";

4. Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(b) Is in the active practice of therapeutic radiology, and has had classroom and laboratory training in basic radioisotope techniques applicable to the use of a sealed source in a therapeutic medical device, supervised work experience, and supervised clinical experience as follows:

1. 200 hours of classroom and laboratory training that includes:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity; and

d. Radiation biology;

2. 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:

a. Review of the full calibration measurements and periodic spot-checks;

b. Preparing treatment plans and calculating treatment times;

c. Using administrative controls to prevent medical events;

d. Implementing emergency procedures to be followed in the event of the abnormal operation of the medical device or console; and

e. Checking and using survey meters; and

3. Three (3) years of supervised clinical experience that includes one (1) year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two (2) years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:

a. Examining individuals and reviewing their case histories to determine their suitability for teletherapy, remote afterloader, or gamma stereotactic radiosurgery treatment, and any limitations or contraindications;

b. Selecting the proper dose and how it is to be administered;

c. Calculating the doses and collaborating with the authorized user in the review of patients' or human research subjects' progress and consideration of the need to modify originally prescribed doses as warranted by patients' or human research subjects' reaction to radiation; and

d. Post-administration follow up and review of case histories.

(11) The authorized medical physicist shall be an individual who:

(a) Is certified by the American Board of Radiology in:

1. Therapeutic radiological physics;

2. Roentgen ray and gamma ray physics;

3. X-ray and radium physics; or

4. Radiological physics; or

(b) Is certified by the American Board of Medical Physics in radiation oncology physics; or

(c) Holds a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and has completed one (1) year of full time training in therapeutic radiological physics and an additional year of full time work experience under the supervision of a medical physicist at a medical institution that includes the tasks listed in Sections 24, 52, 53, 54, 55, 56, 57 and 58 of this administrative regulation as applicable.

(12) The authorized nuclear pharmacist to be a pharmacist who:

(a) Has current board certification as a nuclear pharmacist by the Board of Pharmaceutical Specialties; or

(b)1. Has completed 700 hours in a structured educational program consisting of both:

a. Didactic training in the following areas:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of

radioactivity;

(iv) Chemistry of radioactive material for medical use; and

(v) Radiation biology; and

b. Supervised experience in a nuclear pharmacy involving the following:

(i) Shipping, receiving, and performing related radiation surveys;

(ii) Using and performing checks for proper operation of dose calibrators, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

(iii) Calculating, assaying, and safely preparing dosages for patients or human research subjects;

(iv) Using administrative controls to avoid mistakes in the administration of radioactive material;

(v) Using procedures to prevent or minimize contamination and using proper decontamination procedures; and

2. Has obtained written certification, signed by a preceptor authorized nuclear pharmacist, that the above training has been satisfactorily completed and that the individual has achieved a level of competency sufficient to independently operate a nuclear pharmacy.

(13) An authorized experienced nuclear pharmacist must be a pharmacist who has completed a structured educational program as specified in subsection (12)(b)(1) of this section before December 2, 1994, and who is working in a nuclear pharmacy would qualify as an experienced nuclear pharmacist. An experienced nuclear pharmacist shall not be required to comply with the requirements for a preceptor statement (subsection (12)(b)(2) of this section) and recentness of training (Section 63 of this administrative regulation) to qualify as an authorized nuclear pharmacist.

Section 79. Food and Drug Administration (FDA), Other Federal and State Requirements. Nothing in this administrative regulation relieves the license from complying with applicable FDA, other federal and state requirements governing radioactive drugs or devices.

Section 80. Adoption Without Change. (1) The following material is adopted without change:

(a) "56 F.R. 117" (October 24, 2005);

(b) "45 C.F.R. Part 690" (June 18, 1991); and

(c) "49 C.F.R. Part 11" (June 18, 1991).

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

WILLIAM D. HACKER, MD FAAP, CPE

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 10, 2010

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2011 at 9 a.m. in Conference Suite C of the 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, 2011, 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 January 31, 2011. 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: Matt McKinley (502) 564-3700, ext. 3701

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes guidelines for the use of radionuclides in the health arts.

(b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:073 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By updating the Kentucky Administrative Regulations to be consistent with the Code of Federal Regulations thereby ensuring that Kentucky licensees are bound by the same requirements as their counterparts across the country.

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

(a) How the amendment will change this existing administrative regulation: It updates 902 KAR 100:072 to recognize additional specialty boards for qualification of practitioners, removes the option to designate a practitioner as "visiting", and, removes the alternate training options which expired October 24, 2007.

(b) The necessity of the amendment to this administrative regulation: To ensure compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste. This amendment updates those regulations created to implement that statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will create conformance between state and federal regulations, thus reducing confusion between them.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will assist all 190 medical and radiopharmaceutical licensees in making Kentucky Administrative Regulations consistent with the Code of Federal Regulations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will have to be aware of these changes but already are as they are already following federal regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulation will have no cost associated with com-

pliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licenses will benefit from consistency between state and federal regulations.

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

(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding will be required to implement this regulation. The existing program is covered by General Funds appropriations.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes no fees directly or indirectly.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All parts of the state and local governments are covered by the license holders impacted by this regulation amendment.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. The U.S. Nuclear Regulatory Commission has amended their regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:010 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

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 have no effect on the revenues or expenditures of state or local governments.

(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 produced by this regulation 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 produced by this regulation in subsequent years.

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

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

quent years? There will be cost to implement this regulation in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:165. Notices, reports and instructions to employees.

RELATES TO: KRS 211.842 to 211.852, 211.990(4), 10 C.F.R. 19.11 to 19.17, 30.7, 30.10

STATUTORY AUTHORITY: KRS 13B.170, 194A.050, 211.090(3), 211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation, and the handling and disposal of radioactive waste. This administrative regulation establishes notices, instructions, and reports for the protection of workers who may be exposed to radiation in their employment.

Section 1. Posting of Notices to Workers. (1) A licensee or registrant shall post current copies of the following documents:

(a) The requirements of this administrative regulation and 902 KAR 100:019, relating to standards for protection against radiation;

(b) The license, certificate of registration, conditions or documents incorporated into the license by reference, and amendments to the license;

(c) The operating procedures for work under the license or registration; and

(d) A notice of violation involving radiological working conditions, proposed imposition of civil penalty, or order issued as authorized by 902 KAR 100:170, and responses from the licensee or registrant.

(2) If posting of a document specified in subsection (1)(a), (b), or (c) of this section is not practical [~~practicable~~], the licensee or registrant may post a notice which describes the document and states where it may be examined.

(3) Cabinet form KR-441, ["Notice to Employees"], [~~incorporated by reference~~] shall be prominently posted by a licensee or registrant.

(4) Documents, notices, or forms posted as required by this section shall:

(a) Appear in a sufficient number of places to permit an individual engaged in work under the license or registration to observe them on the way to or from a particular work location to which the document applies;

(b) Be conspicuous; and

(c) Be replaced if defaced or altered.

(5)(a) Cabinet documents posted as required by subsection (1)(d) of this section shall be posted within two (2) working days after receipt of the documents from the cabinet;

(b) The licensee's or registrant's response shall be posted within two (2) working days after dispatch from the licensee or registrant; and

(c) The documents shall remain posted for a minimum of five (5) working days or until action correcting the violation has been completed, whichever is later.

Section 2. Instructions to Workers. (1) An individual likely to receive in a year, during the course of employment, an occupational dose in excess of 100 millirems (one (1) mSV) shall be:

(a) Kept informed of the storage, transfer, or use of sources of

radiation in the licensee's or registrant's workplace;

(b) Informed of health protection problems, to the individual and potential offspring, associated with exposure to radioactive material or radiation, and instructed in precautions or procedures to minimize exposure, and in the purposes and functions of protective devices employed;

(c) Instructed in, and instructed to observe, to the extent within the worker's control, the applicable requirements of 902 KAR Chapter 100[.] and licenses issued thereunder[.] for the protection of personnel from exposures to radiation or radioactive material;

(d) Instructed of their responsibility to report promptly to the licensee or registrant a condition which may lead to or cause a violation of the Act, 902 KAR Chapter 100 or license conditions, or unnecessary exposure to radiation or radioactive material;

(e) Instructed in the appropriate response to warnings made in the event of an unusual occurrence or malfunction that may involve exposure to radiation or radioactive material; and

(f) Informed of the radiation exposure reports which workers may request as authorized by Section 3 of this administrative regulation.

(2) In determining the individuals subject to the requirements of this section, a licensee or registrant shall take into consideration assigned activities during normal and abnormal situations involving exposure to radioactive material or radiation which can reasonably be expected to occur during the life of a licensed or registered facility. The extent of the instructions shall be commensurate with potential radiological health protection problems in the workplace.

Section 3. Notifications and Reports to Individuals. (1) Radiation exposure data for an individual[.] and the results of measurements, analyses, and calculations of radioactive material deposited or retained in the body of an individual, shall be reported to the individual.

(2) The information reported shall include data and results obtained as required by 902 KAR Chapter 100, orders, or license conditions[.] as shown in records maintained by the licensee or registrant as required by 902 KAR 100:019, Section 34.

(3) Each notification and report shall:

(a) Be in writing;

(b) Include the following identifying data:

1. The name of the licensee or registrant;

2. The name of the individual; and

3. The individual's identification or Social Security number.

(c) Include the individual's exposure information; and

(d) Contain the following statement: "This report is furnished to you under the provisions of the Kentucky Cabinet for Health and Family Services' radiation administrative regulations, 902 KAR 100:165. Preserve this report for further reference."

(4) A licensee or registrant shall advise the worker annually of the worker's exposure to radiation or radioactive material as shown in records maintained by the licensee or registrant required by 902 KAR 100:019, Section 34.

(5) At the request of a worker formerly engaged in work controlled by the licensee

or the registrant, a licensee or registrant shall furnish to the worker a report of the worker's exposure to radiation or radioactive material. The report shall:

(a) Be furnished within thirty (30) days from the time request is made, or within thirty (30) days after the exposure of the individual has been determined by the licensee or registrant, whichever is later;

(b) Cover the period of time the worker's activities involved exposure to radiation from radioactive materials licensed by, or radiation machines registered with, the cabinet; and

(c) Include the dates and locations of work under the license or registration in which the worker participated during this period.

(6) If a licensee or registrant is required, pursuant to 902 KAR 100:019, Sections 40, 41 and 42, to report to the cabinet an exposure of an individual to radiation or radioactive material, the licensee or the registrant shall also provide the individual a report on the exposure data included in the report to the cabinet. The reports shall be transmitted to the individual at a time not later than the transmittal to the cabinet.

(7)(a) At the request of a worker who is terminating employment in work involving exposure to radiation or radioactive materi-

all[.] during the current year, the licensee or registrant shall provide to the worker, or to the worker's designee, at termination[.] a written report regarding the radiation dose received by that worker from operations of the licensee or registrant during the current year or fraction thereof.

(b) If the most recent individual personnel monitoring results are not available at the time of termination, a written estimate of the dose shall be provided.

(c) Estimated doses shall be clearly indicated as estimated doses.

Section 4. Presence of Representatives of Licensees or Registrants and Workers during Inspection. (1) A licensee or registrant shall afford to the cabinet at all reasonable times opportunity to inspect materials, machines, activities, facilities, premises, and records required by 902 KAR Chapter 100.

(2) During an inspection, cabinet inspectors may consult privately with workers as specified in Section 5 of this administrative regulation. The licensee or registrant may accompany cabinet inspectors during other phases of an inspection.

(3) If, during the inspection, an individual has been authorized by the workers to represent them during cabinet inspections, the licensee or registrant shall notify the inspectors of the authorization and shall give the workers' representative an opportunity to accompany the inspectors during the inspection of physical working conditions.

(4) The workers' representative shall be routinely engaged in work under control of the licensee or registrant and shall have received instructions as specified in Section 2 of this administrative regulation.

(5) Different representatives of licensees or registrants and workers may accompany the inspectors during different phases of an inspection if there is no resulting interference with the conduct of an inspection. However, only one (1) workers' representative at a time may accompany the inspectors.

(6) With the approval of the licensee or registrant and the workers' representative, an individual who is not routinely engaged in work under control of the licensee or registrant, for example, a consultant to the licensee or registrant or to the workers' representative, shall be afforded the opportunity to accompany cabinet inspectors during the inspection of physical working conditions.

(7) A cabinet inspector shall refuse to permit accompaniment by an individual who deliberately interferes with a fair and orderly inspection.

(8) Unless specifically authorized, an individual accompanying an inspector shall not have access to an area containing information classified[.] by an agency of the U.S. government[.] as a national security interest.

(9) Unless previously authorized by the licensee or registrant, a worker's representative shall not have access to an area containing proprietary information.

Section 5. Consultation with Workers during Inspection. (1) If necessary to conduct an effective and thorough inspection, a cabinet inspector may consult privately with a worker concerning a matter of occupational radiation protection or other matter related to 902 KAR Chapter 100, licenses, or registrations.

(2) During the course of an inspection, a worker may bring [privately] to the attention of the inspectors, either orally or in writing, a past or present condition which he has reason to believe may have contributed to or caused a violation of the Act, 902 KAR Chapter 100, or license condition, or an unnecessary exposure of an individual to radiation from licensed radioactive material or a registered radiation machine under the licensee's or registrant's control. A written notice shall comply with the requirements of Section 6(1) of this administrative regulation.

(3) The requirements of subsection (2) of this section shall not be interpreted as authorization to disregard instructions required by Section 2 of this administrative regulation.

Section 6. Requests by Workers for Inspections. (1)(a) A worker or representative of workers who believes that a violation of the Act, 902 KAR Chap-

ter 100, or a license condition exists or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the Cabinet for Health and Family Services, Radiation Health ~~and Toxic Agents~~ Branch.

(b) The notice shall:

1. Be in writing;
2. Set forth the specific grounds for the notice; and
3. Be signed by the worker or representative of the workers.

(c) A copy shall be provided to the licensee or registrant by the cabinet no later than at the time of inspection. If the worker giving the notice requests, his name and the name of individuals referred to in the notice shall not appear in the copy or on a record published, released, or made available by the cabinet, except for good cause shown.

(2) If, upon receipt of the notice, the Manager, Radiation Health ~~and Toxic Agents~~ Branch, determines that the complaint meets the requirements established in subsection (1) of this section, and that there are reasonable grounds to believe that the alleged violation exists or has occurred, he shall cause an inspection to be made as soon as practicable, to determine if the alleged violation exists or has occurred. An inspection authorized by this section need not be limited to matters referred to in the complaint.

(3) A licensee or registrant, or contractor or subcontractor of a licensee or registrant, shall not discharge or discriminate against a worker because the worker has:

- (a) Filed a complaint;
- (b) Instituted or caused to be instituted a proceeding under 902 KAR 100:170;
- (c) Testified or is about to testify in a proceeding; or
- (d) Exercised an option on behalf of himself or others afforded by this administrative regulation.

Section 7. Inspections not Warranted; Informal Review. (1)(a) If the Cabinet for Health and Family Services, Radiation Health ~~and Toxic Agents~~ Branch determines, with respect to a complaint under Section 6 of this administrative regulation, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the cabinet shall notify the complainant in writing of the determination.

(b) The complainant may obtain a review of the determination by submitting a written statement of position with the Commissioner, Department for Public Health. The commissioner shall provide the licensee or registrant with a copy of the statement by certified mail[.] excluding, at the request of the complainant, the name of the complainant.

(c) The licensee or registrant may submit an opposing written statement of position with the commissioner, who shall provide the complainant with a copy of the statement by certified mail.

(2) Upon the request of the complainant, the commissioner shall hold an administrative hearing in accordance with 902 KAR 1:400.

(3) If the Radiation Health ~~and Toxic Agents~~ Branch determines that an inspection is not warranted because the requirements of Section 6(1) of this administrative regulation have not been met, the complainant shall be notified, in writing, of the determination. The determination shall be without prejudice to the filing of a new complaint meeting the requirements of Section 6(1) of this administrative regulation.

Section 8. Employee Protection. (1) Discrimination by a cabinet licensee, an applicant for a cabinet license, a registrant or a contractor or subcontractor of a cabinet licensee, registrant or applicant against an employee for engaging in protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment.

(a) The protected activities include but are not limited to:

1. Providing the cabinet or his or her employer information about alleged violations or possible violations of requirements of 902 KAR Chapter 100;
2. Refusing to engage in a practice made unlawful under these requirements, if the employee has identified the alleged illegality to the employer;

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3. Requesting the cabinet to institute action against his or her employer for enforcement of these requirements;

4. Testifying in a cabinet proceeding, ~~or~~ before Congress, or at a federal or state proceeding~~[-]~~ regarding a provision, or proposed provision, of 902 KAR Chapter 100;

5. Assisting or participating in, or is about to assist or participate in, a protected activity.

(b) A protected activity shall retain its protected status even if no formal proceeding is initiated as a result of the employee assistance or participation.

(c) This section shall not be applied to an employee alleging discrimination who, acting without direction from his or her employer~~[-]~~ or the employer's agent, deliberately causes a violation of the Act or the administrative regulations promulgated under the Act.

(2) An employee who believes that he or she has been discharged or discriminated against for engaging in a protected activity may seek a remedy through an administrative proceeding in the Department of Labor.

(a) The aggrieved employee shall file a complaint~~[-]~~ within 180 days after the occurrence of the alleged violation~~[-]~~ with the Department of Labor, Employment Standards Administration, Wage and Hour Division.

(b) If warranted by the evidence presented, the Department of Labor shall order reinstatement, back pay, and compensatory damages~~[-]~~ as appropriate to the case.

(3) A violation of subsections (1) or (5) of this section~~[-]~~ or Section 1(3) of this administrative regulation~~[-]~~ by a cabinet licensee, an applicant for a cabinet license, or a contractor or subcontractor of a cabinet licensee or applicant shall constitute grounds for:

(a) Denial, revocation, or suspension of the license;

(b) Imposition of a penalty; or

(c) Other enforcement action.

(4)~~(a)~~ An action taken by an employer~~[-]~~ or others~~[-]~~ which adversely affects ~~affects~~ an employee may be predicated upon non-discriminatory grounds.

~~(b)~~ The prohibition applies if the adverse action occurs because the employee has engaged in a protected activity.

~~(c)~~ An employee's engagement in a protected activity does not automatically render him or her immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations.

(5) An agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor, shall not contain a provision which has the potential to prohibit, restrict, or discourage an employee from participating in protected activity, including providing information to the cabinet or to his or her employer on alleged violations or other matters within cabinet's regulatory responsibilities.

Section 9. Deliberate Misconduct. (1) This section applies to:

(a) Licensee; ~~A licensee;~~

(b) Registrant; ~~registrant;~~

(c) Certificate ~~certificate~~ of registration holder;[-]

(d) Applicant ~~applicant~~ for a license, or certificate of registration;[-]

(e) Employee ~~employee~~ of any person identified in this section ~~[-, a licensee, certificate of registration holder, or applicant]; or[-]~~

(f) Contractor ~~a contractor~~, including a supplier, ~~or~~ consultant, or subcontractor~~[-]~~ to any person identified in this section. ~~employee of a contractor or subcontractor of a licensee or certificate of registration holder or applicant for a license or certificate of registration, who knowingly provides to a licensee, registrant, applicant, certificate holder, contractor, or subcontractor, components, equipment, materials, or other goods or services that relate to a licensee's, certificate holder's, or applicant's activities in 902 KAR Chapter 100, shall not;~~

(2) Any person identified in subsection 1 of this section shall not;

(a) Engage in deliberate misconduct that causes or may have caused, if not detected, a licensee, registrant, certificate of registration holder, or applicant to be in violation of a rule, administrative regulation, or order; or a term,

condition, or

limitation of a license issued by the cabinet; or

(b) Deliberately submit to the cabinet, a licensee, registrant, certificate of registration holder, an applicant, or a licensee's, certificate holder's, or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the cabinet.

(3) ~~(2)~~ A person who violates subsection (2) ~~(4)~~ of this section shall be subject to enforcement action~~[-]~~ in accordance with the procedures in 902 KAR 100:170.

(4) For the purposes of subsection (2)(a) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(a) May cause a licensee, registrant, certificate holder, or applicant for a license, registration, or certificate to be in violation of the rule, regulation, order or a term, condition, or limitation of a license, registration, or certificate issued by the cabinet; or

(b) Constitutes a violation or a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, registrant, certificate holder, applicant, or the contractor or subcontractor of any of them.

Section 10. Incorporation by Reference. (1) Cabinet for Health and Family Services "Form KR-441, ~~[-]~~Notice to Employees", edition 8/05 ~~2/85~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Office of the Commissioner of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. until 4:30 p.m.

WILLIAM D. HACKER, MD FAAP, CPE

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 10, 2010

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2011 at 9 a.m. in Conference Suite C of the 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, 2011, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments regarding this proposed administrative regulation may be submitted through January 31, 2011. 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: Matt McKinley (502) 564-3700, ext 3701

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides clarification as to the meaning and intent of "deliberate misconduct". It also updates the proper names of the Branch (Radiation Health Branch) and the Cabinet (Cabinet for Health and Family Services).

(b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:165 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to

211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment will assist the promulgating agency in determining if acts of misconduct could be considered deliberate.

(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 subsection 4 to section 9 which addresses deliberate misconduct. It also updates the proper names of the Branch (Radiation Health Branch) and the Cabinet (Cabinet for Health and Family Services).

(b) The necessity of the amendment to this administrative regulation: To ensure compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation.

(d) How the amendment will assist in the effective administration of the statutes: It will clarify language and make the state regulation consistent with federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 430 radioactive materials licensees who actively conduct business in Kentucky 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: The regulated entities will have to be familiar with the clarifying language. They are familiar with the federal regulation already.

(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 regulated entity to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entity will be assured of consistency between state and federal regulations.

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

(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds are used to operate this program. No additional funding is required to implement this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation will not require an increase in fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in

this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation impacts all of the state and local government where these licensed entities operate.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:165 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

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

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

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

(c) How much will it cost to administer this program for the first year? No cost will be incurred by the agency to administer this regulation in the first year

(d) How much will it cost to administer this program for subsequent years? No cost will be incurred by the program to administer this regulation in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Quality Living (Amendment)

910 KAR 1:190. Nutrition program for older persons~~(the elderly)~~.

RELATES TO: KRS 205.201, 205.203, 205.455(4), 205.460-205.465, 209A.030, 310.005, 310.021, 310.031~~[902 KAR 45:005]~~, 42 U.S.C. 3001 et seq.

STATUTORY AUTHORITY: KRS 194A.050~~(1)~~, 205.204~~(1)~~, (2), 42 U.S.C. 3030e

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 3030e[U.S.C. 3001 et seq., the Older Americans Act of 1965, as amended,] authorizes grants to states under approved state plans to establish and operate a nutrition program[to provide assistance in the development of new or improved programs] for older persons. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative[adopt] regulations as necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds. KRS 205.204(1) and (2) designates the cabinet [for Health Services] as the state agency to administer the Older Americans Act in Kentucky and authorizes the cabinet to promulgate such administrative regulations as are necessary to comply with any requirement imposed or required by federal law. [The function of] This administrative regulation sets[is to set] forth the standards of operation for the nutrition program for older persons[as implemented by the area agencies on aging. This administrative regulation is promulgated to comply with the statutory requirement of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter. This administrative regulation contains the substance of 005 KAR 8:030 which is repealed].

Section 1. Definitions. (1) "Area Agencies on Aging and Independent Living" or "AAAIL" means~~["Acceptable brands list" means a listing of food brands which have been tested and approved by the State Food Committee, Cabinet for Finance and Administration, Division of Purchases.~~

(2) "Agency" means ~~the area agency on aging,]~~ an entity designated by the state to administer, at the local level, the programs funded by the Older Americans Act of 1965, as amended.

(2) "Area plan" means the plan submitted by a district for the approval of the department which releases funds under contract for the delivery of services within the planning and service area.

(3) "Central kitchen" means an institutional kitchen which is equipped and used for preparing food to be sent to meal sites for service.~~(3) "Area development district" means any of fifteen (15) regional planning and development agencies with which the Office of Aging Services contracts for the local delivery of aging services].~~

(4) "Certified nutritionist" is defined by KRS 310.005 and KRS 310.031.

(5) "Congregate nutrition services" means the provision of meals and related nutrition services in a group setting to older individuals that include:

- (a) Nutrition education;
- (b) Nutrition assessment;
- (c) Nutrition counseling;
- (d) Nutrition screening;
- (e) Opportunities for social engagement; and
- (f) Volunteer roles that contribute to overall health and well-being.

(6) "Cycle menu" means a menu planned for at least five (5) weeks and repeated with modification for seasonal menu items.

(7) "Department" means the Department for Aging and Independent Living.

(8) "District" is defined by KRS 205.455(4).

~~(9)[means one who has completed a master's degree in food science, nutrition or a closely related field and has a minimum of twelve (12) semester hours of graduate credit in nutrition from an accredited college or university.~~

(5) "Chilled food system" means any system of food production which results in the partial or complete cooking of a prepared product which is then chilled, maintained at refrigeration temperatures and reheated before service.

(6) "Dietitian" means one who has met the training and education requirements for membership in the American Dietetic Association, including a master's degree or advanced training in addition to an undergraduate degree in dietetics, food and nutrition, or institutional management.

(7) "District nutrition program" means the program approved by the department[office] and administered in each of the fifteen (15) planning and service areas in Kentucky by the [area development] districts or other contract agencies.

(10) "Home delivered nutrition services" means the provision of meals and related nutrition services to older individuals who are

homebound that include:

- (a) Nutrition screening;
- (b) Nutrition education;
- (c) Nutrition assessment; and
- (d) Nutrition counseling.

(11) "Licensed dietitian" is defined by KRS 310.005 and 310.021.

~~(12)[The district program shall include meals or nutrition services funded by the:~~

- (a) Older Americans Act of 1965;
- (b) United States Department of Agriculture;
- (c) Homecare program;
- (d) Adult day care program;
- (e) Adult day health care program;
- (f) Alzheimer's respite program; or
- (g) Other funds designated in the approved plan.

~~(8) "Meal" means a portion of food consisting of a minimum of:~~

- (a) Five (5) dissimilar components;
- (b) [Three (3) cups total volume; and
- (c) The equivalent of one-third (1/3) of the dietary reference

~~intakes[daily recommended dietary allowances] as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy; and~~

~~(c) The Dietary Guidelines for Americans, published by the Secretary of Health and Human Services and the Secretary of Agriculture.~~

(13) "Modified atmosphere packaging" means the method of extending the shelf life of fresh food products where the atmospheric air inside a package is replaced with a protective gas mix that helps ensure the product stays fresh for as long as possible.

(14) "Nontraditional meal" means a type of home delivered meal, except a hot meal, delivered daily to a participant.

(15) "Nutrition counseling" means individualized guidance:

(a) To an individual who is at nutritional risk because of the individual's health or nutritional history, dietary intake, chronic illness, medications use, or to caregivers; and

(b) Provided one-on-one by a registered dietitian to address options and methods for improving the individual's nutrition status.

(16) "Nutrition screening" means the identification of those at risk of poor nutrition.

(17) "Nutrition Services Incentive Program" or "NSIP" means federally provided incentives to encourage and reward effective performance by states in the efficient delivery of nutrition meals to older individuals.

~~(18)[of Sciences—National Research Council.~~

(9) "Nutrition service provider" means an entity that is awarded a contract under the area plan to provide nutrition services covered under this administrative regulation.

(19)[(49)] "OAA" means the Older Americans Act of 1965, as amended.

~~(20)[(44) "Office" means the Office of Aging Services, Cabinet for Health Services.~~

~~(12) "Registered dietitian" means one who has successfully completed a standard competency test administered by the American Dietetic Association.~~

~~(13) "Standardized recipe" means a written formula for producing food items of a consistent quality and quantity that specifies the yield and portion size adjusted for the requirements of the nutrition program for older persons.~~

(21) "State nutrition program for older persons" means the nutrition program administered by the department that includes:

- (a) Meals;
- (b) Nutrition screening and education; and
- (c) Nutrition assessment and counseling.

Section 2. Eligibility. (1) Eligibility for Title III congregate meal services shall be based on the following criteria:

- (a) An individual who is aged sixty (60) or older; or
- (b) Who is under age sixty (60), if the individual:

1. Is the spouse of the individual that is specified in subsection

(1)(a) of this section; or

2. Has a disability and resides at home with the eligible older individual.

(2) The AAAIL may, in accordance with 42 U.S.C. 3030g-

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21(H), (I), provide a congregate meal to:

(a) A volunteer providing services during meal hours; or

(b) An individual under age sixty (60) who:

1. Has a disability; and

2. Resides in a housing facility primarily occupied by older individuals at which congregate nutrition services are provided.

(3) Eligibility for Title III home-delivered meals shall be based on the following criteria:

(a) A person aged sixty (60) or over and the spouse of that person, if:

1. Either is, by reason of illness or incapacitating disability, unable to attend a congregate site; and

2. There is no person in the home able to prepare a nutritious meal on a regular basis; or

(b) An individual who is under age sixty (60) with a disability and resides with a homebound older individual.

(4) Eligibility for the Homecare Program home-delivered meals shall be in accordance with 910 KAR 1:180.

Section 3. District Nutrition Funding. The district nutrition program may include meals or nutrition services from the following funding sources:

(1) Congregate or home delivered meals funded by the OAA;

(2) Home delivered meals as specified in 910 KAR 1:180 funded by the State Homecare Program;

(3) A congregate meal as specified in 910 KAR 1:160 funded by the State Adult Day and Alzheimer's Respite Program;

(4) NSIP funding for expansion of meals served in the state; or

(5) Other funds designated in the AAAIL's approved area plan such as United Way or other local funding.

Section 4. Congregate Nutrition Program. Congregate meals shall be provided by a nutrition service provider who, five (5) or more days per week in each county, provides at least one (1) hot or other appropriate meal per day and any additional meals which the recipient of a grant or contract may elect to provide in a congregate setting pursuant to 42 U.S.C. 3030(e).

(1) The following requirements shall apply to the transportation of meals to a congregate site:

(a) An insulated container shall be used for bulk food delivery.

(b)1. Bulk foods shall be transported in a stainless steel pan or aluminum disposable pan.

2. Use of plastic shall be restricted to cold foods only.

(c)1. Hot items shall be transported in a bulk container separated from cold products.

2. A container shall be preheated or prechilled before being loaded.

(2) Order of service shall be as follows:

(a) Congregate meals shall be served after packaging the home delivered meals.

(b) Nutritional site personnel shall check and record temperatures of congregate meals daily.

(c) Milk and other cold food items shall not be preset on a table prior to meal service.

(d) A table shall not be preset with eating or drinking utensils more than four (4) hours prior to meal service unless each item is individually wrapped.

(e) A preset table shall not be used for activities prior to meal service.

(f) After all participants have been served, volunteers and other staff may be served.

(g) Food items left over at point of service may be offered as seconds to a participant, if requested by the participant and after all have been served, or shall be discarded.

(3)(a) Only complete meals shall be claimed for payment.

(b) Omission of required meal components shall cause that meal to be incomplete and ineligible for payment and for USDA reimbursement.

(c) Refusal by a participant of specific meal components shall not render that meal incomplete.

(4) Center carry-out policy shall:

(a) Discourage the carry out of food items with particular emphasis on potentially hazardous foods in accordance with 902 KAR 45.005;

(b) Assure a participant is advised concerning the risks involved if foods are held at unsafe temperatures; and

(c) Assure staff or volunteers not to devote time or supplies to the task of packaging individual menu items as carry-outs for participants or staff.

(5) A center shall not provide carry out of unserved or left over meals.

(6) A participant shall have an opportunity to evaluate meals and service at least annually.

(7)(a) An ongoing participant nutrition education program shall be implemented by the nutrition service provider or AAAIL and include at a minimum one (1) session per month at each nutrition site.

(b) The education program shall include a variety of teaching methods on the following topics:

1. Nutrition and its relevance to health promotion and disease prevention;

2. Consumer approaches to food safety and food purchasing;

3. Food fads and diets;

4. Physical activity; and

5. Activities to modify behavior and improve health literacy, including providing information and optimal nutrients.

Section 5. Home Delivered Nutrition Program. Home delivered meals shall be provided by a nutrition service provider who, five (5) or more days a week, provides at least one (1) home delivered hot, cold, frozen, dried, canned, modified atmosphere packaging or supplemental foods meal per day and any additional meals which the recipient of a grant or contract may elect to provide.

(1)(a) A meal shall be delivered only to an eligible person in the eligible person's home.

(b) A meal may be left with a designee of the older person provided the designee has been informed of the requirements of the nutrition program and has indicated a willingness to comply with those requirements.

(2)(a) Non-traditional meals shall not be used in the home delivered meals program without prior approval of the department dietitian.

(b) Documentation for the provision of non-traditional meals shall show:

1. The participant has expressed a preference for the non-traditional meals or lives off an established route;

2. Proper storage and heating facilities are available in the home;

3. The participant is able to prepare and consume the meal alone or with available assistance; and

4. Cost is no more than a traditional meal.

(3)(a) A provider of home delivered meals shall use methods of delivery that shall prevent outside contamination and hold food at appropriate temperatures as specified in paragraph (b) of this subsection.

(b) Delivery of meals shall meet the following criteria:

1. Delivery routes shall be kept as short as possible to minimize nutrient loss and to facilitate temperature retention.

2. Unless an exception is approved by the department, meals shall be delivered within three (3) hours from the end of preparation to the final destination.

3. Nutrition site personnel shall check and record temperatures of meals at least weekly toward the end of each meal delivery route and, if temperature retention problems are found, daily checks of temperatures shall be made until the problem is corrected.

4. Hot food shall be maintained at or above 135 degrees Fahrenheit.

5. Cold food shall be maintained at or below forty-one (41) degrees Fahrenheit, and ice may be used if the food containers are constructed to prevent water seepage into the food.

6. Neutral temperature foods shall be packaged and delivered in a way as to prevent outside contamination.

7.a. Frozen meals shall be maintained in a frozen state during delivery.

b. If the meal has thawed to the extent that ice crystals are not contained in the meal, the meal shall not be refrozen for later use.

c. A thawed meal may be held for a brief period provided the

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temperature is at or below forty-one (41) degrees Fahrenheit or heated and consumed immediately.

(4) A participant shall have an opportunity to:

(a) Evaluate meals and services at least annually; and

(b) Provide ongoing comments for preparation of menus.

(5)(a) An ongoing nutrition education program shall be implemented by the nutrition service provider and shall include a minimum of one (1) session each month for the home delivered meal participant.

(b) The program shall include nutrition training as specified in Section 4(7) of this administrative regulation.

(6) A nutrition service provider shall have a contingency plan in place to replace a meal if the meal:

(a) Does not register the correct temperature on delivery; or

(b) Is not delivered.

Section 6. Emergency Meals.

(1) Provisions shall be made for furnishing emergency meals during inclement weather conditions, power failure, or any disaster that may cause isolation or create a special need.

(2) Meals may be shelf stable, frozen, freeze-dried, dehydrated, modified atmosphere packaging, or a combination of these provided the meals meet the nutritional requirements of the program and menus have been approved by the agency nutrition service provider dietitian. Additional criteria shall include:

(a) Menus shall be planned for a minimum of three (3) days; and

(b) Frozen meals shall be used only if the:

1. Participant is able to store, prepare, and consume the meal alone or with available assistance; and

2. Delivery system is arranged so that storage time after delivery is minimal.

(3) Water shall be provided if necessary to prepare a meal.

(4) The menu plan shall include some foods which require no cooking prior to consumption.

(5) One (1) dish meals may be used provided the nutritional requirements of the Dietary Guidelines of Americans, published by the Secretary of Health and Human Services and the Secretary of Agriculture are met.

(6)(a) Foods may be taken to the nutrition site.

(b) A participant may assist with packaging foods for distribution if the participant is a volunteer at the nutrition site.

(7) An emergency meal package shall be distributed to the eligible homebound client receiving home delivered meals.

(8) Emergency meals may be used for a congregate participant if the center is closed.

(9) For reporting purposes, meals shall be counted by a senior center during the quarter of distribution.

Section 7. Nutrition Services Incentive Program (NSIP). (1) NSIP provides additional funding for the nutrition program to be used exclusively to purchase food and shall not be used to pay for other nutrition-related service or for state or agency administrative costs.

(2) The department shall disburse NSIP monies to AAAILs based upon the AAAIL's proportion of the total number of eligible meals served in the state.

(3) The AAAIL shall:

(a) Expend NSIP monies within the year funds are allocated by the department;

(b) Use the NSIP funds to expand the total number of meals provided in the state;

(c) Not use the NSIP funds to reduce funds from any other grant or contract which the provider may be given;

(d) Maintain records to show the amount of cash received and how it was expended;

(e) Only use the NSIP funds to purchase foods approved by the United States Department of Health and Human Services and other foods produced in the United States of America or purchase meals provided the cost of the meal is quoted as a unit of service cost which includes both food and labor. Ready to serve meals may be purchased on a unit of service cost basis provided each meal contains food equivalent in value to the current rate of reimbursement; and

(f) Serve meals through a nutrition service provider under the jurisdiction, control, management, and audit authority of the department and AAAIL and to eligible individuals as described in Section 2 of this administrative regulation.

(4) Financial records kept by the nutrition service provider shall show:

(a) Meals provided are bid without regard to NSIP reimbursement;

(b) NSIP funds are used as a revenue source for expansion of meals served in the state;

(c) The unit of service cost of a meal is not reduced in anticipation of future NSIP reimbursement but is stated as a true cost in both bidding and reporting procedures; and

(d) Monthly financial reports reflect NSIP expenditures.

(5) NSIP funding shall not be used for the following situations:

(a) Meals served to individuals, guests, or staff less than sixty (60) years of age;

(b) Meals served to a person who is paying a set fee for the meal;

(c) Meals that are served to consumers that meet income eligibility criteria under other programs;

(d) Meals used as a non-federal match for other federal program funding;

(e) Alcoholic beverages and vitamin supplements not allowed under the nutrition program of Guidelines for Americans published by the Secretary of Health and Human Services and the Secretary of Agriculture;

(f) Sponsored meals if a set fee or charge is involved; or

(g) Meals served to individuals in nursing homes, adult day care, or assisted living facilities where the meal is a part of the per diem.

Section 8. Nutrition Program Costs. (1) Ready-to-serve meal costs shall include the following:

(a) The cost of raw food, including food purchased with NSIP cash resources;

(b) The costs of serving supplies, disposables, cleaning materials, and noncapital items used in the preparation of food;

(c) The costs of labor for food preparation, cooking, portioning of foods, and delivery of food to the site of service. Labor costs shall include:

1. Fringe benefits;

2. Wages for persons who prepare and maintain the sanitary condition of the kitchen and storage areas; and

3. Wages paid for time spent in food and supplies inventorying, storing and receiving, and in direct supervision of employees;

(d) Equipment costs for capital items such as a:

1. Range;

2. Dishwasher;

3. Truck or van;

4. Steam table; or

5. Freezer;

(e) The costs of space, related utility costs, equipment operation, maintenance and repair costs; and

(f) The nonlabor costs of transporting food, food storage, insurance, and general liability.

(2) Food service and delivery costs shall include:

(a) The total labor costs for serving foods and for home delivery of meals to a participant;

(b) Mileage and maintenance of vehicle costs for home delivery of meals;

(c) Costs incurred for nutrition education and nutrition outreach services;

(d) Project management costs, including personnel, equipment, and supply costs; and

(e) Other general expenses related to overall program management.

(3)(a) A food service contract bid shall be structured in accordance with Kentucky's Procurement Code.

(b) Meals shall be:

1. Bid without regard to funding source; and

2. Contain both a ready-to-serve cost and a served delivered cost.

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Section 9. Responsibilities of AAAIL. (1) An AAAIL shall have policies and procedures to carry out the AAAIL's responsibilities as follows:

(a) Solicit the expertise of a dietitian or other individual with equivalent education and training in nutrition science or an individual with comparable expertise in the planning of nutritional pursuant to 42 U.S.C. 3030g-21(1);

(b) Pursuant to 42 U.S.C. 3030g-21(2)(K), encourage individuals who distribute nutrition services to provide homebound older individuals with medical information approved by health care professionals, such as informational brochures in the individual's community on how to get vaccines including vaccines for:

1. Influenza;
2. Pneumonia; and
3. Shingles.

(c) Provide implementation and management of the state nutrition program for older persons;

(d) Assure that a nutrition service provider provides:

1. At least one (1) meal per day in a congregate nutrition site or provide home delivered meals based upon a determination of a participant's needs;

2. That the maximum number of eligible older individuals, with emphasis on the frail, those with greatest social and economic need, and the isolated, have the opportunity to participate;

3. Nutrition screening and counseling and nutrition education services to address a participant's assessed needs and ensure that nutrition funds are used to provide these services;

4. Nutrition services to keep older persons healthy, reduce the older adult's risk of chronic disease and disability, and help the older adult to manage chronic diseases and conditions;

5. An emergency plan for back up food preparation sites, nutrition sites, and meal delivery; and

6. A plan for furnishing emergency meals during such emergencies as:

- a. Inclement weather conditions;
- b. Power failure;
- c. A disaster that may cause isolation; or
- d. A medical emergency;

(e) Use meal contributions to increase the number of meals served and facilitate access to these meals; and

(f) Monitor the nutrition program a minimum of twelve (12) times per year to evaluate compliance with nutrition program policies and central kitchens a minimum of one (1) time per year.

(2) If the AAAIL is the provider of meals and services, the AAAIL shall comply with all responsibilities of the nutrition service provider as specified in Section 10 of this administrative regulation.

Section 10. [(14)] "State nutrition program for the elderly" means the nutrition program administered by the office and shall include meals or nutrition services funded as designated in subsection (6) of this section.

(15) "USDA" means the United States Department of Agriculture.

Section 2.] Responsibilities of Nutrition Service Providers. (1) The nutrition service provider contracting to provide meals and services shall have policies and procedures to carry out the responsibilities of the service provider as follows:

(a) Provide the AAAIL[agency] with statistical and other information necessary for state reporting requirements;

(b) Provide a recipient[recipients] with an opportunity to voluntarily contribute to the cost of the service. Voluntary contributions shall be allowed and solicited, if the method of solicitation is non-coercive, and encouraged for an individual whose self-declared income is at or above 185 percent of the federal poverty level at contribution levels based on the actual cost of the service in accordance with 42 U.S.C. 3030c-2(b);

(c) Assure that an older person shall not be denied service because the older person[he] does not or cannot contribute to the cost of the service;

(d) Protect the privacy of each older person with respect to contributions;

(e) [Use meal contributions to increase the number of meals served, and to facilitate access to these meals;

(f)] Report to appropriate officials, such as Department for Community Based Services, EMS, local law enforcement, for follow-up, conditions or circumstances which place the older person or his household in imminent danger;

(f)] [(g) If feasible and appropriate,] Make arrangements for services to older persons in weather-related emergencies;

(g) Assist a participant with access to [(h) Assist participants in taking advantage of] benefits under other programs;

(h) Employ staff to ensure that the service staff is based on the number of program participants and the type of services provided;

(i) [Employ adequate numbers of qualified staff to ensure satisfactory conduct of the service;

(j)] Have a site director, on a paid or volunteer basis, responsible for activities at the site:

1. OAA Title III-C funds may pay a maximum of five (5) hours of the site director's time [If OAA Title III-C funds are utilized the maximum paid hours per day shall be five (5)]; and

2. OAA Title III-B or other funds may be used to pay for additional hours;

(j)] [(k)] Permit staff of the AAAIL [agency or] the cabinet, and federal representatives to monitor and inspect the operation of the site; and

(k)] [(4)] Attend meetings scheduled by the AAAIL and the department [agency and the office].

(2) The service provider contracting to provide meals only shall:

(a) Provide the AAAIL [contracting agency] with statistical and other information necessary for state reporting requirements; and

(b) Abide by the requirements of subsection (1)(i) through (k) of this section.

Section 11. [(b) Employ adequate numbers of qualified staff to ensure satisfactory conduct of the service;

(c) Permit staff of the nutrition service provider, the agency, the Cabinet for Health Services and federal representatives to monitor and inspect the operation; and

(d) Attend meetings scheduled by the agency and the office.

Section 3. Eligibility. (1) Eligibility for congregate meals shall be based on the following criteria:

(a) A person aged sixty (60) or older and the spouse of that person;

(b) Volunteers to handicapped persons residing in elderly housing complexes where a congregate site is located;

(c) Disabled individuals who reside in noninstitutional households with and accompany persons eligible for congregate meals; and

(d) Clients in adult day care, adult day health care, and Alzheimer's respite programs.

(2) Eligibility for home-delivered meals shall be based on the following criteria:

(a) A person aged sixty (60) or over and the spouse of that person, if:

1. Either is, by reason of illness or incapacitating disability, unable to attend a congregate site; and

2. There is no one in the home able to prepare a nutritious meal on a regular basis; or

(b) A nonelderly disabled person who is a member of a noninstitutional household with an elderly person.

Section 4.] Meal Planning. Nutrient dense meals shall be planned using preparation and delivery methods that preserve the nutritional value of foods. The use of saturated fats, salt and sugar shall be restricted to maintain good health.

(1) Menus shall be:

(a) Planned through a formal procedure for soliciting participant comments [with suggestions from participants. A formal procedure shall be] established in each district;

(b) Planned a minimum of one (1) month in advance or, if a cycle menu is planned, use at least for five (5) weeks;

(c) In compliance with the most recent Dietary Guidelines for Americans, published by the Secretary of Health and Human Services and the Secretary of Agriculture;

(d) Provided to each participating older individual:

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1. A minimum of thirty-three and one-third (33 1/3) percent of the dietary reference intakes established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences if the project provides one (1) meal per day pursuant to 42 U.S.C. 3030g-21(2)(A)(ii)(I);

2. A minimum of sixty-six and two-third (66 2/3) percent of the allowances if the project provides two (2) meals per day pursuant to 42 U.S.C. 3030g-21(2)(A) (ii)(II); and

3. One hundred (100) percent of the allowances if the project provides three (3) meals per day pursuant to 42 U.S.C. 3030g-21(2)(A)(ii)(III);

(e) Meet participant dietary needs such as low sugar, low salt, low fat, or low cholesterol;

(f) Certified by the licensed dietitian or certified nutritionist as meeting the nutritional requirements;

(g) Adhered to with minimal substitution;

(h) Provided with condiments; and

(i)(b) Planned on a monthly or quarterly basis using inclusive months, and prepared on menu forms which shall bear the name of the person who prepared the menu.

(c) Certified in writing as providing one-third (1/3) of the current daily recommended dietary allowances for persons fifty-one (51) years and older as established by the Food and Nutrition Board of the National Academy of Sciences – National Research Council. Certification shall be by the dietitian or certified nutritionist whose services are used by the provider.

(d) Submitted for approval to the office dietitian.

1. Two (2) copies of the menu shall be prepared:

a. The original shall be submitted to the office for approval; and
b. One (1) copy shall be retained in the agency.

2. Copies of corrected menus shall be resubmitted to the office.

(e) Adhered to, subject to seasonal availability of food items as well as availability of USDA donated foods, if applicable. Substitution to the approved menu shall be minimal. A list shall be submitted to the office compositely each month that includes:

1. The date of substitution;

2. The original menu item; and

3. The substitution.

(f) Posted in a conspicuous location, including each congregate meal site and each preparation site. Notification of the meals to be served shall be provided to participants receiving home delivered meals.

(2)(a) Special menus which allow for religious, ethnic, cultural and regional dietary practices may be provided when foods and preparations are available.

(b) [where feasible and appropriate but are not required on an individual basis:] Dietary preferences of a majority of the participants shall be reflected.

(3)(a) [Therapeutic diets may be offered if practical and feasible. A written order signed by the physician shall be on file, and reviewed and reordered if a change in the condition of the participant is reported or observed, but at least annually. Therapeutic menus shall be planned and prepared under the supervision of a registered dietitian.]

(4) Additional foods like fresh produce, baked items, and donated canned items, may be added to the meal to provide personal satisfaction and additional nutrition but shall not be considered part of the reimbursable program meal.

(b) Home-canned foods shall not be used.

(4)(a)(5) When a potluck meal is served at a particular site, no congregate meal shall be served at that site.

(b) Home delivered meals shall be provided on the same basis as if the potluck meal had not been scheduled.

Section 12. Consultation Requirements. A registered dietitian or certified nutritionist shall provide an AAAIL with a minimum of four (4) hours of consultation per month including: (1) Food quality, safety, and service;

(2) Assessment of employee practices;

(3) Staff training;

(4) Menu preparation or review;

(5) Assurances that nutrition screening, assessment, and counseling is completed;

(6) Reliable nutrition education is provided to a congregate and home delivered meal participant; and

(7) Individual diet counseling.

Section 13. Food Procurement. (1) Foods purchased for use in the nutrition program shall be of good quality and obtained from sources which conform to the nutritional requirements of 902 KAR 45:005.

(2)[(6) Vitamin and mineral supplements shall not be provided with nutrition program funds; however, citrus juice or drinks fortified with vitamin C are recommended. Only full strength juices shall be used as one (1) of the required meal components. A fruit beverage or drink, even if fortified, shall be used in the optional beverage category.

(7) A minimum of four (4) hours of consultation per month by a registered dietitian or certified nutritionist is required. Responsibilities shall include, but are not restricted to:

(a) Evaluation of the food preparation and service operations including measurement of food temperatures and portion sizes;

(b) Assessment of food quality and employee practices;

(c) Staff training; and

(d) Menu preparation or review.

(8) Individual diet counseling with participants shall only be provided by a dietitian.

Section 5. Meal Components. Meal component standards shall be as follows:

(1) The meat or meat alternate requirement shall be three (3) ounces of cooked edible portion of meat, fish or poultry with each meal. A three (3) ounce equivalent of meat alternate (nonmeat protein source) may be used to fulfill the requirement. Additional requirements include:

(a) Brooding shall be in addition to the three (3) ounce requirement;

(b) The use of cured and processed meat items shall be limited to one (1) time per week due to their high sodium content;

(c) The use of meat extender items shall be limited to a maximum of twice per week to minimize portion control problems;

(d) Cold entrees may be used during the hot months but shall not be used in the winter.

(2) The vegetable and fruit requirement shall be a minimum of two (2) one-half (1/2) cup servings or three (3) one-third (1/3) cup servings of a fruit or vegetable, or full strength fruit or vegetable juice. The following criteria shall apply:

(a) Partial strength or simulated fruit juice or drinks, even when fortified, shall only be considered optional beverages;

(b) One (1) cup portions of tossed salad shall be considered as one half (1/2) cup servings;

(c) A rich source of vitamin A shall be included at least every other day;

(d) The vitamin C meal requirement shall not come from more than two (2) food items, which shall be designated by an asterisk on each menu; because extended heating of food diminishes vitamin C content, the C source shall be a cold item as often as possible;

(e) When fruit or fruit salad is used in place of a second vegetable, the dessert shall not be a "fruit only" item;

(f) When soup is served as one (1) of the fruit and vegetable components, juice shall not be served as the second;

(g) Starchy vegetables shall be limited to one (1) per meal, and a good balance of succulent and starchy vegetables shall be presented;

(h) A bread alternate shall be used as one (1) of the vegetable choices only if a full one-half (1/2) cup portion of fruit is used as the dessert in the same meal;

(i) Vegetables that may be used as meat alternates shall not simultaneously fulfill both the vegetable and the protein requirement; and

(j) Fresh and frozen vegetables shall be used to the capacity that freezer and refrigerated storage shall allow. To minimize the sodium content of meals provided in the nutrition program, salt shall not be added during the cooking of canned vegetables.

(3) The bread or bread alternate requirement shall:

(a) Be one (1) serving of enriched or whole grain bread, bis-

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cuits, muffins, rolls, sandwich buns, cornbread or other hot breads with each meal;

(b) Weigh at least one (1) ounce;

(c) Furnish a minimum of two (2) grams protein; and

(d) Be one-half (1/2) cup volume for bread alternates.

(4) The butter or fortified margarine requirement shall be one (1) teaspoon per meal. The following criteria shall apply:

(a) All purchased margarine shall be from predominantly vegetable sources; special emphasis shall be placed on limiting saturated fats and cholesterol.

(b) Butter or margarine used in cooking may count toward the required amount.

(c) Condiments shall be served in place of butter or margarine:

1. On days when the bread item is used to make a sandwich; and

2. The menu shall indicate the condiment.

(5) The dessert requirement shall be one-half (1/2) cup serving and shall meet the following criteria:

(a) Fruit shall be served for dessert twice weekly, and desserts containing fruits as well as fruit only items shall be included;

(b) Fresh fruit shall be used weekly or a minimum of twice monthly;

(c) A dessert which furnishes a minimum of 100-200 milligrams of calcium shall be provided at least weekly;

(d) Ice cream, ice milk or sherbet shall be served weekly during the hot months and at least monthly thereafter, except that yogurt or puddings made with milk may be served instead of ice cream in the home delivered meals program or in those sites not equipped with freezer storage; and

(e) Juice may be served occasionally as the dessert item but shall be accompanied by a small cookie or peanut butter cracker to provide the satiety value normally furnished by the dessert.

(6) The milk requirement shall be:

(a) One-half (1/2) pint of skim or two (2) percent milk served:

1. In an unopened, commercially filled container; or

2. From an approved bulk milk dispenser;

(b) Other choices such as fortified whole milk, buttermilk or the calcium equivalent in cheese; or

(c) A calcium alternate for the required one (1) cup fluid milk if approved by the office dietitian.

(7) Other foods or beverages may be provided according to the following criteria:

(a) Coffee, tea, decaffeinated beverages, fruit juice and fruit flavored drinks may be offered but are not required.

(b) The service of water is required with meals; it is recommended that cups and pitchers of cold water be preset just prior to meal service in locations convenient to participants.

(c) When a full-strength citrus juice listed under other foods and beverages is to fulfill the vitamin C requirement for the meal, then it shall be so indicated with an asterisk; this designation shall require the service of this menu item to participants.

Section 6. Food Procurement. Foods purchased for use in the nutrition program shall be of good quality and shall be obtained from sources which conform to federal, state and local regulatory standards for quality, sanitation, and safety. The following requirements apply:

(1) Foods shall be purchased and received according to the acceptable brands list or the approved equal to those brands.

(2) Quantity food purchases shall be made using specifications on the current acceptable brands list.

(3) Purchases for canned, packaged and frozen foods shall, when feasible, be made quarterly.

(4) Meat products shall be ordered monthly.

(5) Fresh dairy products, bread and eggs shall be purchased weekly.

(6) Fresh fruits and vegetables shall be purchased on a local market basis.

(7) Other methods of purchasing may be used if the methods result in the best price for the quality desired.

(3)(a)(f) Use of term contracts for repetitively purchased items is encouraged.

(b) Fixed quantity contracting shall be used when definite items and quantities can be determined for future delivery dates.

Section 14.[7-] Food Preparation. (1)(a) Standardized recipes shall be used in food preparation and yield shall be indicated.

(b) Recipes shall specify the yield and portion size adjusted for the requirements of the nutrition program for older persons.

(2)[the elderly-]

(4) The following standards shall be established for quality control:

(a) Food production standards.

1. Hot foods shall be produced within eight (8) hours preceding service unless otherwise directed in the recipe.[;]

2. Protein foods shall be cooked completely once the cooking cycle has begun.[;]

3. Foods to be served cold and neutral temperature foods may be prepared earlier than the preceding eight (8) hours if so directed in the recipe.[;]

4. Solid and semisolid cooked foods stored under refrigeration shall be placed in containers that are no more than four (4) inches in depth.

(b) ~~A chilled food system for bulk food shall not be used; chilled food systems for individually portioned meals may be considered for approval by the office dietitian provided that the cumulative hot holding time for these meals is less than two (2) hours.~~

(c) Holding times shall be kept to an absolute minimum.

1.~~[-but]~~ The holding time for hot foods shall not exceed three (3) hours after preparation.

2. Exception to this requirement may be granted by the ~~department~~[office] provided that meal quality is not compromised with extended hot-holding and that appropriate temperatures are maintained.

(c)[(d)] Temperature standards.

1. ~~Potentially hazardous foods (protein foods) shall be cooked to heat all parts of the product to an internal temperature of at least 140 degrees Fahrenheit; minimum internal temperature shall be 165 degrees Fahrenheit for poultry and 150 degrees Fahrenheit for pork;~~

2.~~[-]~~ Hot foods shall be packed at temperatures of at least 160 degrees Fahrenheit, and the internal temperature of hot foods to be transported shall be at least 135[449] degrees Fahrenheit during transportation and service.

2.[;]

3.~~[-]~~ Cold foods shall not exceed forty-one (41)[~~forty-five (45)~~] degrees Fahrenheit during transportation and service.

3.[;-and]

4. Thermometers used to check food temperatures shall be:

a. Of metal stem-type construction;

b. Numerically scaled;

c. Accurate to plus or minus three (3) degrees Fahrenheit; and

d. Checked periodically to ensure that each thermometer is registering accurately.

4.~~[5-]~~ Food temperatures for both hot and cold items shall be checked and recorded daily at the kitchen and at the site of service.

(3)(a)(f)(2) Food preparation facilities shall be in compliance with state and local fire, health, sanitation and safety regulations which apply to food service operations.

(b) A food preparation and service kitchen[~~kitchens~~] shall be inspected periodically by state and local health officials and the department[~~office~~] dietitian.

(4)(f)(3) Standards for food handling and personal hygiene shall be in accordance with the food service requirements of the State Food Service Code governed by 902 KAR 45:005.

[Section 8. Congregate Meal Service. Congregate meals shall be provided by nutrition service providers who, five (5) or more days per week, provide at least one (1) hot or other appropriate meal per day and any additional meals which the recipient of a grant or contract may elect to provide in a congregate setting.

(1) The following requirements shall apply to the transportation of meals to congregate sites:

(a) Insulated containers shall be used for bulk food delivery;

(b) Bulk foods shall be transported in stainless steel pans or aluminum disposable pans. Use of plastic shall be restricted to cold foods only; and

(c) Hot items shall be transported in bulk containers separate

from cold products. Containers shall be preheated or prechilled before being loaded.

(2) The following order of service shall be followed:

(a) Congregate meals shall be served after packaging the home-delivered meals. Foods shall be maintained at appropriate temperatures during all phases of food service.

(b) Milk and other cold food items shall not be preset on tables prior to meal service; tables shall not be preset with eating or drinking utensils for more than four (4) hours prior to meal service unless each item is individually wrapped.

(c) After all participants have been served, volunteers and other staff may be served.

(d) Food items left over from meals may be:

1. Offered as seconds to participants after all have been served;

2. Packaged in individual trays, labeled, dated and immediately frozen for later use in the home-delivered meals program:

a. Frozen meals shall be stored at zero-degrees Fahrenheit or below; and

b. Distributed within two (2) weeks from the date they are packaged in the center.

3. If neither of these options is possible, the foods shall be discarded.

(3) Only complete meals shall be claimed for payment. The omission of any of the required meal components shall cause that meal to be incomplete and ineligible for payment and for USDA reimbursement. Refusal by a participant of specific meal components shall not render that meal incomplete.

(4) Center carry-out policy shall:

(a) Discourage the carry-out of food items with particular emphasis on potentially hazardous foods but shall not prohibit this practice. Food items which may be taken home are those items which a participant has left from his own meal;

(b) Assure participants shall be advised concerning the risks involved when foods are held at unsafe temperatures; and

(c) Assure staff or volunteers shall not devote time or supplies to the task of packaging individual menu items as carry-outs for participants or staff.

(5) Participants shall have an opportunity to evaluate meals and service.

(6) The aging planner or representative shall monitor the food service operation a minimum of twelve (12) times per year to evaluate compliance with nutrition program policies.

(7) An ongoing nutrition education program shall be implemented and may include a minimum of one (1) session each month at each nutrition site. The program shall include using a wide range of teaching techniques for a variety of topics including, but not limited to:

(a) Health promotion and disease prevention;

(b) Consumer approaches; and

(c) Food fads and diets.

Section 9. Home-Delivered Meal Service. Home-delivered meals shall be provided by nutrition service providers who, five (5) or more days a week, provide at least one (1) home-delivered hot, cold, frozen, dried, canned or supplemental foods meal per day and any additional meals which the recipient of a grant or contract may elect to provide.

(1) Meals shall be delivered only to eligible persons in their homes. Meals may be left with a designee of the older person provided the designee has been informed of the requirements of the nutrition program and has indicated a willingness to comply with those requirements.

(2) Frozen meals or shelf-stable meals shall not be used in the home-delivered meals program without prior approval of the office dietitian. Alternatives to frozen meals shall be sought especially during the hot months for those participants who do not have fans or air conditioning and the heating of a frozen meal in the home may substantially increase the temperature of the home. Documentation for the provision of frozen or shelf-stable meals shall show:

(a) The participant has expressed a preference for frozen or shelf-stable meals; or

(b) The participant lives off an established route; and

(c) Proper storage and heating facilities are available in the home; and

(d) The participant is able to prepare and consume the meal alone or with available assistance.

(3) Providers of home-delivered meals shall use methods of delivery that shall prevent outside contamination and hold food at appropriate temperatures. Delivery of meals shall meet the following criteria:

(a) Delivery routes shall be kept as short as possible to minimize nutrient loss and to facilitate temperature retention;

(b) Meals shall be delivered within three (3) hours from the end of preparation to the final destination, unless an exception is approved by the office;

(c) Nutrition site personnel shall check and record temperatures of meals at least weekly toward the end of the longest delivery route. When temperature retention problems are found, daily checks of temperatures shall be made until the problem is corrected;

(d) When heated delivery equipment is not available, other means to hold temperature shall be used;

(e) Eutectic plates or artificial ice shall be placed over the cold foods within the food boxes. Ice may be used if the food containers are constructed so as to prevent water seepage into the food;

(f) Neutral temperature foods shall be packaged and delivered in a way as to prevent outside contamination; and

(g) Frozen meals shall be maintained in a frozen state during delivery. When the meal has thawed to the extent that ice crystals are not contained in the meal:

1. The meal shall not be refrozen for later use; however,

2. A meal which has begun to thaw may be held for a brief period at forty-five (45) degrees Fahrenheit or below, or heated and consumed immediately.

(4) The aging planner or representative shall monitor the food service operation a minimum of twelve (12) times per year to evaluate compliance with nutrition program policy.

Section 10. Emergency Meals. Provisions shall be made for furnishing emergency meals during inclement weather conditions, power failure, or any disaster that may cause isolation or create a special need. Meals may be shelf-stable, frozen, freeze-dried, dehydrated, or a combination of these, provided they meet the nutritional requirements of the program and menus have been approved by the office dietitian. Additional criteria include:

(1) Menus shall be planned for a minimum of three (3) days;

(2) Frozen meals shall be used only:

(a) If the participant is able to store, prepare and consume the meal alone or with available assistance; and

(b) If the delivery system is arranged so that storage time after delivery is minimal;

(3) Water shall be provided if necessary;

(4) Butter or margarine may be optional;

(5) The menu plan shall include some foods which require no cooking prior to consumption;

(6) One (1) dish meals may be used provided that both the protein and one (1) of the vegetable requirements are contained in the single serving;

(7) Foods may be taken to the nutrition sites and participants may assist with packaging the foods for distribution;

(8) Emergency meal packages shall be distributed to home-bound clients with home-delivered meals and may be used for congregate participants when centers are closed;

(9) For reporting purposes, meals shall be counted during the quarter in which they were distributed.

Section 11. USDA Assistance. The USDA provides a per meal rate of assistance, in the form of commodities or cash-in-lieu of commodities, for each meal served to an eligible participant. Revenue generated shall accrue to the office.

(1) The area development district shall disburse USDA monies to service providers based upon each provider's proportion of the total number of eligible meals served in the state.

(a) Disbursements of cash and receipt of commodities shall be reflected in the next billing after receipt by the provider.

(b) The provider shall expend USDA monies within one (1)

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year from the time payment is received:

(c) ~~USDA funds shall be used to expand the total number of meals provided in the state and shall not be used to reduce funds from any other grant or contract which the provider may be given.~~

(2) ~~When commodities are accepted, the provider shall:~~

(a) ~~Place orders according to procedures established by the office;~~

(b) ~~Maintain records to indicate items received and utilized; and~~

(c) ~~Store commodities together on designated shelves or pallets separate from purchased goods; a separate room is not required.~~

(3) ~~When cash in lieu of commodities is accepted, the provider shall:~~

(a) ~~Maintain records to show the amount of cash received and how it was expended;~~

(b) ~~Use cash to purchase USDA commodities and other foods for the nutrition program;~~

(c) ~~Purchase meals provided the cost of the meal is quoted as a unit cost which includes both food and labor. Ready-to-serve meals may be purchased on a unit cost basis provided each meal contains food equivalent in value to the current rate of reimbursement.~~

(4) ~~Cash reimbursement criteria include:~~

(a) ~~Only meals containing the components of the required meal pattern and actually consumed by eligible participants may be claimed;~~

(b) ~~Meals claimed for reimbursement shall not be claimed under other USDA reimbursement programs;~~

(c) ~~Section 2 of the USDA NPE Budget and Financial Summary Report, herein incorporated by reference, shall be submitted to the office by the 15th of the month following the report period to:~~

1. ~~Claim cash reimbursement;~~

2. ~~Certify commodity meals served; and~~

3. ~~Certify meals ineligible for USDA reimbursement.~~

(d) ~~Cash reimbursement is to be based on the total number of meals served to eligible participants multiplied by the reimbursement rate as established by USDA less commodity entitlement monies if applicable.~~

(5) ~~Financial records kept by the provider shall show:~~

(a) ~~Meals provided are bid without regard to USDA reimbursement;~~

(b) ~~USDA funds are used as a revenue source for expansion of meals served in the state;~~

(c) ~~The unit cost of a meal is not reduced in anticipation of future USDA reimbursement but is stated as a true cost in both bidding and reporting procedures; and~~

(d) ~~Monthly financial reports reflect USDA expenditures.~~

~~Section 12. Nutrition Program Costs. (1) Ready-to-serve meal costs shall include the following:~~

(a) ~~The cost of raw food, including food purchased with USDA cash resources and the dollar value of USDA donated foods used;~~

(b) ~~The costs of serving supplies, disposables, cleaning materials, and noncapital items used in the preparation of food;~~

(c) ~~The costs of labor for food preparation, cooking, portioning of foods, and delivery of food to the site of service. Labor costs shall include:~~

1. ~~Fringe benefits;~~

2. ~~Wages for persons who prepare and maintain the sanitary condition of the kitchen and storage areas; and~~

3. ~~Wages paid for time spent in food and supplies inventorying, storing and receiving and in direct supervision of employees;~~

(d) ~~Equipment costs of capital items like ranges, dishwashers, trucks and vans, steam tables, freezers, etc.;~~

(e) ~~The costs of space, related utility costs, and equipment operation, maintenance and repair costs; and~~

(f) ~~The nonlabor costs of transporting food, food storage, handling charges for USDA donated foods, insurance and general liability.~~

(2) ~~Food service and delivery costs shall include:~~

(a) ~~The total labor costs for serving foods and for home delivery of meals to participants;~~

(b) ~~Mileage and maintenance of vehicles costs for home deli-~~

~~very of meals;~~

(c) ~~Costs incurred for nutrition education and nutrition outreach services;~~

(d) ~~Project management costs, including personnel, equipment and supply costs; and~~

(e) ~~Other general expenses related to overall program management.~~

(3) ~~Food service contract bids shall be structured according to the request for proposal outline developed by the office. Meals shall be bid without regard to funding source, and shall contain both a ready-to-serve cost and a served, delivered cost.~~

~~Section 13. Material Incorporated by Reference. (1) The form necessary for the implementation of the nutrition program for the elderly shall be herein incorporated.~~

(2) ~~Material incorporated by reference may be inspected and copied at the Office of Aging Services, CHR Building, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.]~~

DEBORAH S. ANDERSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 13, 2010

FILED WITH LRC: December 13, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2011 at 9:00 a.m. in the Public Health 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, 2011, 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 January 31, 2011. Send written notification of intent to be heard at the public hearing or written comments to the contact person.

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: Shirley Eldridge 564-6930 x 3432

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the nutrition program for older persons.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the Cabinet to administer the nutrition program for older persons.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 42 U.S.C. 3030e authorizes grants to states under approved state plans to establish and operate a nutrition program for older persons. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to adopt regulations as necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds. This administrative regulation establishes standards with respect to an older person receiving nutritional services such as congregate meals, home-delivered meals, NSIP meals, nutrition screening, assessment, and counseling.

(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 required to provide nutritional services based on the needs of older persons pursuant to 42 U.S.C. 3030e.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates definitions, eligibility for ser-

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vices, voluntary contribution of costs, and menu planning based on Federal Food Code changes and Dietary Guidelines of Americans, and establishes requirements for the Nutrition Service Incentive Program (NSIP) meals.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to be in compliance with the latest amendments to 42 U.S.C. 3001 et seq., the Federal Food Code, and Dietary Guidelines of Americans to enable correct administration of the program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform by establishing the latest provisions of nutrition services in accordance with 42 U.S.C. 3001 et seq., the Federal Food Code, and Dietary Guidelines of Americans.

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes requirements and guidance for entities affected to administer the nutrition program in accordance with 42 U.S.C. 3030e, the requirements of the Federal Food Code and Dietary Guidelines of Americans.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department for Aging and Independent Living (DAIL), 15 Area Agencies on Aging and Independent Living (AAAIL), nutrition service providers (that may include the 15 AAAILs or other nutrition service providers), and older persons receiving nutritional services under this administrative regulation. There were approximately 18,934 older persons receiving congregate meals and 8,734 older persons receiving home-delivered meals in 2009.

(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: DAIL will monitor the AAAILs for compliance with this administrative regulation. The AAAILs will, pursuant to 42 U.S.C. 3030g-21(1), solicit the expertise of a dietitian in planning nutritional services and encourage individuals who distribute nutrition services to homebound older persons to also provide medical information approved by health care professionals. This should include informational brochures and information on how to get vaccines, including vaccines for influenza, pneumonia, and shingles, in the individual's community pursuant to 42 U.S.C. 3030g-21(2)(K), and monitor the service provider for compliance with this administrative regulation. The nutrition service providers will provide a recipient with an opportunity to voluntarily contribute to the cost of a service which shall be allowed and solicited as non-coercive and encouraged for individuals whose self-declared income is at or above 185 percent of the federal poverty level at contribution levels based on the actual cost of the service in accordance with 42 U.S.C. 3030c-2(b), and report to the Department for Community Based Service (DCBS) conditions which place an older person or the older person's household in imminent danger.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The AAAILs will have better guidance to implement the changes of the Federal Food Code and Dietary Guidelines of Americans set forth by the Department of Health and Human Services and the Department of Agriculture. The older person will benefit with the safety measures established for menu planning, meal delivery, and receipt of meals. The older person will benefit from receipt of medical information such as how to receive vaccines for influenza, pneumonia, and shingles in their community. They will also benefit from reports to DCBS any conditions that place them in an imminent danger.

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

(a) Initially: FY 2011 - \$7,723,806 Federal and \$1,158,737 State Match

(b) On a continuing basis: FY 2011 - \$7,723,806 Federal and \$1,158,737 State Match

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: FY 2011 - \$7,723,806 Federal and \$1,158,737 State Match.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is 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. 42 U.S.C. 3030e, KRS 194A.050(1), KRS 205.204(1), (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 not generate additional revenue.

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

(c) How much will it cost to administer this program for the first year? FY 2011 - \$7,723,806 Federal and \$1,158,737 State Match

(d) How much will it cost to administer this program for subsequent years? FY 2011 - \$7,723,806 Federal and \$1,158,737 State Match

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 3030e

2. State compliance standards. KRS 194A.050(1), KRS 205.204(1), (2)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 3030e

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Aging and Independent Living

Division of Quality Living

(Amendment)

910 KAR 1:200. Senior Community Service Employment Program.

RELATES TO: KRS 205.201, 205.455, Chapter 342, 20 C.F.R.

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Part 641, 5 U.S.C. 7323, 29 U.S.C. 206, 20 U.S.C. 2801 et seq., 38 U.S.C. 4215(a)(1), 42 U.S.C. 401 et seq., 42 U.S.C. 641.230, 42 U.S.C. 2002(22), 42 U.S.C. 11302(a)[42 U.S.C. 3001 et seq.]

STATUTORY AUTHORITY: KRS 194A.050(1), 205.204(1), (2), 42 U.S.C. 3001 et seq.

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative~~adopt~~ regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204(1) and (2) designates the cabinet ~~for Health Services~~ as the state agency to administer the Older Americans Act in Kentucky and authorizes the cabinet to promulgate such administrative regulations as are necessary to comply with any requirement imposed or required by federal law. ~~[The function of]~~ This administrative regulation ~~sets[is to set]~~ forth the standards of operation for the senior community service employment program in Kentucky~~[in compliance with KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter].~~

Section 1. Definitions. (1) "Area plan" means a plan submitted by a district for approval of the department which releases funds under contract for the delivery of SCSEP services within a planning and service area.

(2) At risk for homelessness" means an individual who:

(a) Is likely to become homeless; and

(b) Lacks the resources and support networks needed to obtain housing.

(3) "Authorized position" means an enrollment opportunity during a program year based on an average national unit cost pursuant to 20 C.F.R. 641.140.

(4) "Co-enrollment" means enrollment for an individual who meets the qualifications for SCSEP participation and is also enrolled as a participant in WIA or another employment and training program, as provided in the participants Individual Employment Plan.

(5) "Community service" means a service provided by the SCSEP participant within a community to gain work experience and job skills, including:

(a) Social, health, welfare, and educational services including literacy and tutoring;

(b) Legal and other counseling services and assistance including tax counseling and assistance and financial counseling;

(c) Library;

(d) Recreational;

(e) Conservation, maintenance, or restoration of natural resources;

(f) Community betterment or beautification;

(g) Antipollution and environmental quality efforts;

(h) Weatherization activities;

(i) Economic development; or

(j) Other services essential and necessary to the community as the Secretary of Health and Human Services determines by rule to be appropriate.

(6) "Community service assignment" means part-time, temporary employment paid with grant funds for a project at a host agency through which an eligible individual is engaged in community service and receive work experience and job skills that can lead to unsubsidized employment.

(7) "Department" means the Department for Aging and Independent Living.

(8) "Disability" means a mental or physical impairment, or a combination of mental and physical impairments, that result in substantial functional limitations in one (1) or more of the following areas of major life activity:

(a) Self-care;

(b) Receptive and expressive language;

(c) Learning;

(d) Mobility;

(e) Self-direction;

(f) Capacity for independent living;

(g) Economic self-sufficiency;

(h) Cognitive functioning; or

(i) Emotional adjustment.

(9) "District" is defined by KRS 205.455(4).

(10) Frail" means an individual fifty-five (55) years of age or older who is functionally impaired because the individual:

(a) Is unable to perform at least two (2) activities of daily living without verbal reminding, physical cueing, or supervision; or

(b) Requires supervision due to a cognitive or other mental impairment and behaves in a manner that poses a health or safety hazard to the individual or another individual pursuant to 42 U.S.C. 2002(22).

(11) "Greatest economic need" means the need resulting from an income level at or below the poverty guidelines established by the Department of Health and Human Services and approved by the Office of Management and Budget pursuant to 42 U.S.C. 3002(23).

(12) "Greatest social need" means the need caused by non-economic factors pursuant to 42 U.S.C. 3002(24), including:

(a) Physical and mental disabilities;

(b) Language barriers; and

(c) Cultural, social, or geographical isolation, including isolation caused by racial or ethnic status that:

1. Restricts the ability of an individual to perform normal daily tasks; or

2. Threatens the capacity of the individual to live independently.

(13) "Homeless" means an individual, pursuant to 42 U.S.C. 11302(a), who:

(a) Lacks a fixed regular nighttime residence; and

(b) Has a primary nighttime residence that is:

1. A supervised publicly or privately operated shelter designed to provide temporary living accommodations including:

a. Welfare hotels;

b. Congregate shelters; and

c. Transitional housing for the mentally ill;

2. An institution that provides a temporary residence for individuals intended to be institutionalized; or

3. A public or private place not designed for or ordinarily used as regular sleeping accommodations for human beings.

(14) Host agency" means a public agency or private, nonprofit organization, other than a political party, exempt from taxation under the provision of Section 501(c)(3) of the Internal Revenue Code of 1986, which provides a training worksite and supervision for one (1) or more participants.

(15) "Individual employment plan" or "IEP" means a participant's plan based on:

(a) An assessment of the participant conducted by the sub-recipient; or

(b) A recent assessment or plan of the participant developed by another employment and training program and a related service strategy.

(16) "Job ready" means an individual does not require further education or training to perform work that is available in the individual's labor market.

(17) "Limited English proficiency" means an individual who does not speak English as a primary language and has a limited ability to read, speak, write, or understand English.

(18) "Low income" means an income which during the preceding six (6) months on an annualized basis or the actual income during the preceding twelve (12) months, whichever is more beneficial to the applicant, is not more than 125 percent more than the poverty levels established and periodically updated by the United States Department of Health and Human Services.

(19) "OAA" means the Older Americans Act, 42 U.S.C. 3001 et seq., as amended.

(20) "One-Stop center" means the One-Stop center system in a WIA local area through which One-Stop partners provide core services and access to other programs and services carried out by the One-Stop partners.

(21) One-Stop delivery system" means a system which:

(a) Employment and training programs, services, and activities are available through a network of One-Stop partners;

(b) Information about and access to core services is available

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regardless of where the individual initially entered the workforce investment system;

(c) Referral to WIA intensive and training services is available; and

(d) Access to other activities and programs carried out by other One-Stop partners is available.

(22) "Participant" means an individual who is:

(a) Determined to be eligible for the SCSEP program;

(b) Given a community service assignment; and

(c) Receiving a service funded by the SCSEP program.

(23) "Program year" means the one (1) year period beginning on July 1 and ending on June 30.

(24) "Project" means an undertaking by a sub-recipient in accordance with a contract agreement between the department and sub-recipient that provides service to a community and training and employment opportunities to an eligible individual.

(25) "SCSEP" means the Senior Community Service Employment Program authorized under Title V of the OAA and administered by the Department of Labor that serves unemployed low income persons who:

(a) Are fifty-five (55) years of age and older;

(b) Have poor employment prospects; and

(c) Need training in part-time community service assignments and skills and experience to facilitate transition to unsubsidized employment.

(26) "Sub-recipient" means the legal entity to which a sub-award of financial SCSEP assistance is made by the department and who is accountable to the department for the use of the funds provided.

(27) "Sub-recipient agreement" means an agreement between the department and sub-recipient that provides for transfer of SCSEP funds to the sub-recipient for the purpose of carrying out the activities authorized in the agreement.

(28) "Supportive services" means services and incidentals, specified in Section 7 of this administrative regulation, that are necessary to enable an individual to participate in activities authorized under the SCSEP.

(29) "Unemployment" means an individual who is without a job, is available to work, and wants to work, or has occasional employment that does not result in a constant source of income.

(30) "Workforce Investment Act" or "WIA" means the Workforce Investment Act of 1998, 29 U.S.C. 2801 et seq., as amended.

Section 2. Eligibility Criteria. To participate in SCSEP, an applicant shall be: (1) At least fifty-five (55) years old;

(2) Unemployed;

(3) An individual or a member of a family with an income that is not more than 125 percent of the poverty level as determined by Health and Human Services and approved by Office of Management and Budget; and

(4) A resident of Kentucky.

Section 3. Application. (1) A participant shall not be considered a Federal employee solely as a result of the participant's participation in the SCSEP.

(2) To apply for SCSEP, an applicant shall submit official records to a sub-recipient that substantiate:

(a) The applicant's state of residence, such as:

1. Driver's license;

2. State, federal, or tribal ID card;

3. Social Security statement;

4. Rental agreement; or

5. Voter registration card;

(b) The applicant's date of birth, such as:

1. Birth certificate;

2. Driver's license;

3. Government identification card; or

4. Social Security award letter;

(c) The applicant's number in family, with documentation such as a:

1. Lease; or

2. Signed third-party attestation that explains how participant supported self;

(d) The applicant is a family-of-one, with documentation such

as:

1. Social Security Disability Insurance (SSDI) or other Social Security Administration records; and

2. Records indicating disability such as the following:

a. Medical records;

b. Disability records;

c. Veteran's medical record;

d. Vocational rehabilitation letter; or

e. Worker's compensation record; and

(e) 1. The applicant's employment including official documents and business records that establish includable income, military discharge papers, or other military identification; and

2. Attestation that establishes no other includable income exists.

(3) An individual selected for participation in the SCSEP shall participate in the following activities:

(a) Initial orientation;

(b) Initial assessment;

(c) Subsequent assessment as specified in Section 5(1)(c)2;

and

(d) Development of initial and updated IEP.

Section 4. Eligibility Determination. (1) A sub-recipient shall determine an applicant's initial eligibility through the application process described in Section 3 of this administrative regulation and annually thereafter.

(2) The sub-recipient shall compute an applicant's income eligibility by calculating:

(a) The includable income received by the applicant during the twelve (12) month period ending on the date an individual applies;

(b) The annualized income for the six (6) month period ending on the date an individual applies; or

(c) Whichever method in paragraph (a) or (b) of this subsection is more favorable to the applicant.

(3) The following benefit payments shall be included in SCSEP income eligibility determinations:

(a) Earnings;

(b) Seventy-five (75) percent of benefits received under Title II of the Social Security Act;

(c) Survivor benefits;

(d) Pension or retirement income;

(e) Interest income;

(f) Dividends;

(g) Rents, royalties, and estates and trusts;

(h) Educational assistance;

(i) Alimony; and

(j) Other inclusions as authorized by the Department of Labor.

(4) The following benefit payments shall be excluded from SCSEP income eligibility determinations:

(a) Unemployment compensation received under Title XVI of the Social Security Act, 42 U.S.C. 1381 et seq.;

(b) A payment made to or on behalf of veterans or former members of the Armed Forces administered under the Secretary of Veterans Affairs;

(c) Twenty-five (25) percent of a benefit received under Title II of the Social Security Act, 42 U.S.C. 401 et seq.;

(d) Social Security Income or Social Security Disability Income; and

(e) Other exclusions allowed by the Department of Labor.

(5) Priority for SCSEP shall be given to an individual who has one (1) or more of the following characteristics:

(a) Is age sixty-five (65) years of age or older;

(b) Has a disability;

(c) Has limited English proficiency or low literacy skills;

(d) Resides in a rural area;

(e) Has low employment prospects;

(f) Has failed to find employment after using services provided through the One-Stop delivery system;

(g) Is homeless or at risk for homelessness; or

(h) Is a veteran as defined by the Jobs for Veterans Act, 38 U.S.C. 4215(a).

1. Priority is extended to the spouse of a veteran who died of a service-connected disability;

2. The spouse of a member of the Armed Forces on active

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duty who has been listed for a total of more than ninety (90) days as missing in action, captured in the line of duty by hostile force, or forcibly detained by a foreign government or power;

3. The spouse of any veteran who has a total disability resulting from a service connected disability; or

4. The spouse of any veteran who died while a disability so evaluated was in existence.

(6) A sub-recipient shall apply priorities in the following order:

(a) An individual who qualifies as a veteran or qualified under Section 2(a) of the Jobs for Veterans Act, 38 U.S.C. 4215(a) and who possess at least one (1) of the other priority characteristics specified in subsection (5)(a) through (g) of this section;

(b) An individual who qualifies as a veteran or qualified spouse under Section 2(a) of the Jobs for Veterans Act, 38 U.S.C. 4215(a) and who does not possess any other of the priority characteristics specified in subsection (5)(a) through (g) of this section; or

(c) An individual who does not qualify as a veteran or qualified spouse under Section 2(a) of the Jobs for Veterans Act (non-veterans) and who possess at least one (1) of the other priority characteristics specified in subsection (5)(a) through (g) of this section.

Section 5. Enrollment Process. (1) If an individual is selected for participation in the SCSEP program, the sub-recipient shall:

(a) Provide orientation to the SCSEP, including:

1. Information of project goals and objectives;

2. Community service assignments;

3. Training opportunities;

4. Available supportive services;

5. The availability of a free physical examination;

6. Participant rights and responsibilities;

7. Permitted and prohibited political activities pursuant to the Hatch Act, 5 U.S.C. 7323; and

8. A written copy and verbal review of its policies for terminating a participant as specified in Section 10(4) of this administrative regulation;

(b) Assess a participant's work history, including:

1. Skills and interests;

2. Physical capabilities;

3. Talents;

4. Aptitudes;

5. Needs for supportive services;

6. Occupational preferences;

7. Training needs;

8. Potential for performing community service assignments;

and

9. Potential for transition to unsubsidized employment;

(c) 1. Perform an initial assessment upon program entry, unless an assessment has already been performed under Title I of WIA;

2. Subsequent assessments may be made as necessary and shall not be made no less frequently than two (2) times annually, including the initial assessment;

(d) Use the information gathered during an initial assessment to develop an IEP that includes an employment goal for the participant, except that an assessment and IEP developed under Title I of WIA shall satisfy the requirement for SCSEP assessment and IEP in accordance with 42 U.S.C. 641.230;

(e) Update an IEP to reflect information gathered during subsequent assessments;

(f) Place a participant in a community service assignment in the community in which the participant resides or a nearby community;

(g) Provide or arrange for training identified in a participant's IEP consistent with the SCSEP's goal of unsubsidized employment;

(h) Assist a participant with supportive services identified in the participant's IEP;

(i) Provide services for a participant or refer the participant to services through the One-Stop delivery system established under WIA;

(j) Provide counseling to the participant on progress in meeting the goals and objectives identified in the participant's IEPs and in meeting the participant's supportive service needs;

(k) Provide a participant with wages and benefits for time spent

in the community service assignment, orientation, and training;

(l) Monitor to ensure a participant's safe and healthy working conditions at the participant's community services employment worksite; and

(m) Assist the participant in obtaining unsubsidized employment, including providing or arranging for employment counseling in support of the participant's IEP.

(2) A sub-recipient shall not enroll a job-ready individual as a SCSEP participant but shall refer the individual to an employment provider such as a One-Stop Center for job placement assistance under WIA or another employment program.

Section 6. Participant Training. (1) In addition to the training provided in a community service assignment, a sub-recipient may arrange skill training for a participant, if the training:

(a) Is realistic and consistent with the participant's IEP;

(b) Makes the most effective use of the participant's skills and talents; and

(c) Prepares the participant for unsubsidized employment.

(2) Training may be provided:

(a) Before or during a community service agreement;

(b) In the form of:

1. Lectures;

2. Seminars;

3. Classroom instruction;

4. Individual instruction, or

5. On-the-job experiences; or

(c) Through the sub-recipient or an arrangement with other workforce development programs such as WIA.

(3) A sub-recipient may pay, if necessary in accordance with a participant's IEP, for:

(a) Participant training including the payment of costs of:

1. Instructors;

2. Classroom rental;

3. Training supplies;

4. Materials;

5. Equipment; and

6. Tuition; or

(b) Costs associated with supportive services as specified in Section 7 of this administrative regulation;

Section 7. Supportive Services. (1) A sub-recipient may provide directly or arrange for supportive services identified on a participant's IEP to enable the participant to successfully participate in the SCSEP project, such as:

(a) Costs of transportation;

(b) Health and medical services;

(c) Special job-related or personal counseling; or

(d) Incidentals for work or training, such as:

1. Shoes;

2. Badges;

3. Uniforms;

4. Eyeglasses;

5. Tools;

6. Dependent care;

7. Housing, including temporary shelter; or

8. Other needs-related payments for job readiness.

(2) A sub-recipient shall contact a placed participant throughout the first twelve (12) months following placement to determine if the participant has the necessary supportive services to remain employed and to provide or arrange to provide such services if needed.

Section 8. Wages and Benefits. (1)(a) Pursuant to 20 C.F.R. 641.565(a), a sub-recipient shall pay a participant's wages for time spent in:

1. Orientation;

2. Training; and

3. Community service assignments.

(b) The highest applicable minimum wage is either the:

1. Minimum wage applicable under the Fair Labor Standards Act of 1938, 29 U.S.C. 206; or

2. Prevailing rate of pay for persons employed in similar public occupations by the same employer.

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(2) A SCSEP participant shall be paid the highest applicable required wage while receiving WIA intensive services.

(3) A sub-recipient shall:

(a) Make adjustments to minimum wage rates payable to a participant as required by the Fair Labor Standards Act, 29 U.S.C. 206;

(b) Ensure that a participant receives Worker's Compensation pursuant to KRS Chapter 342;

(c) Offer the participant an opportunity to receive a physical examination annually and inform the participant that:

1. A physical examination is a benefit and not an eligibility criterion; and

2. A participant may choose not to accept the physical examination;

(d) 1. Document a participant's refusal of an annual physical examination through a signed statement by the participant and within at least sixty (60) workdays of commencement of the community service assignment;

2. Each year thereafter, offer the physical examination and document the offer and a participant's refusal;

(e) Provide compensation for scheduled work hours during which a host agency's business is closed for a federal holiday, which may be paid or in the form of rescheduled work time; and

(f) Provide sick leave that is not part of an accumulated sick leave program which may be paid or in the form of rescheduled work time;

(4) A sub-recipient shall not:

(a) Carry over allowable benefits from one (1) program year to the next;

(b) Provide payment or otherwise compensate a participant for unused benefits such as sick leave or a holiday; and

(c) Use SCSEP funds:

1. To provide contributions to a retirement system or plan;

2. To pay the cost of pension benefits for a program participant;

3. For annual leave;

4. For accumulated sick leave; or

5. For a bonus.

Section 9. Durational Limits. (1)(a) An eligible individual may participate in the SCSEP for a maximum duration of forty-eight (48) months in the aggregate.

(b) Participation need not be consecutive, from the later of July 1, 2007, or the date of the individual's enrollment in the program.

(2) A sub-recipient shall:

(a) Inform a participant, when enrolled in the SCSEP, of the time limit specified in subsection (1) of this section and possible extension in subsection (3) of this section;

(b) Provide for a system to transition a participant to unsubsidized employment or other assistance before the maximum enrollment duration has expired;

(c) Reflect the transition in the participant's IEP; and

(d) Ensure that a project does not exceed the overall average participation cap for all participants as described in subsection (4) of this section.

(3) The department may request from the Department of Labor increased periods of participation beyond forty-eight (48) months for a participant who:

(a) Has not obtained the participant's IEP goal; and

(b) Has the following characteristics:

1. A severe disability; or

2. Frail.

(4)(a) A sub-recipient shall manage its SCSEP project in such a way that does not exceed an average participation cap for all participants of twenty-seven (27) months in the aggregate.

(b) The department may request an extended average participation period of up to thirty-six (36) months (in the aggregate) for a particular project area in a given program year, if the Department of Labor determines that circumstances exist to justify an extension due to the following:

1. High rates of unemployment or poverty or participation in the program of block grants to States for temporary assistance for needy families under part A of Title IV of the Social Security Act, in the areas served by a sub-recipient, relative to other areas of the

State involved or the Nation;

2. Significant downturns in the economy of an area served by the sub-recipient or in the national economy;

3. Significant numbers or proportions of participants with one (1) or more barriers to employment, including "most-in-need" individuals described in 20 C.F.R. 641.710(a)(6), serviced by a sub-recipient relative to such numbers or proportions for sub-recipients serving other areas of the State or Nation;

4. Changes in federal, state, or local minimum wage requirements; or

5. Limited economies of scale for the provision of community service employment and other authorized activities in the areas served by the sub-recipient.

(5) An authorized break in participation from program shall:

(a) Be considered a formal leave of absence for the following reasons:

1. Personal circumstances; or

2. If a suitable community service assignment is not available;

(b) Be formally entered by the sub-recipient in the SCSEP Performance and Results Quarterly Performance Reporting (SPARQ) system; and

(c) Not count toward the individual time limit specified in subsection (1) of this section or the average participation cap specified in subsection (4) of this section.

(6) A host agency shall notify the sub-recipient of a participant's absence or break in participation without pay for up to:

1. Two (2) weeks approved by the host agency supervisor; or

2. Sixty (60) calendar days with approval of the host agency supervisor and sub-recipient staff.

(7) A participant may be granted a leave of absence with approval from the department for up to ninety (90) calendar days in extenuating circumstances such as:

1. Illness;

2. Family care; or

3. Institutionalization.

(8) Except for an extenuating circumstance specified in subsection (7) of this section, the participant shall request a leave of absence or approved break in participation from the host agency supervisor at least five (5) working days prior to the proposed absence or break.

(9) A sub-recipient may request a waiver to the State SCSEP coordinator ninety (90) days prior to a participant reaching the forty-eight (48) month durational limit, if the participant meets the requirements of subsection (3) of this section.

Section 10. Termination. (1) A sub-recipient shall give a participant written notice explaining the reason for termination and grievance procedures and may terminate the participant thirty (30) days after it has provided the written notice for the following reasons:

(a) If, at any time, a sub-recipient determines that a participant was incorrectly declared eligible as a result of false information knowingly given by the individual;

(b) If during eligibility verification a sub-recipient finds a participant to be no longer eligible for enrollment;

(c) If, at any time, a sub-recipient determines that it incorrectly determined a participant to be eligible for the program through no fault of the participant;

(d) For failure to comply with the requirements of this administrative regulation, with policies included to the participant concerning for cause termination, such as:

1. Commit or threaten to commit acts of violence;

2. Engage in inappropriate, disrespectful, demeaning, and abusive behavior such as:

a. Loud, abusive, profane, foul, obscene, vulgar, crude, insulting, or threatening language;

b. Inappropriate jokes or gestures, discriminatory slurs, or any type of sexual comments;

3. Steal or be a party to theft of any property owned by the host agency, sub-recipient, department, or their staff, visitors, or others;

4. Reveal any confidential information obtained during the course of the participant's community service assignment;

5. Illegally use, possess, or sell prescription medication, alcohol, illegal drugs, or narcotics; or

6. Report for work under the influence of intoxicants; or

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(e) If the participant refuses to accept a reasonable number, in accordance with 20 C.F.R 641.580(e), of job offers or referrals to unsubsidized employment consistent with the IEP and if there are no extenuating circumstances that would hinder the participant from moving to unsubsidized employment.

(2) If a sub-recipient makes an unfavorable determination of enrollment eligibility, the sub-recipient shall refer the individual to other potential sources of assistance, such as the One-Stop delivery system.

(3) If a sub-recipient terminates a participant, the sub-recipient shall refer the participant to other potential sources of assistance, such as the One-Stop delivery system.

(4) A sub-recipient shall provide a participant, when enrolled, a written copy and verbal review of its policies for terminating a participant as specified in subsection (1) of this section.

(5)(a) A participant shall not be terminated from the SCSEP solely on the basis of their age.

(b) A sub-recipient shall not impose an upper age limit for participation in the SCSEP.

Section 11. Sub-recipient Responsibilities. A sub-recipient shall:

(1) Provide SCSEP services throughout the geographic area under its area plan or proposal;

(2) Adhere to provisions set forth in the OAA and federal regulations promulgated under the Act;

(3) Implement and carry out the SCEP in accordance with provisions of a sub-recipient agreement;

(4) Enroll and serve minority eligible participants in proportion to minority numbers within the geographical jurisdiction of the program;

(5) Recruit and determine eligibility of SCSEP participants;

(6) Recruit and select host agencies;

(7) Ensure that a host agency does not reduce the number of employment opportunities or vacancies that would be available to an individual not participating in the program;

(8) Provide supervision for SCSEP participants;

(9) Assist a participant with supportive services identified on the participant's IEP;

(10) Provide participant wages and benefits;

(11) Coordinate with the local Workforce Investment Board initiatives and programs including co-enrollment of SCEP participants;

(12) Monitor for a participant's safe and healthy working conditions;

(13) Permit staff of the department and the district to monitor and evaluate provided SCSEP services;

(14) Monitor that each paid or voluntary staff member meets qualification and training of SCSEP;

(15) Develop a policy and procedure for a referral for service to other programs and services in accordance with a participant's IEP;

(16) Work with a participant to ensure the participant is:

(a) Receiving SCSEP services; and

(b) Taking actions designed to help achieve the participant's goals;

(17) Contact private and public employers directly or through the One-Stop delivery system to develop or identify unsubsidized employment opportunities;

(18) Encourage host agencies to assist a participant in the participant's transition to unsubsidized employment, including unsubsidized employment in the host agency;

(19) Adhere to other sub-recipient requirements set forth in this administrative regulation; and

(20) Submit required SCSEP data monthly to the Department of Labor.

Section 12. Department Responsibilities. The department shall:

(1) Develop and implement the State SCSEP plan with the assistance of sub-recipients and National SCSEP providers;

(2) Have an equitable distribution of authorized positions in the aggregate;

(3) Adhere to provisions set forth in the Older Americans Act and federal regulations promulgated under the Act;

(4) Enroll and serve minority eligible participants in proportion to the minority eligible participants' numbers within the geographical jurisdiction of the program;

(5) Provide a sub-recipient with:

(a) Technical assistance related to SCSEP;

(b) SCSEP information required to accomplish the sub-recipient's agreement responsibilities; and

(c) Annual SCSEP training;

(6) Monitor the performance of the sub-recipient for compliance with the terms, conditions, and performance criteria included within the sub-recipient agreement;

(7) Submit required SCSEP data quarterly to the Department of Labor;

(8) Review performance measures on a quarterly basis and relay that information to each sub-recipient;

(9)(a) Allocate SCSEP funds to a sub-recipient; and

(b) Monitor the sub-recipient:

1. For use of the allocated funds; and

2. To ensure non-federal share of total SCSEP costs are used for in-kind services at a fair market value to services and facilities contributed; and

(10) Adhere to performance measures and indicators as determined by the U.S. Department of Labor annually.

Section 13. Grievance Procedures. (1)(a) A participant receiving services from a contract agency of the sub-recipient may request a local resolution with the contract agency within thirty (30) calendar days of receipt of denial for eligibility or termination of services.

(b) If the participant is dissatisfied with the results of the local resolution with the contract agency, the participant may request a local resolution with the sub-recipient within thirty (30) calendar days of receipt of the results of the local resolution.

(c) If the participant is dissatisfied with the results of the local resolution with the sub-recipient, the participant may request a state administrative hearing as specified in subsection (2)(b) of this section.

(2)(a) A participant receiving services from a sub-recipient may have a local resolution with the sub-recipient within thirty (30) calendar days of receipt of denial for eligibility or termination of services.

(b) If the participant is dissatisfied with the results of the local resolution with the sub-recipient, the participant may request a state administrative hearing:

1. In accordance with KRS Chapter 13B; and

2. By sending a written request to the department within thirty (30) days after receipt of the results of the local resolution. "Allotment" means the initial designation of an amount of appropriated funds to project sponsors and subproject sponsors operating in the state.

(2) "Authorized position" means an enrollment opportunity during a program year.

(3) "Cash welfare payment" means public assistance through federal, state or local government cash payments for which eligibility is determined by a need or income test.

(4) "Community service":

(a) Means:

1. Social, health, welfare and educational services;

2. Legal assistance and other counseling services, including tax counseling and assistance and financial counseling;

3. Library, recreational and similar services;

4. Conservation, maintenance or restoration of natural resources;

5. Community betterment or beautification;

6. Pollution control and environmental quality efforts;

7. Weatherization activities;

8. Economic development; and

9. Other types of services which the department may approve.

(b) Excludes:

1. Building and highway construction except that normally performed by the project sponsor; and

2. Work which primarily benefits private, profit-making organizations.

(5) "Department" means the United States Department of La-

bor, including its agencies and organizational units.

(6) "Employment and training program" means publicly funded efforts designed to offer training and placement services which enhance an individual's employability.

(7) "Enrollee" means an individual who is eligible, receives services, and is paid wages for engaging in community service employment under a project.

(8) "Grant agreement" means a legally binding agreement in document form which is a grant or other form of agreement entered into between the Office of Aging Services and an eligible organization and which awards federal funds and provides for authorized activities under Title V of the Act.

(9) "Host agency" means a public agency or private, nonprofit organization, other than a political party, exempt from taxation under the provision of Section 501(c)(3) of the Internal Revenue Code of 1954, which provides a worksite and supervision for an enrollee.

(10) "Local government" means a local unit of government, including:

- (a) County;
- (b) Municipality;
- (c) City, town or township;
- (d) Local public authority;
- (e) Special or intrastate district;
- (f) Council of governments;
- (g) Sponsor group representative organization;
- (h) Other regional or interstate government entity; or
- (i) Any agency or instrumentality of a local government, except institutions of education and hospitals.

(11) "Low income" means an income which during the preceding six (6) months on an annualized basis or the actual income during the preceding twelve (12) months, whichever is more beneficial to the applicant, is not more than 125 percent more than the poverty levels established and periodically updated by the United States Department of Health and Human Services. In addition, an individual who receives or is a member of a family which receives regular cash welfare payments shall be deemed to have a low income.

(12) "National average unit cost" means all administration costs, other enrollee costs and enrollee wage and fringe benefit costs.

(13) "OAA" means the Older Americans Act of 1965, as amended.

(14) "Office" means the Office of Aging Services, Cabinet for Health Services.

(15) "Project" means an undertaking by a project sponsor pursuant to a grant agreement between the department and a project sponsor which provides for the employment of eligible individuals and the delivery of associated services.

(16) "Project sponsor" means an eligible organization which has entered into a grant agreement with the department. The Cabinet for Health Services is the state agency project sponsor.

(17) "Project year" means the twelve (12) month period covered by a grant agreement.

(18) "Reallocation" means the redistribution of Title V funds as proposed by the department from one (1) state to another or from one (1) project sponsor to another.

(19) "SCSEP" means senior community service employment program as authorized under Title V of the OAA.

(20) "Subproject agreement or contract" means an agreement entered into between a project sponsor and an organization which provides for the transfer of federal funds to the organization for the purpose of carrying out activities authorized in the grant agreement.

(21) "Subproject sponsor" means the area development district or the community action agency which contracts with the office.

(22) "Temporary position" means an enrollment opportunity in addition to the authorized positions made available during a project year if a portion of project funds is not being used as planned in the grant agreement.

Section 2. Responsibilities of the Subproject Sponsor. (1) Subproject sponsors shall obtain and record the personal information necessary for a proper determination of eligibility for each individu-

al and may request documentation to ensure that only eligible individuals are enrolled.

(2) Subproject sponsors shall recertify the income of each enrollee once each year according to the schedule set forth in contract. Enrollees found to be ineligible for continued enrollment because of income shall be given immediate written notice of termination and shall be terminated thirty (30) days after the notice.

(3) If a subproject sponsor determines that an enrollee was incorrectly declared eligible as a direct result of false information given by that individual, the enrollee shall be terminated immediately.

(4) If a subproject sponsor determines that an enrollee was incorrectly declared eligible through no fault of the enrollee, the project shall give the enrollee immediate notice and the enrollee shall be terminated thirty (30) days after the notice.

(5) If a subproject sponsor makes an unfavorable determination on continued eligibility the project shall explain in writing to the enrollee the reason or reasons for the determination. Individuals affected by an unfavorable determination shall be informed of the appeals procedures available.

(6) If a subproject sponsor terminates an enrollee for failure to perform assigned tasks, the enrollee shall be informed in writing of the reason or reasons for termination and of the right to appeal in accordance with procedures described in the grant application.

(7) If a subproject sponsor makes an unfavorable determination of enrollment eligibility pursuant to certification for continued enrollment the subproject sponsor shall assure that the individual is referred to other potential sources of assistance.

(8) The subproject sponsor shall assure by contract provision that persons shall not, on the grounds of race, color, religion, sex, national origin, or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination in connection with any program or activity funded in whole or in part with funds made available from the office or under Title V of the Act.

(9) Subproject sponsors shall cooperate with other project and subproject sponsors, agencies providing services to elderly persons and persons with low incomes, and agencies providing employment and training services.

(10) Subproject sponsors shall not select, reject, promote or terminate individuals based on political affiliations. The selection or advancement of enrollees as a reward for political services or as a form of political patronage, whether or not the political service or patronage is partisan in nature shall be prohibited.

(11) Subproject sponsors shall not involve political activities, as defined in Section 674.321(a) (c) Title V OAA, in the overall operations of their projects.

(12) Subproject sponsors shall not use funds provided under the Act or regulations to assist, promote or deter union organizing.

(13) Subproject sponsors shall not hire and a host agency shall not be a worksite for a person in an administrative capacity, staff position, or community service employment position funded under this project if a member of that person's immediate family is engaged in an administrative capacity for that subproject or host agency.

(a) If there are state or local legal requirements regarding nepotism which are more restrictive, those requirements shall be followed by the subproject sponsor;

(b) Immediate family shall mean wife, husband, son, daughter, mother, father, brother, sister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild; and

(c) Engaged in an administrative capacity shall include those persons who in the administration of projects, subprojects or host agencies have responsibility for the selection of enrollees from among eligible applicants.

(14) Subproject sponsors shall ensure through provisions in the annual program plan that host agencies provide adequate orientation, instruction and supervision for enrollees regarding responsibilities and safety.

(15) Subproject sponsors shall require each enrollee selected for enrollment to receive physical examinations as follows:

(a) Each enrollee shall have an examination within the two (2) month period immediately before the first day of employment;

(b) An enrollee shall have an additional examination at intervals which ensure that no enrollee participates in community service employment more than fifteen (15) months without an examination or a waiver of examination;

(c) If an enrollee is terminated he may reenroll without an additional examination provided the time elapsed since the last examination has not exceeded fifteen (15) months and provided the schedule of one (1) examination per fifteen (15) month period is resumed based on the date of the last examination;

(d) An examination shall not be the basis for denial of participation unless there is clear indication of potential adverse health effects as a result of the performance of the tasks to be assigned; and

(e) If an individual objects to an examination the subproject sponsor shall obtain a signed waiver prior to the enrollee's first day of employment.

(16) Subproject sponsors shall provide orientation as follows:

(a) As soon as practicable to enrollees with information on:

1. Project objectives;
2. Community service employment assignments;
3. Training;
4. Supportive services;
5. Responsibilities, rights and duties of the enrollees;
6. Permitted and prohibited political activities; and
7. Plans for transition to unsubsidized employment.

(b) For host agencies and individuals who supervise enrollees to ensure that enrollees receive adequate supervision and opportunities for transition to the host agency staff or other unsubsidized employment.

(17) Subproject sponsors shall assess each new enrollee to determine the most suitable assignment for the individual, permitting the effective use of each enrollee's skills and aptitudes. The sponsor shall consider the individual's:

- (a) Preference of occupational category;
- (b) Work history;
- (c) Skills;
- (d) Aptitudes;
- (e) Potential for performing community service duties; and
- (f) Potential for transition to unsubsidized employment.

(18) Subproject sponsors shall evaluate at least yearly each enrollee's potential for transition to unsubsidized employment and the appropriateness of the enrollee's current job assignment. An alternate assignment shall be developed if a determination is made that an alternate assignment:

- (a) Provides greater opportunity for use of the enrollee's skills and aptitudes;
- (b) Provides work experience to enhance the potential for unsubsidized employment; or
- (c) Serves the best interests of the enrollee.

(19) Assessments and evaluations shall be documented and a part of each enrollee's permanent record. Information on assessments and evaluations shall be submitted to the office as the activities occur during the program year and at least annually.

Section 3. Recruitment and Eligibility. (1) Recruitment methods shall:

(a) Assure that the maximum number of eligible individuals shall have an opportunity to participate in the project; and

(b) Assure equitable participation of minority individuals, Indians, and limited English speaking eligible individuals in proportion to their numbers in the state.

(2) Eligibility criteria shall be as follows:

(a) An individual shall not be less than fifty-five (55) years of age and no upper age limit shall be imposed for initial or continued enrollment;

(b) The income of an individual seeking initial enrollment, reenrollment after termination, or certification for continued enrollment, or of the family of which the individual is a member shall not exceed the low income standards defined in Section 674.103 of Title V OAA regulations;

(c) Residency requirements shall include:

1. An individual upon initial enrollment shall reside in the state in which the project or subproject is approved;
2. Place of residence shall be the individual's declared permanent dwelling place; and

3. Requirements pertaining to length of residency prior to enrollment shall not be imposed.

(d) Subproject sponsors shall not impose additional conditions or requirements for enrollment eligibility.

(3) Enrollment priorities shall apply to vacant positions, including temporary positions, and shall not require the termination of an eligible enrollee. Enrollment priorities shall be as follows:

- (a) Eligible individuals who are sixty (60) years old or older;
- (b) Eligible individuals seeking reenrollment following termination due to illness, or unsubsidized placement if reenrollment is sought within one (1) year of termination;
- (c) Eligible individuals enrolled in temporary positions;
- (d) Other eligible individuals; and
- (e) Consideration shall be given to within the above established priorities to individuals most in need. In determining those most in need, subproject sponsors may consider the extent to which the individual's income is below the low income standard.

Section 4. Community Service Employment. (1) The subproject sponsor shall place the enrollee in a community service job as soon as possible after the completion of enrollee orientation or training.

(2) Hours of community service employment shall be as follows:

(a) A subproject sponsor or host agency shall not require an enrollee to work more than twenty (20) hours during one (1) week;

(b) A subproject sponsor or host agency shall not offer an enrollee an average of fewer than twenty (20) hours of paid participation per week unless the shorter period is:

1. Permitted by the office's grant agreement;
2. In writing by the Department of Labor; or
3. By written agreement between an enrollee and the subproject sponsor, if the agreement has been approved by the office;

(c) An enrollee shall not work more than 1,300 hours including paid hours of orientation, training, sick leave, and vacation during the twelve (12) month period specified in the annual program plan and Title V Section 674.310(b)(1) of the OAA;

(d) A subproject sponsor or host agency shall to the extent possible ensure that enrollees work during normal business hours if they so desire.

(3) Enrollees shall be employed at worksites in or near their home areas.

(4) Enrollees shall be employed in assignments which:

- (a) Contribute to the general welfare of the community;
- (b) Provide services related to publicly owned and operated facilities and projects;

(c) Provide services related to projects sponsored by organizations, other than political parties, exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954; and

(d) Provide community services as defined in Section 1 of this administrative regulation.

(5) Subproject sponsors or host agencies shall to the fullest extent possible give enrollees first consideration for assignments involved in the operation of projects.

(6) Enrollees shall not be assigned to work involving the construction, operation or maintenance of a facility used or to be used for sectarian religious instruction or worship, or to work which primarily benefits private profit-making organizations.

(7) Enrollees shall not be permitted to work in buildings, surroundings or conditions which are unsanitary, hazardous or dangerous to the enrollees' health or safety. Periodic visits shall be made to the worksites to assure the working conditions and treatment of enrollees are consistent with provisions of the Act and regulations promulgated under the Act.

(8) If a portion of the project funds have not been used as planned in the annual program plan, subproject sponsors may use funds during the period of agreement to enroll additional eligible individuals in temporary positions as follows:

(a) The number of temporary positions may not exceed twenty (20) percent of the total number of authorized positions established in the contract;

(b) Payments to or on behalf of enrollees shall not exceed the

amount of the unused funds available;

(c) Subproject sponsors or host agencies shall inform individuals enrolled in temporary positions that the employment is temporary and may be terminated at any time;

(d) Subproject sponsors or host agencies shall seek to maintain full enrollment in authorized positions and shall seek to schedule enrollments and terminations to avoid excessive terminations at the end of the project period;

(e) Subproject sponsors shall notify the office in writing of action taken in the area of employing temporary positions; and

(f) Enrollee file information shall indicate the temporary status of the enrollee and the written agreement between the individual and the host agency. Copies shall be sent to the subproject sponsor and the project sponsor.

(9) Individuals enrolled in this program shall not be federal employees as a result of employment.

(10) Enrollees shall receive wages for community service employment which shall not be lower than whichever is the highest of:

(a) The minimum wage applicable to the employee under Fair Labor Standards Act of 1938, if Title V, Section 6(a)(1) of the OAA applied to the participant and the participant were not exempt under Title V, Section 13 of the OAA;

(b) The state or local minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rates of pay for persons employed in similar public occupations by the same employer.

(11) Subproject sponsors shall administer fringe benefits uniformly to all enrollees including enrollees in temporary positions as follows:

(a) Enrollees shall receive all fringe benefits required by law;

(b) If enrollees are not covered by the state workers' compensation law the subproject sponsor shall provide enrollees with workers' compensation benefits equal to that provided by law for covered employment and OAA Section 504(b) guidelines;

(c) Subproject sponsors shall be authorized to pay the cost of unemployment insurance where required by law and the OAA Section 502(b)(1)(N);

(d) Fringe benefits which shall be allowable costs include the following:

1. Annual leave;

2. Sick leave;

3. Holidays;

4. Health insurance; and

5. Other fringe benefits approved in the annual plan.

(e) Subproject sponsors shall not expend federal funds for contributions into a retirement system unless the project can demonstrate that:

1. Contributions bear a reasonable relationship to the cost of providing benefits to enrollees;

2. Enrollees have a reasonable expectation of receiving the value of contributions vested if they are made on behalf of the enrollees; and

3. The retirement system or plan is of a defined benefit type and a separate actuarial determination has established a reasonable expectation that the enrollees shall receive benefits as a result of contributions.

Section 5. Enrollee Supportive Services. Subproject sponsors shall provide supportive services designed to assist enrollees in successful participation in community service employment and to prepare enrollees for and assist them in attaining unsubsidized employment. Supportive services may include:

(1) Counseling or instruction, including that designed to assist enrollees personally in areas like health, nutrition, Social Security benefits, Medicare benefits and retirement laws;

(2) Incidentals including work shoes, badges, uniforms, safety glasses, eyeglasses and hand tools; and

(3) Transportation for enrollees provided the service is in the direct performance of employment or employment related activities. Reimbursement from Title V OAA funds shall not exceed the limitation on mileage rates established by federal travel regulations.

Section 6. Training. (1) Training which in the judgment of the

subproject has the primary purpose of providing or improving skills an enrollee expects to use in the performance of his job assignment shall be provided as follows:

(a) An enrollee shall be paid for the hours of training at the established wage rate;

(b) Subproject sponsors shall not schedule required training for an enrollee which exceeds 240 hours during a project year without prior approval from the office; and

(c) Enrollees engaging in required training may be reimbursed for the cost of travel and room and board necessary to participate, provided reimbursement does not exceed rates established by current federal travel regulations.

(2) Training which is available to an enrollee but does not have the primary purpose of providing or improving skills necessary in the performance of job assignments shall be voluntary. Voluntary training may enhance skills for the regular job assignment and an enrollee's potential for unsubsidized employment and may be provided as follows:

(a) Subproject sponsors are not required to compensate enrollees for hours of voluntary training or to count uncompensated hours of voluntary training within the 1300 hour limit on compensated participation;

(b) Subproject sponsors may provide new enrollees with training related to assignments prior to and as a preparation for employment;

(c) Training in preparation for employment combined with time spent in orientation shall be completed within the first eighty (80) hours of the individual's enrollment. The office may approve extended periods.

(d) Subproject sponsors shall enroll each individual in the project prior to orientation and training in preparation for community service employment and shall initiate enrollee status as a paid employee;

(e) Subproject sponsors shall seek to obtain training for enrollees at no cost to the project. If training is not available from other sources Title V funds may be used for training; and

(f) Subproject sponsors shall not prevent or limit enrollees from engaging in training available from sources other than Title V during hours other than hours of community service employment.

Section 7. Placement into Unsubsidized Employment. Subproject sponsors shall employ reasonable means to place enrollees into unsubsidized jobs using the following criteria:

(1) Subproject sponsors shall place into unsubsidized employment the number of enrollees which equals twenty (20) percent of the authorized positions;

(2) Subproject sponsors shall contact public and private employers directly to develop or identify suitable unsubsidized employment opportunities;

(3) Subproject sponsors shall encourage host agencies to employ enrollees in their regular work forces; and

(4) Subproject sponsors shall follow up on enrollees who are placed into unsubsidized employment and document follow up at least once within three (3) months of placement.

Section 8. Duration of Enrollment. A subproject sponsor shall establish and use time limitations on enrollment within a subproject. Limitations shall be approved in the annual program plan and grant application. The subproject sponsor shall demonstrate the following:

(1) The limitation shall be applied in an equitable and uniform manner;

(2) Enrollees whose only source of income is the Title V program shall not be terminated solely because of the limitations;

(3) No limitation shall be less than 1,040 hours of paid community enrollment in a twelve (12) month period;

(4) No hours of paid enrollment prior to July 1, 1985 shall be counted against the limitation; and

(5) Enrollees subject to termination because of a limitation on enrollment shall be informed in writing no less than twelve (12) months prior to scheduled termination.]

DEBORAH S. ANDERSON, Commissioner
JANIE MILLER, Secretary

VOLUME 37, NUMBER 7 – JANUARY 1, 2011

APPROVED BY AGENCY: December 13, 2010

FILED WITH LRC: December 13, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2011 at 9:00 a.m. in the Public Health 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, 2011, 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 January 31, 2011. Send written notification of intent to be heard at the public hearing or written comments to the contact person.

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: Shirley Eldridge 564-6930 x 3432

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for conducting the Senior Community Service Employment Program (SCSEP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide standards for operating the SCSEP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.204(2) requires the cabinet to promulgate administrative regulations establishing standards under the Older Americans Act including the SCSEP under 42 U.S.C. 3056(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide guidance for administering the SCSEP.

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

(a) How the amendment will change this existing administrative regulation: The amendment is in accordance with the Department of Labor's final rule to 20 C.F.R. Part 641 published in the September 1, 2010 Federal Register.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to be in compliance with 20 C.F.R. Part 641.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms by establishing standards to operate the SCSEP in accordance with the 20 C.F.R. Part 641.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in effectively administering 42 U.S.C. 3056(b) by establishing the most recent changes to the SCSEP in accordance with 20 C.F.R. Part 641.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department for Aging and Independent Living (DAIL), the Office of Employment Training, 5 Area Agencies on Aging and independent Living (AAAIL), 2 community action agencies, and approximately 275 eligible individuals age 55 and older (for 2009).

(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: DAIL monitors the AAAILs and commu-

nity action agencies for accuracy in administering the program. The AAAILs and community action agencies implement the program. The Office of Employment Training partners with DAIL to collaborate in providing services to individuals age 55 and older. Eligible individuals will participate with the application, eligibility determination, training processes administered through a service provider.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be in compliance with rules and regulations set forth by the Department of Labor.

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

(a) Initially: FY 2011 - \$2,665,240 federal, \$252,306 local match

(b) On a continuing basis: FY 2011 - \$2,655,240 federal, \$252,306 local match

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 90% Federal and 10% local match

(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 and no increase in funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established by this administrative regulation.

(9) TIERING: Is tiering applied? Tier is not applied since policy is administered 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, Office of Employment Training

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.204(1), (2), 42 U.S.C. 3056(b)

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

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

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

(c) How much will it cost to administer this program for the first year? FY 2011 - \$2,655,240 federal, \$252,306 local match

(d) How much will it cost to administer this program for subsequent years? FY 2011 - \$2,655,240 federal, \$252,306 local match.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 3056(b)

2. State compliance standards. KRS 205.204(1), (2), KRS 194A.050(1)

3. Minimum or uniform standards contained in the federal

mandate. 42 U.S.C. 3056(b)

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

RELATES TO: KRS 205.010, 205.2005, 205.703, 205.720(1), 45 C.F.R. Parts 260-265, 7 U.S.C. 2011-2036, 8 U.S.C. 1101-1524,, 21 U.S.C. 802(6), 22 U.S.C. 7102(8), 7105, 38 U.S.C. 101, 107, 1101, 1301, 1304, 5303A(d), 42 U.S.C. 416, 601-619, 1381-1384, 1396

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), (3), 205.2003(1), 42 U.S.C. 601-619, Pub. L. 109-171, 111-118

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.2003(1) requires the secretary to promulgate administrative regulations to develop a work program for recipients of public assistance under Title IV-A of the Federal Social Security Act, 42 U.S.C. 601 to 619. KRS 205.200(2) requires the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance in conformity with 42 U.S.C. 602 and federal regulations. KRS 205.200(3) authorizes the secretary to promulgate administrative regulations prescribing as a condition of eligibility that a needy child regularly attend school, and the degree of relationship of the person or persons in whose home the needy child must reside. Pub. L. 109-171, effective October 1, 2006, reauthorized the Temporary Assistance for Needy Families Program known as the Kentucky Transitional Assistance Program (K-TAP) in Kentucky. This administrative regulation establishes the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, cooperation in child support activities, strikers, minor teenage parent provisions, time limits and potential entitlement for other programs for eligibility for benefits from the Kentucky Transitional Assistance Program.

Section 1. Definitions. (1) "Assistance" is defined by 45 C.F.R. 260.31.

(2) "Barriers" means a limitation in an individual's ability to become employed and self ~~sufficient~~sufficient or to comply with K-TAP requirements.

(3) "Battered or subjected to extreme cruelty" means an individual who has been subjected to:

- (a) A physical act that resulted in, or threatened to result in, physical injury to the individual;
- (b) Sexual abuse;
- (c) Sexual activity involving a dependent child;
- (d) Being forced as the caretaker relative of a dependent child to engage in a nonconsensual sexual act or activity;
- (e) Threat of, or an attempt at, physical or sexual abuse;
- (f) Mental abuse; or
- (g) Neglect or deprivation of medical care.

(4) "Benefit group" means a group composed of one (1) or more children and may include as a specified relative a person pursuant to Section 11 of this administrative regulation.

(5) "Child" means an individual:

- (a) Age fifteen (15) or under;
- (b) Age sixteen (16), seventeen (17), or eighteen (18) in regular full-time attendance in elementary, junior high, or high school or equivalent level of vocational or technical school; or

(c) Under age eighteen (18) and a high school graduate.

(6) "Domestic violence" means the same as the definition for "battered or subjected to extreme cruelty" pursuant to subsection (3) of this section.

(7) "Employed" means a person who performs a physical or mental activity in exchange for direct monetary compensation.

(8) "Family member" means an individual:

(a) Related by blood, marriage, or adoption to a child or a work-eligible individual, as defined by 45 C.F.R. 261.2(n), in the benefit group; or

(b) Who is a member of an unmarried couple and has a child in the benefit group in common with the work-eligible individual, as defined by 45 C.F.R. 261.2(n).

(9) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families (TANF) money payment program for a child who is deprived of parental support or care due to:

(a) Death of one (1) parent;

(b) Continued voluntary or involuntary absence of one (1) parent; or

(c) If both parents are in the home:

1. Physical or mental incapacity of one (1) parent; or

2. Unemployment of at least one (1) parent.

(10) "Kentucky Works" means a program that assists in obtaining education, training, experience and employment necessary to leave public assistance.

(11) "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married, or is married and not living with the spouse; and

(c) Has a minor child in the applicant's or recipient's care.

(12) "Penalized individual" means a person who is required to be included in the benefit group, but fails to fulfill an eligibility requirement that causes a reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.

(13) "Prior labor market attachment" or "PLMA" means the parent has earned not less than \$1,000 during the twenty-four (24) months prior to the application for K-TAP benefits based on the deprivation of unemployment pursuant to Section 10 of this administrative regulation.

(14) "Qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive K-TAP, is:

(a) Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 to 1524;

(b) Granted asylum pursuant to 8 U.S.C. 1158;

(c) A refugee who is admitted to the United States pursuant to 8 U.S.C. 1157;

(d) Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

(e) An alien whose deportation is being withheld pursuant to:

1. 8 U.S.C. 1253, as in effect prior to April 1, 1997; or

2. 8 U.S.C. 1231(b)(3);

(f) Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7) as in effect prior to April 1, 1980;

(g) An alien who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

(h) Battered or subjected to extreme cruelty in the United States:

1. By a:

a. Spouse or parent; or

b. Member of the spouse or parent's family residing in the same household as the alien, and the spouse or parent consented to, or acquiesced in, the battery or cruelty; and

2. If:

a. The alien no longer resides in the household with the individual responsible for the battery or cruelty;

b. There is a substantial connection between the battery or cruelty and the need for the benefit; and

c. The alien has been approved or has a petition pending for:

(i) Status as a spouse or child of a United States citizen pursuant to 8 U.S.C. 1154(a)(1)(A)(ii), (iii), or (iv);

(ii) Classification pursuant to 8 U.S.C. 1154(a)(1)(B)(ii) or (iii); or

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(iii) Suspension of deportation and adjustment of status pursuant to 8 U.S.C. 1254(a)(3);

(i) A child of an alien or a child who is an alien who has been battered or subjected to extreme cruelty in the United States:

1. By a:

a. Spouse or parent of the alien without the active participation of the alien in the battery or cruelty; or

b. Member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to the battery or cruelty; and

2. If:

a. The alien no longer resides in the household with the individual responsible for the battery or cruelty;

b. There is a substantial connection between the battery or cruelty and the need for the benefit; and

c. The alien has been approved or has a petition pending for:

(i) Status as a spouse or child of a United States citizen pursuant to 8 U.S.C. 1154(a)(1)(A)(ii), (iii), or (iv);

(ii) Classification pursuant to 8 U.S.C. 1154(a)(1)(B)(ii) or (iii); or

(iii) Suspension of deportation and adjustment of status pursuant to 8 U.S.C. 1254(a)(3);

(j) An alien who is lawfully residing in Kentucky and is:

1. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

2. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 U.S.C. 5303A(d);

3. The spouse or surviving spouse who is not remarried if the marriage fulfills the requirements in 38 U.S.C. 1304, or unmarried dependent child of an individual pursuant to subparagraph 1 or 2 of this paragraph;

4. A victim, a child of a victim, or spouse of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105; or

5. A parent or a sibling of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105 and is under eighteen (18) years of age; [or]

(k) An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 U.S.C. 1101; or

(l) An alien admitted to the United States as an Afghan or Iraqi special immigrant on or after December 19, 2009, in accordance with Pub. L. 111-118, Section 8120.

(15) "Qualifying parent" means the parent who meets PLMA.

(16) "Recipient" means an individual receiving K-TAP including a specified relative or a specified relative receiving on behalf of a child.

(17) "Sanctioned individual" means a person who is required to be included in the benefit group, but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(18) "Second chance home" means an entity that:

(a) Provides a minor teenage parent a supportive and supervised living arrangement; and

(b) Requires a minor teenage parent to learn:

1. Parenting skills, including child development;

2. Family budgeting;

3. Health and nutrition; and

4. Other skills to promote long-term economic independence and the well-being of the child of the minor teenage parent.

(19) "Severe form of trafficking in persons" is defined by 22 U.S.C. 7102(8).

(20) "Striker" means an employed individual who is participating in:

(a) A work stoppage;

(b) A concerted slowdown of work; or

(c) An interruption of operations at his or her place of employment.

(21) "Supplemental Security Income" or "SSI" means a monthly cash payment made pursuant to:

(a) 42 U.S.C. 1381 to 1384 to the aged, blind and persons with a disability;

(b) 42 U.S.C. 1382e; or

(c) 42 U.S.C. 1382.

(22) "Unemployed parent case" or "UP case" means K-TAP benefits paid to a family if both parents are in the home and at least one (1) parent is unemployed.

(23) "Work" means participation in a Kentucky Works activity pursuant to 921 KAR 2:370, Section 2(1)(c).

Section 2. Eligible Parent. (1) An eligible parent shall include the natural, adopted, or adjudicated parent of the child.

(2) An adjudicated parent shall include an administrative establishment of the relationship.

(3) A stepparent shall not be an eligible parent.

Section 3. Age and School Attendance. (1) The definition of a "child", pursuant to Section 1(5) of this administrative regulation, shall be met for at least one (1) person in the home.

~~(2) Verification of school attendance[~~Form PA-33D, Child's Certification of School Enrollment/Attendance~~] shall be required for a:~~

(a) Child who is sixteen (16), seventeen (17), or eighteen (18) years of age, in order to determine his continuing eligibility; or

(b) Minor teenage parent pursuant to Section 20(1) of this administrative regulation.

(3) Unless the parent states the child shall not reenter school, a child shall be considered in regular attendance in a month he or she is not attending because of:

(a) Official school or training program vacation;

(b) Illness;

(c) Convalescence; or

(d) Family emergency.

(4) Verification of a high school diploma for a child under age eighteen (18) who is a high school graduate shall be required.

Section 4. Enumeration. (1) A person included in the K-TAP case shall furnish his or her Social Security number or apply for a number if one (1) has not been issued.

(2) Refusal to furnish the Social Security number or apply for a number shall result in the ineligibility of the person whose Social Security number is not furnished.

(3) The cabinet shall assist an individual in making application for a Social Security number, if needed.

Section 5. Residence and Citizenship. (1) Residence. A resident shall be an individual who:

(a) Is living in the state voluntarily and not for a temporary purpose; or

(b)1. Entered the state with a job commitment or seeking employment; and

2. Is not receiving assistance funded by a block grant program pursuant to 42 U.S.C. 601 to 619 from another state.

(2) Citizenship.

(a) Except as provided in paragraphs (b) and (c) of this subsection, K-TAP shall be provided only to a United States citizen.

(b) A qualified alien, pursuant to Section 1(14) of this administrative regulation, who entered the United States before August 22, 1996, who is otherwise eligible for K-TAP, shall be eligible for assistance.

(c) A qualified alien, pursuant to Section 1(14) of this administrative regulation, who entered the United States on or after August 22, 1996, shall not be eligible for K-TAP for a period of five (5) years beginning on the date of the alien's entry into the United States. The following exceptions shall apply to this provision:

1. An alien who is admitted to the United States as a refugee pursuant to 8 U.S.C. 1157;

2. An alien who is granted asylum pursuant to 8 U.S.C. 1158;

3. An alien whose deportation is being withheld pursuant to:

a. 8 U.S.C. 1253, as in effect prior to April 1, 1997; or

b. 8 U.S.C. 1231(b);

4. An alien who is lawfully residing in Kentucky and is:

a. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

b. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 U.S.C. 5303A(d);

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c. The spouse or unremarried surviving spouse if the marriage fulfills the requirements in 38 U.S.C. 1304, or unmarried dependent child of an individual described in clause a or b of this subparagraph;

d. A victim, a child of a victim, or spouse of a victim of a severe form of trafficking in persons who is admitted to the United States pursuant to 22 U.S.C. 7105; or

e. A parent or a sibling of a victim of a severe form of trafficking in persons who is admitted to the United States pursuant to 22 U.S.C. 7105 and is under eighteen (18) years of age;

5. An alien who is a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522; ~~or~~

6. An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 U.S.C. 1101; or

7. An alien admitted to the United States as an Afghan or Iraqi special immigrant on or after December 19, 2009, in accordance with Pub. L. 111-118, Section 8120.

(d) Failure of the parent or other adult applying for or receiving benefits to verify citizenship or alien status shall cause the needs of the parent or other adult to be removed from the case.

Section 6. Deprivation. (1) To be eligible for K-TAP, a child shall be in need and shall be deprived of parental support or care pursuant to Section 1(9) of this administrative regulation.

(2) A specific deprivation factor under ~~Section~~Sections 7, 8, 9, or 10 of this administrative regulation shall be verified for a child for whom assistance is approved.

Section 7. Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.

Section 8. Deprivation Due to Absence. (1) To be considered deprived due to absence, a needy child shall be physically separated from the parent.

(2) Absence may be voluntary or involuntary.

(a) Voluntary absence shall include:

1. Divorce;
2. Legal separation;
3. Marriage annulment;
4. Desertion of:

a. Thirty (30) days or more if the parent:

- (i) Voluntarily leaves; or
 - (ii) Refuses to accept the child into his or her home; or
- b. Less than thirty (30) days if:

(i) The child leaves the parent because the parent was requiring the child to live under a circumstance hazardous to the health or morals of the child;

(ii) One (1) of the parents in the home is required by the court to leave the home because that parent was requiring the child to live under a circumstance hazardous to the health or morals of the child;

(iii) The child is voluntarily placed with a relative following a finding by the cabinet that the home is unsuitable;

(iv) The child is placed by the court with a specified relative other than the parent;

(v) The child is eligible and receiving benefits based on the unemployment or the incapacity of a parent and one (1) of the parents subsequently leaves the home; or

(vi) Both parents are absent from the home;

5. Forced separation; or

6. Birth out-of-wedlock.

(b) Involuntary absence shall include:

1. Commitment to a penal institution for thirty (30) days or more;

2. Long-term hospitalization;

3. Deportation; or

4. Single parent adoption.

(3) A parent who is a convicted offender, but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the work-day shall be considered absent from the home.

Section 9. Deprivation Due to Incapacity. (1) A determination of a deprivation of incapacity shall be based on a full consideration

and assessment of the following factors affecting the claimant:

- (a) Medical;
- (b) Social; and
- (c) Economic.

(2) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the parent's inability to support or care for the child.

(3) Incapacity shall exist in a case if the following criteria are met:

(a) It is medically determined that one (1) parent has a physical or mental disability, illness or impairment that:

1. Was present at the time of application; and

2. ~~a.~~ Has continued or is expected to last for a period of at least thirty (30) calendar days.

~~b.~~ The thirty (30) day period may include a period the claimant is undergoing:

a. (i) Planned diagnostic study; or

b. (ii) Evaluation of rehabilitation potential; and

(b) It is determined by nonmedical evaluation that the disability, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

(4) A determination regarding incapacity shall be made by:

(a) Field staff if the following criteria are met:

1. The parent declares physical inability to work;

2. The worker observes some physical or mental limitation; and

3. The parent:

a. Is receiving SSI;

b. Is age sixty-five (65) or over;

c. Has been determined to meet the definition of blindness pursuant to 42 U.S.C. 1382c or 42 U.S.C. 416 by the Social Security Administration;

d. Has been determined to meet the definition of permanent and total disability pursuant to 42 U.S.C. 1382c or 42 U.S.C. 416 by either the:

(i) Social Security Administration; or

(ii) Medical review team of the cabinet;

e. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested, and there is no visible improvement in condition;

f. Is receiving Retirement, Survivors and Disability Insurance, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter;

g. Is receiving Veterans Administration benefits based on 100 percent disability, as verified by an award letter;

h. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, a statement from the physician shall be requested to indicate if incapacity existed as of the application date;

i. Is recovering from surgery, illness, or injury that requires a period of time for recovery, up to six (6) weeks, as specified by a physician statement. A period longer than six (6) weeks shall be determined through the medical review team;

j. Is on approved sick leave recovering from surgery, illness, or injury for the duration of the approved sick leave if the employer is holding the job for the individual's return, as verified by the employer; or

k. Is a woman in a high risk pregnancy, during the duration of the pregnancy, as verified by physician statement; or

(b) The medical review team, consisting of a licensed physician and a social worker employed by the cabinet, if a determination by field staff is precluded.

(5) The factors to be considered by the medical review team in making the medical determination shall include:

(a) The claimant's medical history and subjective complaint regarding an alleged physical or mental disability, illness, or impairment; and

(b) Competent medical testimony relevant to whether:

1. A physical or mental disability, illness, or impairment exists; and

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2. The disability, illness, or impairment is:
 - a. Sufficient to reduce the parent's ability to support or care for a child; and
 - b. Likely to last thirty (30) days.
- (6) The factors to be considered in making the nonmedical evaluation shall include:
 - (a) The claimant's:
 1. Age;
 2. Employment history;
 3. Vocational training;
 4. Educational background; and
 5. Subjective complaint regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and
 - (b) The extent and accessibility of employment opportunity available in the claimant's area of residence.
- (7) A written report shall be made of the determination under this section.
- (8) A claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing pursuant to 921 KAR 2:055.

Section 10. Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent if both parents are in the home shall be based on the determination that the qualifying parent meets the criteria of unemployment pursuant to subsection (3) of this section and has a PLMA, pursuant to Section 1(13) of this administrative regulation.

(2) The qualifying parent designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(3) A parent shall be considered to be unemployed if employed:

- (a) Less than 100 hours in a calendar month; or
- (b) In excess of 100 hours in a particular month if the employment is intermittent and the excess is of a temporary nature, if the parent:
 1. Was under the 100 hour standard in the prior two (2) months, from the month of application for K-TAP; and
 2. Is expected to be under the 100 hour standard in the following month of application for K-TAP.
- (4) The 100 hour requirement for unemployment in subsection (3) of this section shall apply to a K-TAP applicant.
- (5) PLMA shall be established if the parent:
 - (a) Attests to the amount of earnings pursuant to Section 1(13) of this administrative regulation with the following requirements:
 1. Gross income from self-employment and farming shall qualify as earned income in determining PLMA; and
 2. The self-employed individual shall not have to realize a profit to meet this requirement;
 - (b) Within twelve (12) months prior to application, received unemployment compensation; or
 - (c) Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.
- (6) In determining whether or not criteria in subsection (5) of this section are met, two (2) semesters of full-time school attendance, as defined by the school or institution, may be substituted for \$500 of the \$1000 earnings.
- (7) Unemployment shall not exist if the qualifying parent:
 - (a) Is on strike;
 - (b) Is temporarily unemployed:
 1. Due to weather condition or lack of work;
 2. If there is a job to return to; and
 3. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;
 - (c) Is unavailable for full-time employment;
 - (d) Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;
 - (e) Has not met the criteria of unemployment for at least thirty (30) days;
 - (f) Is not:
 1. Registered for work pursuant to 921 KAR 2:370, Section

4(3); or

2. Subject to Kentucky Works, pursuant to 921 KAR 2:370; ~~or~~
 - (g) Has refused a bona fide offer of employment or training for employment without good cause, pursuant to 921 KAR 2:370, Section 6(1), in the thirty (30) days prior to UP eligibility or during the course of receipt of UP benefits; or
 - (h) Has been discontinued in accordance with 921 KAR 2:370, Section 7(2)(a)2, for less than thirty (30) days.

Section 11. Living with a Specified Relative. (1) To be eligible for K-TAP, a needy child shall be living in the home of a relative as follows:

- (a) A blood relative, including a relative of the half-blood;
- (b) A person listed in paragraph (a) of this subsection if the alleged father has had relationship established through the administrative determination process pursuant to Section 12 of this administrative regulation;
- (c) An adoptive parent, the natural and other legally adopted child and other relative of the adoptive parent; or
- (d) A relative by marriage, even if the marriage may have terminated, if termination occurred after the birth of the child, as follows:

1. A couple that has been considered married by a state with a common-law marriage provision shall be considered married in Kentucky for K-TAP eligibility purposes; and

2. The statement of the applicant or recipient that the couple's marriage is recognized from another state as a common-law marriage shall be accepted as verification by the cabinet.

(2) Cash assistance shall not be provided for a child who is absent, or expected to be absent, from the home for a period of thirty (30) consecutive days or more unless good cause exists. Good cause for absence, or expected absence, of the child from the home for a period of thirty (30) consecutive days or more shall exist if the parent continues to exercise care and control of the child and the child is absent due to:

- (a) Medical care;
- (b) Attendance at school including boarding school;
- (c) College or vocational school;
- (d) ~~[Emergency]~~ Foster care, as verified by the cabinet; or
- (e) A short visit with a friend or relative if it is intended that the child will return to the home and the parent or specified relative maintains parental control of the child.

(3)(a) A child shall be removed from the benefit group the first administratively feasible month following thirty (30) consecutive days from the date the child is placed in ~~[emergency]~~ foster care.

(b) If the only eligible child in the benefit group is absent due to ~~[emergency]~~ foster care, the otherwise eligible parent or parents in the benefit group shall:

1. Remain eligible for sixty (60) days from the date the child is placed in ~~[emergency]~~ foster care; and
2. Be discontinued the first administratively feasible month following sixty (60) days from the date the child is placed in ~~[emergency]~~ foster care if no other eligible child is in the benefit group.

(4)(a) If a specified relative fails to notify the cabinet of a thirty (30) consecutive day or more absence of the child for a reason other than one (1) of the good cause reasons listed in subsection (2) of this section, the specified relative shall not be eligible for his or her share of K-TAP benefits during the period of the child's unreported absence of thirty (30) consecutive days or more.

(b) Ineligible benefits received by the specified relative and child during the period of the child's unreported absence of thirty (30) consecutive days or more shall be recouped pursuant to 921 KAR 2:016, Section 11.

Section 12. Administrative Establishment of Relationship. (1) An administrative determination of relationship as established in this administrative regulation shall be used only to establish relationship for K-TAP eligibility if the following type of evidence is present:

- (a) A birth certificate listing the alleged parent;
- (b) Legal document which shall include:
 1. Hospital record;
 2. Juvenile court record;
 3. Will; or

4. Other court record that clearly indicates the relationship of the alleged parent or relative;

(c) Receipt of statutory benefits as a result of the alleged parent's circumstance;

(d) Documents declaring voluntary paternity as specified in 901 KAR 5:070, Section 1; or

(e) A sworn statement or affidavit of either parent acknowledging relationship plus one (1) of the following:

1. School record;
2. Bible record;
3. Immigration record;
4. Naturalization record;
5. Church document, such as baptismal certificate;
6. Passport;
7. Military record;
8. U.S. Census record; or

9. Notarized statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(2) Rebuttal of administrative relationship shall occur if the parent or, in the absence of the parent, the caretaker relative:

(a) Alleges the evidence pursuant to subsection (1)(a) or (b) of this section is erroneous;

- (b) Provides substantiation of the erroneous information; and
- (c) Provides a notarized statement or affidavit:

1. Acknowledging the erroneous information; and
2. Containing the correct information on the actual alleged parent.

(3) Presence of the notarized statement or affidavit pursuant to subsection (2)(c) of this section shall serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of relationship shall not be acknowledged.

Section 13. One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for K-TAP if receiving SSI.

(2) If a child who receives SSI meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative shall be approved for K-TAP if all other eligibility factors are met.

(3) If a child who receives foster care benefits meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative shall be approved for K-TAP if all other eligibility factors are met.

Section 14. Strikers. (1) A family shall be ineligible for benefits for a month the parent, with whom the child is living on the last day of the month, is participating in a strike.

(2) A specified relative other than the parent shall be ineligible for benefits for a month if, on the last day of the month, the relative is participating in a strike.

Section 15. Work Registration. An adult applicant or recipient of the K-TAP benefit group shall register for work pursuant to 921 KAR 2:370, Section 4(3).

Section 16. Assessment. A work-eligible individual, as defined by 45 C.F.R. 261.2(n), shall complete an assessment pursuant to 921 KAR 2:370.

Section 17. Kentucky Works. The technical requirements for participation in the Kentucky Works Program shall be pursuant to 921 KAR 2:370.

Section 18. Cooperation in Child Support Activities. (1) In cooperation with the Department for Income Support, the Department for Community Based Services shall attempt to secure parental support, and if necessary establish paternity, for a child receiving assistance pursuant to Section 1(1) of this administrative regulation, who has a parent absent from the home due to:

- (a) Divorce;
- (b) Desertion;
- (c) Birth out-of-wedlock;
- (d) Legal separation;
- (e) Forced separation; or

(f) Marriage annulment.

(2) With the exception of a good cause reason, pursuant to subsections (4) and (5) of this section, avoidance of the twenty-five (25) percent reduction of the amount of the payment maximum in K-TAP benefits pursuant to subsection (7) of this section shall be dependent upon the applicant's or recipient's cooperation in child support activities that shall include:

- (a) Identifying the noncustodial parent or obligor;
- (b) Providing information to assist in the:
 1. Location of the noncustodial parent or obligor;
 2. Enforcement of a child support order; or
 3. Review or modification of a child support order;
- (c) Establishing paternity, if required;
- (d) Establishing, modifying or enforcing a child support order;

and

(e) Forwarding a child support payment received to the state's centralized collection agency.

(3) The cabinet shall inform the applicant or recipient of the individual's [individuals] right to file a good cause claim for refusing to cooperate in a child support activity.

(4) The applicant or recipient shall be excused from penalty for failure to cooperate with a child support activity, pursuant to subsection (2) of this section, if one (1) of the following criteria is met:

(a) Cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the:

1. Child; or
2. Caretaker relative to an extent that it would reduce the capacity to care for the child adequately;

(b) The child was conceived as a result of incest or forcible rape and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation;

(c) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(d) The applicant or recipient is being assisted by a public or licensed private social service agency to resolve whether to keep the child or release the child for adoption if:

1. Discussion has not gone on for more than three (3) months; and

2. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Unless an extension is granted, the applicant or recipient shall have twenty (20) days from the date the good cause claim, Part I of Form PA-121, Good Cause Claim/Determination, is filed to provide evidence to substantiate the claim.

(a) Evidence used to determine good cause shall include:

1. Birth certificate, medical information, or law enforcement record indicating that the child was conceived as a result of incest or forcible rape;

2. Court document or other record indicating legal proceedings for adoption of the child by a specific family is pending before a court of competent jurisdiction;

3. Record or other evidence indicating the noncustodial parent, or obligor, or the alleged parent might inflict physical or emotional harm on the child or caretaker relative;

4. A written statement from a public or licensed private social service agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption, and the issue has not been pending more than three (3) months; or

5. Notarized statement from an individual, other than the applicant or recipient, with knowledge of the circumstance that provides the basis for the good cause claim.

(b) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered:

1. The present emotional state of the individual subject to emotional harm;
2. The emotional health history of the individual;
3. The extent and probable duration of the individual's emotional impairment; and
4. The extent of involvement required by the individual in establishing paternity or enforcing a support obligation.

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(c) If the good cause claim is based on the anticipation of physical harm to the child or caretaker relative, and corroborative evidence is not submitted, the cabinet shall conduct an investigation if it is believed that:

1. Corroborative evidence is not available; and
2. The claim is credible without corroborative evidence.

(d) If the cabinet conducts an investigation of a good cause claim, it shall not contact the noncustodial parent or obligor, or the alleged parent regarding support, unless the contact is necessary to establish the good cause claim.

(e) If it is necessary for the cabinet to contact the noncustodial parent, or obligor, or the alleged parent during the investigation of a good cause claim, the worker shall notify the applicant or recipient of the proposed contact to either:

1. Obtain permission for the contact; or
2. Enable the applicant or recipient to:

a. Present additional evidence or information so that the contact shall be unnecessary;

b. Withdraw the application for assistance or request discontinuance of K-TAP; or

c. Have the good cause claim denied.

(6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the cabinet shall:

(a) Document the case;

(b) Determine that good cause:

1. Exists and a support activity cannot be initiated without endangering the:

- a. Best interests of the child; or
- b. Physical or emotional health of the child or the relative; or
2. Does not exist;

(c) Advise the applicant or recipient in writing, Part II of Form PA-121, Good Cause Claim/Determination, of the result of the good cause claim determination; and

(d) Identify each case that good cause is established, but may be subject to change, for subsequent review.

(7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not considered to be met by the cabinet. K-TAP benefits shall be reduced by twenty-five (25) percent of the amount of the maximum payment for the appropriate family size pursuant to Section 9 of 921 KAR 2:016.

(8) If, after the reduction of the K-TAP payment for failure to cooperate, the specified relative states he or she will cooperate, the cabinet shall:

(a) Remove the twenty-five (25) percent reduction in benefits effective the first administratively feasible month if the individual states he or she will cooperate and verification of cooperation is provided timely; and

(b) Not authorize a back payment for the period the individual did not cooperate.

(9) As a condition of eligibility for assistance, each applicant for, or recipient of, K-TAP shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1). The assignment shall:

(a) Include all members of the case for whom support rights apply; and

(b) Be completed at the time of application for K-TAP benefits.

Section 19. Potential Entitlement for Other Programs. (1) An applicant or recipient shall apply for and comply with the requirements to receive another benefit if potential entitlement exists.

(2) Failure to apply for another benefit or comply with its requirements shall result in ineligibility for K-TAP.

(3) If an applicant or recipient voluntarily reduces the amount of benefits received from another source, other than for the purpose of reimbursing the source for a previous overpayment, this action shall result in ineligibility.

Section 20. Minor Teenage Parents. (1) A minor teenage parent ~~[under the age of eighteen (18) living with the spouse]~~ shall participate in an educational activity directed toward the attainment of a high school diploma, or its equivalent, or a cabinet approved alternate education or training program if the individual has:

(a) A minor child at least twelve (12) weeks of age in his or her

care; and

(b) Not completed a high school education (or its equivalent).

(2) Except pursuant to subsection (4) of this section, a minor teenage parent and his or her minor child shall reside in:

(a) A place of residence maintained by:

1. A parent;

2. A legal guardian; or

3. An adult relative pursuant to Section 11 of this administrative regulation; or

(b) An appropriate adult supervised supportive living arrangement, that includes a second chance home or maternity home, taking into consideration the needs and barriers of the minor teenage parent.

(3) The cabinet shall provide or assist the minor teenage parent in locating a second chance home, maternity home, or other appropriate adult supervised supportive living arrangement if the:

(a) Minor teenage parent does not have a:

1. Parent, legal guardian, or appropriate adult relative pursuant to Section 11 of this administrative regulation who is living or whose whereabouts is known; or

2. Living parent, legal guardian, or other appropriate adult relative pursuant to Section 11 of this administrative regulation who:

a. Otherwise meets applicable state criteria to act as the legal guardian of the minor teenage parent; and

b. Would allow the minor teenage parent to live in the home of the parent, guardian, or relative pursuant to Section 11 of this administrative regulation; or

(b) Cabinet determines:

1. The minor teenage parent or the minor child of the teenage parent is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the minor teenage parent's own parent or legal guardian; or

2. Substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the minor teenage parent and the minor child lived in the same residence with the minor teenage parent's own parent or legal guardian.

(4) The requirement in subsection (2) of this section shall be waived if the cabinet determines:

(a) Living in the place of residence maintained by the parent, legal guardian, or adult relative pursuant to Section 11 of this administrative regulation is not in the best interest of the minor child taking into consideration the needs of the minor child; or

(b) The minor teenage parent's current living arrangement is appropriate.

(5) If a circumstance changes and the current arrangement ceases to be appropriate based on the needs and barriers of the minor teenage parent, the cabinet shall assist the minor teenage parent in finding an alternate appropriate arrangement.

~~(6) [The minor teenage parent shall complete an assessment, in accordance with 921 KAR 2:370.~~

~~(7)~~ If the minor teenage parent is determined to be ineligible for K-TAP as a result of not complying with a provision found in this section, payment shall continue for the eligible child of the minor teenage parent.

~~(7) [(8)]~~ Even if exemption criteria are met and the cabinet determines the minor teenage parent's current living arrangement is appropriate, a minor teenage parent and the child, who do not reside in a place of residence maintained by a parent, legal guardian, other adult relative pursuant to Section 11 of this administrative regulation, second chance home, or maternity home, shall be considered an adult regarding benefit time limitations pursuant to Section 21 of this administrative regulation.

Section 21. Benefit Time Limits. (1) K-TAP, or any other assistance from a federally-funded program pursuant to 42 U.S.C. 601 to 619, shall not be provided for more than sixty (60) cumulative months to a benefit group that includes:

(a) An adult;

~~(b) A minor teenage parent who is head of household [pursuant to Section 20(8) of this administrative regulation]; or~~

(c) A fugitive or drug felon not eligible pursuant to Section 23 or 24 of this administrative regulation.

(2) After assistance has been received for sixty (60) months,

an otherwise eligible benefit group containing one (1) of the following individuals shall be allowed an extension of the sixty (60) months time limit, during the period the individual:

(a) Is battered or subjected to extreme cruelty. During the extension period the individual shall have an individual service plan pursuant to Section 25(1)(b) of this administrative regulation;

(b) Is a work-eligible individual in the benefit group, who the cabinet determines has a physical or mental disability, as established in Section 9(3) of this administrative regulation. During the extension period, the individual shall comply with:

1. Treatment or other activity recommended by the referral source and approved by the cabinet, as required by the Kentucky Works Program pursuant to 921 KAR 2:370, Sections 2(1)(c)12 and 4(2); and

2. Child support cooperation requirements pursuant to Section 18 of this administrative regulation;

(c) In accordance with 45 C.F.R. 261.2(n)(2)(i), is a parent providing care for a disabled family member living in the home as verified pursuant to 921 KAR 2:370, Section 3(5). During the extension period, the individual shall comply with child support cooperation requirements pursuant to Section 18 of this administrative regulation;

(d) Is a grandparent or other relative, except for a parent, caring for an eligible child who would otherwise be placed in foster care. The caretaker relative shall continue to comply with:

1. Child support cooperation requirements pursuant to Section 18 of this administrative regulation; and

2. Except for a caretaker relative age sixty (60) or over, Kentucky Works requirements pursuant to 921 KAR 2:370 if the caretaker relative is included in the benefit group;

(e) Is an adult with insufficient employment opportunities, who:

1. Has complied with:

a. Kentucky Works requirements pursuant to 921 KAR 2:370; and

b. Child support cooperation requirements pursuant to Section 18 of this administrative regulation; ~~and~~

2. During the extension period, shall:

a. Comply with:

(i) Kentucky Works requirements pursuant to 921 KAR 2:370;

(ii) Child support cooperation requirements pursuant to Section 18 of this administrative regulation;

(iii) Employment opportunities and activities listed on the KW-202, Transitional Assistance Agreement, incorporated by reference in and pursuant to 921 KAR 2:370, Section 4(2); and

(iv) Work registration requirements pursuant to 921 KAR 2:370, Section 4(3); and

b. Not quit or refuse a job without good cause pursuant to 921 KAR 2:370, Section 6; and

3. Shall be limited to an extension period of six (6) consecutive months; or

(f) 1. Received a domestic violence exemption pursuant to Section 25(2) of this administrative regulation, up to the number of months the individual received K-TAP during the domestic violence exemption.

2. During the extension period, the individual shall comply with:

a. Child support cooperation requirements pursuant to Section 18 of this administrative regulation; and

b. Kentucky Works requirements pursuant to 921 KAR 2:370.

(3) If otherwise eligible, a benefit group containing a member who has lost a job, through no fault of the recipient, within thirty (30) days of reaching the sixty (60) month time limit shall receive a three (3) consecutive month extension of the time limitation.

(4) A benefit group that receives an extension to the sixty (60) months time limit shall be reviewed:

(a) Every six (6) months for an extension pursuant to subsection (2)(a), (c), or (f) of this section;

(b) Every three (3) months for an extension pursuant to subsection (2)(e) of this section;

(c) Every three (3) months or the medical review team review period for an extension pursuant to subsection (2)(b) of this section; or

(d) Annually for an extension pursuant to subsection (2)(d) of this section.

(5) The cabinet shall send a notice containing a list of the

hardship extensions, pursuant to subsection (2) of this section, to a benefit group nearing the sixty (60) month time limit.

(6) A benefit group discontinued from K-TAP due to reaching the sixty (60) month time limitation shall receive a notice pursuant to 921 KAR 2:046, Section 4.

(7) The cabinet shall conduct a review at least two (2) months prior to the expiration of the sixty (60) month time limit to:

(a) Determine if the benefit group meets criteria established for a hardship extension pursuant to subsection (2) of this section; and

(b) Inform the benefit group of Safety Net Services, pursuant to 922 KAR 1:400, Section 5.

(8)(a) K-TAP shall not be provided to a benefit group, pursuant to Section 2(1) of 921 KAR 2:016, that includes an adult, or minor teenage parent pursuant to Section ~~20(7)~~~~20(8)~~ of this administrative regulation, who has:

1. Received six (6) cumulative months of assistance from a federally funded program pursuant to 42 U.S.C. 601 to 619; and

2. Been penalized for failure to cooperate in Kentucky Works, pursuant to 921 KAR 2:370, for a period of three (3) cumulative months.

(b) An adult or minor teenage parent in paragraph (a) of this subsection shall receive assistance if the individual:

1. Demonstrates cooperation in Kentucky Works pursuant to 921 KAR 2:370;

2. Meets the technical requirements established in this administrative regulation; and

3. Meets the standard of need in accordance with 921 KAR 2:016.

(9) Time limitations shall apply to a:

(a) Sanctioned individual; or

(b) Penalized individual.

Section 22. Receiving Assistance in Two (2) or More States.

(1) K-TAP assistance shall be denied for ten (10) years to a person who has been convicted in federal or state court of having made a fraudulent statement or representation committed after August 22, 1996, with respect to the place of residence of the individual in order to receive assistance simultaneously from two (2) or more states for:

(a) A program pursuant to:

1. 42 U.S.C. 601 to 619;

2. 42 U.S.C. 1396; or

3. 7 U.S.C. 2011 to 2036; or

(b) Benefits received under ~~SSI~~~~[supplemental security income]~~.

(2) The requirement in subsection (1) of this section shall not apply to a conviction for a month beginning after the granting of a pardon by the President of the United States with respect to the conduct that was the subject of the conviction.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in Kentucky Works in accordance with 921 KAR 2:370.

Section 23. Fugitive Felons. (1) K-TAP assistance shall not be provided to an individual:

(a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or an attempt to commit a crime, committed or attempted to be committed after August 22, 1996, that is a felony; or

(b) Violating a condition of probation or parole imposed under federal or state law.

(2) Subsection (1) of this section shall not apply with respect to conduct of an individual for a month beginning after the President of the United States grants a pardon with respect to the conduct.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in Kentucky Works in accordance with 921 KAR 2:370.

Section 24. Denial of Assistance for a Drug Felon. (1) An individual convicted under federal or state law of an offense committed after August 22, 1996, classified as a felony by the law of the jurisdiction involved and that has as an element the possession, use or distribution of a controlled substance pursuant to 21 U.S.C. 802(6), shall not be eligible for K-TAP benefits, except pursuant to KRS 205.2005.

(2) An individual applying for K-TAP benefits shall be required to state in writing whether the individual or a member of the household has been convicted of a crime pursuant to subsection (1) of this section.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in Kentucky Works in accordance with 921 KAR 2:370.

Section 25. Domestic Violence. (1)(a) A K-TAP applicant or recipient shall be screened for a history of domestic violence.

(b) If the applicant or recipient is identified as a victim of domestic violence or with a history of domestic violence, an appropriate services plan shall be required for the individual. The plan shall:

1. Be developed by a person trained in domestic violence;
2. Reflect the individualized assessment and a revision made by a redetermination;
3. Include appropriate referral to counseling and supportive services based on the needs and barriers identified in the individualized assessment, as determined by the cabinet;
4. Be designed to lead safely to employment; and
5. Be completed no less often than every six (6) months.

(2) If compliance with the following K-TAP requirements would make it more difficult for an individual receiving K-TAP to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, the individual shall not be required to meet:

(a) Residency requirements pursuant to Section 5 of this administrative regulation;

(b) Child support cooperation requirements pursuant to Section 18 of this administrative regulation;

(c) Time limitations, for so long as necessary and otherwise eligible, pursuant to Section 21 of this administrative regulation; or

(d) Participation in Kentucky Works requirements pursuant to 921 KAR 2:370.

Section 26. Incorporation by Reference. (1) The ~~following material is incorporated by reference:~~

~~(a) "PA-33D, Child's Certification of School Enrollment/Attendance", edition 10/06; and~~

~~(b) "PA-121, Good Cause Claim/Determination", edition 2/09, 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 10, 2010

FILED WITH LRC: December 10, 2010 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, 2011 at 9:00 a.m. in the Conference Suite C, 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, 2011, 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 January 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

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, (502) 564-3556

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the technical eligibility requirements for the Kentucky Transitional Assistance Program (K-TAP).

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform conditions and requirements regarding technical eligibility for K-TAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the requirements for technical eligibility for K-TAP, the assistance program funded by the Temporary Assistance for Needy Families (TANF) block grant authorized by 42 U.S.C. 601-619. This administrative regulation sets forth these requirements in conformity with the Title IV-A State Plan.

(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 K-TAP technical eligibility requirements. The administrative regulation establishes the technical requirements of school attendance, residency, citizenship, deprivation, living with a relative, age, cooperation in child support activities, minor teenage parent provisions, and time limitations for eligibility for K-TAP benefits.

(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 being amended to: (1) allow Afghan and Iraqi Special Immigrants who are in the U.S. or admitted to the U.S. on or after December 19, 2009, to be eligible for K-TAP benefits if otherwise eligible, in accordance with Public Law 111-118, the Department of Defense Appropriations Act; (2) remove form PA-33D, Child's Certification of School Enrollment/Attendance, from material incorporated by reference for verifying school attendance to allow several methods and greater flexibility to obtain this required information; (3) clarify the intent of policy to disqualify a household from K-TAP for a minimum of 30 days based on the unemployment of one or both parents who refuse to participate in work activities. Current language allows the household to reapply with no interruption; (4) remove language requiring an assessment for minor teen parents; (5) clarify that a minor teenage parent must participate in an educational activity directed toward the attainment of a high school diploma or its equivalent; (6) apply the 60 month lifetime limit on the receipt of K-TAP to minor teen parents who are heads of households regardless of their living situation; (7) remove the term "emergency foster care". It is no longer used by the department; and (8) make 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 to conform to federal laws and guidance; ensure maximum participation is captured to protect Kentucky's full share of the federal funding under the Temporary Assistance for Needy Families Block Grant (Title IV-A of the Social Security Act) and avoid financial penalty; create a more efficient process for the reduction of administrative burdens and public confusion; and promote employment and self-sufficiency of K-TAP households.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its alignment with federal law and guidance and enhanced clarity.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes through its technical corrections and/or conformity with applicable federal laws and guidance and KRS Chapter 13A governing the promulgation of administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving assistance from K-TAP. As of October 2010,

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24,447 families received K-TAP assistance.

(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: In the implementation of this regulatory amendment, Afghan and Iraqi Special Immigrants who are in the U.S. on or after December 19, 2009, will be treated as refugees, eligible for TANF benefits if otherwise eligible, without the five year ban. In addition, the regulatory amendment will reduce administrative burdens of regulated entities by providing other means for verification of a child's school enrollment/attendance and eliminating the assessment requirement for minor teen parents, clarify the disqualification period for two-parent households who are noncompliant with required program participation, and align lifetime limits on the receipt of benefits for minor teen parents with federal law and guidance.

(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 to this administrative regulation will require no new action on the part of regulated entities.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation conforms state policy to federal laws and guidance, reduces administrative burdens on staff and regulated entities, and protects current federal funding for the continuation of K-TAP and other related programs. The amendment will relax some existing program requirements for regulated entities, and reinforce program participation to ultimately promote employment and the self-sufficiency of the regulated entities.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding under Title IV-A of the Social Security Act (a.k.a., Temporary Assistance for Needy Families Block Grant or TANF) and General Funds used to meet Maintenance of Effort requirements for federal funding are the funding sources for this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees, nor directly or indirectly increase any fees.

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

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), 205.200(2), (3), 205.2003(1); 42

U.S.C. 601 to 619; Pub. L. 109-171, 111-118

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 program has been operational for numerous years and does not directly generate any revenue. This administrative regulation will not generate any revenues in the first year.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601 to 619

2. State compliance standards. KRS 194A.050(1), 205.200(2), (3), 205.2003(1)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the Federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose no stricter, additional, or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will impose no stricter, additional, or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amendment)

921 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).

RELATES TO: KRS 205.200, 205.210, 205.2001, 205.211, 45 C.F.R. 233.20(a)(13), Parts 260-265, 400.66(d), 8 U.S.C. 1183a, 20 U.S.C. 1088(b)(1)[4088(a)(4)], 2302(3), (13)[(49)], 25 U.S.C. 459, 1261, 1401, 29 U.S.C. 723(a)(5), 2801, 2931(a)(2), 38 U.S.C. 1833[4845], 42 U.S.C. 7(xviii), (D)(4), 1381-1384, 1771, 1775, 3001, 4950-5084, 8621, 10602(c)

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.210(1), 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619 and federal regulations. KRS

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205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Kentucky Transitional Assistance Program (K-TAP), the block grant program funded by 42 U.S.C. 601 to 619. This administrative regulation sets forth the standards of need for and the amount of a Kentucky Transitional Assistance Program payment.

Section 1. Definitions. (1) "Assistance" is defined by 45 C.F.R. 260.31.

(2) "Benefit group" means a group composed of one (1) or more children and may include as specified relative a person pursuant to 921 KAR 2:006, Section 11.

(3) "Change in a circumstance" means a change in income or dependent care expense affecting the ongoing K-TAP payment that includes:

- (a) Beginning or ending employment;
- (b) Change in an employer or obtaining additional employment;
- (c) Increase or decrease in the number of work hours;
- (d) Increase or decrease in the rate of pay;
- (e) Increase or decrease in the dependent care expense due to a change in:

- 1. Provider;
- 2. Number of hours of care;
- 3. Number of individuals for whom care is given; or
- 4. Amount charged; or

(f) Change in farm cropping arrangement or type of self-employment activity.

(4) "Claimant" means the individual responsible for the repayment of an overpayment.

(5) "Countable income" means income that remains after excluded income and appropriate deductions are removed from gross income.

(6) "Deduction" means an amount subtracted from gross income to determine countable income.

(7) "Electronic benefit transfer" or "EBT" means a computer-based electronic benefit transfer system in which an eligible household's benefit authorization is received from a central computer through a point of sale terminal or automated transfer machine.

(8) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(9) "Excluded income" means income that is received but not counted in the gross income test.

(10) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(11) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in:

- 1. An adult basic education program;
- 2. A general educational development program; or
- 3. A literacy program;

(b) The number of hours required by the individual program for participation in a college or university; or

(c) The number of hours required by the individual high school or vocational school to fulfill the high school or vocational school's definition of full time.

(12) "Gross income limitation standard" means 185 percent of the assistance standard, as set forth in Section 9 of this administrative regulation.

(13) "Kentucky Transitional Assistance Program" or "K-TAP" means a money payment program for a child who is deprived of parental support or care pursuant to 921 KAR 2:006, Section 1.

(14) "Kentucky Works" means a program that assists a:

(a) Recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or

(b) Former K-TAP recipient with job retention service.

(15) "Lump sum income" means income that does not:

(a) Occur on a regular basis; or

(b) Represent accumulated monthly income received in a single sum.

(16) "Minor" means a person who is under the age of eighteen (18).

(17) "Minor parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married or is married and not living with the spouse; and

(c) Has a minor child in the applicant's or recipient's care.

(18) "Part-time employment" means employment of:

(a) Less than thirty (30) hours per week; or

(b) Less than 130 hours per month.

(19) "Part-time school attendance" means a workload that is less than full-time school attendance as determined by the educational institution.

(20) "Penalized individual" means a person who is required to be included in the benefit group but fails to fulfill an eligibility requirement, causing a reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.

(21) "Recoupment" means recovery of an overpayment of an assistance payment.

(22) "Sanctioned individual" means a person who is required to be included in the benefit group but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(23) "Self-employment income" means income from a business enterprise if taxes are not withheld prior to receipt of the income by the individual.

(24) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1384 to the aged, blind and disabled.

(25) "Unavailable" means that the income is not accessible to the K-TAP benefit group for use toward basic food, clothing, shelter, and utilities.

(26) "Workforce Investment Act" or "WIA" means a program to assist adults, dislocated workers, and youth with entering, retraining, and advancing within employment, as established by 29 U.S.C. 2801.

(27) "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, and tools.

Section 2. Technical Eligibility. (1) A benefit group shall include:

(a) A dependent child;

(b) A child's parent living in the home with the dependent child who is:

1. Eligible for K-TAP; or

2. Ineligible for K-TAP due to benefit time limitations pursuant to 921 KAR 2:006, Section 21;

(c) An eligible sibling living in the home with a dependent child, except for a sibling who is an applicant or recipient of the Kinship Care Program pursuant to 922 KAR 1:130; or

(d) An eligible child who is:

1. In full-time school attendance or part-time school attendance; and

2.a. Sixteen (16) through eighteen (18) years of age; or

b. A minor parent.

(2) If the K-TAP benefits to a household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, the child shall not be included in the benefit group.

(3) If a dependent child's parent is a minor living in the home with an eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applied for assistance.

(4) An incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors of 921 KAR 2:006 are met.

Section 3. Resource Limitations. (1) A liquid asset shall be considered a countable resource if it is:

(a) Available to the benefit group; and

(b) Owned in whole or in part by:

1. An applicant or recipient;

2. A sanctioned or penalized individual; or

3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.

(2) The total amount of resources reserved by a benefit group

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shall not be in excess of \$2,000 in liquid assets, excluding an asset listed in subsection (3) of this section.

(3) Excluded resources.

(a) Resources from the following individuals shall be excluded from consideration:

1. A recipient of SSI or the state supplementation program living in the home;
2. A child excluded from the K-TAP grant; or
3. An individual not receiving assistance but living in the home including:

- a. The stepparent;
- b. The parent or legal guardian of a minor parent;
- c. The spouse of a nonresponsible specified relative; or
- d. The spouse of a minor dependent child.

(b) The following resources shall not be included in the \$2,000 resource limit:

1. Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home;
2. Funds in an individual retirement account, retirement or deferred compensation account during the period of unavailability;
3. An excluded income payment, pursuant to Section 5 of this administrative regulation;
4. Principal and accrued interest of an irrevocable trust during a period of unavailability;
5. Prepaid burial funds;
6. Cash surrender value of all burial insurance policies per family member;
7. Principal of a verified loan;
8. Up to \$12,000 to Aleutians and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;
9. Payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to a veteran or veteran's survivor;
10. Earned income tax credit payment in the month of receipt and the following month;
11. A payment received from the Radiation Exposure Compensation Trust Fund;
12. A nonrecurring lump sum SSI retroactive payment that is made to a K-TAP recipient who is not ongoing eligible for SSI, in the month paid and the next following month;
13. Up to a total of \$5,000 in individual development accounts, excluding interest accruing, pursuant to subsection (7) of this section; and
14. A payment received from the National Tobacco Growers Settlement Trust.

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise disposed of a liquid asset in order to qualify for assistance.

(b) The household's application shall be denied, or assistance discontinued if:

1. The transfer was made expressly for the purpose of qualifying for assistance; and
2. The amount of the transfer, when added to total resources, exceeds the resource limit.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d) 1. If the amount of excess transferred resources does not exceed \$500, the period of ineligibility shall be one (1) month.

2. the period of ineligibility shall be increased one (1) month for every \$500 increment up to a maximum of twenty-four (24) months.

(5) Lifetime care agreement.

(a) The existence of a valid agreement between the applicant or recipient and another individual or organization that the applicant or recipient surrendered resources in exchange for lifetime care shall make the case ineligible.

(b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.

(6) Resources held jointly by more than one (1) person.

(a) 1. For a bank account requiring one (1) signature for withdrawal, the total balance of the account shall be considered available to the K-TAP applicant or recipient, unless the other owner is a recipient of SSI.

2. If the other owner receives SSI, the:

a. Balance shall be divided evenly by the number of owners; and

b. K-TAP applicant or recipient's share shall be considered available.

(b) For a bank account that requires more than one (1) signature for withdrawal, the K-TAP applicant or recipient's share shall be determined by obtaining a written statement from the other owners as to the division.

(c) If there is no predetermined allocation of shares from a business enterprise, the applicant or recipient's available share shall be determined by dividing the value of the business enterprise by the number of owners.

(d) If a resource is held jointly, other than a resource pursuant to paragraphs (a) through (c) of this subsection, the applicant or recipient's share shall be determined by dividing the value of the resource by the number of owners.

(e) Rebuttal of ownership shall be accomplished if the applicant or recipient asserts no contribution to or benefits from a jointly held resource and provides:

1. A written statement regarding ownership, who may deposit and withdraw;

2. A written statement from each of the other owners that corroborates the applicant's or recipient's statement, unless the account holder is a minor or is incompetent; and

3. Verification that the applicant's or recipient's name has been removed from the resource.

(7)(a) To be considered an exempt resource, the individual development account shall have been:

1. Established on or after May 1, 1997; and

2. funded through periodic contributions by a member of the benefit group using funds derived from earned income that was earned after May 1, 1997, for a qualified purpose.

(b) A qualified purpose to establish an individual development account shall be for:

1. Postsecondary educational expense that shall include:

a. Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution;

b. Fees, books, supplies, and equipment required for a course

of instruction at an eligible educational institution; and

c. An eligible educational institution that shall be an:

(i) Institution pursuant to 20 U.S.C. 1088(b)(1); or

(ii) Area vocational education school pursuant to 20 U.S.C. 2302(3) or ~~(13)(40)~~;

2. First home purchase that includes:

a. Costs of acquiring, constructing, or reconstructing a residence; and

b. Usual or reasonable settlement, financing, or other closing costs;

3. A business capitalization expenditure for a business that does not contravene a law or public policy, as determined by the cabinet, pursuant to a qualified plan which shall:

a. Include capital, plant, equipment, working capital, and inventory expenses;

b. Be approved by a financial institution; and

c. Include a description of a service or a good to be sold, a marketing plan, and projected financial statement. An applicant may use the assistance of an experienced entrepreneurial advisor if needed; or

4. Other purpose allowed by a federal regulation or clarification.

(c) Funds held in an individual development account shall not be withdrawn except for one (1) or more of the qualified purposes pursuant to paragraph (b) of this subsection.

(d) To be considered an exempt resource, an individual development account shall be matched by funds from a:

1. Nonprofit organization; or

2. State or local government agency, funding permitted, acting in cooperation with an organization pursuant to subparagraph 1 of this paragraph.

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Section 4. Income Limitations. In determining eligibility for K-TAP, the following shall apply: (1) Gross income test:

(a) The total gross non-K-TAP income shall not exceed the gross income limitation standard and shall include:

1. Income of the benefit group;
2. Income of a parent who does not receive SSI or state supplementation pursuant to 921 KAR 2:015;
3. Income of a sanctioned or penalized individual; and
4. An amount deemed available from:
 - a. The parent of a minor parent living in the home with the benefit group;
 - b. A stepparent living in the home;
 - c. The spouse of a minor dependent child living in the home; or
 - d. An alien's sponsor and sponsor's spouse if living with the sponsor;

(b) Excluded income types pursuant to Section 5(1) of this administrative regulation shall apply; and

(c) If total gross income exceeds the gross income limitation standard, the benefit group shall be ineligible.

(2) Benefit calculation:

(a) If the benefit group meets the criteria pursuant to subsection (1) of this section, benefits shall be determined by subtracting excluded income and applicable deductions pursuant to Section 5(1), (2), and (3) of this administrative regulation;

(b) If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the standard of need for the appropriate benefit group size pursuant to Section 9 of this administrative regulation, the benefit group shall be ineligible; and

(c) Amount of assistance shall be determined prospectively.

(3) Ineligibility period:

(a) A period of ineligibility shall be established for a benefit group whose income in the month of application or during a month the assistance is paid exceeds a limit pursuant to subsection (2) of this section due to receipt of lump sum income;

(b) The ineligibility period shall be:

1. The number of months that equals the quotient of the division of total countable income by the standard of need pursuant to Section 9 of this administrative regulation for the appropriate benefit group size; and

2. Effective with the month of receipt of the nonrecurring lump sum amount; and

(c) The ineligibility period shall be recalculated if:

1. The standard of need pursuant to Section 9 of this administrative regulation increases and the amount of grant the benefit group would have received also changes;

2. Income, that caused the calculation of the ineligibility period, has become unavailable for a reason that was beyond the control of the benefit group;

3. The benefit group incurs and pays a necessary medical expense not reimbursable by a third party;

4. An individual, who is required to be a member of the benefit group, joins the K-TAP household during an established ineligibility period; or

5. The benefit group reapplies during an established ineligibility period and the cabinet determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 5. Excluded Income and Deductions. (1) Gross non-K-TAP income received or anticipated to be received shall be considered with the application of excluded income and deduction policy:

(a) By the:

1. Benefit group;
2. Sanctioned or penalized individual;
3. Natural parent;
4. Spouse of a dependent child;
5. Parent of a minor parent living in the home with the benefit group; or
6. Stepparent living in the home; and

(b) Pursuant to subsections (2) to (4) of this section.

(2) Gross income test. An income listed in this subsection shall be excluded:

(a) A deduction applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a

minor parent in the home with the benefit group, pursuant to Section 7 of this administrative regulation;

(b) A deduction applicable to an alien sponsor's income, pursuant to Section 8 of this administrative regulation;

(c) A deduction applicable to self-employment income;

(d) Allowances, earnings, and payments received under WIA programs in accordance with 29 U.S.C. 2931(a)(2)~~The difference between the standard of need and the payment maximum for the benefit group, pursuant to Section 9 of this administrative regulation, if a member of the benefit group receives a WIA stipend~~;

(e) Value of United States Department of Agriculture program benefits including:

1. Donated food;
2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;
3. Special food service program for a child pursuant to 42 U.S.C. 1775;
4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly Supplemental Nutrition Assistance Program~~Food stamp~~ allotment;

(f) Reimbursement for transportation in performance of an employment duty, if identifiable;

(g) The value of Kentucky Works supportive services payment pursuant to 921 KAR 2:017;

(h) Nonemergency medical transportation payment;

(i) Payment from complementary program if no duplication exists between the other assistance and the assistance provided by the K-TAP program;

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

(k) Highway relocation assistance;

(l) Urban renewal assistance;

(m) Federal disaster assistance and state disaster grant;

(n) Home produce utilized for household consumption;

(o) Housing subsidy received from federal, state or local governments;

(p) Funds distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(q) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(r) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as a:

1. Senior health aide; or
2. Member of the:
 - a. Service Corps of Retired Executives; or
 - b. Active Corps of Executives;

(s) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5084 if less than the minimum wage under state or federal law, whichever is greater including:

1. Volunteers in Service to America (VISTA);
2. Foster Grandparents;
3. Retired and Senior Volunteer Program; or
4. Senior Companion;

(t) Payment from the cabinet for:

1. Child foster care; or
2. Adult foster care;

(u) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or
2. Other energy assistance payment made to an energy provider or provided in-kind;

(v) The first fifty (50) dollars of child support payment;

(w) Earnings of an individual attending school who is age nineteen (19) or under;

(x) Earnings of a dependent child under eighteen (18) who is a high school graduate;

(y) Nonrecurring monetary gifts totaling thirty (30) dollars or less per month per individual;

(z) The principal of a verified loan;

(aa) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World

War II;

(bb) Income of an individual receiving SSI, including monthly SSI benefits and any retrospective SSI benefits;

(cc) The essential person's portion of the SSI check;

(dd) Income of an individual receiving mandatory or optional state supplementary payment pursuant to 921 KAR 2:015;

(ee) The advance payment or refund of earned income tax credit;

(ff) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(gg) Interest and dividend income unless derived from a corporate business;

(hh) In-kind income;

(ii) Income of a technically ineligible child;

(jj) Payment made from the Agent Orange Settlement Fund;

(kk) K-TAP payment including back payment;

(ll) Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship pursuant to 921 KAR 2:006, Section 11;

(mm) Payment made from the Radiation Exposure Compensation Trust Fund;

(nn) Up to \$2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;

(oo) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(pp) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(qq) A payment received from the National Tobacco Growers Settlement Trust;

(rr) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(c);

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

(tt) A payment made to children of Vietnam veterans and certain other veterans, pursuant to 38 U.S.C. 1833[1845 by the Veterans Administration, to children of female Vietnam veterans];

(uu) A discount or subsidy provided to Medicare beneficiaries pursuant to Section 1860D-31(g)(6) of the Social Security Act, 42 U.S.C. 7(xviii) and (D)(4);

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

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

(3) Benefit calculation. Excluded income pursuant to subsection (2) of this section and an applicable deduction listed in this subsection shall be applied:

(a) Work expense standard deduction of ninety (90) dollars for full-time and part-time employment;

(b) If the caregiver is not the parent, legal guardian or a member of the benefit group, the dependent care disregard shall:

1. Be allowed as a work expense for:

a. An able bodied child age thirteen (13) or over and not under court supervision;

b. An incapacitated adult living in the home and receiving K-TAP;

c. A K-TAP case that is otherwise ineligible for K-TAP without the benefit of the disregard for child care, at the option of the recipient; or

d. The month of application for K-TAP benefits; and

2. Not exceed:

a. \$175 per month per individual for full-time employment;

b. \$150 per month per individual for part-time employment; or

c. \$200 per month per individual for child under age two (2);

(c) Child support payment received and retained until notification of eligibility for K-TAP is received;

(d) Child support payment assigned and actually forwarded or paid to the cabinet;

(e) First thirty (30) dollars and one-third (1/3) of the remainder of earned income not already deducted for each member of the benefit group calculated as follows:

1. The one-third (1/3) portion of this deduction shall be applied to each member's earned income for four (4) months;

2. The thirty (30) dollar portion of this deduction shall be applied concurrently with the one-third (1/3) deduction and for an additional eight (8) consecutive months following the expiration of the concurrent period; and

3. Until the individual has earnings, reported timely, from new employment, the deductions shall not be available to the individual after expiration of the time limits; and

(f) For new employment, or increased wages, acquired after approval and reported timely, a one (1) time only disregard per employed adult member of the benefit group, the amount of two (2) full calendar months earnings calculated as follows:

1. The two (2) months earnings disregard shall be consecutive, and at the option of the recipient; and

2. If otherwise eligible, a sanctioned or penalized member of the benefit group may receive the two (2) months earnings disregard.

(4) Deductions from earnings pursuant to subsection (3)(a), (b) and (e) of this section shall not apply for a month the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists pursuant to 921 KAR 2:370, Section 6(1); or

(b) Fails to report an increase in earnings, that impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:

1. The benefit group has been directly affected by a natural disaster;

2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or

3. The responsible relative in the case and the member employed, if different, is out of town for the entire ten (10) day report period.

Section 6. Child Care Expense. With the exception of those circumstances pursuant to Section 5(3)(b) of this administrative regulation, a child care expense incurred as a result of employment shall be paid pursuant to 922 KAR 2:160.

Section 7. Income and Resources of an Individual Not Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, pursuant to subsection (2) of this section:

(a) A stepparent;

(b) The spouse of a minor dependent child;

(c) The spouse of a specified relative other than a parent; and

(d) A parent of a minor parent. (2) The gross income of the individual shall be considered available to the benefit group, subject to the following deductions:

(a) The first ninety (90) dollars of the gross earned income; and

(b) 1. An amount equal to the K-TAP standard of need for the appropriate family size, pursuant to Section 9 of this administrative regulation for:

a. The support of the individual; and

b. A person living in the home if:

(i) The needs of the person are not included in the K-TAP eligibility determination; and

(ii) The person is or may be claimed as a dependent for the purpose of determining his federal personal income tax liability by the individual;

2. An amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for the purpose of determining his personal income tax liability by the individual; or

3. Payment for alimony or child support to a person not living in the home by the individual.

(3) A resource shall not be considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit group that belongs solely to the:

(a) Stepparent;

(b) Spouse of a minor dependent child;

(c) Spouse of a specified relative other than a parent; or

(d) Parent of a minor parent.

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Section 8. Alien Sponsor Income and Resources. (1)(a) For the purpose of this section, the alien's sponsor and sponsor's spouse, if living with the sponsor, shall be referred to as sponsor.

(b) This subsection and subsections (2) through (6) of this section shall apply to an immigrant who has an agreement executed other than an agreement pursuant to 8 U.S.C. 1183a.

(2) The gross non-K-TAP income and resources of an alien's sponsor shall be deemed available to the alien, subject to a deduction set forth in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) If adequate information on the sponsor or sponsor's spouse is not provided, a sponsored alien shall be ineligible for a month.

(5) If an alien is sponsored by an agency or organization, that has executed an affidavit of support, the alien shall be ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

(a) Is no longer in existence; or

(b) Does not have the financial ability to meet the alien's needs.

(6) The provisions of this subsection shall not apply to an alien pursuant to subsection (5) or (7) of this section.

(a) The gross income of the sponsor shall be considered available to the benefit group subject to the following deductions:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;

2. An amount equal to the K-TAP standard of need for the appropriate family size pursuant to Section 9 of this administrative regulation of:

a. The sponsor; and

b. Other person living in the household:

(i) Who is or may be claimed by the sponsor as a dependent in determining the sponsor's federal personal income tax liability; and

(ii) Whose needs are not considered in making a determination of eligibility for K-TAP;

3. An amount paid by the sponsor to a nonhousehold member who is or may be claimed as a dependent in determining the sponsor's federal personal tax liability;

4. Actual payment of alimony or child support paid to a non-household member; and

5. Income of a sponsor receiving SSI or K-TAP.

(b) Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if the sponsor were a K-TAP applicant in this state, less \$1,500.

(7)(a) For a sponsored alien who enters the United States on or after December 19, 1997, who is required to complete a sponsorship agreement pursuant to 8 U.S.C. 1183a, the total gross income and resources of an alien's sponsor and sponsor's spouse shall be deemed available to the alien.

(b) The sponsor's obligation shall be available until the:

1. Immigrant:

a. Becomes a United States citizen;

b. Is credited with forty (40) quarters of work; or

c. Ceases to hold the status of an alien lawfully admitted for permanent residence; or

2. sponsor dies.

(c) The immigrant shall provide the sponsorship agreement pursuant to 8 U.S.C. 1183a.

(8)(a) The actual amount provided by the sponsor shall be considered for a period up to twelve (12) months from the date of determination, if an:

1. Amount less than the amount in the sponsorship agreement is made available to the immigrant; and

2. Alien is determined indigent.

(b) An alien shall be determined indigent if:

1. The amount of the sponsor's income and resources given to the alien is less than the amount in the agreement; and

2. Without K-TAP assistance and after consideration of the alien's own income, cash, food, housing or assistance provided by an individual including the sponsor, the alien is unable to obtain

food and shelter.

(9) Deeming of the sponsor's income shall not apply for twelve (12) months if the:

(a) Alien or alien's child has been subjected to extreme cruelty or battery while living in the United States and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:

1. Spouse or parent; or

2. Spouse or parent's family living with the alien or alien's child and the spouse or parent allows the cruelty or battery; or

(b) Alien is a child who lives with a parent who has been subjected to extreme cruelty or battery while living in the United States, and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:

1. Spouse; or

2. Member of the spouse's family living in the same household and the spouse allows the cruelty or battery.

Section 9. Payment Maximum. (1) The K-TAP payment maximum includes an amount for food, clothing, shelter, and utilities.

(2)(a) Countable income, pursuant to Section 10 of this administrative regulation, shall be subtracted in determining eligibility for and the amount of the K-TAP assistance payment as follows:

Number of Eligible Persons	Payment Maximum	Standard of Need
1 person	\$186	\$401
2 persons	\$225	\$460
3 persons	\$262	\$526
4 persons	\$328	\$592
5 persons	\$383	\$658
6 persons	\$432	\$724
7 or more persons	\$482	\$790

(b) The gross income limit shall be as follows for the appropriate family size:

Number of Eligible Persons	Maximum Gross Income Limits
1 Person	\$742
2 Persons	\$851
3 Persons	\$974
4 Persons	\$1096
5 Persons	\$1218
6 Persons	\$1340
7 or more Persons	\$1462

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4)(a) The assistance payment shall be the lesser amount of either:

1. Fifty-five (55) percent of the deficit pursuant to subsection (3) of this section; or

2. The payment maximum pursuant to subsection (2)(a) of this section.

(b) As a result of applying the forty-five (45) percent ratable reduction pursuant to subsection (3) of this section, an eligible payment to an otherwise eligible family with no income shall be calculated pursuant to KRS 205.200(2).

(5) If a benefit group's assistance payment equals zero (0), the benefit group shall be ineligible for K-TAP.

Section 10. Best Estimate. (1) The benefit shall be computed by using a best estimate of income that may exist in the payment month.

(2) The following method shall be used to calculate a best estimate:

(a) For a case with earned income, other than self-employment earned income, a monthly amount shall be determined as follows:

1. Cents shall:

a. Not be rounded to the nearest dollar before adding or multiplying hourly or daily earnings; and

b. Be rounded to the nearest dollar before adding or multiplying weekly, biweekly, semimonthly, monthly, quarterly, or annual

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amounts.

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used.

3. A monthly amount shall be determined by:

a. Adding gross income from each pay period;

b. Dividing by the total number of pay periods considered;

c. Converting the pay period figure to a monthly figure by multiplying a:

(i) Weekly amount by four and one-third (4 1/3);

(ii) Biweekly amount by two and one-sixth (2 1/6); or

(iii) Semimonthly amount by two (2); and

d. Rounding to the nearest dollar.

4. If income has recently begun, and the applicant or recipient has not received two (2) calendar months of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the hourly rate by the estimated number of hours to be worked in a pay period; or

b.(i) Multiplying the daily rate by the estimated number of days to be worked in the pay period; and

(ii) Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3c of this paragraph and rounding to the nearest dollar.[:]

(b) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Rounding cents to the nearest dollar;

2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and

3. Averaging the amount of unstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.[: and]

(c) For a case with self-employment income, a monthly amount shall be determined as follows:

1. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);

2. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and

3. Profit shall be determined by:

a. Rounding the total gross income to the nearest dollar;

b. Rounding the total amount of allowable expenses to the nearest dollar;

c. Dividing each by twelve (12), or the appropriate number of months, and rounding to the nearest dollar; and

d. Subtracting the rounded monthly expense from the rounded monthly income.

(3) The best estimate shall be recalculated:

(a) At six (6) month intervals for a case with[:]

4.[: Earned, [or] unearned, or [income other than] self-employment income; [or]

2. Income from a self-employment enterprise that has not been in existence for at least one (1) year;]

(b) [At twelve (12) month intervals for a case with a self-employment enterprise that has been in existence for at least one (1) year;

(c)] If the agency becomes aware of a change in a circumstance; or

(c)[(d)] To reflect a mass change in the standard of need or payment maximum standard pursuant to Section 9 of this administrative regulation.

Section 11. K-TAP Recoupment. The following provisions shall apply for recoupment of a K-TAP overpayment.

(1) Necessary action will be taken promptly to correct and recoup an overpayment.

(2) An overpayment shall be recovered:

(a) From an adult claimant, whether currently receiving K-TAP benefits:

1. After notice and an opportunity for a fair hearing pursuant to 921 KAR 2:055 is given;

2. After administrative and judicial remedies have been exhausted or abandoned; and

3. Including assistance paid:

a. Pending the hearing decision; or

b. Due to cabinet error; and

(b) Through:

1. Repayment by the claimant to the cabinet;

2. Reduction of future K-TAP benefits, that shall result in the benefit group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income pursuant to Section 9 of this administrative regulation;

3. Civil action in the court of appropriate jurisdiction; or

4. If the cabinet becomes aware of expunged electronic benefits transfer (EBT) payments, reduction of the overpayment balance by an amount equal to the expunged benefits.

(3) In a case that has both an overpayment and an underpayment, the overpayment and underpayment shall be offset one against the other in correcting the payment to a current recipient.

Section 12. Aid to Families with Dependent Children Recoupment. (1) The cabinet shall recoup an Aid to Families with Dependent Children overpayment discovered on or after April 1, 1982, pursuant to 45 C.F.R. 233.20(a)(13).

(2) An Aid to Families with Dependent Children overpayment shall be recovered from an adult or child member of the benefit group:

(a) Pursuant to 45 C.F.R. 233.20(a)(13); and

(b) In accordance with the recoupment process specified in Section 11 of this administrative regulation.

Section 13. Avoiding an Overpayment. (1) A K-TAP recipient may voluntarily:

(a) Return a benefit payment; or

(b) Give permission to the cabinet to use EBT benefits by completing and returning a written statement requesting a written statement requesting this option to avoid an overpayment if the case:

1. Is totally ineligible for the month the payment is issued; and

2. Has not been reduced for recoupment of a previous overpayment.

(2) If a payment is voluntarily returned, the cabinet shall determine whether the recipient is due a refund as described in Section 14 of this administrative regulation.

Section 14. Refund. A recipient shall be due a refund in the following situations:

(1) An amount in excess of the actual overpayment is recouped;

(2) An overpayment and an underpayment is offset and a balance is owed to the recipient; or

(3) A K-TAP payment that is voluntarily returned to avoid an overpayment is compared to the current month obligation of child support collected by the cabinet during the month the K-TAP check was intended to cover, leaving a balance owed to the recipient.

Section 15. Correction of Underpayments. The following provisions shall apply to a K-TAP payment:

(1) An underpayment shall be promptly corrected to:

(a) A current K-TAP recipient; or

(b) One (1) who would be a current recipient if the error causing the underpayment had not occurred.

(2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group.

(3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in the:

(a) Month the payment is paid; or

(b) Next following month.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 10, 2010

FILED WITH LRC: December 10, 2010 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, 2011 at 9:00 a.m. in the Conference Suite C, 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, 2011, 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 January 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

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, (502) 564-3556

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards of need for and the amount of a Kentucky Transitional Assistance Program payment.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish financial eligibility criteria necessary to determine eligibility for the Kentucky Transitional Assistance Program (K-TAP) and the benefit amount to those individuals who are eligible.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the standards of need and amount of assistance for K-TAP under 42 U.S.C. 601-619.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes through its establishment of eligibility criteria and benefit amounts for the K-TAP 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 excludes certain types of income when the agency is determining eligibility for the Kentucky Transitional Assistance Program (K-TAP). Specifically, the amendment clarifies all income received under the Workforce Investment Act (WIA) in accordance with 29 U.S.C. 2931(a)(2) and interest and dividend income, unless derived from a corporate business, will be excluded. Excluded payments received from the Veterans Administration are expanded to include other veteran recipients in addition to children of female Vietnam veterans in accordance with 38 U.S.C. 1833. Additionally, the amendment clarifies that cases with benefit amounts equaling zero will be denied or discontinued, and all earned income will be recalculated every six months to conform with federal laws. The amendment also makes 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 to align state policy with federal laws governing excluded income and income recalculation periods for benefits. In addition, the amendment will reduce administrative burdens for those cases whose benefit amounts equal zero and preserve the available lifetime limit on the receipt of benefits for these households.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this regulation conforms to the content of the authorizing statutes by prescribing the conditions of

eligibility for public assistance and the amount of a public assistance payment in accordance with applicable federal laws.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes through its update of the conditions of eligibility for public assistance and the method to calculate the amount of public assistance to an eligible household, and its inclusion of other technical corrections to conform with KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving assistance from K-TAP. As of October 2010, there was 24,447 K-TAP families.

(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 to this administrative regulation will have minimal impact to families applying for or receiving K-TAP assistance. The amendment clarifies language related to eligibility by excluding certain income and, thereby, eliminating the burden placed on applicants to provide verification. No action will have to be taken on behalf of the applicant or recipient as a result of ending or discontinuing cases whose benefit amount equals zero. This action will be automated by the eligibility system utilized by staff.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to the administrative regulation will not create a cost to K-TAP recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation reduces administrative burdens for staff and K-TAP applicants. The amendment excludes additional income types when determining eligibility for K-TAP assistance and reduces the need for verification from the applicant in accordance with federal laws. Additionally, denying or discontinuing a case when benefits equals zero avoids the potential for additional months to be counted towards the household's 60 month lifetime receipt of K-TAP. Recalculating earned income every six months does result in a shortened timeframe for this process; however, this eliminates the need of the household to report hours worked every month.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding under Title IV-A of the Social Security Act (a.k.a., Temporary Assistance for Needy Families Block Grant or TANF) and General Funds used to meet Maintenance of Effort requirements for federal funding are the funding sources for this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees, nor directly or indirectly increases any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. 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 194.050(1), 205.200(2), 205.210(1), 205.211, 205.2001; 42 U.S.C. 601 to 619

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 K-TAP program has been operational since October 1996 and does not directly generate any revenue. This amendment will generate no revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will generate no revenue in subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601 to 619

2. State compliance standards. KRS 194.050(1), 205.200(2), 205.210(1), 205.211, 205.2001

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 2:017. Kentucky Works supportive services.

RELATES TO: KRS 45.237-241, 205.200, 205.211, 205.2003, 45 C.F.R. Parts 260-265, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.2003(1), 42 U.S.C. 601-619

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. KRS Chapter 205 requires the Cabinet for Health and Family Services to administer the public assistance programs. KRS 205.200(2) requires the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619 and federal regulations. KRS 205.2003(1) requires the cabinet to promulgate administrative regulations to develop a work program for recipients of public assistance to provide for immediate employment or preparation for employment, and to provide supportive services to assist in the pursuit of work and self-sufficiency. This administrative regulation establishes requirements for receiving Kentucky Works supportive services.

Section 1. Definitions. (1) "Approved Kentucky Works activity" means participation in an allowable activity in accordance with 921 KAR 2:370, Section 2(1)(c).

(2) "Component" means a service or activity in accordance with 921 KAR 2:370, Section 2(1)(c).

(3) "Component preparation" means the period in which assessment, testing, completion of the transitional assistance agreement, in accordance with 921 KAR 2:370, and referral for removal of barriers takes place.

(4) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(5) "Improper payment" is defined by KRS 45.237(1)(d).

(6) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's "Temporary Assistance for Needy Families" or "TANF" money payment program for a child as defined in 921 KAR 2:006.

(7) "Kentucky Works" means a program, in accordance with 921 KAR 2:370, that assists a recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance.

(8) "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(9) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(10) "Work-eligible individual" is defined by 45 C.F.R. 261.2(n).

Section 2. Kentucky Works Participation and Supportive Services Payment. The cabinet shall make a payment for a supportive service cost:

(1) For an individual participating in the Kentucky Works Program, except for the exclusions listed in Section 12 of this administrative regulation;

(2) Necessary for participation in an approved Kentucky Works activity; and

(3) To the extent funds are available.

Section 3. Transportation. Transportation reimbursement shall be paid in the following situations:

(1) Precomponent;

(2) Component preparation; or

(3) Component participation.

Section 4. Transportation Payment Amount and Authorization. (1)(a) To the extent funds are available, payment for transportation shall be provided for an individual participating in an approved Kentucky Works activity, if:

1. Free transportation that meets the needs of the work-eligible individual is unavailable; and

2. The individual is required to incur a transportation expense in order to participate.

(b) If a need for transportation reimbursement for four (4) days or more is determined, a direct payment of \$200 per month to the individual shall be made through the System Tracking for Employability Program or "STEP".

(c) If a need for transportation reimbursement for less than four (4) days is determined, a payment of fifteen (15) dollars to the individual shall be made through the System Tracking for Em-

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ployability Program or "STEP".

(2) A payment shall be issued in accordance with 921 KAR 2:050.

(3) In precomponent, if necessary to guarantee that the transportation arrangement shall not be lost, a transportation payment shall be provided for the period of up to:

(a) Two (2) weeks prior to the scheduled start of component activity; and

(b) One (1) month during a break in component activity if subsequent component activity is scheduled to begin within that period.

Section 5. Restriction on Authorization of a Transportation Payment. A transportation payment shall not be made if the work-eligible individual is not in compliance with a Kentucky Works activity, in accordance with 921 KAR 2:370.

Section 6. Other Supportive Services. (1) To the extent funds are available, the cabinet shall provide other supportive services to a work-eligible individual if necessary for the individual's participation in the approved Kentucky Works activity for:

(a) Component preparation;

(b) Component participation while the K-TAP case remains active; or

(c) Acceptance of a new job or retention of an existing one if the parent or other adult:

1. Has accepted employment and a start date of employment is provided, except if an item is required as a condition of being hired by the employer; or

2. Is employed.

(2) If requirements of subsection (1) of this section are met, the cabinet may approve an item or service needed by the work-eligible individual for participation in a Kentucky Works activity, such as:

(a) A drug screening test fee;

(b) Up to three (3) uniforms for employment, if not reimbursable by the employer;

(c) One (1) suitable interview outfit for preemployment purposes;

(d) Required clothing or shoes particular to a service, profession, or company, if not reimbursable by the employer;

(e) School supplies and books;

(f) A licensing fee which includes:

1. Exam costs required to obtain a professional license or certificate; or

2. Driver's license fee;

(g) A timepiece necessary for employment or training;

(h) The cost to have a photo identification;

(i) The cost of a criminal records check fee, if required by the provider or employer;

(j) A driver's education class fee; or

(k) Tools required for employment.

(3) Payment for other supportive services shall be limited to a cumulative total of \$400 per individual in a twelve (12) month period, beginning with the first day of the month in which the initial Form PA-32, Authorization for Supportive Services Payments, is issued to the work eligible individual [payment is issued].

(4) A penalized or sanctioned work-eligible individual shall not be eligible for other supportive services.

(5) A retroactive payment for other supportive services shall not be made for an item purchased by a penalized or sanctioned work-eligible individual who later cures the penalty. After the individual cures the penalty or sanction, an eligible expense may be authorized.

(6) Except in accordance with Section 7 of this administrative regulation, a medical service or item shall not be an allowable supportive service.

Section 7. Allowable Medical Service or Item. To the extent non-TANF funding is available, the purchase of the following item or service shall be allowed for a work-eligible individual, if needed for participation in the Kentucky Works activity and not reimbursable through Medicaid and limited to:

(1) Eyeglasses or corrective lens;

(2) Dentures;

(3) Hearing aids; and

(4) Medical service or item required as a condition of employment.

Section 8. Car Repairs. (1) If a free service for car repairs, including a vocational school automotive program, is unavailable that meets the needs of the work-eligible individual, a car repair expenditure shall be provided, to the extent funds are available, if necessary for participation in the approved Kentucky Works activity of:

(a) Component preparation; or

(b) Component participation, including employment while the K-TAP case remains active.

(2) Car repair expense shall meet the following criteria to be considered for payment:

(a) Car repair that makes the car functional;

(b) Property tax on the vehicle;

(c) Vehicle registration;

(d) Licenses fee;

(e) Liability insurance to drive a vehicle;

(f) New or used automotive part to be purchased by the work-eligible individual to make the car functional; and

(g) Other car expense needed by the work-eligible individual that would allow participation in the Kentucky Works activity.

(3) Prior to the approval of a car repair expenditure listed in subsection (2) of this section, the work-eligible individual shall provide an estimate of the cost.

(4) Auto repair work shall:

(a) Be completed by a garage, unless the repair is completed by a vocational school automotive program; or

(b) Be the responsibility of the work-eligible individual if a payment is made for a new or used automotive part as specified in subsection (2)(f) of this section.

(5) Prior to approval of a car repair expenditure, the cabinet shall verify the work-eligible individual owns the vehicle.

(6) The restrictions on authorization and verification of a supportive service payment described in Section 12 of this administrative regulation shall apply to a car repair expense and payment.

(7) Payment for car repairs shall be limited to a cumulative total of \$1,500 per eligible family during a twelve (12) month period, beginning with the first day of the month in which the initial payment is issued.

Section 9. Short-term Training. To the extent funds are available, a fee for a short-term training program shall be eligible for payment for a work-eligible individual if the training program is:

(1) Not eligible for federal financial aid; and

(2) Likely to lead to paid employment, in accordance with:

(a) The work-eligible individual's transitional assistance agreement; and

(b) 921 KAR 2:370.

Section 10. Required Fees. (1) To the extent funds are available, the following payment may be made for a work-eligible individual in compliance with Kentucky Works requirements:

(a) A training registration fee;

(b) Financial aid application fee;

(c) Testing fee;

(d) Application fee required by a vocational school for a specified program;

(e) Liability insurance fee;

(f) Copy of records fee;

(g) Activity fee if mandated by the institution; or

(h) Other required fee.

(2) Required fees shall not exceed \$200 per payment.

Section 11. Educational Bonus. (1) An educational bonus of \$250 per individual shall be paid to a K-TAP adult or child who reports and verifies:

(a) Receiving a:

1. High school diploma;

2. GED certificate; or

3. Postsecondary school certificate or degree; or

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(b) Graduating from English as a second language class.

(2) A short-term training program shall not qualify for postsecondary education.

(3) A K-TAP adult or child shall be limited to only one (1) payment for:

(a) Receiving a postsecondary certificate or degree; or

(b) Graduating from an English as a second language class.

(4) A K-TAP adult or child shall earn the diploma, certificate, or degree while receiving K-TAP.

(5) A K-TAP applicant or recipient shall be advised of the educational bonus and be reminded of available work incentives:

(a) During application;

(b) At recertification; and

(c) Through periodic mailings.

Section 12. Restrictions on Authorization of Supportive Service Payments. (1)(a) To verify an expense and authorize a supportive service payment, except as provided in Section 5 of this administrative regulation, a PA-32, Authorization for Supportive Services Payments, shall be completed.

(b) PA-32, Authorization for Supportive Services Payments, shall be valid for thirty (30) calendar days from the date issued by the cabinet.

(2) A payment shall not be made for the period during which:

(a) A valid PA-32, Authorization for Supportive Services Payment, is not returned; or

(b) The work-eligible individual is:

1. Penalized for noncompliance with a Kentucky Works activity, as specified in 921 KAR 2:370; or

2. Ineligible.

(3) A supportive service payment shall be issued in accordance with 921 KAR 2:050.

Section 13. Hearings and Appeals. An applicant or recipient of supportive services who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing in accordance with 921 KAR 2:055.

Section 14. Improper Payments. The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-241 and 205.211, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 15. Incorporation by Reference. (1) The "PA-32, Authorization for Supportive Services Payments", edition 11/09, 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:

FILED WITH LRC: December 10, 2010 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, 2011 at 9:00 a.m. in the Conference Suite C, 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, 2011, 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 January 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

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, (502) 564-3556

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the types and financial limitations on supportive services for Kentucky Works Program (KWP) participants.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform conditions and requirements regarding the payment of KWP supportive services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the requirements and payment maximums for KWP support services. KWP is the work program under the Kentucky Temporary Assistance Program (K-TAP), the assistance program funded by the Temporary Assistance for Needy Families (TANF) block grant authorized by 42 U.S.C. 601-619 or Title IV-A of the Social Security Act. In addition, this administrative regulation establishes KWP supportive services in conformity with the Title IV-A State Plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of eligibility criteria and financial limitations for all KWP supportive services, including transportation, other supportive services, allowable medical services or items, car repairs, short-term training, required fees, and educational bonuses.

(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 being amended to clarify that the start date for the 12 month cumulative limit for KWP supportive services payments begins with the first day of the month in which the initial form PA-32, Authorization for Supportive Services Payments, is issued to the individual. The amendment makes other technical corrections to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the start date for the 12 month cumulative limit of KWP supportive services payments.

(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 prescribing the types and conditions for KWP supportive services to assist in the pursuit of work and self-sufficiency.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes through its financial limitation of supportive services to foster work and self-sufficiency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving assistance from K-TAP and are required to participate in a KWP activity. As of October 2010, there was 24,447 K-TAP families of which 9,974 recipients were required to participate in KWP.

(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 to this administrative regulation will require no additional action by participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create

no cost to KWP participants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky Works Program participants will benefit from the clarity of the amended administrative regulation.

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

(a) Initially: The amendment to this administrative regulation will result in no cost to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will result in no cost to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding under Title IV-A of the Social Security Act (a.k.a., Temporary Assistance for Needy Families Block Grant or TANF) and General Funds used to meet Maintenance of Effort requirements for federal funding are the funding sources for this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because the application of policy is applied in a like manner 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? 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); KRS 45.237-241; KRS 205.200, 205.211, 205.203; 45 C.F.R. Parts 260-265; 42 U.S.C. 601-619

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 KWP program has been operational since October 1996 and does not directly generate any revenue. This amendment will not directly generate any revenue in the first year.

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will result in no new program cost in the first year of implementation.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will result in no new program cost in subsequent years of implementation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:-

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619

2. State compliance standards. KRS 194A.050(1), 205.200(2), 205.2003(1)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional, or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Family Support

(Amendment)

921 KAR 2:370. Technical requirements for Kentucky Works.

RELATES TO: KRS 205.200(7), 205.2003, 45 C.F.R. 98.2, 260-265, 29 U.S.C. 651-678, 42 U.S.C. 601-619, 12101-12213

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.200(7), 205.2003, 42 U.S.C. 601-619, Pub. L. 109-171

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. The Cabinet for Health and Family Services has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program for the Kentucky Transitional Assistance Program, the block grant program funded pursuant to 42 U.S.C. 601 to 619. KRS 205.200(2) and (7) require the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619, and federal regulations. KRS 205.2003 requires that a work program for a recipient of Kentucky Transitional Assistance Program be prescribed by administrative regulations. Pub. L. 109-171, effective October 1, 2006, reauthorized the Temporary Assistance for Needy Families Program known as the Kentucky Transitional Assistance Program in Kentucky. This administrative regulation sets forth the technical requirements of the Kentucky Works Program.

Section 1. Definitions. (1) "Americans with Disabilities Act disability" or "ADA disability" is defined by 42 U.S.C. 12102.

(2) "Affordable child care arrangements" means appropriate child care at a reasonable distance that is suitable and with a charge at or below the maximum provider payment rate pursuant to the Child Care and Development Fund plan.

(3) "Appropriate child care" means eligible child care as provided by an "eligible child care provider", pursuant to 45 C.F.R. Part 98.2.

(4) "Assessment" means the ongoing evaluation of an individual's strengths and needs relative to achieving self-sufficiency.

(5) "Assistance" is defined by 45 C.F.R. 260.31.

(6) "Barriers" means a limitation in an individual's ability to become employed and self-sufficient or to comply with K-TAP requirements.

(7) "Community service activities" means "community service programs", as defined by 45 C.F.R. 261.2(h).

(8) "Conciliation" means a process in which a participation problem in the Kentucky Works Program can be resolved.

(9) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

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(10) "Family member" means an individual:

(a) Related by blood, marriage, or adoption to a child or a work-eligible individual, as defined by 45 C.F.R. 261.2(n), in the benefit group; or

(b) Who is a member of an unmarried couple and has a child in the benefit group in common with the work-eligible individual, as defined by 45 C.F.R. 261.2(n).

(11) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in:

1. An adult basic education program;
2. A general educational development (GED) program; or
3. A literacy program;

(b) The number of hours required by the individual program for participation in a college or university; or

(c) A semester system in a college or university of:

1. Twelve (12) semester hours or more; or
2. Six (6) semester hours or more during the summer term;

(c) The equivalent of paragraph (b) of this subsection in a college or university if other than a semester system is used; or

(d) The number of hours required by the individual high school or vocational school to fulfill the high school or vocational school's definition of full time.

(12) "Job search and job readiness assistance" is defined by 45 C.F.R. 261.2(g).

(13) "Job skills training directly related to employment" is defined by 45 C.F.R. 261.2(j)

(14) "Kentucky Transitional Assistance Program" or "[K-TAP]" means a money payment program for a child pursuant to 921 KAR 2:006, Section 1.

(15) "Kentucky Works" means a program that assists a recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance.

(16) "On-the-job training" is defined by 45 C.F.R. 261.2(f).

(17) "Part-time enrollment" means enrollment with a postsecondary institution at a minimum of half of full-time enrollment as defined by subsection (12)(b) or (c) of this section.

(18) "Qualifying Parent" means a parent who meets prior labor market attachment in accordance with 921 KAR 2:006, Section 1.

(19) "Reasonable distance" means the distance customarily available within a locality.

(20) "Subsidized employment" is defined by 45 C.F.R. 261.2(c) and (d).

(21) "Unsubsidized employment" is defined by 45 C.F.R. 261.2(b).

(22) "Unsuitability of informal child care" means care not regulated pursuant to Kentucky law that does not meet the quality child care need as defined by the parent or the health and safety requirements applicable to unregulated child care in the commonwealth.

(23) "Vocational education" means "vocational educational training" as defined by 45 C.F.R. 261.2(i).

(24) "Work-eligible individual" is defined by 45 C.F.R. 261.2(n).

(25) "Work Experience Program" or "WEP" means the definition of "work experience" if sufficient private sector employment is not available" pursuant to 45 C.F.R. 261.2(e).

Section 2. Program Participation. (1) Unless the K-TAP recipient meets the exception criteria in Section 3 of this administrative regulation, the cabinet shall determine a work-eligible individual as follows:

(a) 1. A one (1) parent household shall be required to participate in a specific activity pursuant to paragraph (c) of this subsection no less than the number of hours per week required in the activity, pursuant to subparagraph 2 of this paragraph.

2. The activity shall be required to have at least a minimum of thirty (30) hours per week, ten (10) hours of which may be satisfied through participation in an education or training activity pursuant to paragraph (c)8, 9, and 11 of this subsection or in literacy or adult education.

(b) A two (2) parent household shall participate in a specific activity no less than the number of hours per week required in the activity, pursuant to this paragraph. The activity shall be required to

have at least a minimum of:

1. If the family receives federally funded child care assistance, the activity shall be required to have at least a minimum of fifty-five (55) hours combined from both parents, five (5) of which may be satisfied through participation in an education activity pursuant to paragraph (c)8, 9, and 11 of this subsection or in literacy or adult education.

2. If the family does not receive federally-funded child care, a two (2) parent household shall participate thirty-five (35) hours per week combined, five (5) of which may be satisfied through participation in an education activity pursuant to paragraph (c)8, 9, and 11 of this subsection or in literacy or adult education.

3. If an adult is needed to care for a child in the home with a severe disability pursuant to 921 KAR 2:006, a two (2) parent household shall participate pursuant to paragraph 2 of this paragraph.

4. A two (2) parent household eligible for K-TAP based on the deprivation of incapacity, pursuant to 921 KAR 2:006, shall meet the number of hours of participation in a work activity listed in paragraph (a) of this subsection.

(c) In accordance with 45 C.F.R. 261.2, to be in compliance with the program participation requirement in Kentucky Works, a countable activity may include:

1. Unsubsidized employment;
2. Subsidized employment;
3. Work experience training;
4. On-the-job training;
5. Job search and job readiness assistance;
6. Community service activities;
7. Full-time enrollment, as defined by the educational institution or program, in post secondary or vocational education not to exceed twelve (12) [twenty-four (24)] cumulative months [during which the participant will not be required to participate in other activities];

8. Full or part-time enrollment, as defined by the educational institution or program, in postsecondary or vocational education at any time if combined with an activity pursuant to subparagraph 1 through 4 and 6 of this paragraph;

9. Attendance at secondary school or equivalent if the recipient:

- a. Has not completed secondary school or equivalent; or
- b. Couples the attendance with work or work activity in the amount of hours per week pursuant to paragraphs (a) and (b) of this subsection;

10. Provision of child care services to an individual participating in community service activities;

11. Job skills training directly related to employment; and

12. Based on the findings of the assessment, an allowable activity that includes:

- a. Domestic violence counseling;
- b. Life skills training;
- c. A substance abuse program;
- d. Mental health counseling;
- e. Vocational rehabilitation;
- f. Literacy;
- g. Adult education; or
- h. Another preparation or service:

(i) To address an individual's barriers; and

(ii) Approved in advance by the cabinet.

(2) Excused absences shall:

(a) Include:

1. Scheduled hours missed due to holidays; and

2. A maximum of ten (10) additional days or eighty (80) hours of excused absences in any twelve (12) month period with no more than two (2) days or sixteen (16) hours occurring in a month; and

(b) Count as actual hours of participation.

(3) To verify the actual number of hours of participation in approved activities, the K-TAP recipient shall provide the following a:

(a) PA-33, Verification of Kentucky Works Participation; or

(b) Monthly calendar sheet or log that requires the signature of the work-eligible individual and person supervising the work-eligible individual.

Section 3. Exceptions to Program Participation. (1) A work-eligible individual shall be considered to be engaged in work for a

month in a fiscal year if the individual:

- (a) Is a head of household;
- (b) Has not obtained a high school diploma or a GED;
- (c) Has not attained twenty (20) years of age; and

(d) 1. Maintains regular attendance and satisfactory progress at a secondary school or the equivalent during the month; or

2. Participates in education that is directly related to employment for at least twenty (20) hours a week while maintaining regular attendance and satisfactory progress.

(2)(a) A work-eligible individual shall not be required to comply with a program participation requirement for up to twelve (12) months if the individual is:

1. A single custodial parent; and
2. Caring for a child who has not attained twelve (12) months of age.

(b) The twelve (12) months of exemption from a work participation requirement shall be limited to a total of twelve (12) months in a lifetime for the adult and may be:

1. Consecutive; or
2. Cumulative.

(3)(a) For a work-eligible individual whose compliance with program participation would make it difficult to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, compliance shall not be mandated.

(b) If a K-TAP applicant or work-eligible individual is identified as a victim of domestic violence or with a history of domestic violence, an appropriate services plan shall be required for the individual pursuant to 921 KAR 2:006, Section 25[24].

(4) A work-eligible individual shall be considered to be engaged in work for a month if the individual is:

(a) A single custodial~~The only~~ parent or caretaker relative in the family with a child who has not attained six (6) years in age; and

(b) Engaged in work for an average of at least twenty (20) hours per week during the month pursuant to Section 2(1)(c) 1, 2, 3, 4, 5, 6, or 7 of this administrative regulation.

(5) In accordance with 45 C.F.R. 261.2(n)(2)(i), the cabinet shall exclude from program participation a parent providing care to a disabled family member as verified by the completion of the PA-4, Statement of Required Caretaker Services.

(6) In accordance with 45 C.F.R. 261.2(n)(2), the cabinet shall exclude from program participation a parent who is a recipient of Social Security Disability Insurance (SSDI) benefits.

(7)(a) If an individual with an ADA disability cannot participate in a countable work activity as specified in Section 2 of this administrative regulation, the cabinet shall provide a reasonable accommodation or program modification based on the abilities and barriers of the individual.

(b) A reasonable accommodation or program modification may include:

1. Excused participation from an activity;
2. Participation for a reduced number of hours;
3. Participation in an activity for a longer period of time than is countable; or
4. Participation in an activity that is not countable in accordance with Section 2(1)(c)12 of this administrative regulation

Section 4. Program Participation Requirements. (1) Assessment.

(a) The cabinet or its designee shall make an assessment of the work-eligible individual's employability on KW-200, Kentucky Works Assessment Form.

(b) The cabinet shall request another agency to assist in the assessment process if the need for a diagnostic assessment or an additional professional skill set is indicated.

(c) The assessment shall include consideration of:

1. Basic skills;
2. Occupational skills;
3. Barriers and other relevant factors;
4. An ADA disability; and
5. A reasonable accommodation or program modification needed for an individual with an ADA disability.

(2) The self-sufficiency plan. Based on the findings of the assessment, the cabinet or its designee and work-eligible individual

shall jointly develop a self-sufficiency plan by completing the KW-202, K-TAP Transitional Assistance Agreement. This plan shall contain:

- (a) An employment goal for the individual;
- (b) A service to be provided by the cabinet including child care;
- (c) An activity to be undertaken by the individual to achieve the employment goal;
- (d) A reasonable accommodation or program modification needed due to an ADA disability; and
- (e) Other needs of the family.

(3) In accordance with KRS 205.200(7)(a), an adult applicant or recipient of the K-TAP benefit group shall register for work except for a member who is:

- (a) Under age eighteen (18);
- (b) Age sixty (60) or over;
- (c) Age eighteen (18) or nineteen (19) years old in full-time school attendance pursuant to 921 KAR 2:006, Section 3;
- (d) Receiving benefits based on 100 percent disability;
- (e) An individual who has received benefits based on 100 percent disability within the past twelve (12) months but lost the benefits due to income or resources and not an improvement in the disability; or
- (f) Employed thirty (30) hours or more per week at minimum wage or more.

Section 5. Conciliation. (1) Conciliation shall be conducted:

- (a) At the request of a work-eligible individual or a Kentucky Works participant;
- (b) At the request of a service provider; or
- (c) If a situation is identified that could result in a penalty pursuant to Section 7 of this administrative regulation.

(2) The conciliation shall be conducted by the cabinet or its designee.

(3) During conciliation, the cabinet or its designee shall determine if an additional service is needed to assist with Kentucky Works participation.

(4)(a) During conciliation, participation shall be monitored for up to fifteen (15) days following the issuance of form KW-204, Conciliation Notice.

(b) The fifteen (15) day period may be extended for an additional fifteen (15) days, if necessary, to determine if participation is in compliance with the terms of the conciliation.

(5) At the conclusion of the conciliation period, the participant shall be notified in writing of an adverse action in accordance with 921 KAR 2:046.

Section 6. Excused from Penalties. (1) A work-eligible individual shall be excused from a penalty for failure to comply with the Kentucky Works Program, pursuant to Section 7 of this administrative regulation, if one (1) of the following good cause criteria is met:

(a) The individual is a single custodial parent who has a demonstrated inability to obtain needed child care for a child under six (6) years of age. A demonstrated inability to obtain needed child care for a child under six (6) years of age shall be met if the single custodial parent:

1. Cannot locate appropriate child care;
2. Cannot locate child care at a reasonable distance from home;
3. Determines the unsuitability of informal child care; or
4. Cannot locate affordable child care arrangements;
- (b) Dependent care is not available for an incapacitated individual living in the same household as a dependent child;
- (c) Child care is terminated through no fault of the individual;
- (d) Child care does not meet the needs of the child, for example, a child with a disability;
- (e) 1. The individual is unable to engage in employment or training for a mental or physical reason as verified by the cabinet; and

2. No reasonable accommodation or program modification exists;

(f) The individual is temporarily incarcerated or institutionalized for thirty (30) days or less;

(g) The cabinet determines there is discrimination by an employer and a formal complaint has been filed based on:

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1. Age;
2. Race;
3. Sex;
4. Color;
5. Disability;
6. Religious belief;
7. National origin; or
8. Political belief;

(h) Work demand or condition renders continued employment unreasonable including:

1. Consistently not being paid on schedule; or
2. The presence of a risk to the individual's health or safety;

(i) Wage rate is decreased subsequent to acceptance of employment;

(j) The individual accepts a better job that, because of a circumstance beyond the control of the individual, does not materialize; or

(k) The work activity site is so far removed from the home that commuting time would exceed three (3) hours per day.

(2) The duration of good cause criteria may vary according to the individual's circumstance.

Section 7. Penalties. (1) If a work-eligible individual fails to comply with a requirement of the Kentucky Works Program, the recipient shall be subject to a Kentucky Works and Kentucky Transitional Assistance Program penalty. Failure to comply shall be found if the work-eligible individual:

(a) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a required activity, including:

1. An assessment interview;
2. An assessment; or
3. Self-sufficiency plan development including completion of KW-202;

(b) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a program activity in accordance with form KW-202;

(c) Refuses without good cause, pursuant to Section 6 of this administrative regulation, to accept employment;

(d) Terminates employment or reduces earnings without good cause, pursuant to Section 6 of this administrative regulation; or

(e) Fails to register for work unless an exception in Section 4(3) of this administrative regulation applies.

(2)(a) Except for a requirement listed in paragraph (b) of this subsection:

1. A work-eligible individual who has failed to comply with a Kentucky Works requirement without good cause, pursuant to Section 6 of this administrative regulation, or register for work unless an exception pursuant to Section 4(4) of this administrative regulation applies, shall be penalized by reducing the amount of the assistance otherwise payable to the benefit group on a pro rata basis; or

2. Assistance otherwise payable to a benefit group consisting of a two (2) parent household shall be discontinued if neither the work-eligible individual who is a qualifying parent nor the other parent complies with a Kentucky Works requirement without good cause, pursuant to Section 6 of this administrative regulation.

(b) Assistance to the benefit group shall be denied if the work-eligible individual, fails, without good cause pursuant to Section 6 of this administrative regulation, to:

1. Keep an appointment for an assessment interview; or
2. Pursuant to Section 4 of this administrative regulation: (a) Complete an assessment; or
- b. Register for work.

(c)[-

3-] The penalties in subsection (2) of this section shall not be applied until after a conciliation procedure is conducted pursuant to Section 5 of this administrative regulation.

(3)[-] The penalties in subsection (2)(a) of this section shall continue to be applied until the work-eligible individual complies with a program requirement.

(4).

Section 8. Hearings and Appeals. An applicant or recipient of

benefits pursuant to a program described herein who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing pursuant to 921 KAR 2:055.

Section 9. Work Experience Program Training Site Agreement.

(1) A cost incurred by a training site agency because of participation in a WEP shall not be reimbursed.

(2) A WEP participant shall not be removed from training without prior notice to the Department for Community Based Services.

(3) A WEP participant shall not infringe upon the promotional opportunity of a currently employed individual.

(4) An individual shall not be subjected to discrimination, or denied training or employment or benefits, in the administration of, or in connection with, the training program because of:

- (a) Race;
- (b) Color;
- (c) Religion;
- (d) Sex;
- (e) National origin;
- (f) Age;
- (g) Disability; or
- (h) Political belief or affiliation.

(5) Prior to placement in a WEP activity, a WEP participant shall sign form KWET 241, WEP Training Site Agreement.

(6) A training site agency shall:

(a) Complete surveying or reporting relating to the operation of the training site agreement upon the request of the cabinet;

(b) Not displace a currently employed worker by a WEP participant, including a partial displacement including a reduction of the:

1. Hours of nonovertime work;
2. Wages; or
3. Employment benefits;

(c) Comply with 42 U.S.C. 12101 to 12213;

(d) Report a personnel problem to the departmental representative designated by the cabinet;

(e) Maintain accurate time and attendance records daily for a WEP participant;

(f) Verify time and attendance records for a WEP participant pursuant to Section 2(3) of this administrative regulation to ensure the WEP participant's compliance with subsection (7) of this section;

(g) Grant access for the Department for Community Based Services to the training site during working hours to counsel a participant and to monitor the site;

(h) Immediately report an injury to the designated representative;

(i) Conduct an investigation and submit a report upon the request of the Department for Community Based Services;

(j) Not encourage or require a WEP participant to take part in partisan political activity, or involve a WEP participant in partisan political activity;

(k) Maintain the confidentiality of information provided by or about a WEP participant who seeks or receives a service pursuant to form KWET-241, except as authorized by law or in writing by a WEP participant;

(l) Hold the cabinet harmless from a loss, claim, expense, action, cause of action, cost, damage, and obligation arising from a negligent act or omission of the training site agency, its agent, employee, licensee, invitee, or WEP participant that results in injury to a person, or damage or loss relative to a person, corporation, partnership, or other entity;

(m) Provide:

1. Sufficient training to ensure development of appropriate skills;
2. New task after mastery of a skill; and
3. Adequate participation instruction and supervision at all times;

(n) Provide the participant a safe training place;

(o) Assure a participant, engaged in an activity not covered pursuant to 29 U.S.C. 651 to 678, is not required or permitted to receive training or a service in a building or surrounding, or under a training condition that is unsanitary, hazardous, or dangerous to the health and safety of the participant;

(p) Provide adequate material to complete a training activity in

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a safe environment; and

(q) Sign form KWEP-241 with the cabinet and the participant containing a statement of:

1. The conditions established by subsections (1) through (10) of this section; and

2. The period covered by the agreement, including the required weekly number of hours of participation.

(7) The WEP participant shall submit verification pursuant to Section 2(3) of this administrative regulation completed monthly in accordance with subsection (6)(e) and (f) of this section.

(8) If an amendment is made to the agreement, a new form KWET-241 shall be issued.

(9) A WEP participant or WEP provider shall be notified in writing of discontinuance of a WEP placement on form KWET-241.

(10) A WEP participant shall have the right to request an administrative hearing, in accordance with Section 8 of this administrative regulation, relating to a grievance or complaint.

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

(a) "KW-200, Kentucky Works Assessment Form", edition 2/09;

(b) "KW-202, K-TAP Transitional Assistance Agreement", edition 4/11[2/09];

(c) "KW-204, Conciliation Notice", edition 2/09;

(d) "KWET-241, WEP Training Site Agreement", edition 4/11[2/09];

(e) "PA-4, Statement of Required Caretaker Services", edition 10/08; and

(f) "PA-33, Verification of Kentucky Works Participation", edition 4/11[2/09].

(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 10, 2010

FILED WITH LRC: December 10, 2010 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, 2011 at 9:00 a.m. in the Conference Suite C, 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, 2011, 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 January 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

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, (502) 564-3556

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the technical requirements for activities allowed under the Kentucky Works Program (KWP).

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform technical requirements for all individuals participating in KWP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms

to the content of the authorizing statutes by setting forth participation standards in conformity with the Title IV-A (of the Social Security Act) or Temporary Assistance for Needy Families Block Grant (TANF) State Plan.

(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 uniform technical eligibility requirements for participation in KWP, including weekly participation requirements, allowable activities, good cause reasons for failure to participate, exemption criteria from program participation and penalties for failure to participate without good cause.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes language that allows individuals to participate solely in vocational education for 12 months beyond the federally-countable 12 months of participation (i.e., a total of 24 months). The amendment will allow KWP participants to pursue vocational education in combination with other countable activities to meet participation requirements after the initial 12 month period. The amendment clarifies that the provision requiring a 20-hour workweek due to having a child under age six is only applicable to single parents and caretaker relatives, not to two parent cases. The amendment revises material incorporated by reference, form PA-33, Verification of Kentucky Works Participation, by changing the list of approved holidays and making the form more user-friendly for field staff and clients; and form KWET-241, WEP Training Site Agreement, to clarify safety responsibilities for the training site. The amendment also makes technical corrections to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with federal and state statutes and to ensure forms are clear and user-friendly. KRS 205.703 states an individual's request to participate in education is honored when it is countable towards the federal participation rate or is combined with other activities that are countable towards the participation rate. Current policy is more liberal and could result in the state facing federal financial penalties for failing to meet the required federal participation rate. Additionally, 45 C.F.R. 261.35 states that the 20-hour workweek due to having a child under 6 is only applicable to single parents and caretaker relatives. Current language in the administrative regulation does not prohibit this provision from being applied to two parent families.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying technical participation requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its enhanced alignment with federal and state requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving assistance from K-TAP and are required to participate in KWP. As of October 2010, 24,447 families received K-TAP and 9,974 individuals were required to participate in KWP.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be allowed 12 months of vocational education, and then the regulated entity will be required to pair vocational education with another countable work activity. In addition, two-parent households will be required to participate in a countable activity, regardless of the age of a child in the household, consistent with requirements for all two-parent households.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation is tech-

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nical and conforming in nature and does not have a fiscal impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will continue to be afforded opportunities to pursue vocational education and will receive supports through the department and/or its designee in the pursuit of countable work activities and/or vocational education. In addition, regulated entities will benefit from clarity and enhancements made to incorporated materials. The amendment to this administrative regulation further supports the regulated entities' efforts to become employed and self-sufficient in accordance with federal and state laws and the state's application or plan for federal funding.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding under Title IV-A of the Social Security Act (a.k.a., Temporary Assistance for Needy Families Block Grant or TANF) and General Funds used to meet Maintenance of Effort requirements for federal funding are the funding sources for this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees nor directly or indirectly increase any fees.

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

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), KRS 205.200(2), 205.200(7), 205.200(3); 42 U.S.C. 601 to 619

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 program has been operational since October 1996 and does not directly generate any revenue. This amendment will generate no revenue in the first year.

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

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

(d) How much will it cost to administer this program for subsequent years? This amendment will not require any additional cost for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601 to 619

2. State compliance standards. KRS 194A.050(1), 205.200(2), 205.200(7), 205.200(3)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the Federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional, or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Family Support

(Amendment)

921 KAR 2:500. Family Alternatives Diversion (FAD)[~~or "FAD"~~].

RELATES TO: KRS 205.200, 205.200(3), 205.211, 42 U.S.C. 601-619[;]

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet 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~~[authorizes 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]~~. EO 2004-726 reorganizes the executive branch of government and establishes the Cabinet for Health and Family Services. KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601-619, and federal regulations. This administrative regulation establishes requirements for the Family Alternatives Diversion Program (FAD).

Section 1. Definitions. (1) "Benefit group" means a group that meets the eligibility requirements established in 921 KAR 2:006.

(2) "Kentucky Transitional Assistance Program" or "K-TAP" means a money payment program for children who are deprived of parental support or care in accordance with 921 KAR 2:006.

(3) "Overpayment" means a FAD benefit received by an individual who:

(a) After an initial determination of eligibility is determined to be ineligible for the program and erroneous benefits were received by the individual; or

(b) Is determined eligible for the program and refuses to apply the benefit to the provider of the service needed to resolve the short-term emergency as indicated by the individual at the time of the application.

(4) "Self-supporting" means an individual who:

(a) Is employed in accordance with 921 KAR 2:006, Section 1; or

(b) Shall be employed in accordance with 921 KAR 2:006,

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Section 1, within the subsequent three (3) months.

(5) "Unsubsidized child care" means child care for which financial assistance is not provided.

Section 2. Eligibility for Family Alternatives Diversion ~~of "FAD"~~. (1) To qualify for FAD benefits, the benefit group shall:

(a) Meet monthly income and resource requirements in the month of application as established in 921 KAR 2:016, Sections 3, 4(1), 5(1) and (2), and 7[2, 3(1), 4(1), and 6];

(b) Except for the thirty (30) day unemployment requirement for unemployed parent cases as described in 921 KAR 2:006, Section 10(7)(e)[9(7)-(e)] that shall not be required, meet technical requirements of K-TAP in accordance with 921 KAR 2:006;

(c) Not be currently receiving ongoing K-TAP benefits;

(d) Have a verified short-term need to include:

1. Car repair, to be:

a. Completed by a mechanic who is employed by a garage;

b. Completed by a vocational school automotive program; or

c. The responsibility of the FAD recipient, if a payment is made for a new or used automotive part;

2. Other transportation assistance;

3. Unsubsidized child care;

4. Utilities payment assistance;

5. Housing payment assistance; or

6. Items required for employment; and

(e) Be determined by the cabinet to be self-supporting if the short-term need is met.

(2) The cabinet shall use the FA-1, Family Alternatives Diversion (FAD) Determination, to determine if a potential K-TAP eligible benefit group is a family eligible to receive FAD benefits.

~~(3) The FA-1, Transitional Assistance Self-assessment Survey, shall be used:~~

~~(a) To screen applicants for K-TAP; and~~

~~(b) Together with the FA-2, Family Alternatives Assessment, to determine eligibility for FAD.~~

~~(3)(a) The cabinet shall screen to determine if a potential K-TAP eligible benefit group may be a family eligible to receive FAD benefits.~~

~~(b) The K-TAP eligible benefit group shall be notified of the option to decline FAD benefits in lieu of applying for ongoing K-TAP benefits.~~

~~(4)(a) FAD shall be utilized instead of K-TAP if:~~

~~(a) Requested by the benefit group; and~~

~~(b) [if] The benefit group is deemed eligible for FAD.~~

~~(5)(4)(a) The benefit group's countable gross income shall include earned and unearned income in accordance with 921 KAR 2:016, Sections 3 and 4 and 5.~~

(b) The benefit group's gross income shall be computed using the best estimate of income for the month of application in accordance with 921 KAR 2:016, Section 10[9].

(c) The benefit group's total gross earned and unearned income as determined in paragraph (b) of this subsection shall be compared to the maximum gross income scale for K-TAP in accordance with 921 KAR 2:016, Section 9(2)(b)[8(2)(b)].

(d) If the benefit group's total gross earned and unearned income exceeds the maximum gross income limit for the appropriate benefit group size, pursuant to 921 KAR 2:016, Section 9(2)[8(2)], the family shall not be eligible for a FAD payment.

~~(6)(5)(a) The FAD eligibility period for an approved FAD application shall be a three (3) consecutive month period beginning with the month of issuance of the first FAD check or voucher.~~

(b) One (1) or more checks with a combined total of up to \$1,300, to the extent funds are available, may be issued to resolve a short-term need as specified in subsection (1)(d) of this section during the three (3) month eligibility period.

~~(c) [One (1) approval during the three (3) month eligibility period shall be necessary to issue one (1) or more checks.~~

~~(d) An adult member of a benefit group shall not be approved for FAD more than once during a twenty-four (24) month period.~~

~~(d)[(e)] An adult member of a benefit group shall not be approved for FAD more than twice in a lifetime.~~

~~(e)[(f)] If the adult member of a benefit group has voluntarily quit employment, the adult member shall not be eligible to receive FAD, unless the adult meets criteria specified in 921 KAR 2:370,~~

Section 6(1)(a) through (k).

Section 3. Authorization of a FAD Payment. (1) The amount of the eligible FAD payment shall be issued in one (1) or more checks or vouchers to:

(a) A vendor; or

(b) The eligible FAD benefit group and vendor, as a two (2) party check.

(2) Except for payments for purchases of merchandise or goods, a FAD payment shall not be issued to a vendor of services who is required and fails to provide signed documentation of:

(a) A tax identification number or Social Security number; and

(b) Verification of services.

(3) Total payments during the three (3) month FAD eligibility period shall not exceed \$1,300, to the extent funds are available.

Section 4. Coordination with K-TAP and Other Benefit Programs. (1) Receipt of a FAD payment shall exclude the benefit group from receiving ongoing K-TAP benefits for twelve (12) months unless nonreceipt would result in:

(a) Abuse or neglect of a child, as determined pursuant to KRS 600.020(1); or

(b) The parent's inability to provide adequate care or supervision due to the loss of employment through no fault of the parent.

(2) A benefit group shall not be eligible to receive Work Incentive (WIN) and K-TAP or FAD funds concurrently.

(3) An application shall be taken or a referral made for the following benefits as needed for a FAD eligible family:

(a) Supplemental Nutrition Assistance Program (SNAP)[Food stamps];

(b) Medicaid;

(c) Child care; and

(d) Child support.

(4) For a FAD eligible benefit group, a referral shall be made as needed for other services offered through other state agencies, contractors, or charitable organizations to include the following services:

(a) Job search;

(b) Job readiness assessment;

(c) Life skills; and

(d) Other food benefit programs.

Section 5. Overpayments. (1) The cabinet shall recover the amount of an overpayment, including assistance paid pending the outcome of a hearing, from the claimant-payee.

(2) An overpayment shall be recovered through:

(a) Repayment by the claimant-payee to the cabinet; or

(b) Cabinet initiation of a civil action in the court of appropriate jurisdiction after the claimant-payee has exhausted or abandoned the administrative and judicial remedies specified in 921 KAR 2:055.

Section 6. Hearing Rights. Hearing rights for FAD shall be the same as hearing rights for a K-TAP recipient in accordance with 921 KAR 2:055.

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

~~(a) "FA-1, Family Alternatives Diversion (FAD) Determination", edition 04/11, is incorporated by reference[Transitional Assistance Self-assessment, edition 8/04"; and~~

~~(b) "FA-2, Family Alternatives Assessment, edition 8/04".]~~

(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 10, 2010

FILED WITH LRC: December 10, 2010 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, 2011 at 9:00 a.m. in the Conference Suite

C, 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, 2011, 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 January 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

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, (502) 564-3556

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Family Alternatives Diversion Program or FAD.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide short-term temporary assistance to stabilize families and maintain self-sufficiency as an alternative to applying for ongoing cash assistance through the Kentucky Transitional Assistance Program or K-TAP.

(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 a short-term temporary assistance programs for families, known as FAD, as an alternative to applying for ongoing cash assistance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes by establishing uniform conditions and requirements for the cabinet's administration of FAD.

(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 renaming the material incorporated by reference, form FA-1, Transitional Assistance Self-Assessment, and combining its content with content form FA-2, Family Alternatives Assessment. The revised form will be the FA-1, Family Alternatives Diversion Determination, and make obsolete form FA-2 to streamline the eligibility determination process. The amendment also makes 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 to streamline the process to request the required information needed in determining eligibility.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by updating and streamlining the FAD eligibility process.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its enhancements of uniform conditions and requirements for the cabinet's administration of FAD.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are potentially eligible for K-TAP (i.e., those not currently receiving K-TAP), but could be self-supporting if short-term needs are met. For State Fiscal Year 2010, there were a total of 1,365 families who received FAD.

(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 to this administrative regulation will not require a new action on the part of regulated entities.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will benefit the regulated entities through its streamlining of the eligibility process used for FAD.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding under Title IV-A of the Social Security Act (a.k.a., Temporary Assistance for Needy Families Block Grant or TANF) and General Funds used to meet Maintenance of Effort requirements for federal funding are the funding sources for this administrative regulation.

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

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

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

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), 205.200(2); 42 U.S.C. 601-619

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 FAD program has been operational statewide since April 1998 and does not directly generate any revenue. This amendment will generate no revenue in the first year.

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

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

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619
2. State compliance standards. KRS 194A.050(1), 205.200(2)
3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter 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 justification for the imposition of a stricter standard, or additional or different responsibilities or requirements is not applicable.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amendment)

921 KAR 3:010. Definitions.

RELATES TO: 7 C.F.R. ~~271.2~~^{247.2}, 273.1, 273.4, 273.5, 273.6, 273.7, 273.11, 273.16, 273.18, ~~274~~^{274.42}, 7 U.S.C. 2012(l), 8 U.S.C. 1101, Title 38 U.S.C., 42 U.S.C. 301-306, 401-433, 1201-1206, 1351-1355, 1381-1385, 1396, 45 U.S.C. 231(a) to (v), Pub. L. 110-234(g), (h)

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4, ~~274.12~~

NECESSITY, FUNCTION, AND CONFORMITY: ~~[The Cabinet for Health and Family Services shall administer a Food Stamp Program.]~~ 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 requires the cabinet to administer the Supplemental Nutrition Assistance Program (SNAP) within the state~~[provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth].~~ This administrative regulation sets forth definitions of terms used in 921 KAR Chapter 3.

Section 1. Definitions. (1) "Agency error" means an overissuance of SNAP~~[food stamp]~~ benefits caused by an action or failure to take an action by the cabinet.

(2) "Allotment" is defined by 7 C.F.R. 271.2~~[means the total value of food stamp benefits a household is authorized to receive during each month or other time period].~~

(3) "Application ~~[for participation]~~" means "application form" as defined by 7 C.F.R. 271.2~~[the form]~~ to apply for SNAP~~[food stamps]~~ that is completed by:

- (a) A household member; or
- (b) An authorized representative.

(4) "Authorized representative" means an individual designated by a household member to act on behalf of the household in one (1) or all of the following capacities:

- (a) Making application for the program;

(b) Obtaining the ~~[coupons or]~~ EBT card; and

(c) Using the ~~[coupons or]~~ EBT card.

(5) "Benefits" means the value of SNAP provided to a household by means of an EBT access device~~[mean the following items issued in accordance with the Food and Nutrition Service regulations for the purchase of eligible food:~~

- ~~(a) Stamp;~~
- ~~(b) Coupon;~~
- ~~(c) Type of certification; or~~

~~(d) Access device, including an electronic benefit transfer (EBT) card or personal identification number].~~

(6) "Boarder" means an individual to whom a household furnishes lodging and meals for reasonable compensation.

(7) "Cabinet" means the Cabinet for Health and Family Services or its designee.

(8) "Certification" means the action necessary to determine eligibility of a household including:

- (a) Interview;
- (b) Verification; and
- (c) Decision.

(9) "Communal dining facility" means:

~~(a) A public or nonprofit private establishment, approved by FNS, that prepares and serves meals for elderly persons;~~

~~(b) A public or private nonprofit establishment (eating or otherwise) that feeds:~~

1. Elderly persons; and
2. SSI recipients and their spouses;

~~(c) Federally subsidized housing for the elderly that prepares and serves meals to the residents; and~~

~~(d) A private establishment that contracts with an appropriate state or local agency to offer meals at concessional prices to:~~

1. Elderly persons; and
2. SSI recipients and their spouses.

(10) "Date of entry" or "date of admission" means the date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.

~~(14)]~~ "Disability" means in accordance with 7 C.F.R. 271.2:

(a) An individual who receives:

1. Supplemental Security Income (SSI) or presumptive SSI under 42 U.S.C.^[USC] 1381 to 1385;

2. Disability or blindness payments under:

- a. 42 U.S.C.^[USC] 301 to 306;
- b. 42 U.S.C.^[USC] 401 to 433;
- c. 42 U.S.C.^[USC] 1201 to 1206;
- d. 42 U.S.C.^[USC] 1351 to 1355; or
- e. 42 U.S.C.^[USC] 1381 to 1385;

3. Optional or mandatory state supplementation;

4. Disability retirement benefits;

a. From a federal, state, or local government agency; and

b.:

a. Federal;

b. State; or

c. Local governmental agency; and

d.] Resulting from a disability considered permanent under 42 U.S.C.^[USC] 421(i);

5. Annuity payments under:

a. 45 U.S.C.^[USC] 231(a) to (v); and]

b. Is determined to qualify for Medicare by the Railroad Retirement Board; and]

c. Has a disability based upon the criteria used under 42 U.S.C.^[USC] 1381 to 1385; or]

(b) A veteran with a service connected or nonservice connected disability rated by the Veteran's Administration or paid as total (100 percent) by the Veteran's Administration under Title 38 of the United States Code;

(c) A veteran considered by the Veteran's Administration to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;

(d) A surviving spouse of a veteran and considered by the Veteran's Administration to be in need of regular aid and attendance or permanently housebound;

(e) A surviving child of a veteran and considered by the Veteran's Administration to be permanently incapable of self-support under Title 38 of the United States Code;

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(f) A surviving spouse or surviving child of a veteran and considered by the Veteran's Administration to be entitled to:

1. Compensation for a service-connected death;
2. Pension benefits for a nonservice-connected death under Title 38 of the United States Code; and
3. Has a disability considered permanent under 42 U.S.C.[USC]

421(i);

(g) An individual in receipt of disability related medical assistance under 42 U.S.C.[USC] 1396;

(h) An individual who is certified to receive, but not yet receiving SSI or Social Security disability payments; or

(i) An individual who is currently having his entire SSI or Social Security disability benefit check recouped to recover a prior overpayment.

~~(10)[(42)] "Drug addiction or alcoholic treatment [and rehabilitation] program" means "drug addiction or alcoholic treatment and rehabilitation program" as defined by 7 C.F.R. 271.2[a program conducted by a private nonprofit organization or institution that is certified by the cabinet or agencies designated by the Governor as responsible for the administration of the state's program for alcoholics or drug addicts].~~

~~(11)[(43)] "Elderly" means in accordance with 7 C.F.R. 271.2 an individual who is:~~

~~(a) Age sixty (60) or older; or~~

~~(b) Fifty-nine (59) years of age at the time of application, but shall turn age sixty (60) before the end of month of application.~~

~~(12)[(44)] "Electronic benefit transfer" or "EBT"[(EBT)] means a computer-based electronic benefit transfer system or access device in which an eligible household's benefit authorization is received from a central computer through a point of sale terminal.~~

~~(13) "Employment and Training Program" or "E&T":~~

~~(a) Is defined by 7 C.F.R. 271.2; and~~

~~(b) Means the program pursuant to 921 KAR 3:042.~~

~~(14)[(45)] "Eligible foods" means the following:~~

~~(a) A food or food product intended for human consumption except:~~

~~1. Alcoholic beverages;~~

~~2. Tobacco;~~

~~3. Hot foods; and~~

~~4. Hot food products prepared for immediate consumption;~~

~~(b) Seeds and plants to grow foods for the personal consumption by eligible households;~~

~~(c) Meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals;~~

~~(d) Meals served by a communal dining facility for:~~

~~1. The elderly;~~

~~2. SSI households; or~~

~~3. To both; and~~

~~4. To households eligible to use coupons for communal dining;~~

~~(e) Meals prepared and served by an authorized drug addiction or alcoholic treatment and rehabilitation center to:~~

~~1. Narcotic addicts;~~

~~2. Alcoholics; and~~

~~3. Their children;~~

~~(f) Meals prepared and served by an authorized group living arrangement facility to residents who are blind or have a disability as defined in subsection (14) of this section;~~

~~(g) Meals prepared and served by an authorized shelter for battered women and children to its eligible residents;~~

~~(h) Meals prepared for and served by an approved authorized public or private nonprofit establishment including a soup kitchen and temporary shelter that feeds homeless persons, provided that the facility is approved by the cabinet; and~~

~~(i) Meals prepared by a private establishment that contracts with the cabinet to be sold to homeless individuals at concessional prices.~~

~~(16) "Employment and training (ET) program" means a program consisting of one (1) or more of the following components:~~

~~(a) Work;~~

~~(b) Training;~~

~~— (c) Education; or~~

~~— (d) Job search.~~

~~(17)] "Entitlement" means the amount of SNAP[food stamp] benefits that a household would receive if every disquali-~~

~~fied[eligible] household member participates.~~

~~(15)[(48)] "Excluded household member" means an individual residing with a household, but excluded when determining the household's size in accordance with the provisions of 921 KAR 3:035, Section 5(3) and (4).~~

~~(16)[(49)] "Expungement" means the removal of [EBT] benefits from a household's EBT account if the household has not accessed the account for 365[270] days.~~

~~(17)[(20)] "Federal fiscal year" means a period of twelve (12) calendar months beginning with each October 1 and ending with September 30 of the following calendar year.~~

~~(18)[(24)] "FNS" means the Food and Nutrition Service of the United States Department of Agriculture in accordance with 7 C.F.R. 271.2.~~

~~(19)[(22)] "Group living arrangement" is defined by 7 C.F.R. 271.2.~~

~~(20)[means a public or private nonprofit residential setting that:~~

~~(a) Serves no more than sixteen (16) residents; and~~

~~(b) Is appropriately certified.~~

~~(23)] "Head of household" means the person in whose name the application for participation is made as:~~

~~(a) Having primary financial responsibility for the household;~~

~~(b) Being an adult parent of a child of any age and living in the household; or~~

~~(c) Being an adult having parental control over a child under the age of eighteen (18) and living in the household.~~

~~(21) "Homeless" means "homeless individual" as defined by 7 C.F.R. 271.2~~

~~(22)[(24)] "Household" means:~~

~~(a) An individual who:~~

~~1. Lives alone; or~~

~~2. While living with others, customarily purchases and prepares meals for home consumption separate from others; or~~

~~(b) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.~~

~~(23)]:~~

~~(25) "Immigration and Naturalization Service (INS)" means the Immigration and Naturalization Service, United States Department of Justice.~~

~~(26)] "Inadvertent household error" means an overissuance resulting from a misunderstanding or unintended error on the part of the household.~~

~~(24)[(27)] "Institution of higher education" means any institution providing post high school education, which normally requires a high school diploma or equivalency certificate for a student to enroll, such as a[including but not limited to]:~~

~~(a) College;~~

~~(b) University; and~~

~~(c) Vocational or technical school.~~

~~(25)[(28)] "Intentional program violation" is defined by 7 C.F.R. 273.16(c).~~

~~(26)[means having intentionally:~~

~~(a) Made a false or misleading statement;~~

~~(b) Misrepresented, concealed or withheld facts;~~

~~(c) Sold food purchased with food stamp coupons or EBT card; or~~

~~(d) For the purpose of using, presenting, transferring, acquiring, receiving, possessing, or trafficking a food stamp coupon or EBT card, committed an act that constitutes a violation of:~~

~~1. 7 USC 2041, et seq.;~~

~~2. 7 CFR 210 through 295; or~~

~~3. 921 KAR Chapter 3.~~

~~(29)] "Kentucky Transitional Assistance Program" or "[K-TAP)]", means a program pursuant to 921 KAR 2:006.~~

~~(27)[2:017, Section 1(8).~~

~~(30) "Kentucky Works" means a program pursuant to 921 KAR 2:017, Section 1(9).~~

~~(31) "Meal delivery service" means an entity with which the cabinet has contracted for the preparation of meals at concessional prices to an individual who is unable to adequately prepare his meals.~~

~~(32)] "Medicaid" means medical assistance under 42 U.S.C.[USC] 1396 in accordance with 7 C.F.R. 271.2.~~

~~(28)[(33)] "Nonassistance household" (NA) means a household containing at least one (1) member who is not included in a K-TAP~~

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household.

(34) "Nonhousehold member" means an individual residing with a household, but not considered a household member in determining the household's eligibility or allotment.

~~(29)(35) "Nonprofit cooperative food purchasing venture" means any private nonprofit association of consumers whose members pool their resources to buy food.~~

~~(36) "Overissuance" is defined by 7 U.S.C. 271.2.~~

~~(30) means the amount by which benefits issued to a household exceeds the amount the household was eligible to receive.~~

(37) "Public assistance" or "[PA]" means any of the programs authorized under 42 U.S.C. [USC] 601 to 679 in accordance with 7 C.F.R. 271.2, including:

- a. Old age assistance;
- b. K-TAP;
- c. Aid to the blind;
- d. Aid to the persons who have a permanent and total disability;

and

- e. Aid to aged, blind or persons with a disability.

~~(31)(38) "Quality control review" is defined by 7 C.F.R. 271.2.~~

~~(32) means a review of a statistically valid sample of active and negative cases to determine the extent to which a household:~~

~~(a) Received the food stamp allotment to which it was entitled to receive; or~~

~~(b) Was not incorrectly denied food stamp benefits or terminated from the Food Stamp Program.~~

(39) "Recipient claim" means an amount owed to the cabinet because a household:

- (a) Received an overissuance; or
- (b) Trafficked SNAP [food stamp] benefits.

(33) "Restoration of benefits" means the provision of SNAP benefits that are ~~(40) "Restored benefit" means a food stamp benefit that is~~ owed to a household that received less SNAP [food stamp] benefits than it was entitled to receive during the month pursuant to 921 KAR 3:050, Section 10.

(34)(44) "Self-employment income" means income from a business enterprise from which no taxes are withheld prior to receipt of the income by the individual.

(35)(42) "Shelter for battered women and children" is defined by 7 C.F.R. 271.2

~~(36) means a public or private nonprofit residential facility that serves battered women and children.~~

(43) "Sponsor" means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident.

(37)(44) "Sponsored alien" means an alien lawfully admitted for permanent residence as an immigrant as defined under 8 U.S.C. [USC] 1101.

(38)(45) "Spouse" means either of two (2) individuals who:

- (a) Would be defined as married to each other under applicable state law; or
- (b) Are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or trades people.

(39)(46) "Striker" means anyone involved in a strike or other concerted stoppage of work by employees.

(40) "Supplemental Nutrition Assistance Program" or "SNAP":

(a) Is defined by 7 U.S.C. 2012(l); and

(b) Means the program formerly known as the Food Stamp Program in accordance with Pub.L. 110-234, Section 4001.

(41) "Supplemental Security Income" or "SSI" is defined by 7 C.F.R. 271.2

(42)(47) "Supplemental security income (SSI)" means monthly cash payments made under the authority of:

- (a) 42 USC 1381 to 1385 to the aged, blind and disabled;
- (b) 42 USC 1382c; or
- (c) 42 USC 1382.

(48) "Thrifty food plan" is defined by 7 C.F.R. 271.2.

(43) "Trafficking" is defined by 7 C.F.R. 271.2 ~~means the diet required to feed a family of four (4) persons, determined in accordance with the Secretary of the United States Department of Agriculture calculations, consisting of:~~

- (a) A man and a woman twenty (20) through fifty (50);

(b) A child six (6) through eight (8); and

(c) A child nine (9) through eleven (11) years of age; and

(49) "Trafficking" means:

(a) The buying or selling of a food stamp coupon or an EBT card or other benefit instrument for cash or consideration other than eligible food; or

(b) The exchange of firearms, ammunition, explosives, or controlled substances as defined in Section 802 of title 21 USC for a food stamp coupon or an EBT card.

(50) "Underissuance" means the amount that the benefits to that the household was entitled exceeds the benefits which the household received.]

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 10, 2010

FILED WITH LRC: December 10, 2010 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, 2011 at 9:00 a.m. in the Conference Suite C, 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, 2011, 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 January 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing, (502) 564-3556

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides definitions for the Supplemental Nutrition Assistance Program (SNAP), Title 921 of the Kentucky Administrative Regulations Chapter 3. SNAP is the program formerly known as Food Stamps.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the definitions used throughout Title 921 of the Kentucky Administrative Regulations Chapter 3 applicable to SNAP.

(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 defining terms used throughout Title 921 of the Kentucky Administrative Regulations Chapter 3 applicable to the SNAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides for the effective administration of the statutes by providing defined terms for administrative regulations governing SNAP.

(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 updates and clarifies definitions used throughout Title 921 of the Kentucky Administrative Regulations Chapter 3 applicable to the SNAP. The amendment also makes 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 to update definitions used in SNAP to meet current

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federal guidelines and match terminology used in the administrative regulations found in Title 921 of the Kentucky Administrative Regulations Chapter 3.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by updating terminology used in Title 921 of the Kentucky Administrative Regulations Chapter 3 applicable to the SNAP.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes through its update to definitions used in Title 921 of the Kentucky Administrative Regulations Chapter 3 applicable to the SNAP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect households who are receiving benefits from SNAP. As of October 2010, there were 370,672 SNAP households.

(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 to this administrative regulation will have minimal impact to the regulated entities applying for or receiving SNAP benefits. The amendment clarifies terminology used in the administration of SNAP. No new action will have to be taken on behalf 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): The amendment to this administrative regulation will not create a cost to the regulated entities, SNAP applicant and recipient households.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation is technical and conforming in nature and will result in additional clarity for the regulated entities.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have an initial cost to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP 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 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: There are no increases in fees or funding required with this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees, nor directly or indirectly increases any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. 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)

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? SNAP does not directly generate any revenue. This amendment will generate no revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? SNAP does not directly generate any revenue. This amendment will generate no revenue in subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4

2. State compliance standards. KRS 194.050(1)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional, or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amendment)

921 KAR 3:025. Technical requirements.

RELATES TO: KRS 205.2005, 7 C.F.R. Parts 273.4, 5, 7, 45 C.F.R. 261.2, 7 U.S.C. 2011, 2014, 2015(d), 8 U.S.C. 1101-1524, 1612(a), 19 U.S.C. 2296, 21 U.S.C. 862(a), 25 U.S.C. 450, 29 U.S.C. 2801 to 2945, 38 U.S.C. 101, 107, 1101, 1301, 1304, 1382, 5303A(d), 42 U.S.C. 681, 1382, Pub. L. 111-118[7 U.S.C. 2015(e), (e), 8 U.S.C. 1182(e)(A)(ii)(II), 1612(a), (b), 1613(b), 1622(b), 1641(b), 7 U.S.C. 2014]

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. Parts 271.4, 272, 273

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. 7 C.F.R. Part 271.4 requires the cabinet to administer a Supplemental Nutrition Assistance Program (SNAP)~~Food Stamp Program~~ within the state. 7 C.F.R. Parts 272 and 273 set forth requirements for the cabinet to

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participate in the ~~SNAP[Food Stamp Program]~~. In addition, 7 U.S.C. 2014 establishes that an otherwise-qualified alien who is blind or receiving a disability benefit, who has lived in the United States for at least five (5) years, or is under eighteen (18) years of age shall be eligible to participate in ~~SNAP[the Food Stamp Program]~~ regardless of the date he entered the United States. This administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of ~~SNAP[the Food Stamp Program]~~.

Section 1. Definitions. (1) "Certification period" means a period of time during which a household shall be eligible to receive ~~SNAP[food stamp]~~ benefits.

(2) "Qualified alien" means an alien or refugee who is:

(a) Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 ~~to 1524[et seq.];~~

(b) Granted asylum pursuant to 8 U.S.C. 1158;

(c) Admitted to the United States pursuant to 8 U.S.C. 1157;

(d) Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

(e) Having his deportation withheld pursuant to:

1. 8 U.S.C. 1253(h), as in effect prior to April 1, 1997; or

2. 8 U.S.C. 1231(b)(3);

(f) Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7) as in effect prior to April 1, 1980;

(g) Granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;

(h) A victim that has been battered or subjected to extreme cruelty in the U.S. pursuant to 8 U.S.C. 1182; ~~[or]~~

(i) A victim of a severe form of trafficking in persons who has been certified to the same extent as an alien who is admitted to the U.S. as a refugee pursuant to 8 U.S.C. 1157; ~~or~~

(j) An alien admitted to the United States as an Afghan or Iraqi special immigrant on or after December 19, 2009, in accordance with Pub. L. 111-118, Section 8120.

(3) "Student" means a person who is between the ages of eighteen (18) and forty-nine (49), physically and mentally fit, and enrolled at least half-time in an institution of higher education.

Section 2. Technical Eligibility. In accordance with federal regulations promulgated by the Food and Nutrition Service (~~FNS~~)~~[or "FNS"]~~, of the United States Department of Agriculture, the cabinet shall utilize national uniform requirements of technical eligibility for ~~SNAP[the Food Stamp Program]~~.

Section 3. Technical Eligibility Criteria. Technical eligibility requirements shall apply to all households and consist of:

(1) Residency. A household:

(a) Shall reside in the county in which they receive benefits; and

(b) May apply for benefits in any county as specified in 921 KAR 3:030, Section 3.

(2) Identity.

(a) The applicant's identity shall be verified; and

(b) If an authorized representative applies for the household, the applicant's and the authorized representative's identities shall be verified.

(3) Citizenship and alien status.

(a) The following individuals shall satisfy the citizenship and alien status requirement:

1. A citizen of the United States;

2. A U.S. noncitizen national;

3. An alien who is:

a. An American Indian born in Canada pursuant to 8 U.S.C. 1359; or

b. A member of an Indian tribe pursuant to 25 U.S.C. 450;

4.a. An alien lawfully residing in the United States who was a member of a Hmong or Highland Laotian tribe and rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era pursuant to 38 U.S.C. 101;

b. The spouse, or an unmarried dependent child, of an individual described in clause a of this subparagraph; or

c. The unmarried surviving spouse of such an individual who is deceased, as described in clause a of this subparagraph.

5. An alien who is lawfully residing in Kentucky and is:

a. A veteran, as defined pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with an honorable discharge and not on account of alienage, who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d);

b. On active duty, other than active duty for training, in the Armed Forces of the United States;

c. The spouse or unmarried dependent child of an individual described in clauses a and b of this subparagraph;

d. The unmarried surviving spouse of an individual described in clauses a and b of this subparagraph who is deceased if the marriage fulfills the requirements of 38 U.S.C. 1304;

e. Under eighteen (18) years of age on October 1, 2003;

6. An alien lawfully residing in the United States on August 22, 1996, who is blind or has a disability pursuant to 42 U.S.C. 1382;

7. An alien lawfully residing in the United States on August 22, 1996, who was sixty-five (65) years of age or older;

8. An alien lawfully residing in the United States on October 1, 2003, who is under eighteen (18) years of age; ~~[or]~~

9. An alien admitted to the United States as an Afghan or Iraqi special immigrant on or after December 19, 2009, in accordance with Pub. L. 111-118, Section 8120; or

10. An alien lawfully residing in the United States who meets the alien and citizenship requirements as specified in subparagraph 5 of this paragraph.

(b) In accordance with 7 U.S.C. 2014, an otherwise-qualified alien who is blind or receiving a disability benefit, who has lived in the United States for at least five (5) years, or who is under eighteen (18) years of age, shall be eligible to participate in ~~SNAP[the Food Stamp Program]~~ regardless of the date the otherwise-qualified alien~~[he]~~ entered the United States.

(c) Pursuant to 8 U.S.C. 1612(a)(2)(D)(ii), an alien who was participating in ~~SNAP[the Food Stamp Program]~~ on August 22, 1996, shall not be determined ineligible based solely on the alien eligibility criteria of 8 U.S.C. 1612(a)(1).

(d) Except as provided in paragraph (e) of this subsection, an individual whose status is questionable shall be ineligible to participate until verified.

(e) An individual whose status is pending verification from a federal agency shall be eligible to participate for up to six (6) months from the date of the original request for verification.

(f) A single household member shall attest in writing to the citizenship or alien status requirements as established in 921 KAR 3:030 for each household member.

(4) Household size. If information is obtained by the Department for Community Based Services (DCBS) that household size differs from the household's stated size, the size of household shall be verified through readily available documentary evidence or through a collateral contact.

(5) Students. A student shall be ineligible to participate unless they meet at least one (1) of the following criteria:

(a) Shall be engaged in paid employment for ~~an average~~~~[a minimum]~~ of twenty (20) hours per week or, if self-employed, shall be employed for ~~an average~~~~[a minimum]~~ of twenty (20) hours per week and receive weekly earnings at least equal to the federal minimum wage multiplied by twenty (20) hours;

(b) Shall participate in a state or federally financed work study program during the regular school year;

(c) Shall be responsible for the care of a dependent household member under the age of six (6);

(d) Shall be responsible for the care of a dependent household member who has reached the age of six (6), but is under age twelve (12) where the cabinet has determined that adequate child care is not available to enable the individual to attend class and to satisfy the work requirements of paragraphs (a) and (b) of this subsection;

(e) Shall receive benefits from the Kentucky Transitional Assistance Program (~~K-TAP~~)~~[or "K-TAP"]~~;

(f) Shall be assigned to or placed in an institution of higher learning through a program pursuant to:

1. 29 U.S.C. ~~2801~~~~[4504]~~;

2. ~~45 U.S.C. 261.2~~~~[7 U.S.C. 2045]~~; or

3. 19 U.S.C. 2296;

(g) Shall be enrolled in an institution of higher learning as a result of participation in a work incentive program pursuant to 42 U.S.C. 681; or

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(h) Is a single parent with responsibility for the care of a dependent household member under age twelve (12).

(6) Social Security number (SSN) ~~or "SSN"~~.

(a) Households applying for or participating in ~~SNAP[the Food Stamp Program]~~ shall comply with SSN requirements by providing the SSN of each household member or applying for one prior to certification.

(b) Failure to comply without good cause shall be determined for each household member and shall result in an individual's disqualification from participation in ~~SNAP[the Food Stamp Program]~~ until this requirement is met.

(7) Work registration. All household members shall be required to comply with the work registration requirements, unless exempt, as established in 921 KAR 3:042, ~~Food Stamp Employment and Training Program~~.

(8) Work requirement.

(a) Except for individuals that may be eligible for up to three (3) additional countable months in accordance with subsection (7) of this section, an individual shall not be eligible to participate in ~~SNAP[the Food Stamp Program]~~ as a member of a household if the individual received ~~SNAP[food stamps]~~ for more than three (3) countable months during any three (3) year period, during which the individual did not:

1. Work eighty (80) hours or more per month;

2. Participate in and comply with the requirements of the Employment and Training Program component pursuant to 7 U.S.C. 2015(d) for twenty (20) hours or more per week;

3. Participate in and comply with the requirements of a program pursuant to:

a. 29 U.S.C. 2801 to 2945 ~~14501 et seq.~~; or

b. 19 U.S.C. 2296;

4. Participate in and comply with the requirements established in 921 KAR 3:042 of the following programs:

a. The Work Experience Program component of ~~SNAP[the Food Stamp]~~ Employment and Training Program; or

b. Vocational Education Skill Training Program; or

5. Receive ~~SNAP[food stamp]~~ benefits pursuant to paragraph (b), (c) or (d) of this subsection.

(b) Paragraph (a) of this subsection shall not apply to an individual if the individual is:

1. Under eighteen (18) or fifty (50) years of age or older;

2. Physically or mentally unfit for employment as determined by the cabinet;

3. A parent or other adult member of a household containing a dependent child under the age of eighteen (18);

4. Exempt from work registration as specified in 921 KAR 3:042, Section 2; or

5. Pregnant.

(c) Paragraph (a) of this subsection shall not apply if, pursuant to an approved waiver by ~~FNS[the Food and Consumer Service]~~, the county or area in which the individual resides:

1. Has an unemployment rate of over ten (10) percent; or

2. Does not have a sufficient number of jobs to provide employment.

(d) Subsequent eligibility.

1. An individual denied eligibility under paragraph (a) of this subsection shall regain eligibility to participate in ~~SNAP[the Food Stamp Program]~~ if, during a thirty (30) day period, the individual meets the conditions of paragraph (a)1 through 4 of this subsection, or who did not reapply for benefits because ~~the individual[he]~~ was not meeting the work requirements in accordance with paragraph (b) of this subsection.

2. An individual who regains eligibility pursuant to subparagraph 1 of this paragraph shall remain eligible as long as the individual meets the requirements of subparagraph 1 of this paragraph.

(e) Loss of employment or training.

1. An individual who regains eligibility under paragraph (d)1 of this subsection and who no longer meets the requirements of paragraph (a)1 through 4 of this subsection shall remain eligible for a consecutive three (3) month period, beginning on the date the individual first notifies the cabinet that the individual no longer meets the requirements of paragraph (a)1 through 4 of this subsection.

2. An individual shall not receive benefits under subparagraph 1 of this paragraph for more than a single three (3) month period in any

three (3) year period.

(f) If the individual does not meet all other technical and financial eligibility criteria pursuant to 7 U.S.C. 2011, nothing in this section shall make an individual eligible for ~~SNAP[food stamp]~~ benefits.

(9) Quality control. Refusal to cooperate in completing a quality control review shall result in termination of the participating household's benefits.

(10) Drug felons. An individual convicted under federal or state law of an offense classified as a felony by the law of the jurisdiction involved and that has an element of possession, use or distribution of a controlled substance as defined in 21 U.S.C. 862(a), may remain eligible for ~~SNAP[food stamp]~~ benefits if the individual meets the requirements pursuant to KRS 205.2005.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 10, 2010

FILED WITH LRC: December 10, 2010 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, 2011 at 9:00 a.m. in the Conference Suite C, 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, 2011, 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 January 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing, (502) 564-3556

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the technical requirements to receive Supplemental Nutrition Assistance Program (SNAP) benefits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the technical requirements for eligibility for SNAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the technical eligibility requirements for SNAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of the technical eligibility requirements for SNAP.

(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 provides that Iraqi and Afghan Special Immigrants are eligible to receive benefits to the same extent as refugees in accordance with Pub.L. 111-118, the Department of Defense Appropriations Act of 2010. Additionally, the amendment will allow the averaging of employment hours for students to meet eligibility requirements. Students may now work an average of 20 hours per week to remain eligible, not 20 hours each week as currently stated. The amendment also makes 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 to allow Iraqi and Afghan special immigrants to receive as qualified aliens in accordance with recently enacted federal law. The change to allow the averaging of the employment hours of students eases the administration of the program and simplifies the requirements for SNAP applicants and recipients.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes through its update of the technical eligibility requirements for SNAP congruent with federal law.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes through its update to technical eligibility requirements for SNAP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect households who are receiving assistance from SNAP. As of October 2010, there were 370,672 SNAP households.

(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 to this administrative regulation will allow Iraqi and Afghan special immigrants to apply for and receive SNAP as qualified aliens. Further, the amendment clarifies language related to eligibility by allowing students work a flexible schedule while pursuing education.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation allows Iraqi and Afghan special immigrants to receive SNAP benefits as qualified aliens. Being classified as qualified aliens eliminates any waiting periods that were previously required and allows them to receive to the same extent as refugees. Also, by averaging the work hours of students, it allows the participant to further their education while maintaining flexible employment rather than the 20 hours per week minimum currently required.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP 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 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: There are no increases in fees or funding required with this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees, nor directly or indirectly increases any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. 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. Parts 271.4, 272, 273

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? SNAP has been operational for numerous years as the formerly known Food Stamps. SNAP does not directly generate any revenue. This amendment will generate no revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? SNAP does not directly generate any revenue. This amendment will generate no revenue in subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. Parts 271.4, 272, 273

2. State compliance standards. KRS 194.050(1)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose no stricter, additional, or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter, additional, or different responsibilities or requirements.

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 Supplemental Nutrition Assistance Program (SNAP)[~~Food Stamp Program~~] within the state. KRS 194A.050(1) requires the secretary to promulgate administrative regulations

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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 SNAP~~[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 subsection (3)~~subsections (3) and (4)~~ of this section, a household shall be certified for at least twelve (12)~~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) month certification as specified in subsection~~subsections~~ (2) ~~and (4)~~ of this section.

(4)(a) In accordance with 7 C.F.R. 273.12, a household shall complete an interim report using Form FS-2, SNAP 6-Month Report, during the sixth (6) month of the household's certification period unless all household members:

1. Are elderly or have a disability as defined in 921 KAR 3:010; and

2. Have no earned income.

(b) If a household fails to return a completed FS-2, SNAP 6-Month Report, or the required income verification, the cabinet shall take action in accordance with 7 C.F.R. 273.12(a)(5)[A household shall be certified for twelve (12) 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 allow the household thirty (30) days to return verification or complete a required action; or

(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 if:

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

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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, if 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. 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 treatment program's[facility's] authorized representative.

(c) SNAP[Food stamp] processing standards and notice provisions shall apply to a resident recipient.

(d) A treatment program[center] shall notify the cabinet of a change in a resident's circumstance.

(e) Upon departure of the treatment program[center], the resident shall be eligible to receive remaining benefits, if otherwise eligible.

(f) The treatment program[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 or through use of the group living arrangement's[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, 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 authorization to redeem SNAP[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).

(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 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 SNAP[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 SNAP[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) Within ten (10) days of the end of the month in which the change occurs, a household shall report a change which causes:

(a) The household's gross monthly income to exceed 130 percent 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, Section 3(8)(b), to work less than twenty (20) hours per week.

(2) An applying household shall report a change related to its SNAP[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.

Section 8. Incorporation by reference. (1) The "FS-2, SNAP 6-Month Review", edition 4/11, 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 10, 2010

FILED WITH LRC: December 10, 2010 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, 2011 at 9 a.m. in the Conference Suite C, 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, 2011, 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 pro-

posed 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 January 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

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, (502) 564-3556

(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 Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the certification process necessary for SNAP eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the SNAP certification process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of the SNAP certification process.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will allow all SNAP households to be certified for twelve (12) months and an interim report conducted at six (6) months for households which do not contain all members who are elderly or disabled and have no earned income. The amendment 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 to ensure compliance with federal law and guidelines and to reduce administrative burdens for staff and SNAP recipient households.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes through its update of the certification process for SNAP households in accordance with federal law and guidelines.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes through federally required updates to and streamlining of the certification process for SNAP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect households who are receiving assistance from SNAP. As of October 2010, there were 370,672 SNAP households.

(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 to this administrative regulation will change the certification period to twelve (12) months for families receiving SNAP benefits. Households that do not contain all elderly or disabled members and have no earned income will submit a review during the sixth month of their certification to determine ongoing eligibility.

(b) In complying with this administrative regulation or amend-

ment, how much will it cost each of the entities identified in question (3): The amendment to the administrative regulation will create no cost to SNAP recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation reduces the number of times that the household will be required to complete a recertification for ongoing eligibility. The certification will be twelve (12) months for SNAP households instead of six (6) months for households that do not contain all elderly or disabled adults. This will reduce the number of times each year that recipients will be required to visit the local office.

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

(a) Initially: The amendment to this administrative regulation is technical in nature and does not have an initial cost to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical in nature and does not have a continuing cost to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded by the U.S. Department of Agriculture. Program, and administrative costs are funded 50% federal and 50% state and 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: There are no increases in fees or funding required to implement the amendment to 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, nor directly or indirectly increases any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. 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. 271.4

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? SNAP does not directly generate any revenue. This amendment will generate no revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? SNAP does not directly generate any revenue. This amendment will generate no revenue in subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.10
2. State compliance standards. KRS 194.050(1)
3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional, or different responsibilities or requirements than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional, or different responsibilities or requirements.

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, DECEMBER 15, 2010

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(New Administrative Regulation)

11 KAR 19:010. Coal County Scholarship Program for Pharmacy Students.

RELATES TO: KRS 164.7890

STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4), 164.753(3), 164.7890

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships. KRS 164.748(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.7891. KRS 164.7890 requires the authority to promulgate administrative regulations establishing the terms and conditions for the award, cancellation, and repayment of coal county scholarships for pharmacy students. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program.

Section 1. Definitions. (1) "Authority" is defined by KRS 164.740(1).

(2) "Coal-producing county" is defined by KRS 164.7890(2).

(3) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date for the obligation.

(4) "Eligible student" means any individual who satisfies the requirements set forth in KRS 164.7890(4) and (6).

(5) "Full-time practice" means providing services as a pharmacist in a coal-producing county for a minimum of 2,000 hours per calendar year.

(6) "Home County" means the county of permanent home residence of the student at the time in which the application is made, as determined by a preponderance of evidence such as a student's permanent address, parent's mailing address, parent's tax returns, location of high school of graduation and additional criteria as needed for determination of residency status as contained in 13 KAR 2:045.

(7) "Qualified service" is defined in KRS 164.7890(3)(d).

Section 2. Eligibility of Applicants and Selection Process. (1) Applicants shall complete the Coal County Scholarship Program for Pharmacy Students application set forth in 11 KAR 4:080, Section 1(3), according to its instructions. The applicant shall ensure that the completed application is received by the authority on or before May 1, or the next regular business day if May 1 falls on a weekend or holiday, preceding the academic year for which the award is requested.

(2) Eligibility of renewal applicants. A person who previously received a loan or scholarship pursuant to KRS 164.7890 shall be eligible to apply for and be considered for a renewal coal county scholarship if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.

(3) Recipients will be selected from among eligible applicants in the following order:

(a) Renewal applicants whose home counties are coal-producing counties;

(b) Initial applicants whose home counties are coal-producing counties;

(c) Renewal applicants whose home counties are not coal-producing counties; and

(d) Initial applicants whose home counties are not coal-producing counties;

(e) In the event that there are more applicants within any of the above categories than there are funds available, the applications in each category shall be ranked to receive available funds by date of

receipt of application.

Section 3. Entrance Counseling. (1) Each participating institution shall conduct entrance counseling for each scholarship recipient prior to requesting scholarship funds from the Authority on the recipient's behalf.

(2) Such counseling shall be provided through either in-person sessions or by electronic or written means with the recipient's acknowledgement of receipt thereof.

(3) The following topics shall be covered through the counseling:

(a) Recipient's obligation to repay the scholarship in the event of the recipient's failure to provide qualified service as required under the program;

(b) Consequences of defaulting on any repayment obligation imposed under this program;

(c) Recipient's obligation to repay the scholarship even if the recipient is not satisfied with the quality of education received, does not complete the program of study, or does not find employment in the appropriate field or service area after graduation; and

(d) Importance of contacting the authority to advise of any change with respect to the recipient's name, address, enrollment status, or other contact information.

Section 4. Disbursements. (1) Each disbursement of a coal county scholarship shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified pharmacy service in lieu thereof.

(2) Within thirty (30) days following receipt by the authority of the original signed promissory notes for the students awarded a coal county scholarship, the authority shall send to the institution a roster containing each recipient's name and Social Security number.

(3) The participating institution shall verify the student's full-time enrollment in a Pharm D. program and completion of entrance counseling on the roster and return it to the authority.

(4) Upon receipt of the institution's completed roster, the authority shall disburse funds to the institution on behalf of all eligible students to receive the scholarship by electronic funds transfer.

(5) Disbursement of a coal county scholarship shall be made at the beginning of each fall and spring term.

(6) The participating institution shall be responsible for proper delivery of funds. Upon the receipt of funds, the participating institution shall immediately credit the recipient's account and notify the recipient in writing that it has so credited that account, and deliver to the recipient any remaining scholarship proceeds.

(7) The participating institution shall retain record of the date funds were either credited to the student's account or disbursed to the student, the name of a recipient for whom funds are being returned, the amount being returned, and the reason funds are being returned.

(8) If a recipient withdraws or is expelled prior to the first day of classes of the period of enrollment for which the scholarship is awarded, the institution shall return the proceeds to the authority.

(9)(a) If a recipient subsequently refuses to repay the scholarship on grounds that he was unaware of or did not receive delivery of the scholarship proceeds from the school, upon written request from the authority, the institution shall promptly provide documentary evidence to the authority that the recipient received or had funds credited to his student account and was notified of this transaction.

(b) The school shall otherwise reimburse the authority for any amount of the scholarship that is unenforceable absent that documentary evidence.

(c) The obligation of the school to provide the documentary evidence specified in paragraph (a) of this subsection shall continue until the recipient's obligations for repayment of the scholarship is paid in full or otherwise discharged.

Section 5. Refunds. (1) If a student fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the

program on or after the student's first day of class of the period of enrollment or changes enrollment status, the Authority may be due a refund of monies paid to the institution on behalf of that student or a repayment of cash disbursements made to the student for educational expenses.

(2) If the student received financial assistance administered by the authority, the refund and repayment shall be due to the authority for its financial assistance programs in accordance with this section.

(3) The institution shall adopt and implement a fair and equitable refund policy for financial assistance administered by the authority which shall be:

(a) A clear and conspicuous written statement;

(b) Made available to a prospective student, prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement, and to currently-enrolled students;

(c) Consistently administered by the institution; and

(d) Made available to the authority upon request.

(4) The institution's refund policy for financial assistance administered by the authority shall either:

(a) Use the same methods and formulas for determining the amount of a refund as the institution uses for determining the return of federal financial assistance funds; or

(b) Be a separate and distinct policy adopted by the institution that is based upon:

1. The requirements of applicable state law; or

2. The specific refund standards established by the institution's nationally-recognized accrediting agency.

(5) The amount of the refund shall be determined in accordance with the educational institution's refund policy relative to financial assistance funds, except as provided in subsection (7) of this section.

(6) If the institution determines that a refund of financial assistance is due in accordance with its policy, the institution shall allocate to the financial assistance programs administered by the authority the refund and repayment prior to allocating the refund to institutional or private sources of financial assistance.

(7)(a) If a coal county scholarship recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an over award and a full refund and repayment of the coal county scholarship shall be required, notwithstanding any institutional policy to the contrary.

(b) If the institution is unable to document the student's last date of attendance, any coal county scholarship disbursement for that award period shall be subject to full refund.

(c) If a coal county scholarship recipient's enrollment is terminated with no assessment of tuition and fees by the institution, the full coal county scholarship shall be subject to:

1. Cancellation, if not yet disbursed; or

2. refund if the coal county scholarship has already been disbursed.

(8)(a) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

(b) Refunds by the institution transmitted to the authority shall be accompanied by:

1. The student's name and Social Security number;

2. The reason for the refund;

3. The date of enrollment status change; and

4. The semester and year.

(c) Failure of the institution to make restitution when required shall, without precluding other remedies, be deemed cause for limitation, suspension, or termination of the participation of the institution in accordance with 11 KAR 4:020.

Section 6. Notification Requirements. (1) A scholarship recipient shall notify the authority in writing within thirty (30) days of:

(a) Cessation of full-time enrollment in a pharmacy program;

(b) Certification to practice pharmacy in the Commonwealth of Kentucky;

(c) Failure to obtain certification to practice pharmacy in the

Commonwealth of Kentucky;

(d) Employment in a qualified service position;

(e) Cessation of employment in a qualified service position;

(f) Failure, within 180 days following certification to practice pharmacy in the Commonwealth of Kentucky, to obtain employment in full-time practice in a coal-producing county within the Commonwealth of Kentucky as a certified pharmacist for a majority of the calendar year; or

(g) Change of name, permanent home address or place of employment.

(2) The school of pharmacy shall notify the authority in writing within thirty (30) days of learning that a Coal County Scholarship Program for Pharmacy Students award recipient ceases to be enrolled on a full-time basis in the school of pharmacy.

Section 7. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of each student receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The institution's records shall be maintained for at least three (3) years after the student ceases to be enrolled at the institution.

KRISTI P. NELSON, Chair

APPROVED BY AGENCY: October 26, 2010

FILED WITH LRC: December 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, January 24, 2011 at 10 a.m., Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 work-days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, January 31, 2011. 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carole Ellis, Director of Student Financial Aid

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the framework for the Authority's implementation and administration of the Coal County Scholarship Program for Pharmacy Students created by the General Assembly during the 2010 Special Legislative Session and codified at KRS 164.7890.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to the administration of the newly-established Coal County Scholarship Program for Pharmacy Students pursuant to KRS 164.7890.

(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 the definitions, eligibility criteria, entrance counseling, disbursement procedures and record-keeping requirements for the program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with the effective administration of the statutes by establishing the framework for administration of this newly-created student aid program.

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

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(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All residents of Kentucky coal counties who are interested in pursuing a degree in pharmacy studies will be positively affected by this administrative regulation

(4) Provide an analysis of how the entities identified in (3) above 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 in order to comply with this administrative regulation or amendment: All potential pharmacy scholarship program recipients will be required to complete the application specified in the regulation as well as satisfy the eligibility criteria for the program.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those individuals who complete the application and who satisfy the eligibility criteria specified will be considered for an award under this program to the extent funds are available.

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

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The program is funded in full through transfer of receipts from the coal severance tax levied pursuant to KRS 143.020.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

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? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.744(2), 164.748(4), 164.753(3) and 164.7890.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (New Administrative Regulation)

11 KAR 19:020. Service cancellation and repayment of Coal County Pharmacy Scholarship.

RELATES TO: KRS 164.7890

STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4), 164.753(3), 164.7890

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships. KRS 164.748(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.7891. KRS 164.7890 requires the authority to promulgate administrative regulations establishing the terms and conditions for the award, cancellation, and repayment of coal county scholarships for pharmacy students. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program.

Section 1. Definitions. (1) "Coal-producing county" is defined in KRS 164.7890(2).

(2) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date for the obligation.

(3) "Full-time practice" means providing services as a pharmacist in a coal-producing county for a minimum of 2,000 hours per calendar year.

(4) "Qualified service" is defined in KRS 164.7890(3)(d).

Section 2. Cancellation. (1) A recipient shall receive cancellation under this program for each year during which service is provided as specified in KRS 164.7890(5)(b) if the recipient:

(a) Has completed the program of study;

(b) Has provided qualified service in a coal-producing county in Kentucky; and

(c) Has submitted to the authority written verification of qualified service.

(2) A recipient rendering qualified service shall remain eligible for the credit cancellation if:

(a) the county in which qualified service is provided ceases to

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be a coal-producing county as defined in KRS 164.7890(2); and

(b) the recipient continues to render continuous qualified service in the area.

Section 3. Repayment. (1) A recipient failing to complete the eligible program of study, attain a license to practice after completion of the eligible program of study, commence rendering pharmacy service within the six (6) month period following completion of the eligible program of study or cease providing qualified service at any point thereafter shall immediately become liable to the authority to pay the sum of all promissory notes and accrued interest thereon, unless the authority grants a deferment or forbearance for cause.

(2) Interest at the rate of six (6) percent per annum shall be applicable to the coal county scholarship under this section and shall begin accruing upon disbursement of the award.

(3) Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing.

Section 4. Application of Payment. (1) The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority.

(2) Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

(3) If a repayment obligation subsequently becomes eligible for service credit cancellation as a result of the recipient's provision of pharmacy service, refund of payments previously made shall not be given to the recipient.

Section 5. Default. (1) Upon default on a repayment obligation under this program, the recipient's account shall be transferred to the appropriate agency of the Commonwealth of Kentucky for collections and shall be subject to the collection charges and fees assessed by that agency.

(2) A recipient whose repayment obligation has defaulted and who subsequently begins providing pharmacy service in a coal-producing county in the Commonwealth of Kentucky shall be removed from default status.

Section 6. Rehabilitation. (1) The authority may offer a recipient in default under this program an opportunity to rehabilitate the loan obligation in order to remove it from default.

(2) A defaulted recipient interested in pursuing loan rehabilitation shall contact the authority and enter into a written agreement to submit six (6) consecutive, voluntary, on-time monthly payments to the agency of the Commonwealth currently charged with collecting the obligation.

(3) At the completion of the rehabilitation repayment agreement, the recipient's loan shall be removed from default and the account shall be transferred back to the authority where loan servicing will resume.

(4) No refund of fees or charges assessed during the default period shall be due a recipient who completes rehabilitation.

(5) A recipient whose loan obligation has been removed from default due to rehabilitation shall not be eligible for subsequent rehabilitation in the event of a subsequent default.

Section 7. Disability Discharge. A conditional or permanent discharge of the repayment obligation required by this program shall be granted by the Authority upon submission by the recipient of the documentation required by this section.

(1) Conditional discharge. A conditional discharge shall be granted for a maximum two (2) year period, subject to annual review by the Authority, upon the submission of one (1) of the following as proof of the recipient's qualifying disability;

(a) A finding of permanent disability by the Social Security Administration; or

(b) A completed Coal County Scholarship Program Application for Discharge, which shall include a certification by the recipient's treating physician that the recipient is unable to work or earn money and that the condition is expected to persist indefinitely.

(2) Permanent discharge. At the expiration of the two (2) year Conditional Discharge period specified in subsection (1) of this

section, the Authority shall grant a permanent discharge to a recipient under this program upon the submission by the recipient of current documentation verifying that the qualifying disability exists at the time the permanent discharge is granted.

KRISTI P. NELSON, Chair

APPROVED BY AGENCY: October 26, 2010

FILED WITH LRC: December 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, January 24, 2011, at 10 a.m., Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 work-days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, January 31, 2011. 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carole Ellis, Director of Student Financial Aid

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the terms for cancellation, repayment, default, rehabilitation and discharge of the repayment obligation under the newly-established Coal County Scholarship Program for Pharmacy Students created by the General Assembly during the 2010 Special Legislative Session and codified at KRS 164.7890.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to the administration of the newly-established Coal County Scholarship Program for Pharmacy Students pursuant to KRS 164.7890.

(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 the terms for cancellation, repayment, default, rehabilitation and discharge of the repayment obligation for the program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with the effective administration of the statutes by establishing the framework for repayment and cancellation of an obligation under this newly-created student aid 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: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All recipients of the coal county pharmacy scholarship will be impacted by this regulation as it establishes what each recipient must do in order to qualify for service credit cancellation of the scholarship award or to repay same in the event of failure to provide service credit as agreed.

(4) Provide an analysis of how the entities identified in (3) above 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 in order to comply with this administrative regulation or amendment: All pharmacy scholarship program recipients will be required to either provide qualified pharmacy service in a coal-producing county of Kentucky or repay the scholarship award.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each recipient will be required either to provide qualified service as agreed to through the application and promissory note or repay the award. The cost to repay will depend on the initial size of the award and the amount of interest that has accrued thereon.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those individuals who provide the agreed service will have their repayment obligation cancelled.

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

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The program is funded in full through transfer of receipts from the coal severance tax levied pursuant to KRS 143.020.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

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? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.744(2), 164.748(4), 164.753(3) and 164.7890.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute.

vided by statute.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (New Administrative Regulation)

11 KAR 19:030. Deferment of Repayment of Coal County Scholarships for Pharmacy Students.

RELATES TO: KRS 164.7890

STATUTORY AUTHORITY: KRS 164.744(2), KRS 164.7890, KRS 164.748(4), KRS 164.753(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships. KRS 164.748(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.7891. KRS 164.7890 requires the authority to promulgate administrative regulations establishing the terms and conditions for the award, cancellation, and repayment of coal county scholarships for pharmacy students including deferments. This administrative regulation establishes conditions for deferment of the repayment obligation.

Section 1. Definitions. (1) "Authority" is defined by KRS 164.740(1).

(2) "Coal-producing county" is defined in KRS 164.7890(2).(3) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date for the obligation thereon.

(4) "Deferment" means a temporary waiver of the obligation of a teacher scholarship recipient to make payments to the authority, pursuant to one (1) or more promissory notes executed between the recipient and the authority, which is granted by the authority, for a specified period of time, upon a showing of cause by the recipient.

(5) "Full-time practice" means providing services as a pharmacist in a coal-producing county for a minimum of 2,000 hours per calendar year.

(6) "Qualified service" is defined in KRS 164.7890(3)(d).

Section 2. Request for Deferment. (1) The recipient shall request a deferment in writing by submitting to the Authority complete and accurate information verifying the recipient's circumstances that qualify for deferment in accordance with this administrative regulation.

(2) The recipient's submission of a request for deferment shall constitute authorization for the authority to request and receive the verification of facts represented by the recipient as may be deemed necessary by the Authority.

Section 3. Effect on Repayment. (1) During a deferment, principal or interest payments shall not be required. Interest shall:

(a) Continue to accrue on the unpaid principal balance owed by the recipient during a period specified in Section 4(1), (4), or (5) of this administrative regulation; and

(b) Not accrue during a period specified in Section 4(2) or (3) of this administrative regulation.

(2) The authority shall not be required to grant a deferment if the deferment would legally impair the ultimate recovery of the principal and accrued interest otherwise owed by the recipient.

(3) If, during a deferment, the recipient resumes full-time enrollment in a Pharm D. program at a participating institution or

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renders qualified service, the deferment shall nullify the prior commencement of repayment, and a promissory note so deferred may be subsequently cancelled in accordance with 11 KAR 19:020.

Section 4. Types of Deferment Except as provided in subsection (6) of this section, if the requirements established in this section are met, the authority shall grant an enrollment deferment, disability deferment, unemployment deferment, hardship deferment, military service deferment or residency deferment.

(1) Enrollment deferment.

(a) An enrollment deferment shall be granted to a recipient who is enrolled on at least a half-time basis at an eligible institution in the United States.

(b) Each semester, the recipient shall provide to the Authority in writing evidence of the current enrollment.

(c) The Authority shall grant deferment of repayment upon this basis for a period not to exceed an aggregate of forty-eight (48) months.

(2) The Authority shall grant deferment of repayment for periods not to exceed an aggregate of thirty-six (36) months for any one (1) or combination of the following circumstances, unless a documented extenuating circumstance is approved by the executive director of the authority:

(a) Disability deferment.

1. A disability deferment shall be a deferment granted to a recipient who is:

a. Temporarily totally disabled and, therefore, unable to obtain full-time employment or attend school; or

b. Unable to obtain full-time employment or attend school due to the temporary total disability of the recipient's spouse who:

(i) Requires continuous (twenty-four (24) hour) nursing or similar care by the recipient; and

(ii) Is not confined to a hospital, nursing home, intermediate care facility, or similar institution.

2. For purposes of a disability deferment, a recipient, or the spouse of a recipient, shall be considered temporarily totally disabled if the person suffers an injury or illness which necessitates an extended or indefinite period of recovery which can be expected to preclude gainful employment or school attendance.

3. The recipient shall provide to the authority a statement from a licensed physician certifying that the recipient or spouse is temporarily totally disabled in accordance with subparagraphs 1 and 2 of this paragraph. The recipient shall be solely responsible for securing the physician's certification.

4. The authority shall grant a disability deferment subject to an annual review of the physician's certification.

5. After the third year of a disability deferment, the authority shall cancel the debt if it appears that the disability is expected to continue for an indefinite time.

(b) Unemployment deferment. An unemployment deferment shall be granted to a recipient seeking, but unable to obtain, a service-creditable position as a pharmacist in a coal-producing county within six (6) months following completion of a pharmacy program at a participating institution. The recipient shall:

1. Be eligible to begin practice as a pharmacist;

2. Have applied for a service-creditable position with at least three (3) employers within Kentucky coal-producing counties;

3. Not have refused an offer of employment in a service-creditable pharmacy position within a Kentucky coal-producing county to which the recipient may have applied; and

4. Provide the authority with a signed statement which sets forth:

a. The recipient's current address;

b. The names of the employers to which the recipient has applied for qualified service-creditable employment as a pharmacist; and

c. The recipient's agreement to notify the authority if the recipient obtains full-time employment in a service-creditable position.

(c) Hardship deferment. The authority shall determine that a hardship exists and grant a hardship deferment if:

1. Enrollment in a pharmacy program or employment in a service-creditable pharmacy position is temporarily interrupted due to circumstances beyond the recipient's control, including major illness, accident or death in the family, after which the recipient in-

tends to resume enrollment in a pharmacy program or a full-time pharmacy practice; or

2. The recipient is insolvent due to circumstances beyond his control, including natural disaster, involuntary unemployment, or unforeseen medical expenses.

(3) Military service deferment. The authority shall grant a military service deferment to a recipient upon proof of current active duty status in the United States Armed Forces, subject to annual review and verification by the authority.

(4) Residency deferment. The authority shall grant a deferment for a maximum of twenty-four (24) months to a recipient who provides proof of participation in a qualified pharmacy residency program.

(5) Pharmacy service deferment. A deferment shall be granted to a recipient who, due to verified current employment in a service-creditable position as a pharmacist in a coal-producing Kentucky county, may reasonably be expected, on an annual basis, to qualify for cancellation benefits pursuant to 11 KAR 19:020.

(6) Upon default of a repayment obligation under this program, a recipient shall be permanently barred from eligibility for the deferment options provided for in this administrative regulation unless the obligation is rehabilitated as provided in 11 KAR 19:020(6).

KRISTI P. NELSON, Chair

APPROVED BY AGENCY: October 26, 2010

FILED WITH LRC: December 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, January 24, 2011, at 10 a.m., Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 work-days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, January 31, 2011. 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carole Ellis, Director of Student Financial Aid

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the types of deferment of the repayment obligation available under the newly-established Coal County Scholarship Program for Pharmacy Students created by the General Assembly during the 2010 Special Legislative Session and codified at KRS 164.7890.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to the administration of the newly-established Coal County Scholarship Program for Pharmacy Students pursuant to KRS 164.7890.

(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 the deferment types available under this program and the eligibility criteria for each.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with the effective administration of the statutes by establishing additional terms for administration of this newly-created student aid program.

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

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(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All recipients of an award under this program could be positively impacted by this regulation in the event they seek to have their repayment obligation deferred.

(4) Provide an analysis of how the entities identified in (3) above 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 in order to comply with this administrative regulation or amendment: Each recipient who desires to postpone repayment of an award under this program will be required to apply for a deferment and satisfy the requirements thereof.

(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 noted above in complying with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those individuals who complete a deferment application and who satisfy the eligibility criteria specified will be granted a deferment of the repayment obligation under this program.

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

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The program is funded in full through transfer of receipts from the coal severance tax levied pursuant to KRS 143.020.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

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? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.744(2), 164.748(4), 164.753(3) and 164.7890.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation beyond the program funds provided through coal severance tax receipts as provided by statute.

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 Dentistry (New Administrative Regulation)

201 KAR 8:571. Registration of dental assistants.

RELATES TO: KRS 214.615, 313.030, 313.045, 313.050, 313.080, 313.130

STATUTORY AUTHORITY: KRS 214.615(2), 313.021(1)(a), (b), (c), 313.045

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.045(1) requires the board to promulgate administrative regulations relating to requirements and procedures for registration, duties, training, and standards of practice for dental assistants. This administrative regulation establishes the requirements and procedures for registration, duties, training, and standards of practice for dental assistants.

Section 1. Definitions. (1) "Coronal polishing" means a procedure that is the final stage of a dental prophylaxis on the clinical crown of the tooth after a dentist or a hygienist has verified there is no calcareous material.

(2) "Dental assistant" mean a person who is directly involved with the care and treatment of a patient under the direct supervision of a dentist and performs reversible procedures delegated by dentist licensed in the Commonwealth.

Section 2. General Registration Requirements and General Training Requirements.(1) A dentist licensed in the Commonwealth shall register all dental assistants on the Application for Renewal of Dental Licensure incorporated by reference in 201 KAR 8:530.

(2) The dentist shall retain in the personnel file for the registered dental assistant the following:

(b) The certificate of completion issued for the completion of the Coronal Polishing Course if the course has been taken by the dental assistant;

(a) A copy of the certificate of completion issued for the completion of the Radiation Safety Course if the course has been taken by the dental assistant;

(b) A copy of the certificate of completion issued for the completion of the Radiation Techniques Course if the course has been taken by the dental assistant;

(c) A copy of the certificate of completion issued for the completion of the Starting Intravenous Access Lines if the course has been taken by the dental assistant;

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(d) A copy of proof of having current certification in cardiopulmonary resuscitation (CPR) that meets or exceeds the guidelines set forth by the American Heart Association, as incorporated by reference in 201 KAR 8:530; and

(e) A statement of the competency of procedures delegated to the dental assistant from the delegated duties list that includes the following:

1. Name of the individual trained; and
2. Name of the licensee attesting to the competency of the Dental Assistant;

Section 3. Coronal Polishing Requirements. (1) A registered dental assistant may perform coronal polishing. If coronal polishing is performed by a registered dental assistant, the assistant shall have:

(a) Completed the training described in subsection (2) of this administrative regulation; and

(b) Obtained a certificate from the authorized institution, which shall be provided to the board for the assistant's file and maintained in the employee's personnel file at each place of employment.

(2) The required training shall consist of an eight (8) hour course taught at an institution of dental education accredited by the Council on Dental Accreditation to include the following:

- (a) Overview of the dental team;
- (b) Dental ethics, jurisprudence, and legal understanding of procedures allowed by each dental team member;
- (c) Management of patient records, maintenance of patient privacy, and completion of proper charting;
- (d) Infection control, universal precaution, and transfer of disease;
- (e) Personal protective equipment and overview of Occupational Safety and Health Administration requirements;
- (f) Definition of plaque, types of stain, calculus, and related terminology and topics;
- (g) Dental tissues surrounding the teeth and dental anatomy and nomenclature;
- (h) Ergonomics of proper positioning of patient and dental assistant;
- (i) General principles of dental instrumentation;
- (j) Rationale for performing coronal polishing;
- (k) Abrasive agents;
- (l) Coronal polishing armamentarium;
- (m) Warnings of trauma that can be caused by improper techniques in polishing;
- (n) Clinical coronal polishing technique and demonstration;
- (o) Written comprehensive examination covering the material listed in this section, which shall be passed by a score of seventy-five (75) percent or higher;
- (p) Completion of the reading component as required by subsection (3) of this administrative regulation; and
- (q) Clinical competency examination supervised by a dentist licensed in Kentucky, which shall be performed on a live patient.

(3) A required reading component for each course shall be prepared by each institution offering coronal polishing education that shall:

- (a) Consist of the topics established in subsection (2)(a) to (n) of this section;
 - (b) Be provided to the applicant prior to the course described in subsection (2) of this administrative regulation; and
 - (c) Be reviewed and approved by the board based on the requirements of subsection (2)(a) to (n) of this section.
- (4) The institutions of dental education approved to offer the coronal polishing course in Kentucky shall be:
- (a) University of Louisville School of Dentistry;
 - (b) University of Kentucky College of Dentistry;
 - (c) Western Kentucky University Dental Hygiene Program;
 - (d) Lexington Community College Dental Hygiene Program; and
 - (e) Kentucky Community Technical College System Dental Hygiene or Dental Assisting Programs.

Section 4. X-rays by Registered Dental Assistants. A registered dental assistant may take x-rays under the direct supervision

of a dentist licensed in Kentucky. If a registered dental assistant takes x-rays under the direct supervision of a dentist licensed in Kentucky, the dental assistant shall have completed:

- (1) A six (6) hour course in dental radiography safety; and
- (2) Four (4) hours of instruction in dental radiography technique while under the employment and supervision of the dentist in the office; or
- (3) A four (4) hour course in radiography technique.

Section 5. Requirements for Starting Intravenous Access Lines.

(1) An individual registered as a dental assistant in Kentucky and not subject to disciplinary action under KRS Chapter 313 who desires to start intravenous (IV) access lines while under the direct supervision of a dentist who holds a sedation or anesthesia permit issued by the board shall submit documentation to the licensed dentist for whom the registered dental assistant will be providing services proving successful completion of a board-approved course in starting IV access lines based on:

- (a) Patient Safety Techniques;
- (b) Anatomy and physiology of the patient;
- (c) Techniques in starting and maintaining an IV access line; and
- (d) Appropriate methods of discontinuing an IV access line.

(2) A registered dental assistant shall not start IV access lines if the individual has not completed a Board approved course in IV access lines.

Section 6. Any dental assistant personnel operating under this administrative regulation shall be under the direct supervision of the dentist licensed in the Commonwealth. The dentist licensed in the Commonwealth shall accept sole responsibility for the actions of the dental assistant or dental auxiliary personnel while in the performance of duties in the dental office.

Section 7. Incorporation by Reference. (1) "Delegated Duty List", July 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

C. MARK FORT, President, Kentucky Board of Dentistry

APPROVED BY AGENCY: November 30, 2010

FILED WITH LRC: November 30 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, January 25, 2011 at 9 a.m. at the office of the Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing no later than January 18, 2011 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 January 31, 2011. 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: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures for the registration of dental assistants and establishes the requirements

for training in coronal polishing for registered dental assistants as required by KRS 313.045.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement KRS 313.045, which requires the board to promulgate administrative regulations regarding the requirements for the registration requirements, duties, training, and standards of practice for registered dental assistants.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation is necessary to implement KRS 313.045, which requires the board to promulgate administrative regulations regarding the requirements for the registration requirements, duties, training, and standards of practice for registered dental assistants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to implement KRS 313.045, which requires the board to promulgate administrative regulations regarding the requirements for the registration requirements, duties, training, and standards of practice for registered dental assistants.

(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 statute: 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 is a new level of provider to be registered by the board so the number of individuals affected by this regulation is unknown. Additionally, the Kentucky Board of Dentistry 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: This regulation will not require any new actions on behalf of the dental assistant(s) as their registration is held by the dentist and not the Board. The Kentucky Board of Dentistry is charged by KRS Chapter 313 et.seq to regulate the practice of dentistry in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new cost to the individual with this emergency administrative regulation. The Board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of \$705,400 and for FY 2011 - 2012 and allotment of \$714,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for licensees to legally practice as a registered dental assistant in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost associated with this regulation. The board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of \$705,400 and for FY 2011 - 2012 and allotment of \$714,000. The Kentucky Board of Dentistry receives no monies from the general fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Dentistry is a fully self funded agency and derives its funding from fees paid by licensees.

(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 fees found in 201 KAR 8:520E make the agency financially solvent.

(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 registered dental assistants.

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 Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 313.

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meet its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough money to meet its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is \$705,400.

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is \$714,000.

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:

GENERAL GOVERNMENT CABINET Board of Dentistry (New Administrative Regulation)

201 KAR 8:581. Charity dental practices.

RELATES TO: KRS 313.254

STATUTORY AUTHORITY: KRS 313.021, 313.254

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.021(1) requires the board to exercise all of the administrative functions of the Commonwealth in the regulation of the profession of dentistry, KRS 313.060 requires the board to promulgate administrative regulations relating to dental practices, and KRS 313.254 requires the board to promulgate administrative regulations relating to the charitable practice of dentistry. This administrative regulation establishes requirements for charitable dental practices.

Section 1. Minimum Documentation Standards for All Dental Patients of a Charitable Dental Practice. Each patient record for a dental patient of a charitable dental practice in the Commonwealth of Kentucky shall include at a minimum:

- (1) The patient's name;
- (2) The patient's date of birth;
- (3) The patient's medical history;
- (4) The patient's dental history;
- (5) The patient's current medications from all healthcare providers;
- (6) The date of current treatment;
- (7) The diagnosis;
- (8) The treatment options presented to the patient;
- (9) The tooth number and surfaces to be treated, which shall be included in the progress notes;
- (10) The patient's current blood pressure reading;
- (11) Informed consent by the patient; and
- (12) Signature or initials of the provider.

Section 2. Documentation of Infection Control Procedures. All charitable dental practices in the Commonwealth of Kentucky shall adhere to the universal precautions outlined in the "Guidelines for Infection Control in Dental Health-Care Settings" published by the Centers for Disease Control and Prevention and shall retain documentation proving that:

- (1) All workers have been educated in the charitable dental practice or post-disaster clinic procedures for infection control;
- (2) All workers involved in patient treatment have received a Hepatitis B vaccination or have signed a waiver;
- (3) A policy is in place requiring all staff involved in clinical patient care to wear a fresh set of gloves for each patient;
- (4) A policy is in place to assure all staff change gloves between patients;
- (5) A policy is in place to assure all staff wears protective clothing during patient care;
- (6) A policy is in place to assure all staff wear mask during procedures that may involve spatter;
- (7) The charitable dental practice contains the necessary supplies to comply with this administrative regulation
- (8) All hand-pieces are sterilized following each patient treatment by one (1) of the following means:
 - (a) Autoclave;
 - (b) Dry heat; or
 - (c) Heat or chemical vapor.
- (9) There is routine verification that sterilization methods are functioning properly;
- (10) Individual burs, hand instruments, and rotary instruments are either discarded or sterilized following each use;
- (11) A policy is in place that addresses the disinfection of all operatory equipment and surfaces between patients;
- (12) All surfaces that are difficult to disinfect shall be covered with a non-penetrable barrier;
- (13) A policy is in place requiring that all non-penetrable surfaces are changed between patients;
- (14) Disinfectant is used, including the name and type of the disinfectant;
- (15) A policy is in place which describes a separate place for the cleaning, disinfecting, and sterilization of items, with a mechanism of separation from the patient treatment area that may be:
 - (a) An enclosed instrument table;
 - (b) Curtains or wall separation; or
 - (c) Bagging of the instruments;
- (16) A policy is in place which provides for the protection of dental records, charts, and radiographs from biohazards while those items are in the patient treatment area, or if no protection exists, charts shall be readily reproducible with limited effort; and
- (17) An agreement exists with an agency to properly dispose of all medical waste and bio-hazardous material, including sharps, instruments, and human tissue.

Section 3. Infection Control Inspections. The board or its designee may perform an infection control inspection of a charitable dental practice utilizing the "Infection Control Inspection Checklist".

- (2) Any charitable dental practice that is found deficient upon

an initial infection control inspection shall not be allowed to continue until the clinic coordinator provides proof to the board that the charitable dental practice is in compliance.

Section 4. General Requirements for Charitable Dental Practices. All charitable dental practices in the Commonwealth shall comply with the following requirements:

- (1) The clinic coordinator, who shall supervise and oversee all charitable dental practice functions, shall be a Kentucky licensed dentist;
- (2) There shall be a functional radiograph machine on site;
- (3) Follow-up care provisions shall be in place for each patient requiring follow-up care;
- (4) A written blood-borne pathogen exposure control plan shall be kept on site;
- (5) A sharps stick protocol shall be followed in which:
 - (a) The entity that will collect specimens shall be identified prior to the start of the event; and
 - (b) The laboratory that will perform blood work analysis shall be identified prior to the start of the event.
- (6) Post-operative instructions shall be delivered to the patient prior to the patient leaving;
- (7) No dentist shall supervise more than six (6) students in a charitable dental practice or post-disaster clinic;
- (8) All procedures shall be concluded by the end date of the charitable dental practice unless a Kentucky licensed dentist has stated in writing that the licensee shall complete the procedure in a timely manner at his practice;
- (9) All charitable dental practices shall notify the board no less than thirty (30) days prior to the start of an event of the dates, locations, and host of the event;
- (10) A charitable dental practice shall provide the names and license numbers of all participating dentists and dental hygienists no later than fifteen (15) days post-event;
- (11) A prescription for a narcotic shall not be written during an event unless approved by a designated dental prescription coordinator who shall hold a full license to practice dentistry in the Commonwealth of Kentucky. The prescription shall be approved if it is medically appropriate;
- (12) A written emergency medical response plan shall be kept on site; and
- (13) All charitable dental practices larger than forty (40) chairs shall have at least one (1) Basic Life Support (BLS) ambulance on site for the duration of the event.

Section 5. Registered Dental Assistants and Auxiliary Personnel. (1) For the purpose of a charitable dental practice any individuals other than a licensed dentist or licensed dental hygienist shall be restricted to the duties of a dental auxiliary; and

- (2) A radiograph shall not be taken unless the person performing the x-ray has met the requirements of 201 KAR 8:570.

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

- (a) "Guidelines for Infection Control in Dental Health-Care Settings", December 2003; and
 - (b) "Infection Control Inspection Checklist", July 2010.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

C. MARK FORT, President, Kentucky Board of Dentistry

APPROVED BY AGENCY: November 29, 2010

FILED WITH LRC: November 30 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, January 25, 2011 at 9 a.m. at the office of the Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing no later than January 24, 2011 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 January 31, 2011. 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: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures dentist as related to documentation of patient records, infection control, and requirements to hold a charity clinic as required by KRS 313.060 and KRS 313.254.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement KRS 313.060 and KRS 313.254, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, infection control, and requirements to hold a charity clinic.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation is necessary to implement KRS 313.060 and KRS 313.254, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, infection control, and requirements to hold a charity clinic.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to implement KRS 313.060 and KRS 313.254, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, infection control, and requirements to hold a charity clinic or post disaster clinic.

(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 statute: 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: The Kentucky Board of Dentistry will be affected by this administrative regulation. Additionally, any entity who desires to have a charity clinic in the Commonwealth will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Dentistry is charged by KRS 313 et. al to regulate the practice of dentistry in the Commonwealth. This regulations provides guidance to individuals who desire to offer a charity clinic in the Commonwealth and gives direction to protect the public during these clinics.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of \$705,400 and for FY 2011 - 2012 and allotment of \$714,000. The

cost to the entities desiring to offer a charity clinic is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for licensees offer a charity clinic in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of \$705,400 and for FY 2011 - 2012 and allotment of \$714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Dentistry is a fully self funded agency and derives it funding from fees paid by its licensees.

(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 fees found in 201 KAR 8:520E make the agency financially solvent.

(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 individuals or entities wishing to host a charity clinic or post disaster clinic.

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 Dentistry is the only state government entity which will be impacted by this regulation. 3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 313 et. al.

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is \$705,400

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is \$714,000

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:

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(New Administrative Regulation)

301 KAR 3:012. Public use of Otter Creek Outdoor Recreation Area.

RELATES TO: KRS 150.010, 150.240, 150.640, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.620 authorizes the department's Commission to acquire, improve, and maintain lands for public shooting, fishing, and other recreational uses, to impose and enforce special regulations in the maintenance and operation of these lands, to pay for the cost of the operations and maintenance of these areas, and to charge fair and reasonable fees to the public for use of these areas.

Section 1. Definitions. (1) "Event" means a planned gathering of thirty (30) or more people twelve (12) years or older on the area at the same time.

(2) "Shooting range" means a department built:

- (a) Firearm target range facility in which a person is required to shoot through a metal tube at various stationary targets; or
- (b) Archery range facility in which a person shoots at stationary targets from specified locations.

Section 2. General Area Use Restrictions. (1) Pursuant to 301 KAR 3:022, a person, except for permit exempt individuals, shall possess and carry:

- (a) A valid daily or annual Area Entry Permit when using the Otter Creek Outdoor Recreation Area; and
- (b) A valid daily or annual Special Activities Permit if:
 - 1. Biking on designated trails;
 - 2. Horseback riding on designated trails; or
 - 3. Using designated shooting range facilities.

(2) A person shall not be on the area when the area is closed, except for:

- (a) Registered campers at the designated campground area;
 - (b) Authorized hunters; or
 - (c) A special activity or event authorized by the department.
- (3) The department shall notify the public when the area is closed by:
- (a) A pre-recorded phone message;
 - (b) An internet posting; and
 - (c) Visible signage on the area.
- (4) A person shall park vehicles in designated parking areas only.

(5) A person who is hunting, fishing, trapping, or boating on the area shall follow all applicable administrative regulation requirements pursuant to 301 KAR Chapters 1, 2, 3, and 6;

(6) The area shall be closed to the general public, except for authorized hunters, during:

- (a) A firearms deer quota hunt pursuant to 301 KAR 2:178; and
- (b) Spring turkey season, pursuant to 301 KAR 2:142.

(7) The following activities are prohibited without prior department authorization:

- (a) Cutting or removing live or standing trees, shrubs, or other vegetation;
- (b) Riding motorized all-terrain or off-highway vehicles;
- (c) Allowing unleashed dogs, except at times and areas designated by the department;
- (d) Camping, except in designated areas;
- (e) Setting fires, except for attended fires:
 - 1. In designated camping areas; or
 - 2. In grills at designated picnic areas.
- (f) Blocking a roadway or gate;
- (g) Igniting fireworks or rockets;

- (h) Participating in a commercial activity or endeavor;
- (i) Damaging or destroying crops or wildlife food plots;
- (j) Damaging or defacing buildings, structures, signs, or other property;
- (k) Hunting in an area closed to hunting;
- (l) Tethering a horse to a tree, shrub or sign; or
- (m) Discharging a firearm:
 - 1. Within 100 yards of a building;
 - 2. Except on a designated firearm shooting range; and
 - 3. Except during an authorized hunting season in an authorized hunting area.

Section 3. Trail Requirements. (1) A person shall only ride a horse or bike on designated trails or roadways.

(2) A person shall not possess a wheeled vehicle other than a bike on a designated bike trail, except for department authorized maintenance activities.

(3) A person shall not ride a bike or a horse on designated trails that have been temporarily closed by the department due to:

- (a) Hunting activity;
 - (b) Wet conditions;
 - (c) Trail maintenance activity;
 - (d) Downed trees;
 - (e) Unsafe conditions; or
 - (f) An event authorized by the department.
- (4) The department shall provide the public with a reasonable notification system for temporary trail closures that includes:
- (a) A pre-recorded phone message;
 - (b) An internet posting; and
 - (c) Visible signage on the area.

Section 4. Event Permits. (1) A group of people conducting an event shall not meet on the area without first applying for and obtaining a completed Event Permit from the department.

(2) A person, on behalf of the people involved with an event, shall apply for an Event Permit at least thirty (30) days in advance of the planned event.

(3) The application for an Event Permit shall be on a form provided by the department.

(4) The department shall deny an Event Permit if the planned activity or event:

- (a) Is prohibited pursuant to this administrative regulation; or
- (b) Is in conflict with:
 - 1. Another Event Permit activity already authorized by the department;
 - 2. A hunting season;
 - 3. A quota hunt; or
 - 4. Recreational use of the area.

Section 5. Incorporation by Reference. (1) "Otter Creek Event Permit Application", 2011 Edition, is incorporated by reference.

(2) The permit application 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, Monday through Friday, 8 a.m. to 4:30 p.m.

BENJY T. KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: December 3, 2010

FILED WITH LRC: December 15, 2010 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2011 at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing,

you may submit written comments on the proposed administrative regulation by January 31, 2011. 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) 564-3400, 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 regulation establishes restrictions and requirements for public use of Otter Creek Outdoor Recreation Area (OCORA) in Meade County, Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary because the department recently acquired the 2,200 acres and will be opening it to the public in late spring or early summer 2011. It is also necessary in order to effectively manage multiple recreational uses on the area.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.620 authorizes the department's Commission to acquire, improve, and maintain lands for public shooting, fishing, and other recreational uses, to impose and enforce special regulations in the maintenance and operation of these lands, to pay for the cost of the operations and maintenance of these areas, and to charge fair and reasonable fees to the public for use of these areas.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will allow the department to effectively manage the area in accordance to the statutes listed above in (1)(c).

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation and is not an amendment.

(b) The necessity of the amendment to this administrative regulation: Not applicable due to (2)(a) above.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable due to (2)(a) above.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable due to (2)(a) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All people visiting OCORA will be affected by this administrative regulation. It is currently unknown how many people will visit the area in a given year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Everyone using the area will have to purchase the appropriate permit(s) applicable to the type of activities pursued on the area, pursuant to 301 KAR 3:022. They will also have to follow the general use requirements, trail requirements, and group event requirements established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A person using the area will have to purchase either a daily entry permit for \$3 (valid for one day) or an annual entry permit for \$30. In addition to the daily or annual entry permit fee, a person who will be biking or horseback riding on the trails or using the shooting range facilities on the area must purchase an additional Special Activities Permit at either the daily level (\$7) or the annual level (\$70). There will also be a fee charged by the operators of the campground which will be outsourced by the department,

but campers will not have to also purchase a daily or annual entry permit.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The people will have access to a 2,200 acre multiple use recreation area close to Louisville that was previously closed to public access. Horseback riders, mountain bikers, and hikers will also benefit from a maintained trail system that will allow them to pursue their individual activities. Shooting enthusiasts will benefit from being able to use a quality outdoor firearm shooting range and two outdoor archery ranges.

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

(a) Initially: \$330,000, which includes \$135,000 in equipment start-up expenditures.

(b) On a continuing basis: The department estimates it will require \$300,000 to \$400,000 per year to operate.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The department will fund fish and wildlife management and related activities from the Game and Fish fund. The department will fund the management of non-traditional recreational uses of the area from user permit fees established in 301 KAR 3:022.

(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 be necessary for the department to charge new user fees in order to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes the requirement for people to obtain an entry or special activities permit to use the area. The fees for these permits are established in 301 KAR 3:022, "License, Tag and Permit Fees".

(9) TIERING: Is tiering applied? Yes, tiering is applied because horseback riders, trail bikers, and shooting range participants will be required to purchase an additional Special Activities Permit to pursue these activities on the area.

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 of the Divisions in the Department of Fish and Wildlife Resources will be impacted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 and 150.620 authorizes the actions 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? It is unknown how much revenue will be generated in the first year since attendance numbers are currently unavailable, but the department estimates revenue to be approximately \$300,000 to \$400,000 per 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? Unknown revenue, but estimated at approximately \$300,000 to \$400,000 in subsequent years.

(c) How much will it cost to administer this program for the first year? It is estimated that it will cost the department approximately \$300,000 to \$400,000 to administer this program in the first full year.

(d) How much will it cost to administer this program for subsequent years? Estimated at approximately \$300,000 to \$400,000 in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**JUSTICE AND PUBLIC SAFETY CABINET
Parole Board
(New Administrative Regulation)**

501 KAR 1:070. Conducting sex offender conditional discharge revocation hearings.

RELATES TO: KRS 532.043, 532.060(3), 439.340(3)

STATUTORY AUTHORITY: KRS 15A.160, 439.340(3), 439.430, Jones v. Commonwealth, 2007-SC-000922

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation contains the procedures for the revocation of sex offender conditional discharge and the issuance of warrants.

Section 1. Preliminary Revocation Hearings. Preliminary Sex Offender Conditional Discharge revocation hearings shall be conducted by an administrative law judge of the Parole Board who shall have control over the proceedings and the reception of evidence at these hearings.

(1) Charges of a violation of a condition of sex offender conditional discharge shall be initiated by a parole officer of the Department of Corrections by service of a notice of preliminary hearing which sets forth the alleged violations. This notice may be amended at any time prior to the close of the record of the preliminary hearing, within the discretion of the administrative law judge, if a finding is made that the substantial rights of the offender shall not be prejudiced by the amendment. A continuance of the proceeding may be granted in the event of this amendment, if the interest of justice so requires. Failure to object to any defect in the notice prior to the close of the hearing shall be deemed a waiver of this objection.

(2) Pursuant to SCR 3.700 Sub-rule 3, in the absence of an attorney to represent the Department of Corrections, Division of Probation and Parole, before the board and the administrative law judge, any duly appointed probation and parole officer of the Commonwealth of Kentucky may appear before the board or its administrative law judge as representative of the Department of Corrections in matters relating to the revocation of sex offender conditional discharge.

(3) A preliminary hearing shall not be conducted earlier than five (5) days of service of notice of the hearing. The preliminary hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown. At the request of either party, the administrative law judge may, within his discretion, leave the record open for reception of additional evidence provided that no substantial rights are prejudiced.

(4) All preliminary revocation hearings shall be conducted on the record. The hearing may be recorded and preserved by any means practical, including electronically, mechanically, or stenographically. If requested by the board, the record of the proceedings shall be transcribed.

(5) The administrative law judges may take judicial notice of acts of the Parole Board, including the conditions of sex offender conditional discharge and all other matters which may be judicially noticed in the courts of this Commonwealth pursuant to KRE 201. Witnesses appearing at the preliminary hearing to give testimony shall do so under oath, administered by the administrative law judge, and shall be available for examination by the other party or the administrative law judge, unless good cause dictates otherwise. Hearsay evidence may be presented and admitted into the record, at the discretion of the administrative law judge. The probation and parole officer shall bear the burden of proof in establishing the elements of the violation. The probation and parole officer shall present evidence first and the Offender shall be given the opportunity to present evidence in defense or mitigation. Any further pro-

ceedings shall be conducted at the discretion of the administrative law judge. The offender may, within reasonable limits, present evidence solely for the purpose of mitigation of his conduct, including evidence of his mental condition. If presented, this evidence shall be subject to rebuttal by the probation and parole officer.

(6) At the close of the hearing, or within a reasonable time thereafter, the administrative law judge shall make a determination, from the evidence produced at the hearing, as well as any evidence of which judicial notice is taken, whether there exists probable cause to believe that the offender has committed any or all of the violations alleged in the notice of preliminary hearing. If probable cause is found to exist, the case shall then be referred to the Parole Board which shall then issue a sex offender conditional discharge violation warrant which shall cause the offender to be brought before the Parole Board for a final sex offender conditional discharge revocation hearing.

(7) If the administrative law judge finds probable cause to believe that a violation of sex offender conditional discharge has been committed and the case is referred to the Parole Board for the issuance of a sex offender conditional discharge violation warrant, the administrative law judge shall issue a written decision and may issue a recommendation, along with reasons in support of that recommendation, as to what action should be taken concerning the revocation of sex offender conditional discharge and return of the offender as a sex offender conditional discharge violator. This recommendation shall be advisory only and shall not be binding on the board. If the administrative law judge finds that there exist substantial mitigating factors, the administrative law judge may recommend that the offender not be returned as a sex offender conditional discharge violator. If the administrative law judge makes that finding and recommendation, the case shall be referred to the Parole Board for their vote on the issuance of the sex offender conditional discharge violation warrant. If the Parole Board votes to issue the warrant, the offender shall be brought before the Parole Board for a final sex offender conditional discharge revocation hearing in the same manner as provided in subsection (6) of this section. At the final sex offender conditional discharge revocation hearing, the Parole Board shall determine what action should be taken concerning the revocation of sex offender conditional discharge and return of the offender as a sex offender conditional discharge violator. The charges specified in the warrant shall be explained to the offender at the final sex offender conditional discharge revocation hearing, and the offender shall be given the opportunity to admit or deny them. The evidence at the final revocation hearing shall be limited to the administrative record made before the administrative law judge, except that the Parole Board may, in its discretion, consider any new evidence or information submitted by the offender in advance of the final revocation hearing if the board finds that the new evidence or information is relevant to the proceeding and that the new evidence or information could not have been presented at the preliminary hearing. If the board votes to revoke the sex offender conditional discharge and return the offender as a sex offender conditional discharge violator, the offender shall be returned to the custody of the Department of Corrections for the remaining period of sex offender conditional discharge.

(8) If the alleged violation of sex offender conditional discharge, as set forth in the notice of preliminary hearing, is new criminal conduct which does not also constitute a technical violation of the conditions of supervision, or the conditions of sex offender conditional discharge, the case shall not be referred to the board for revocation consideration unless it is shown that the offender has received a conviction in a court of law or there exists some other form of judicial admission, such as a plea of guilty, concerning the alleged criminal conduct, or it is found that the criminal conduct, or a substantial part of it, was committed in the presence of a duly appointed probation and parole officer of the Commonwealth of Kentucky. Nothing in this subsection shall prevent revocation for a technical violation, which also happens to partially or wholly involve criminal conduct.

(9) Any party appearing before an administrative law judge of the Kentucky Parole Board may be represented by counsel if he so desires. The party may have, upon motion thereof, a continuance for the purpose of obtaining the presence of counsel; except that

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chronic appearance for hearing without counsel by an offender who is capable of retaining counsel may be deemed an implicit waiver of counsel.

(10) The administrative law judges, in the absence of any specific statutory authorization, shall not consider matters of bail or any other form of release from custody for those persons accused of a violation of a condition of sex offender conditional discharge.

Section 2. Final Hearings, Sex Offender Conditional Discharge Violation Warrants. Sex offender conditional discharge violation warrants shall be issued as set forth below:

(1) If a case is referred to the Parole Board by the administrative law judge under the provisions of Section 1(6) of this administrative regulation for a final hearing and probable cause of a violation of a condition of Sex Offender Conditional Discharge is found to exist, the Parole Board shall issue a Sex Offender Conditional Discharge violation warrant. A vote of the full board shall not be necessary.

(2) If a case is referred to the Parole Board by the administrative law judge with a recommendation that the offender not be returned to the institution for a violation of a condition of sex offender conditional discharge, the board may issue a sex offender conditional discharge violation warrant, if upon review a majority of the board concurs that probable cause exists to believe a sex offender conditional discharge violation has taken place. If the board votes to issue the warrant, the warrant shall be issued.

(3) If it appears that an offender has absconded from sex offender conditional discharge supervision, it otherwise appears that an offender is a fugitive from justice, or a sex offender conditional discharge violation warrant is necessary to effect the return of the Offender to the state of Kentucky, the Parole Board may issue a warrant, if it receives documentation from the supervising probation and parole officer, setting forth facts sufficient to conclude there are reasonable grounds to believe that some violation has occurred, and the commissioner or his designee submits to the board a recommendation that a warrant be issued.

(4) If the offender is being supervised outside the state of Kentucky, a sex offender conditional discharge violation warrant may be issued upon a vote of the Parole Board based upon a written report from the supervising state setting forth facts sufficient to conclude that there are reasonable grounds to believe that a violation of a condition of sex offender conditional discharge has occurred, and the commissioner or his designee submits to the board a recommendation that a warrant be issued.

(5) In all other cases sex offender conditional discharge violation warrants may be issued only upon majority vote of the board, except as set forth in subsection (7) of this section. If the board votes to issue any warrant, the warrant shall be issued.

(6) The board may decline any request for a sex offender conditional discharge violation warrant made pursuant to any section of this administrative regulation except subsection (1) of this section. Any warrant, issued under any section of this administrative regulation, may be rescinded by majority vote of the board at any time.

(7) If a vote of the board is required to issue a sex offender conditional discharge violation warrant, and if there is no quorum of the board present to concur that probable cause exists and the warrant should be issued, any member of the Parole Board may issue a sex offender conditional discharge violation warrant if he, upon review concurs that probable cause exists to issue said warrant. If a warrant is issued under these circumstances, the board shall vote, as soon as is reasonable, on whether or not to concur in the issuance of the warrant. If a majority of the board does not concur, the warrant shall be voided by the board.

(8) Any member of the Parole Board may sign warrants.

VERMAN WINBURN, Chairman

APPROVED BY AGENCY: December 1, 2010

FILED WITH LRC: December 1, 2010 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2011 at 10 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 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. 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 January 31, 2011. 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 C. Cummings, Counsel for the Kentucky Parole Board, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3620, fax (502) 564-8995.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John C. Cummings (502) 564-3620

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation would give the Executive Branch, through the Parole Board, revocation authority in cases where an individual violates the conditions of his or her sex offender conditional discharge.

(b) The necessity of this administrative regulation: A ruling from the Supreme Court of Kentucky in April 2010 held that KRS 532.043(5) violates the separation of powers doctrine by impermissibly conferring an executive power to the judiciary. This ruling left the Department of Corrections no established procedure for returning an offender to custody for violating the terms of his or her conditional discharge.

(c) How the amendment conforms to the content of the authorizing statutes: The administrative regulation establishes procedures for obtaining determinations of whether individuals alleged to have violated the terms of their conditional discharge should have their conditional discharge revoked in accordance with KRS 532.043 and 532.060. This regulation also conforms with KRS 439.340 and 439.430 as it relates to the powers and authority of the Kentucky Parole Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide a process for seeking revocation of sex offender conditional discharge pursuant to KRS 532.043 and 532.060.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: Not applicable - 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 administrative regulation: The following governmental agencies will be affected by this regulation: Kentucky Department of Corrections, Division of Probation and Parole and the Kentucky Parole Board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department of Corrections, Division of Probation and Parole already has probation and parole officers assigned to supervision of sex offender conditional discharge offenders. In addition, The Parole Board has personnel in place to implement this regulation. It is not anticipated that any additional staff will be needed to implement this regulation by either agency.

(b) In complying with this administrative regulation or amend-

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ment, how much will it cost each of the entities identified in question (3): It is not anticipated that there will be any additional costs by any of the agencies listed in question 3 to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Department of Corrections will have in place a process by which to revoke the sex offender conditional discharge of offenders via the Kentucky Parole Board.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: It is not anticipated that there will be any additional costs by any of the agencies listed in question 3 to comply with this regulation.

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

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

(9) TIERING: Is tiering applied? No, tiering is not necessary as the regulation only affects the state agencies identified above and is revenue neutral.

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 Corrections, Division of Probation and Parole and the Kentucky Parole Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 439.340, 439.430, 532.043, 532.060.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs associated with implementation or administration of this regulation for the first year are expected.

(d) How much will it cost to administer this program for subsequent years? No additional costs associated with implementation or administration of this regulation are expected 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
Expenditures (+/-): None
Other Explanation: None

**PUBLIC PROTECTION CABINET
Department of Insurance
Consumer Protection Division
(New Administrative Regulation)**

806 KAR 2:150. Collection fee.

RELATES TO: KRS 91A.080, 91A.0804, KRS 304.3, KRS 304.10-120

STATUTORY AUTHORITY: KRS 91A.080(4), KRS 304.10-180
NECESSITY, FUNCTION, AND CONFORMITY: KRS 91A.080(4) requires the Department of Insurance to promulgate an administrative regulation to provide for a reasonable collection fee to be retained by the insurance company or its agent as compensation for collecting the local government premium tax. This administrative regulation sets forth the standards for a reasonable collection fee.

Section 1. Definitions. (1) "Collection fee" means the fee established in KRS 91A.080(4).

(2) "Insurance company" means:

(a) An entity holding a certificate of authority in accordance with KRS 304, Subtitle 3; and

(b) A surplus lines broker licensed in accordance with KRS 304.10-120.

(3) "Local government tax" or "tax" means the license fee or tax imposed by a local government in accordance with KRS 91A.080 and does not include the collection fee.

Section 2. Collection Fee. (1) An insurance company may charge to and collect from an insured a collection fee in addition to a local government tax.

(2) The maximum collection fee that an insurer may charge is set forth in KRS 91A.080(4).

(3) The collection fee shall be retained as compensation for collecting the local government tax by:

(a) The insurance company; or

(b) An agent in accordance with an agreement between the insurance company and its agent.

(4) The insurance company shall pay the full amount of the refund, including any collection fee that has been retained, to the policyholder if a refund of a local government tax is owed:

(a) To an insured pursuant to KRS 91A.0804(3), and the amount of the tax to be refunded is not owed to another local government; or

(b) To an insured pursuant to KRS 91A.080(3).

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 7, 2010

FILED WITH LRC: December 14, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 26, 2011, 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 19, 2011, 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 January 31, 2011. 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, Staff Assistant, 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 standards for a reasonable collection fee.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement KRS 91A.080(4).

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 91A.080 requires the Department of Insurance to promulgate an administrative regulation to provide for a reasonable collection fee to be retained by the insurance company or its agent as compensation for collecting the local government premium tax. This administrative regulation sets forth the standards for a reasonable collection fee.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will set forth the amount of a collection fee that can be charged and will clarify that the collection fee is in addition to the local government premium tax.

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 1,409 insurance companies that hold a certificate of authority in Kentucky and approximately 340 actively licensed surplus lines brokers that are subject to local government taxes.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be required to adhere to the standards in this regulation if they choose to charge and collect a collection fee from insureds as compensation for administering local government premium taxes.

(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 sets forth a long-standing practice regarding collection fees. As insurers have already been complying in this manner, there is no cost to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, regulated entities will be charging reasonable collection fees in accordance with KRS 91A.080.

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

(a) Initially: There will not be a cost to implement this administrative regulation.

(b) On a continuing basis: There will not be a continuing cost related to this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: If any costs are incurred, 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: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies holding a certificate of authority in Kentucky and all licensed surplus lines brokers subject to local government taxes.

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.0810

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 will not have an impact on the expenditures and revenues of the Department of Insurance.

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost to the Department of Insurance associated with this administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? There will not be a cost associated with this administrative regulation in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Kentucky Board of Home Inspectors (New Administrative Regulation)

815 KAR 6:050. Continuing education approval.

RELATES TO: KRS 198B.712, 198B.722, 198B.724

STATUTORY AUTHORITY: KRS 198B.706, 198B.712(2)(c), 198B.724

NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(15) requires the Kentucky Board of Home Inspectors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.700 to 198B.738 and to establish requirements for continuing education. KRS 198B.724 requires the board to establish continuing education requirements. This administrative regulation establishes the procedures for being approved as a continuing education provider.

Section 1. Definitions. (1) "Approved" means recognized by the Kentucky Board of Home Inspectors.

(2) "Board" is defined in KRS 198B.700(2).

(3) "Continuing education hour" means fifty (50) clock minutes of instruction, exclusive of any breaks, recesses, testing or other time not spent in instruction.

(4) "Provider" means the person or legal entity approved by the Board to provide continuing education in home inspections.

Section 2. Preapproval of Continuing Education Hours. (1) Any entity seeking to obtain approval of continuing education course prior to its offering shall submit a request for approval to the Board at least thirty (30) days prior to the next regularly scheduled board meeting and provide the following:

(a) A completed "Application for Approval of Continuing Education Course", Form KBHI 4, (09/10);

(b) A published course description;

(c) A copy of the course agenda indicating hours of education

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and breaks;

(d) Number of continuing education hours requested;

(e) Name and address of competent instructors, as documented by academic training, professional licensure or certification, or professionally recognized experience.

(f) Official certificate of completion and;

(g) The fee of twenty-five (25) dollars per course, per date offered. A continuing education provider shall not pay in excess of \$250 in course approval fees in any one (1) year.

(2) The board may approve continuing education courses that appropriately relate to the general business skills or the technical skills required of licensees and contain sufficient educational content to improve the quality of licensee performance. An educational course from any of the following providers shall be deemed to be relevant to home inspections and shall not require board review or approval but shall maintain attendance records and copies of certificates issued:

(a) American Society of Home Inspectors or any of its affiliated state chapters;

(b) The National Association of Home Inspectors or any of its affiliated state chapters;

(c) Kentucky Real Estate Inspectors' Association; and

(d) International Association of Certified Home Inspectors or any of its affiliated state chapters.

(3) If a course is approved, the board shall assign the course a number. The course provider shall use the course number in the course syllabus, in all other course materials used in connection with the course, and in all written advertising materials used in connection with the course.

(4) The board shall have the discretion to approve a course for hours different than the provider's request.

Section 3. Duration of Approval. (1) Continuing education course approval shall be valid for two (2) years from date of issue if no substantial change is made in the course and the Board has not imposed discipline upon the provider or its instructors.

(2) Substantial changes made in any course shall require a new approval of that course. A provider shall apply for course approval forty-five (45) days prior to the date of expiration of the original course approval.

Section 4. Denial of Application. A course which has been denied may be resubmitted to the board after adopting the suggested modifications provided by the board.

Section 5. Disciplinary Matters. (1) The board may deny, suspend, or revoke the approval of any continuing education provider for any of the following acts or omissions:

(a) Obtaining or attempting to obtain registration or approval through fraud, deceit, false statements, or misrepresentation;

(b) Failing to provide complete and accurate information in the initial registration or in any notification of change in information;

(c) Failing to timely notify the board of a change in the information required for registration of the provider;

(d) Falsifying of any records regarding the courses conducted by the provider or the persons who attended the courses offered;

(e) Failing to maintain any required records regarding course offerings conducted by the provider or the persons who attended the course;

(f) Failing to adequately train the staff responsible for taking attendance at any approved course;

(g) Failing to provide the board with copies of any document or other information required to be maintained by the provider pursuant to this administrative regulation;

(h) Advertising that a provider has been approved by the board prior to the date the approval is granted;

(i) Failing to include provider and course numbers in advertisements;

(j) Failing to maintain a record of instructors;

(k) Failing to resolve attendance reporting problems; and

(l) Failing to comply with any other duty imposed on providers in this administrative regulation.

(2) Disciplinary action shall be initiated by the board and governed by KRS Chapter 13B.

(3) All appeals shall be governed in accordance with KRS Chapter 13B.

(4) A provider whose course approval has been revoked shall not reapply for approval of that course for two (2) years from the date of revocation.

Section 6. Subsequent Approval of Continuing Education Course. A licensee may request approval for continuing education activities not approved by the board as set forth in Section 2 of this administrative regulation. The licensee shall submit documentation of attendance and participation in the form of official documents, including transcripts, certificates, affidavits signed by instructors, receipts for fees paid to the provider, for the Board to review.

Section 7. Incorporation by Reference. (1) "Application for Approval of a Continuing Education Course, Form KBHI 4", November 2010 Edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES R. BONE, Board Chair

APPROVED BY AGENCY: December 14, 2010

FILED WITH LRC: December 15, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2011, at 10 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 the close of business January 31, 2011. 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: Mark Brengelman, Board Counsel, Assistant Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5600, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Brengelman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates a regulation specific to continuing education providers only. It was dissected from 815 KAR 6:040, which also addressed pre-licensure providers. The regulation establishes the procedures the Board will follow to approve continuing education courses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform the public and potential continuing education providers of the process to obtain approval of continuing education courses, which licensees are required to obtain annually.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation establishes the application process for approval of a continuing education course.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the information that must be submitted to the board for approval of a continuing education course and sets deadlines for submission that coordinate with monthly board meetings.

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

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(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 325 home inspectors, 4 home inspector associations and 5 private home inspection continuing education providers 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 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: Providers will have to submit applications earlier for pre-approval and the associations listed in the regulation will no longer need approval from the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Provider applicants and licensees seeking post-approval must submit a \$25 application fee per course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees are assured continuing education courses received from the listed associations will be accepted by the board. Also, licensees will have the opportunity to receive post-approval for continuing education courses they have already attended.

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

(a) Initially: The cost to implement this regulation is minimal and consists of the cost of making copies of the application.

(b) On a continuing basis: Minimal

(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 for licensure.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees 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: The fee in this regulation is a continuation of the fee set in 815 KAR 6:040, from which this regulation was dissected. This is not a new fee.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally by statute 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 the Office of Occupations and Professions, which provides administrative services to the Kentucky Board of Home Inspectors.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 198B.724

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. Expenditures will not be effected by the regulation.

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

fire departments, or school districts) for the first year? Based on the board's 2009-2010 financial statement \$2,800 was received in continuing education applications.

(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? N/A

(d) How much will it cost to administer this program for subsequent years? See 4(c) above.

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

Revenues(+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Kentucky Board of Home Inspectors (New Administrative Regulation)

815 KAR 6:060. Complaint procedure.

RELATES TO: KRS Chapter 198B.706

STATUTORY AUTHORITY: KRS 198B.706

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.706(4) authorizes the board to investigate an allegation of a practice which violates the provisions of KRS Chapter 198B. This administrative regulation establishes the procedures for processing a complaint received by the board.

Section 1. Definitions. (1) "Chair" means the chair or vice-chair of the board.

(2) "Charge" means a specific allegation contained in a formal complaint, as established in Section 5(3) of this administrative regulation, issued by the board alleging a violation of a specified provision of KRS Chapter 198B or the requirements established in 815 KAR Chapter 6.

(3) "Complaint" means a written allegation of misconduct by a home inspector, or other allegation of a violation of KRS Chapter 198B, the requirements established in 815 KAR Chapter 6, or another state or federal statute or regulation applicable to home inspectors.

(4) "Compliance Committee" means the committee appointed pursuant to Section 2 of this administrative regulation.

(5) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed home inspector and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests a court to take action.

(6) "Informal proceeding" means a proceeding instituted during the disciplinary process with the intent of reaching a disposition of a matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

Section 2. Compliance Committee. (1) The committee shall consist of three (3) board members, appointed by the chair of the board to:

(a) Review complaints and investigative reports;

(b) Participate in informal proceedings to resolve formal complaints; and

(c) Make recommendations for disposition of complaints to the full board; and

(2) The committee may be assisted by the board staff and counsel to the board.

Section 3. Receipt of Complaints. (1) A complaint may be submitted by an:

(a) individual,

(b) organization,

(c) entity; or

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(d) the board, based on information in its possession.

(2) A complaint shall be in writing, signed by the individual filing the complaint and notarized.

(3) Upon receipt of a completed "Complaint Form," Form KBHI 5, the board shall send a copy to the licensee named in the complaint along with a request for a written response to the complaint. The licensee shall file a written response with the board within twenty (20) days from the date of receipt. Upon receipt of the written response of the licensee, a copy of the response shall be sent to the complainant. The complainant shall have ten (10) days from the date of receipt to submit a written reply to the Committee. Upon receipt of the complainant's reply, the Compliance Committee may request an additional response from the licensee if additional issues are raised and may request additional information from either party to assist in making its recommendation to the board.

Section 4. Initial Review. (1)(a) Upon the expiration of the complainant's period to reply, the complaint committee shall consider the complaint, response, and complainant's reply to the response, and other relevant material available, and make a recommendation to the board.

(b) The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines that a complaint does not warrant a formal investigation against a licensee, or the issuance of a formal complaint against a licensee, then the board shall dismiss the complaint and shall notify both the complainant and the licensee of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation against the licensee, then the board shall authorize an investigator to investigate the matter and make a report to the complaint committee at the earliest opportunity.

Section 5. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of a formal investigation, the Compliance Committee shall consider the facts regarding the complaint.

(a) The committee shall review an investigative report and supporting documents and make a recommendation to the board.

(b) The board shall determine whether there is enough evidence to believe that a violation of the law or administrative regulations may have occurred and whether a formal complaint shall be filed.

(2)(a) If the board determines that a complaint does not warrant the issuance of a formal complaint and the holding of a hearing, then the complaint shall be dismissed.

(b) The board shall notify both the complainant and the licensee of the outcome of the complaint.

(3)(a) If the board determines that a complaint warrants the issuance of a formal complaint against the licensee, then a formal complaint which states clearly the charge or charges to be considered at the hearing shall be prepared by the Compliance Committee.

(b). The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the licensee as required by KRS 13B.050.

Section 6. Settlement by Informal Proceedings. (1) The board, through counsel and the Compliance Committee, may enter into informal proceedings with the licensee which is the subject of the complaint for the purpose of resolving the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the board chairman and the licensee who is the subject of the complaint, and the chairman.

Section 7. Incorporation by Reference. (1) "Complaint Form, KBHI 5", 9/2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Occupations and Professions, 911 Leawood Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES R. BONE, Board Chair

APPROVED BY AGENCY: December 14, 2010

FILED WITH LRC: December 15, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2011, at 10 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 the close of business January 31, 2011. 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: Mark Brengelman, Board Counsel, Assistant Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5600, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Brengelman

(1) Provide a brief summary of:

(a) What this administrative regulation does. This regulation establishes the process for filing a complaint against a licensed home inspector and the process for the board to investigate the complaint.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish a process for the public to report possible wrongdoings of home inspectors, the Board to investigate the complaint and provide licensees due process before any discipline is imposed on the licensee.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to investigate complaints about licensees and impose discipline upon them.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the process for filing a complaint against a licensee and explains the methods in which a complaint can be resolved.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective and administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 370 licensed home inspectors and approximately five (5) pre-licensing course providers.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation will clearly state the requirements for filing a complaint, the time limits for a licensee to respond and how the Board will proceed to resolve the complaint.

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

(a) Initially: Minimal. The cost of printing complaint forms.

(b) On a continuing basis: Minimal

(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 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 administrative regulation

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation applies to all licensees 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 Kentucky Board of Home Inspectors is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 198B.706, 198B.728 and 198B.730.

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. N/A

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? N/A

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of December 14, 2010

Call to Order and Roll Call

The December meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, December 14, 2010, at 1:00 p.m., in Room 149 of the Capitol Annex. Representative Leslie Combs, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the November 2010 meeting were approved.

Present were:

Members: Senators Elizabeth Tori, David Givens, Alice Forgy Kerr, and Joey Pendleton, and Representatives Leslie Combs and Danny Ford.

LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, and Laura Napier.

Guests: Robert Brown, Mike Carr, Alicia Sneed, Education Professional Standards Board; Laura Ferguson, DeVon Hankins, Mark Johnson, Gary Morris, Jeff Mosley, Don Richardson, Lisa Swiger, Rose Caudle, Travis Powell, Don Speer, Finance and Administration Cabinet; Michael Burleson, Board of Pharmacy; Brian Bishop, Katherine King, Susan King, Robert Zena, Board of Dentistry; William Adcock, Jim Grawe, Margaret Hazlette, Board of Social Work; Karen Waldrop, Department of Fish and Wildlife; Sue Billings, Robert Stout, Clint Quarles, Department of Agriculture; Dan Ballard, Ann D'Angelo, Transportation Cabinet; Kevin Brown, Michael Miller, Kentucky Department of Education; DJ Wasson, Department of Insurance; Patricia Cooksey, Marc A. Guilfoil, Mary Scollay, Susan Speckert, Timothy West, Kentucky Horse Racing Commission; Michael D. Bennett, Dawn Bellis, Michael D. Bennett; Department of Housing, Buildings and Construction; Paula Goff, IJ Eneje, Janice Johnston, Ray Peters, Cabinet for Health and Family Services; Gabe Prewitt, Kentucky Harness Horsemen.

The Administrative Regulation Review Subcommittee met on Tuesday, December 14, 2010, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

EDUCATION PROFESSIONAL STANDARDS BOARD: Teaching Certificates

16 KAR 2:150. Probationary certificate for teachers of engineering and technology education. Mike Carr, director of certification, and Alicia Sneed, director of legal services, represented the board.

A motion was made and seconded to approve the following amendments: (1) 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.

Assessment

16 KAR 6:020. Written examination prerequisites for occupation-based career and technical education teachers.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 4 and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Office of Income Taxation: Income Tax; General Administration

103 KAR 15:180. Kentucky New Markets Development Program Tax Credit. Laura Ferguson, assistant general counsel; Jeff Mosley, general counsel; and Gary Morris, policy advisor, represented the office.

In response to a question by Senator Pendleton, Mr. Mosley stated that all stakeholder requests for changes to this administrative regulation had been made with the exception of a request that required a statutory change. The office intended to work on the statutory change

during the 2011 Regular Session of the General Assembly and then amend the administrative regulation to conform.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 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.

Office of the Secretary: Purchasing

200 KAR 5:400. Kentucky resident bidder reciprocal preference. Travis Powell, deputy general counsel, and Don Speer, executive director, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 2 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.

GENERAL GOVERNMENT CABINET: Board of Pharmacy: Board

201 KAR 2:165. Transfer of prescription information. Michael Burleson, executive director, represented the board.

Board of Dentistry: Board

201 KAR 8:007E. Repeal of 201 KAR 8:006, 8:015, 8:070, 8:130, 8:135, 8:140, 8:150, 8:160, 8:170, 8:180, 8:185, 8:190, 8:220, 8:225, 8:230, 8:240, 8:250, 8:260, 8:265, 8:270, 8:277, 8:280, 8:290, 8:310, 8:320, 8:330, 8:340, 8:345, 8:350, 8:355, 8:400, 8:420, 8:430, 8:440, 8:450, 8:460, 8:70, and 8:490. Katherine King, DMD and vice president; Susan M. King, DMD and secretary/treasurer; and Brian Bishop, executive director, represented the board.

In response to a question by Senator Pendleton, Mr. Bishop stated that the board had met with stakeholders and held ten (10) town-hall meetings pertaining to these administrative regulations. The board kept the latest versions of these administrative regulations available on its Web site and had informed licensees of the proposed changes through affiliated associations.

In response to questions by Co-Chair Combs, Mr. Bishop stated that the board would communicate directly with licensees to inform them of the proposed amendments. The administrative regulations were filed by the board as emergencies because the statutes were repealed and reenacted and the board did not realize the prior administrative regulations would stay in effect until repealed or amended by the board.

201 KAR 8:510 & E. Advisory opinions.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; 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.

201 KAR 8:520 & E. Fees and fines.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend Section 4(5) to delete provisions for a fifty (50) dollar fee for a paper copy of the Dental Practice Act; (3) to amend Sections 5 and 6 to comply with the format requirements of KRS Chapter 13A; (4) to amend Section 3 to delete the registered dental assistant initial fee for IV access line registration, and (5) to amend Section 5 to: (a) clarify that fines may be agreed to by settlement agreement or as listed in

this Section, rather than "in addition to"; (b) limit the fine for a licensee deficient on hours after a continuing education audit to \$200 per hour deficient, not to exceed \$5,000; (c) lower the fine for failure of a follow-up infection control inspection from \$1,000 to \$500; (d) change the time frame for a follow-up anesthesia and sedation facility that has failed a previous inspection from no sooner than twenty (20) to no sooner than thirty (30) days following the initial failed inspection; and (e) lower the fine for a follow-up anesthesia and sedation facility inspection after an initial inspection failure from \$2,500 to \$1,500. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 8:540 & E. Dental 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 and Section 3(3) to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Social Work: Board

201 KAR 23:050. Renewal, termination, reinstatement of license. Jim Grawe, assistant attorney general; Margaret Hazlette, executive director; and William Adock, board member, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to define "licensee"; (2) to amend Section 1(3) to specify that address changes shall be provided to the board in writing; and (3) 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.

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

301 KAR 2:221 & E. Waterfowl seasons and limits. Karen Waldrop, wildlife director, represented the department.

301 KAR 2:222 & E. Waterfowl hunting requirements on public lands.

Wildlife

301 KAR 4:050. Swan Lake Unit of Boatwright Wildlife Management Area.

DEPARTMENT OF AGRICULTURE: Office of State Veterinarian: Division of Animal Health: Livestock Sanitation

302 KAR 20:065. Sale and exhibition of Kentucky origin animals in Kentucky. Sue Billings, DVM, deputy state veterinarian; Robert Stout, DVM, state veterinarian; and Clint Quarles, staff attorney, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Section 12 to update the name of a form; and (2) to amend Sections 1 and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 20:066. Chronic wasting disease surveillance in farmed cervids.

In response to a question by Senator Pendleton, Dr. Stout stated that there had been no reported cases of chronic wasting disease in Kentucky for wild or domesticated animals.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 9 for clarification, to insert citations, 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 of Motor Carriers: Motor Vehicle Tax

601 KAR 9:140. Temporary registration plates. Dan Ballard, branch manager, and Ann D'Angelo, assistant general counsel, represented the division.

In response to a question by Senator Pendleton, Ms. D'Angelo stated that the division was making progress regarding discussions with stakeholders relating to 601 KAR 1:018 & E, special overweight or overdimensional permits.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: Office of Instruction

704 KAR 3:303. Required core academic standards. Kevin Brown, general counsel, and Michael Miller, director, Division of Program Standards, represented the department.

704 KAR 3:305. Minimum requirements for high school graduation.

A motion was made and seconded to approve the following amendment: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 2, 5, and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Division of Kentucky Access: Health Insurance Contracts

806 KAR 17:320. Kentucky Access requirements. D.J. Wasson, staff assistant, represented the division.

Kentucky Horse Racing Commission: Thoroughbred Racing

810 KAR 1:009 & E. Jockeys and apprentices. Susan Speckert, general counsel, and Timothy West, assistant general counsel, represented the commission.

In response to questions by Co-Chair Combs, Ms. Speckert stated that the commission understood that emergency administrative regulations shall conform to KRS Chapter 13A. The commission met with the Kentucky Jockeys' Guild and with the Kentucky Horsemen's Benevolent and Protective Association, and those stakeholders were in agreement with the proposed amendments.

At the October 12, 2010, meeting of the Administrative Regulation Review Subcommittee, a motion was made and seconded to approve the following amendments: (1) to amend Section 15(4) to delete the new provisions that require disclosure of advertising agreement terms to the commission; (2) to amend the advertising request form, KHRC 009-001, in conformity; (3) to amend Section 14 to specify that a safety vest shall have a tag, stamp, or similar identifying marker indicating that it meets one (1) of the required safety standards; and (4) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 14 to 17 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: (1) to amend Section 14(5) to: (a) delete the two (2) pound weight limit for safety vests; and (b) specify that a safety vest shall meet or exceed one (1) of the listed safety standards; and (2) to amend Section 15 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 1:026 & E. Racing associations.

At the October 12, 2010, meeting of the Administrative Regulation Review Subcommittee, a motion was made and seconded to approve the following amendments: (1) to amend Section 31 to specify that a safety vest shall have a tag, stamp, or similar identifying marker indicating that it meets one (1) of the required safety standards; and (2) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 21, 28, 30, 31, 36, and 37 to comply with

the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Section 31 to: (a) specify that a safety vest shall meet or exceed one (1) of the listed safety standards; and (b) make a technical correction. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:130. Postrace sampling and testing procedures.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 4, 5, 7, and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Harness Racing

811 KAR 1:220. Harness racing at county fairs.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 12, 13, 15, 17, 21, and 24 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 1:260. Postrace sampling and testing procedures.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 4, 5, 7, and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:170. Postrace sampling and testing procedures.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 4, 5, 7, and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Housing, Buildings and Construction: Division of Building Code Enforcement: Electrical Inspectors

815 KAR 35:100. Electrical continuing education procedure.

Michael D. Bennett, staff attorney, and Dawn Bellis, general counsel, represented the division.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 6 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to revise the forms incorporated by reference to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Adult and Child Health Improvement: Kentucky Early Intervention System

902 KAR 30:001 & E. Definitions. Paula Goff, Part C coordinator, represented the division.

In response to questions by Senator Givens, Ms. Goff stated that the federal statutes that authorize the First Steps program were revised in 2004. Kentucky had been in special circumstances with federal administrators until Kentucky's administrative regulations could be amended commensurate with the federal changes. Also, new technologies precipitated changes to the forms and processing requirements. The division was pleased with the new system, TOTS, which was more efficient than expected. The data management system tracked each child in First Steps from referral to discharge, enabled the division to track funding for the program and engage in meaningful quality assurance, and compiled information for reporting information, including data needed for Medicaid billing.

In response to a question by Co-Chair Tori, Ms. Goff stated that most children in the program were between eighteen (18) months and twenty (20) months of age at the time of referral and were in the program for an average of one (1) year and six (6) months. A smaller

percentage of children were referred at birth due to medical conditions identified at birth.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend the TITLE and Section 1 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 1 to add definitions for "cabinet-approved criterion referenced instrument", "cabinet-approved screening protocol", "First Steps data management system", "Kentucky Early Childhood Data System", "Part C coordinator", and "record review team". Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 30:110 & E. Point of entry and service coordination.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 4 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to update the material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 30:120 & E. Evaluation and eligibility.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend Sections 1 through 4 to comply with the drafting and format requirements of KRS Chapter 13A; (3) to amend Section 1 to establish the criteria for approved neonatal follow-up program teams and intensive level evaluation teams; (4) to amend Section 2 to specify the three (3) assessment instruments approved by the cabinet; and (5) to amend Section 4 to incorporate by reference the three approved assessment instruments and the First Steps Established Risk Condition List. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 30:130 & E. Assessment, service planning, and assistive technology.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 4 to comply with the drafting and format requirements of KRS Chapter 13A; (4) to amend Section 2 to specify that services shall be limited to one hour per day, rather than one hour per week; (5) to amend Section 3 to establish the requirements for assistive technology services, including the review process; and (6) to amend Section 4 to incorporate by reference the Individualized Family Service Plan. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 30:141. Repeal of 902 KAR 30:140 and 30:170.

902 KAR 30:150 & E. Personnel qualification.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 4 to comply with the drafting and format requirements of KRS Chapter 13A; (4) to amend Section 1 to clearly establish the application requirements; and (5) to amend Section 2 to re-insert licensed psychologists, certified psychologists with autonomous functioning, and licensed psychological practitioners to the list of personnel who may provide services. Without objection, and with

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agreement of the agency, the amendments were approved.

902 KAR 30:160 & E. Covered services.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to: (a) comply with the drafting and format requirements of KRS Chapter 13A; (b) specify which services may be provided without the child being present; and (c) add to the list of disciplines that provide early intervention professionals who are licensed psychologists, physicians, optometrists, and ophthalmologists. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 30:180 & E. Procedural safeguards.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 5 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 5 to incorporate by reference the First Steps Complaint Form and the Mediation/Due Process Request Form. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 30:200 & E. Coverage and payment for services.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend Sections 1 through 5 to comply with the drafting and format requirements of KRS Chapter 13A; (3) to amend Section 2 to reinsert licensed psychologists to the list of providers who shall be reimbursed for services; (4) to amend Section 3 to specify when early intervention family services authorized by KRS 200.654(7) may be provided without the child present; (5) to amend Section 6 to incorporate by reference the record review supporting documentation; and (6) to amend Section 2 to change the reimbursement paid to licensed psychological associates or certified psychologists for services by increasing from: (a) \$46 to \$61 the reimbursement for services provided in an office or center-based site; and (b) \$70 to \$81 the reimbursement for services provided in a home or community site. Without objection, and with agreement of the agency, the amendments were approved.

Department for Behavioral Health, Developmental and Intellectual Disabilities: Division of Behavioral Health: Mental Health

908 KAR 2:230. Kentucky family peer support specialist. I.J. Eneje, internal policy analyst, and Janice Johnston, administrator, Behavioral Health Program, represented the division.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; NECESSITY, FUNCTION, AND CONFORMITY paragraphs; Sections 1 through 7; and Section 9 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the January 11, 2011, meeting of the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Kentucky Teachers' Retirement System: General Rules

102 KAR 1:225. General compliance with federal tax laws.

102 KAR 1:230. Limitations on benefits.

102 KAR 1:245. Rollovers and transfers of contributions to other plans.

Department of Revenue: Office of Sales and Excise Taxes: Forms

103 KAR 3:050. Miscellaneous taxes forms manual.

GENERAL GOVERNMENT CABINET: Board of Dentistry: Board

201 KAR 8:390E. General anesthesia, deep sedation, and conscious sedation by dentists.

201 KAR 8:500 & E. Board organization.

201 KAR 8:530 & E. Licensure of dentists.

201 KAR 8:560 & E. Licensure of dental hygienists.

Board of Licensure for Private Investigators: Board

201 KAR 41:100. Verification of 240 hour employees.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Carriers: Division

601 KAR 1:018 & E. Special overweight or overdimensional permits.

LABOR CABINET: Department of Workers' Claims: Department

803 KAR 25:089. Workers' compensation medical fee schedule for physicians.

803 KAR 25:091 & E. Workers' compensation hospital fee schedule.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Thoroughbred Racing

810 KAR 1:001. Definitions.

810 KAR 1:011. Pari-mutuel wagering.

810 KAR 1:120. Exotic wagering.

Harness Racing

811 KAR 1:005. Definitions.

811 KAR 1:125. Pari-mutuel wagering.

811 KAR 1:250. Exotic wagering.

Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:010. Definitions.

811 KAR 2:060. Pari-mutuel wagering.

811 KAR 2:160. Exotic wagering.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Mental Health and Mental Retardation Services: Division of Administration and Financial Management: Institutional Care

908 KAR 3:050. Per diem rates. Ray Peters, program administrator, represented the division.

In response to a question by Senator Kerr, Mr. Peters stated that the division needed to verify the rates in the proposed amendment before continuing with Subcommittee consideration of this administrative regulation. The division requested deferral of this administrative regulation.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to defer consideration of this administrative regulation to the January 11, 2011 meeting of the Subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

The subcommittee adjourned at 1:50 p.m. until January 11, 2011.

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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.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of November 8, 2010

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of November 8, 2010, having been referred to the Committee on November 3, 2010, pursuant to KRS 13A.290(6):

102 KAR 1:320 & E
102 KAR 1:330 & E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 8, 2010 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of November 16, 2010

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Transportation for its meeting of November 16, 2010, having been referred to the Committee on November 3, 2010, pursuant to KRS 13A.290(6):

201 KAR 40:040
201 KAR 40:050
201 KAR 40:060
201 KAR 40:070
201 KAR 40:080
201 KAR 40:100

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 16, 2010 meeting, which are hereby incorporated by reference. ADDITIONAL COMMITTEE Findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of November 17, 2010

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of November 17, 2010, having been referred to the Committee on November 3, 2010, pursuant to KRS 13A.290(6):

201 KAR 22:020
201 KAR 22:053
921 KAR 2:040 & E
921 KAR 3:030 & E

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 17, 2010 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON VETERANS, MILITARY AFFAIRS, AND PUBLIC PROTECTION
Meeting of November 22, 2010

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Veterans, Military Affairs, and Public Protection for its meeting of November 22, 2010, having been referred to the Committee on November 3, 2010, pursuant to KRS 13A.290(6):

106 KAR 2:020

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 22, 2010 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

G - 2

The Locator Index lists all administrative regulations published in VOLUME 37 of the Administrative Register from July 2010 through June 2011. 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 36 are those administrative regulations that were originally published in VOLUME 36 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2010 bound Volumes were published.

KRS Index

G - 12

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 37 of the Administrative Register.

Technical Amendment Index

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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2010 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

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The Subject Index is a general index of administrative regulations published in VOLUME 37 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	36 Ky.R. Page No.	Effective Date	Regulation Number	36 Ky.R. Page No.	Effective Date
VOLUME 36					
The administrative regulations listed under VOLUME 36 are those administrative regulations that were originally published in Volume 36 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2010 bound Volumes were published.					
SYMBOL KEY:			As Amended	1434	
* Statement of Consideration not filed by deadline			31 KAR 6:010		
** Withdrawn, not in effect within 1 year of publication			Amended	2110-M	
*** Withdrawn before being printed in Register			As Amended	2176	6-4-10
(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.			101 KAR 2:066		
			Amended	1963	
			Withdrawn		7-19-10
			102 KAR 1:160		
			Amended	1966	
			As Amended	2177	6-4-10
			102 KAR 1:225		
			Amended	1967	
			Amended	2056-A	
			As Amended	2299	
			Amended	2061-A	
			As Amended	2302	6-4-10
			200 KAR 5:314		
			Amended	1300	
			As Amended	2177	6-4-10
			200 KAR 5:315		
			Amended	616	
			Withdrawn	**	Date
			201 KAR 10:050		
			Amended	1301	
			As Amended	2047-M	
			Withdrawn		7-8-10
			201 KAR 16:030		
			Amended	2353	
			Withdrawn		11-5-10
			201 KAR 20:240		
			Amended	2071-A	6-16-10
			201 KAR 20:450		
			Amended	527	
			201 KAR 20:490		
			Amended	2073-A	
			As Amended	2312	6-16-10
			201 KAR 20:510	2402	(See 37 Ky.R.)
			201 KAR 22:020		
			Amended	2208	
			Withdrawn		6-15-10
			201 KAR 22:045		(See 37 Ky.R.)
			Amended	2209	
			201 KAR 22:135		(See 37 Ky.R.)
			Amended	2211	
			201 KAR 30:050		
			Amended	152	
			Amended	569	
			301 KAR 1:140		(See 37 Ky.R.)
			Amended	2212	
			301 KAR 2:049		(See 37 Ky.R.)
			Amended	2215	
			301 KAR 2:132		(See 37 Ky.R.)
			Amended	2075-A	
			Amended	2335	
			301 KAR 2:172		
			Amended	2080-A	
			As Amended	2314	6-3-10
			301 KAR 2:178		
			Amended	2082-A	
			As Amended	2316	6-3-10
			401 KAR 5:045		(See 37 Ky.R.)
			Amended	2112-M	
			401 KAR 5:070		
			Amended	2114-M	8-5-10
			401 KAR 5:075		(See 37 Ky.R.)
			Amended	2119-M	
			Amended	2339	
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.)					
101 KAR 2:066E					
Resubmitted	1860	1-4-10			
Withdrawn		7-19-10			
201 KAR 16:030E					
Resubmitted	2280	5-13-10			
401 KAR 8:010E					
Resubmitted	2281	4-20-10			
Replaced		(See 37 Ky.R.)			
503 KAR 1:140E	1871	1-5-10			
Replaced	2178	6-4-10			
505 KAR 1:160E					
Resubmitted	1180	11-13-09			
703 KAR 5:180E					
Resubmitted	2020-M	1-15-10			
810 KAR 1:025E					
Resubmitted	2158	3-26-10			
Replaced		(See 37 Ky.R.)			
810 KAR 1:037E	2165	3-17-10			
Replaced		(See 37 Ky.R.)			
810 KAR 1:100E					
Resubmitted	2168	3-17-10			
Replaced		(See 37 Ky.R.)			
811 KAR 1:037E	2169	3-17-10			
Replaced		(See 37 Ky.R.)			
811 KAR 1:070E					
Resubmitted	2023-M	1-15-10			
811 KAR 1:230					
Resubmitted	2172	3-17-10			
Replaced		(See 37 Ky.R.)			
811 KAR 2:130					
Resubmitted	2174	3-17-10			
815 KAR 20:050E					
Resubmitted	992	10-01-09			
Replaced	2067-M	6-4-10			
906 KAR 1:180E					
Resubmitted	1184	11-13-09			
Replaced	2197	6-4-10			
921 KAR 2:530E					
Resubmitted	2294	5-14-10			
Expired					
ORDINARY ADMINISTRATIVE REGULATIONS:					
11 KAR 5:145					
Amended	1508				
11 KAR 12:060					
Amended	2055-A	7-12-2010			
13 KAR 1:020					
Amended	2347	9-3-10			
31 KAR 3:010					
Amended	1095				

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401 KAR 8:010			Withdrawn		6-15-10
Amended			781 KAR 1:020		
401 KAR 8:020			Amended	2230	(See 37 Ky.R.)
Amended	2088-A		781 KAR 1:030		
As Amended	2321	6-3-10	Amended	2232	(See 37 Ky.R.)
401 KAR 8:070			781 KAR 1:040		
Amended	2092-A		Amended	2235	
401 KAR 8:150		(See 37 Ky.R.)	Withdrawn		6-15-10
Amended	2094-A		803 KAR 30:010		(See 37 Ky.R.)
401 KAR 8:200			Amended	2238	
Amended	2097-A		804 KAR 11:030		
As Amended	2323	6-3-10	Amended	2112-A	
401 KAR 8:250			Amended	2344	
Amended	2099-A		Withdrawn		7-7-10
As Amended	2324		810 KAR 1:025		
401 KAR 8:300			Amended	2244	(See 37 Ky.R.)
Amended	2100-A		810 KAR 1:037	2261	(See 37 Ky.R.)
As Amended	2324	6-3-10	810 KAR 1:100	2264	(See 37 Ky.R.)
401 KAR 8:510			811 KAR 1:037	2265	(See 37 Ky.R.)
Amended	2101-A		811 KAR 1:070		
As Amended	2324	6-3-10	Amended	2127-M	6-4-10
401 KAR 8:550			As Amended	2187	
Amended	2103-A		811 KAR 1:230	2268	(See 37 Ky.R.)
As Amended	2325	6-3-10	811 KAR 2:130	2269	(See 37 Ky.R.)
401 KAR 11:010			815 KAR 7:070		(See 37 Ky.R.)
Amended	2094		Amended	2251	
401 KAR 11:030		(See 37 Ky.R.)	815 KAR 8:070	2004	
Amended	2105-A		As Amended	2194	6-4-10
401 KAR 47:090		(See 37 Ky.R.)	815 KAR 8:080	2006	
Amended	620		Amended	2048-A	
401 KAR 59:015			As Amended	2195	6-4-10
Amended	2355	(See 37 Ky.R.)	815 KAR 8:090	2008	
405 KAR 8:010			As Amended	2196	6-4-10
Amended	2360	(See 37 Ky.R.)	815 KAR 10:060		
503 KAR 1:140			Reprint	1857	
Amended	1989		815 KAR 20:018	2271	(See 37 Ky.R.)
As Amended	2178	6-4-10	815 KAR 20:050		
503 KAR 3:010			Amended	1134	
Amended	2373	(See 37 Ky.R.)	As Amended	2067-M	6-4-10
503 KAR 3:040			815 KAR 20:191		
Amended	2379	(See 37 Ky.R.)	Amended	2135-M	
503 KAR 3:110			As Amended	2327	(See 37 Ky.R.)
Amended	2383	(See 37 Ky.R.)	815 KAR 2	5:080	
601 KAR 1:200		(See 37 Ky.R.)	Amended	2114-A	
Amended	2220		As Amended	2333	
601 KAR 1:220			900 KAR 5:020		
Amended	2058-M		Amended	2255	(See 37 Ky.R.)
As Amended	2184	6-4-10	900 KAR 6:020		
601 KAR 2:020			Amended	2256	(See 37 Ky.R.)
Amended	2388	(See 37 Ky.R.)	900 KAR 6:060		
601 KAR 12:060			Amended	2258	(See 37 Ky.R.)
Amended	1116		900 KAR 6:125	260	
As Amended	2325	6-4-10	Withdrawn		11-13-09
603 KAR 4:045			902 KAR 20:400	1572	
Amended	2124-M		Amended	2049-A	(See 37 Ky.R.)
As Amended	2184		906 KAR 1:180	1403	
702 KAR 3:030			Amended	2103-M	
Amended	2108-A		As Amended	2197	6-4-10
As Amended	2326		910 KAR 1:240		
702 KAR 3:246			Amended	2391	(See 37 Ky.R.)
Amended	2225	(See 37 Ky.R.)	910 KAR 1:260		
703 KAR 5:060			Amended	1997	
Amended	2109-A	(See 37 Ky.R.)	As Amended	2201	6-4-10
703 KAR 5:180	2144-M		921 KAR 1:410		
704 KAR 3:540	2260	(See 37 Ky.R.)	Amended	2395	(See 37 Ky.R.)
725 KAR 1:061					
Amended	2227				

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VOLUME 37					
EMERGENCY ADMINISTRATIVE REGULATIONS:			902 KAR 20:330E	1404	10-18-10
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of re- quested extension, or upon replacement or repeal, whichever occurs first.)			902 KAR 20:410E	935	9-1-10
31 KAR 4:130E	4	6-15-10	902 KAR 30:001E	257	7-15-10
Replaced	680	10-1-10	902 KAR 30:110E	260	7-15-10
31 KAR 4:140E	6	6-15-10	902 KAR 30:120E	265	7-15-10
Replaced	682	10-1-10	902 KAR 30:130E	274	7-15-10
32 KAR 1:030E	1381	11-2-10	902 KAR 30:150E	279	7-15-10
32 KAR 1:190E	1382	11-2-10	902 KAR 30:160E	283	7-15-10
101 KAR 2:210E	916	9-15-10	902 KAR 30:180E	286	7-15-10
101 KAR 5:015E	211	7-13-10	902 KAR 30:200	289	7-15-10
Withdrawn		8-13-10	902 KAR 45:005E	939	9-8-10
Resubmitted	664	8-13-10	Withdrawn		10-18-10
102 KAR 1:320E	212	7-15-10	902 KAR 45:110E	942	9-8-10
102 KAR 1:330E	215	7-15-10	Withdrawn		10-18-10
105 KAR 1:190E	217	7-15-10	907 KAR 1:012E	295	7-1-10
201 KAR 8:007E	224	7-15-10	907 KAR 1:014E	298	7-1-10
201 KAR 8:390E	225	7-15-10	907 KAR 1:015E	302	7-1-10
201 KAR 8:500E	228	7-15-10	907 KAR 1:019E	305	7-1-10
201 KAR 8:510E	231	7-15-10	907 KAR 1:479E	312	7-1-10
201 KAR 8:520E	233	7-15-10	907 KAR 1:677E	318	7-1-10
201 KAR 8:530E	235	7-15-10	907 KAR 1:825E	323	7-1-10
201 KAR 8:540E	239	7-15-10	907 KAR 3:090E	333	7-1-10
201 KAR 8:560E	241	7-15-10	907 KAR 3:100E	348	7-1-10
201 KAR 8:570E	245	7-15-10	907 KAR 3:215E	1164	10-1-10
Withdrawn		10-15-00	907 KAR 5:005E	352	7-1-10
201 KAR 8:580E	248	7-15-10	921 KAR 2:040E	672	7-23-10
Withdrawn		9-14-10	921 KAR 3:030E	674	7-23-10
201 KAR 39:050E	250	6-16-10	ORDINARY ADMINISTRATIVE REGULATIONS:		
Replaced	444	11-5-10	4 KAR 1:010	872	
301 KAR 2:221E	1158	10-15-10	As Amended	1168	12-3-2010
301 KAR 2:222E	1160	10-15-10	4 KAR 1:020	873	12-3-2010
301 KAR 2:225E	917	8-18-10	4 KAR 1:030	875	12-3-2010
302 KAR 20:115E	252	7-2-10	4 KAR 1:040	877	
Replaced	955	10-13-10	As Amended	1168	12-3-2010
302 KAR 21:005E	254	7-2-10	11 KAR 3:100		
Replaced	955	10-13-10	Amended	71	10-1-10
405 KAR 8:010E		(See 36 Ky.R.)	Amended	1736	
Replaced	689	9-2-10	11 KAR 4:080		
501 KAR 1:070E	1619	12-1-10	Amended	1746	
503 KAR 1:110E	9	6-10-10	11 KAR 5:145		
601 KAR 1:018E	666	8-12-10	Amended	84	10-1-10
702 KAR 7:130E	255	6-23-10	11 KAR 19:010	1923	
Replaced	969	10-6-10	11 KAR 19:020	1925	
803 KAR 25:091E	920	9-15-10	11 KAR 19:030	1927	
810 KAR 1:009E	13	6-15-10	16 KAR 2:150		
815 KAR 1:025E		(See 36 Ky.R.)	Amended	1317	
Replaced	363	9-3-10	As Amended	1622	
810 KAR 1:026E	18	6-15-10	16 KAR 3:050		
810 KAR 1:037E		(See 36 Ky.R.)	Amended	1500	
Replaced	369	9-3-10	16 KAR 6:010		
810 KAR 1:100E		(See 36 Ky.R.)	Amended	86	
Replaced	371	9-3-10	As Amended	678	10-1-10
810 KAR 1:110E	923	9-15-10	16 KAR 6:020		
811 KAR 1:037E		(See 36 Ky.R.)	Amendment	1318	
Replaced	372	9-3-10	As Amended	1622	
811 KAR 1:230		(See 36 Ky.R.)	16 KAR 6:030		
Replaced	372	9-3-10	Amended	89	
811 KAR 1:240E	927	9-15-10	As Amended	680	10-1-10
811 KAR 2:150E	931	9-15-10	31 KAR 4:130		
811 KAR 2:020E	22	6-15-10	Amended	91	
811 KAR 2:130E		(See 36 Ky.R.)	As Amended	680	10-1-10
Replaced	374	9-3-10	31 KAR 4:140		
811 KAR 2:140E	30	6-15-10	Amended	94	
900 KAR 5:020E	1384	10-18-10	As Amended	682	10-1-10
900 KAR 6:060E	1385	10-18-10	32 KAR 1:030		
902 KAR 20:320E	1387	10-18-10	Amended	1502	
			32 KAR 1:190		
			Amended	1504	

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40 KAR 2:350			Repealed	224	7-15-10
Amended	96		201 KAR 8:135		
Amended	741	11-5-2010	Repealed	224	7-15-10
101 KAR 2:210			201 KAR 8:140		
Amended	1000		Repealed	224	7-15-10
101 KAR 5:015	605		201 KAR 8:150		
Withdrawn		8-13-10	Repealed	224	7-15-10
Resubmitted	879	12-3-2010	201 KAR 8:160		
102 KAR 1:225			Repealed	224	7-15-10
Amended	1322		201 KAR 8:170		
102 KAR 1:230			Repealed	224	7-15-10
Amended	1323		201 KAR 8:180		
102 KAR 1:245			Repealed	224	7-15-10
Amended	1327		201 KAR 8:185		
102 KAR 1:320	606		Repealed	224	7-15-10
Amended	989		201 KAR 8:190		
As Amended	1170	11-8-2010	Repealed	224	7-15-10
102 KAR 1:330	609		201 KAR 8:220		
As Amended	1172	11-8-2010	Repealed	224	7-15-10
103 KAR 3:020			201 KAR 8:225		
Amended	755		Repealed	224	7-15-10
As Amended	1172	12-3-2010	201 KAR 8:230		
103 KAR 3:050			Repealed	224	7-15-10
Amended	760		201 KAR 8:240		
103 KAR 15:180	1107		Repealed	224	7-15-10
Amended	1490		201 KAR 8:250		
As Amended	1625		Repealed	224	7-15-10
103 KAR 18:070			201 KAR 8:260		
Amended	409		Repealed	224	7-15-10
As Amended	1177	12-3-2010	201 KAR 8:265		
103 KAR 31:102	611		Repealed	224	7-15-10
As Amended	945	11-5-10	201 KAR 8:270		
105 KAR 1:190			Repealed	224	7-15-10
Amended	410		201 KAR 8:277		
As Amended	945	11-5-10	Repealed	224	7-15-10
105 KAR 1:370			201 KAR 8:280		
Amended	99		Repealed	224	7-15-10
As Amended	683	10-1-10	201 KAR 8:290		
106 KAR 2:020			Repealed	224	7-15-10
Amended	417		201 KAR 8:310		
As Amended	1177	11-22-2010	Repealed	224	7-15-10
107 KAR 2:010			201 KAR 8:320		
Amended	1505		Repealed	224	7-15-10
109 KAR 15:020			201 KAR 8:330		
Amended	767		Repealed	224	7-15-10
As Amended	1178	11-17-10	201 KAR 8:340		
200 KAR 5:400	1109		Repealed	224	7-15-10
As Amended	1627		201 KAR 8:345		
200 KAR 5:410	1111		Repealed	224	7-15-10
As Amended	1411		201 KAR 8:350		
201 KAR 1:065			Repealed	224	7-15-10
Amended	1507		201 KAR 8:355		
201 KAR 1:140			Repealed	224	7-15-10
Amended	1508		201 KAR 8:400		
201 KAR 2:165			Repealed	224	7-15-10
Amended	1328		201 KAR 8:420		
201 KAR 2:330	612		Repealed	224	7-15-10
As Amended	951	10-2-10	201 KAR 8:430		
201 KAR 7:075			Repealed	224	7-15-10
Amended	1001		201 KAR 8:440		
As Amended	1411		Repealed	224	7-15-10
201 KAR 17:030			201 KAR 8:450		
Amended	1003		Repealed	224	7-15-10
As Amended	1412		201 KAR 8:460		
201 KAR 8:006			Repealed	224	7-15-10
Repealed	224	7-15-10	201 KAR 8:470		
201 KAR 8:015			Repealed	224	7-15-10
Repealed	224	7-15-10	201 KAR 8:480		
201 KAR 8:070			Repealed	224	7-15-10
Repealed	224	7-15-10	201 KAR 8:500	614	
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As Amended	1628		Amended	1332	
201 KAR 8:530	620		201 KAR 23:075		
201 KAR 8:540	624		Amended	1335	
As Amended	1629		Amended	1692	
201 KAR 8:560	626		201 KAR 26:115		
201 KAR 8:570	630		Amended	1511	
Withdrawn		10-14-10	201 KAR 26:121		
201 KAR 8:571	1929		Amended	1513	
201 KAR 8:580	633		201 KAR 26:125		
Withdrawn		9-14-10	Amended	1514	
201 KAR 8:581	1931		201 KAR 26:130		
201 KAR 9:005			Amended	1516	
Repealed	194	9-15-10	201 KAR 26:155		
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201 KAR 10:050			201 KAR 26:171		
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201 KAR 18:150			201 KAR 26:175		
Amended	768		Amended	1523	
As Amended	1178	12-3-2010	201 KAR 26:180		
201 KAR 20:056			Amended	1526	
Amended	419		201 KAR 26:185		
Amended	1215		Amended	1527	
201 KAR 20:057			201 KAR 26:190		
Amended	421	10-20-10	Amended	1529	
201 KAR 20:061	635		201 KAR 26:200		
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201 KAR 20:062	637		201 KAR 26:215		
Amended	1217		Amended	1533	
As Amended	1415		201 KAR 26:230		
201 KAR 20:070			Amended	1535	
Amended	423	10-20-10	201 KAR 26:270		
201 KAR 20:110			Amended	1537	
Amended	426	10-20-10	201 KAR 26:290		
201 KAR 20:162			Amended	1539	
Amended	428	10-20-10	201 KAR 26:310		
201 KAR 20:215			201 KAR 28:010		
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201 KAR 20:225			As Amended	1420	
Amended	429	10-20-10	201 KAR 28:130		
201 KAR 20:230			Amended	1006	
Amended	431		As Amended	1422	
As Amended	952	10-20-10	201 KAR 30:040		
201 KAR 20:240			Amended	101	
Amended	432	10-20-10	201 KAR 34:020		
201 KAR 20:370			Amended	443	11-5-10
Amended	434	10-20-10	201 KAR 36:060		
201 KAR 20:411			Amended	780	
Amended	436	10-20-10	201 KAR 36:070		
201 KAR 20:470			Amended	783	
Amended	438	10-20-10	Withdrawn		12-14-10
Amended	1748		201 KAR 39:050		
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As Amended	357	8-18-10	201 KAR 40:040		
201 KAR 22:020			Amended	784	11-16-2010
Amended	775	12-3-2010	201 KAR 40:050		
201 KAR 22:045		(See 36 Ky.R.)	Amended	786	
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Amended	776		Amended	787	
As Amended	1184	12-3-2010	As Amended	1187	11-16-2010
201 KAR 22:135		(See 36 Ky.R.)	201 KAR 40:070		
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201 KAR 22:070			As Amended	1188	11-16-2010
Amended	779		201 KAR 40:080		
As Amended	1419		Amended	791	
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Amended	1695		As Amended	1630	
201 KAR 42:020			302 KAR 20:066		
Amended	1011		Amended	1035	
Amended	1696		As Amended	1634	
201 KAR 42:030			302 KAR 20:115		
Amended	1012		Amendment	451	
201 KAR 42:035			As Amended	955	10-13-10
Amended	1013		302 KAR 21:005	642	
Amended	1697		As Amended	955	10-13-10
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Amended	1015		Amended	112	
Withdrawn		9-15-10	As Amended	684	9-8-10
Amended	1699		302 KAR 29:050		
201 KAR 42:050			Amended	114	
Amended	1016		As Amended	686	9-8-10
Amended	1700		302 KAR 29:060		
201 KAR 42:060			Amended	118	9-8-10
Amended	1018		302 KAR 34:020		
Amended	1702		Amended	800	Withdrawn
201 KAR 42:070			Withdrawn		
Amended	1020		304 KAR 1:040		
Amended	1704		Amended	121	
201 KAR 42:080			Withdrawn		8-18-10
Amended	1113		307 KAR 1:060	643	
Amended	1705		As Amended	956	11-5-10
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Amended	796		Amended	1346	
Withdrawn		9-14-10	401 KAR 5:006		
201 KAR 42:110			Amended	1757	
Amended	1022		401 KAR 5:045		(See 36 Ky.R.)
300 KAR 2:040	195		As Amended	44	8-5-10
As Amended	952	11-5-10	401 KAR 5:075		(See 36 Ky.R.)
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Amended	446		401 KAR 8:100		
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301 KAR 1:140		(See 36 Ky.R.)	Amended	991	
As Amended	35	8-5-10	401 KAR 8:150		(See 36 Ky.R.)
301 KAR 1:201			As Amended	50	8-5-10
Amended	102	9-2-10	401 KAR 11:030		(See 36 Ky.R.)
301 KAR 1:410			As Amended	51	8-5-10
Amended	107		401 KAR 47:090		(See 36 Ky.R.)
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SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, not in effect within 1 year of publication

*** Withdrawn before being printed in Register

(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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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2010 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: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

The Board of Nursing has requested that technical amendments be made to reflect the statutory change of the term "Advance Registered Nurse Practitioner" or "ARNP" to "Advance Practice Registered Nurse" or "APRN". This change was applied to 201 KAR 20:059, 201 KAR 20:161, 201 KAR 20:163, 201 KAR 20:215, 201 KAR 20:220, 201 KAR 20:235, 201 KAR 20:400, 201 KAR 20:410, 201 KAR 20:450, and 201 KAR 20:490, as of July 15, 2010.

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