# ADMINISTRATIVE REGISTER **OF KENTUCKY**



## LEGISLATIVE RESEARCH COMMISSION Frankfort, Kentucky

## **VOLUME 37, NUMBER 8 TUESDAY, FEBRUARY 1, 2011**

ARRS - February 2011 TENTATIVE AGENDA 1949 REGULATION REVIEW PROCEDURE
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Kentucky Teachers' Retirement System 1964
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MEETING NOTICE: ARRS The Administrative Regulation Review Subcommittee is tentatively scheduled to meet February 14, 2011 at 1:00 p.m. in room 149 Capitol Annex. See tentative agenda on pages 1949-1951 of this Administrative Register.

#### The ADMINISTRATIVE REGISTER OF KENTUCKY is the monthly supplement for the 2010 Edition of KENTUCKY ADMINISTRA-TIVE REGULATIONS SERVICE.

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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, FEBRUARY 14, 2011, at 1:00 p.m., Room 149 Capitol Annex

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11 KAR 3:100. Administrative wage garnishment.

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11 KAR 4:080. Student aid applications.

#### **Coal County Scholarship Program**

11 KAR 19:010. Coal County Scholarship Program for Pharmacy Students.

11 KAR 19:020. Service cancellation and repayment of Coal County pharmacy scholarship.

11 KAR 19:030. Deferment of repayment of Coal County Scholarships for pharmacy students.

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## Office of Sales and Excise Taxes

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

#### PUBLIC PROTECTION CABINET **Crime Victims Compensation Board**

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107 KAR 2:010. Payment schedule for sexual assault examinations. (Deferred from January)

#### **GENERAL GOVERNMENT CABINET 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)

201 KAR 8:571. Registration of dental assistants.

201 KAR 8:581. Charity dental practices.

#### **Board of Nursing**

#### Board

201 KAR 20:470. Dialysis technician credentialing requirements and training program standards.

#### TOURISM, ARTS AND HERTIAGE **Department of Fish and Wildlife Resources**

#### Game

301 KAR 2:122. Seasons, methods, and limits for small game.

#### Hunting and Fishing

301 KAR 3:012. Public use of Otter Creek Outdoor Recreation Area.

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

#### ENERGY AND ENVIRONMENT CABINET **Department for Environmental Protection Division of Water**

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401 KAR 5:006. Wastewater planning requirements for regional planning agencies.

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

#### Office

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

#### **Parole Board**

#### Board

501 KAR 1:030. Determining parole eligibility. (Deferred from January)

501 KAR 1:070 & E. Conducting sex offender conditional discharge revocation hearings. ("E" expires 5/30/2011)

501 KAR 1:080. Parole board policies and procedures. (Deferred from January)

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

#### Division

601 KAR 1:101. Proof of liability and cargo insurance. (Deferred from January) **Division of Motor Vehicle Licensing** 

#### Division

601 KAR 9:210. Continuation of title liens.

## PUBLIC PROTECTION CABINET

Department of Insurance Consumer Protection Division

#### Administration

806 KAR 2:150. Collection fee.

#### Health and Life Division

Division

806 KAR 17:460. Requirements for autism benefits for children.

#### 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. (Comments Received)

810 KAR 1:027. Entries, subscriptions, and declarations. (Comments Received)

810 KAR 1:120. Exotic wagering. (Not Amended After Comments) (Deferred from November)

#### 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 1:250. 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 2:160. Exotic wagering. (Not Amended After Comments) (Deferred from November)

## Department of Housing, Buildings and Construction

#### Board of Home Inspectors

#### Board

815 KAR 6:040. Home inspector prelicensing providers.

815 KAR 6:050. Continuing education approval.

815 KAR 6:060. Complaint procedure.

#### 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 5/19/2011) (Comments Received)

#### **Certificate of Need**

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

### Department for Public Health

#### **Division of Administration and Financial Management**

#### **Local Health Departments**

902 KAR 8:040. Definition of terms in 902 KAR Chapter 8.

902 KAR 8:060. Classification and compensation plans for local health departments.

902 KAR 8:070. Recruitment, examination, and certification of eligibles for local health departments.

902 KAR 8:080. Initial appointment, probationary period, layoff, performance evaluation, and the resignations of employees of local health departments.

902 KAR 8:090. Promotion, transfer, and demotion of local health departments.

902 KAR 8:096. Local health department employee performance evaluation program.

902 KAR 8:100. Disciplinary procedures applicable for local health department employees.

902 KAR 8:110. Disciplinary appeal process applicable for local health department employees.

902 KAR 8:120. Leave provisions applicable to employees of local health departments.

902 KAR 8:140. Appointment of health officer or a health department director of a local health department.

## 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) (Comments Received)

902 KAR 20:330 & E. Psychiatric residential treatment facilities. ("E" expires 4/16/2011) (Comments Received)

#### Department for Public Health

#### Division of Public Health Protection and Safety

#### **Milk and Milk Products**

902 KAR 50:110. Grade A milk and milk products standards.

#### Radiology

902 KAR 100:010. Definitions for 902 KAR Chapter 100.

902 KAR 100:021. Disposal of radioactive material.

902 KAR 100:058. Specific licenses to manufacture, assemble, repair, or distribute products.

902 KAR 100:070. Transportation of radioactive material.

902 KAR 100:072. Use of radionuclides in the health arts.

902 KAR 100:165. Notices, reports and instructions to employees.

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.)

#### Department for Aging and Independent Living

## Aging Services

910 KAR 1:190. Nutrition program for older persons.

910 KAR 1:200. Senior community service employment program.

### Department for Community Based Services

## Division of Family Support

#### K-TAP, Kentucky Works, Welfare to Work, State Supplementation

- 921 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).
- 921 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).
- 921 KAR 2:017. Kentucky works supportive services.
- 921 KAR 2:370. Technical requirements for Kentucky Works.
- 921 KAR 2:500. Family alternatives diversion (FAD).

Food Stamps

921 KAR 3:010. Definitions.

921 KAR 3:025. Technical requirements.

921 KAR 3:035. Certification process.

## 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, JANUARY 14, 2011**

#### STATEMENT OF EMERGENCY 201 KAR 20:059E

This administrative regulation deals with the length of time for which a prescription can be written by Advance Practice Registered Nurses (APRN) for certain specified controlled substances. The amendment increases the length of time for the prescription from fourteen (14) to thirty (30) days. This means that APRNs will need to write fewer prescriptions for these controlled substances. This has a direct and immediate impact on Medicaid and will act to decrease some health care costs. For that reason, this amendment is being offered as an emergency administrative regulation. An ordinary administrative regulation could not go into effect in less than three (3) months. Because this amendment may save the Commonwealth money in the Medicaid budget, an emergency administrative regulation is appropriate. Lengthening the period of time for the prescriptions from fourteen (14) to thirty (30) days will eliminate additional co-pays for an office visit and for the medication. Patients also will not incur additional travel costs. Access to care by APRNs will increase since the APRN will not need to see the patient every two (2) weeks, freeing up some time to see other patients. The amendment will also positively impact the state's Medicaid budget by decreasing costs incurred by the state for additional visits and pharmacy dispensing fees. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on January 13, 2010. The ordinary administrative regulation and emergency administrative regulation are identical.

#### GENERAL GOVERNMENT CABINET Board of Nursing (Emergency Amendment)

201 KAR 20:059E. Advanced practice registered nurse controlled substances prescriptions.

RELATES TO: KRS 314.011(8)(c) STATUTORY AUTHORITY: KRS 314.131(1) EFFECTIVE: January 13, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.011(8)(c) authorizes the Controlled Substances Formulary Development Committee to make recommendations to the Board of Nursing concerning any limitations for specific controlled substances. This administrative regulation implements that provision.

Section 1. Specific Controlled Substances. The following controlled substances have been identified as having the greatest potential for abuse or diversion:

(1) Diazepam (Valium), a Schedule IV medication;

(2) Clonazepam (Klonopin), a Schedule IV medication;

(3) Lorazepam (Ativan), a Schedule IV medication;

(4) Alprazolam (Xanax), a Schedule IV medication;

(5) Carisoprodol (Soma), a Schedule IV medication;

(6) Combination Hydrocodone products in liquid or solid dosage form, Schedule III medications.

Section 2. Limitations. [(1)] Prescriptions for the medications listed in Section 1[(1), (2), (3), and (4)] of this administrative regulation shall be limited to a [fourteen (14) day supply without any refills.

(2) Prescriptions for the medication listed in Section 1(5) of this administrative regulation shall be limited to a] thirty (30) day supply without any refills. [(3) Prescriptions for the medications listed in Section 1(6) of this administrative regulation shall be limited to a fourteen (14) day supply without any refills.]

CAROL KOMARA, Board President

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: January 13, 2011 at 10 a.m.

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, email nathan.goldman@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: Pursuant to KRS 314.011(8)(c), this administrative regulation sets limitations on APRN prescriptive authority for specific controlled substances that have been determined to have the greatest potential for abuse or diversion.

(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 limitations on APRN prescriptive authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting limitations on APRN prescriptive 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: It changes the length of time for which prescriptions may be written for the identified drugs. The Controlled Substances Formulary Development Committee recommended to the Board of Nursing that the limitations be changed from a prescription limited to 14 days to a prescription limited to 30 days.

(b) The necessity of the amendment to this administrative regulation: There has been no evidence that APRNs are abusing their prescriptive authority as regards the identified drugs. The 14 day limitation causes a hardship on patients who would be required to make another visit to the APRN for another prescription.

(c) How the amendment conforms to the content of the authorizing statutes: The statute states that the Committee shall make recommendations to the board.

(d) How the amendment will assist in the effective administration of the statutes: It will benefit patients by allowing an APRN to write a prescription for these drugs for 30 days.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All APRNs, approximately 4,000.

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

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

(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 able to assist their patients.

(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? 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? 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:

#### STATEMENT OF EMERGENCY 907 KAR 6:005E

This emergency administrative regulation is being promulgated to establish Medicaid electronic health record (EHR) incentive payment policies in accordance with federal law and regulation. EHR incentive payments are payments, authorized by the American Recovery and Reinvestment Act (ARRA), to eligible professionals and eligible hospitals that adopt, implement, upgrade, or demonstrate "meaningful use" of certified EHR technology in the first year of participation or then demonstrate meaningful use for up to five more years of EHR incentive payment program participation. This action must be implemented on an emergency basis to protect the health, safety, and welfare of Medicaid recipients by offering incentive payments to certain Medicaid providers, including hospitals, to acquire and implement electronic health record technology. The use of electronic health record technology has been proven to enhance patient care across diverse settings including reduced deaths and complications in hospitals. Uses of electronic health records include enabling patient data to be quickly shared, electronic note taking, electronic treatment records, electronic test results, electronic drugs orders, and the use of decision-support systems which can inform clinical staff regarding treatment options and drug interactions. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Information Systems (New Emergency Administrative Regulation)

 $907\ {\rm KAR}\ 6{:}005{\rm E}.$  Electronic health record incentive payments.

RELATES TO: KRS 205.520(3)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396b(a)(3)(F), and 42 U.S.C. 1396b(t)

EFFECTIVE: January 3, 2011

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes Medicaid electronic health record incentive payment requirements and policies.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "EHR" means electronic health record.

(3) "Eligible hospital" is defined in 42 C.F.R. 495.100.

(4) "Eligible professional" is defined in 42 C.F.R. 495.100.

(5) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(6) "Meaningful EHR user" is defined in 42 C.F.R. 495.4.

(7) "Program year" means a:

(a) A calendar year for eligible professionals; and

(b) A federal fiscal year for eligible hospitals.

(8) "Provider" is defined by KRS 205.8451(7).

(9) "Qualified electronic health record" or "qualified EHR" is defined in 45 C.F.R. 170.102.

(10) "Qualifying critical access hospital" or "qualifying CAH" is defined in 42 C.F.R. 495.100.

(11) "Qualifying eligible professional" is defined by 42 C.F.R. 495.100.

(12) "Qualifying hospital" is defined by 42 C.F.R. 495.100.

Section 2. General Requirements of EHR Incentive Payment Eligibility. To be eligible for an EHR incentive payment:

(1) An individual shall be an eligible professional who:

(a) Has an office of practice that is physically located in the Commonwealth of Kentucky;

(b) Is currently enrolled in the Kentucky Medicaid Program pursuant to 907 KAR 1:672;

(c) Is currently participating in the Kentucky Medicaid Program pursuant to 907 KAR 1:671;

(d) Is not on the:

1. United States Department of Health and Human Services, Office of Inspector General's List of Excluded Individuals and Entities; or

2. Department's List of Excluded Providers; and

(e) Has not have already received an electronic health record incentive payment from:

1. Another state within the current program year; or

2. Kentucky within the current program year; or

(2) An entity shall be an eligible hospital that:

(a) Is physically located in the commonwealth of Kentucky; and (b) Is currently enrolled in the Kentucky Medicaid Program pursuant to 907 KAR 1:672; and

(c) Is currently participating in the Kentucky Medicaid Program pursuant to 907 KAR 1:671.

(d) Is not on the:

1. United States Department of Health and Human Services, Office of Inspector General's List of Excluded Individuals and Entities; or

2. Department's List of Excluded Providers; and

(e) Has not have already received an electronic health record incentive payment from:

1. Another state within the current program year; or

2. Kentucky within the current program year.

Section 3. EHR Incentive Payment Provider Scope and Eligibility. To qualify for an EHR incentive payment:

(1) An eligible professional shall meet the:

(a) Requirement established in 42 C.F.R. 495.304(c) unless exempt pursuant to 42 C.F.R. 495.304(d); and

(b) Requirements established in Section 2(1) of this administra-

tive regulation;

(2) An eligible hospital shall meet the:

(a) Requirement established in 42 C.F.R. 495.304(e); and

(b) Requirements established in Section 2(2) of this administrative regulation.

Section 4. Establishing Patient Volume. (1) An eligible: (a) Professional shall establish his or her patient volume in accordance with 42 C.F.R. 495.306(a)(1); or

(b) Hospital shall establish its patient volume in accordance with 42 C.F.R. 495.306(a)(2).

(2)(a) The establishment of the patient volume of an eligible professional who practices predominantly in a federally-qualified health center (FQHC) or a rural health clinic (RHC) shall comply with 42 C.F.R. 495.306(c).

(b) An eligible professional shall be determined to practice predominantly in an FQHC or RHC if over fifty (50) percent of his or her total patient encounters over a six (6) month period in the most recent calendar year occurred in an FQHC or an RHC.

Section 5. Basis for Determining an EHR Incentive Payment. (1) The department's basis for determining an incentive payment shall be in accordance with 42 C.F.R. 495.308.

Section 6. EHR Incentive Payment Amounts and Limits. (1) EHR incentive payments to an eligible professional shall be limited pursuant to 42 C.F.R. 495.310(a) through (e).

(2) EHR incentive payments to an eligible hospital shall be limited pursuant to 42 C.F.R. 495.310(e) and (f).

(3)(a) An aggregate EHR hospital incentive payment amount shall be in accordance with 42 C.F.R. 495.310(g).

(b) If the department determines that an eligible hospital's data on charity care necessary to calculate the aggregate EHR hospital incentive payment referenced in paragraph (a) of this subsection is unavailable, the department shall determine an approximate proxy for charity care in accordance with 42 C.F.R. 495.310(h).

(c) If data, other than data referenced in paragraph (b) of this subsection, does not exist, the department shall deem in accordance with 42 C.F.R. 495.310(i).

(4) An eligible hospital may receive EHR incentive payments from Medicare and Medicaid in accordance with 42 C.F.R. 495.310(j).

(5) EHR incentive payments to state-designated entities shall be in accordance with 42 C.F.R. 495.310(k).

Section 7. Payment Process. (1) To receive an EHR incentive payment, a provider shall, in addition to satisfying the EHR incentive payment eligibility requirements established in this administrative regulation, comply with 42 C.F.R. 495.312(b).

(2) The department's EHR incentive payment process shall comply with 42 C.F.R. 495.312(a) and (c).

(3) An EHR incentive payment to an eligible professional or eligible hospital shall be disbursed based on the criteria established in 42 C.F.R. 495.2 through 10.

(4) An EHR incentive payment to an eligible:

(a) Professional shall be disbursed in accordance with the timeframe established in 42 C.F.R. 495.312(e)(1); or

(b) Hospital shall be disbursed in accordance with the timeframe established in 42 C.F.R. 495.312(e)(2).

Section 8. Activities Required to Receive an Incentive Payment. (1) To receive an EHR incentive payment in the first payment year, an eligible professional or eligible hospital shall comply with the requirements established in 42 C.F.R. 495.314(a).

(2) To receive an EHR incentive payment in the second, third, fourth, fifth, or sixth payment year, an eligible professional or eligible hospital shall:

(a) Meet the requirements established in 42 C.F.R. 495.314(b).

Section 9. Meaningful Use Objectives and Measures. (1) An eligible professional shall meet the meaningful use criteria established in 42 C.F.R. 495.6(a), (c), and (d).

(2) An eligible hospital shall meet the meaningful use requirements established in 42 C.F.R. 495.6(b), (c), and (e).

Section 10. Demonstration of Meaningful Use. (1) An eligible professional shall demonstrate, in accordance with 42 C.F.R. 495.8(a), that he or she meets the meaningful use criteria established in 42 C.F.R. 495.6(a), (c), and (d).

(2) An eligible hospital shall demonstrate, in accordance with 42 C.F.R. 495.8(b), that it meets the meaningful use requirements established in 42 C.F.R. 495.6(b), (c), and (e).

(3) An eligible professional's or eligible hospital's demonstration of meaningful use shall be subject to review by:

(a) The department; or

(b) The Centers for Medicare and Medicaid Services.

Section 11. Meaningful Use Documentation. An eligible professional, eligible hospital or critical access hospital shall maintain documentation supporting their demonstration of meaningful use in accordance with 42 C.F.R. 495.8(c)(2).

Section 12. Combating Fraud and Abuse. (1) On any form on which a provider submits information to the department that is necessary to determine the provider's eligibility to receive EHR payments, the provider must include a statement that meets the requirements established in 42 C.F.R. 495.368(b).

(2) If an overpayment is due from an eligible professional or eligible hospital to the department, the eligible professional or eligible hospital shall repay the entire overpayment within the time-frame established in 42 C.F.R. 495.368(c).

Section 13. Overpayment Dispute Resolution Process Prior to Administrative Hearing. (1)(a) An eligible professional or eligible hospital may appeal the following by first requesting a dispute resolution meeting:

1. An incentive payment;

2. An incentive payment amount;

3. A determination regarding the demonstration of adopting, implementing, or upgrading meaningful use of electronic health record technology;

4. An overpayment amount determined by the department to be due from the eligible professional or eligible hospital.

(b) A provider may appeal a determination regarding the provider's eligibility for electronic health record incentive payments by first requesting a dispute resolution meeting.

(2) A request for a dispute resolution meeting shall:

(a) Be in writing and mailed to and received by the department within thirty (30) calendar days of the date the notice was received by the provider;

(b) Clearly identify each specific issue and dispute;

(c) Clearly state the:

1. Basis on which the department's decision on each issue is believed to be

erroneous; and 2. Name, mailing address, and telephone number of individuals who are expected to attend the dispute resolution meeting on the provider's behalf.

(3) The department shall not accept or honor a request for administrative appeals process that is filed prior to receipt of the department's written determination that creates an administrative appeal right.

(4)(a) The department or the party requesting a dispute resolution meeting may request the presence of a court reporter at the dispute resolution meeting.

(b) If requested, a court reporter shall be secured in advance of a dispute resolution meeting, and a dispute resolution meeting shall not be postponed solely due to the failure to timely secure a court reporter.

(5)(a) Except if a court reporter was requested solely by a provider, the department shall bear the cost of a court reporter.

(b) Each party shall at all times bear the costs of requested transcribed copies.

(6) A dispute resolution meeting involving a court reporter shall:

(a) Be conducted face to face; and

(b) Not be conducted via telephone.

(7) If an administrative hearing is requested at the dispute

resolution meeting, the dispute resolution meeting transcript shall become part of the official record of the hearing pursuant to KRS 13B.130.

(8)(a) The department shall, within ten (10) calendar days of receipt of the request for

a dispute resolution meeting, send a written response to the eligible professional or hospital:

1. Identifying the time and place in which the meeting shall be held within thirty (30) days of receipt of the request; and

2. Identifying the department's representative who is expected to attend the meeting.

(b) A dispute resolution meeting shall be held within forty (40) calendar days of receipt of the request, unless a postponement is requested.

(c) A dispute resolution meeting may be postponed for a maximum additional period of sixty (60) calendar days, at the request of either party.

(9)(a) A dispute resolution meeting shall be conducted in an informal manner as directed by the department's representative.

(b) An eligible professional or hospital may present evidence or testimony at a dispute resolution meeting to support the case.

(c) Each party at a dispute resolution meeting shall be given an opportunity to ask questions to clarify the disputed issue or issues.

(10)(a) An eligible professional, eligible hospital, or provider may, within the same deadline specified in subsection (2) of this section, submit information they wish to be considered in relation to the department's determination without requesting a dispute resolution meeting.

(b) A submission of additional documentation shall not extend the thirty (30) day time period for requesting a resolution meeting.

(11) The department, after the dispute resolution meeting or the date the information

to be considered was presented to the department as established in subsection (10) of this section, shall within thirty (30) calendar days:

(a) Uphold, rescind, or modify the original decision with regard to the disputed issue; and

(b) Provide written notice to the eligible professional or hospital of:

1. The department's decision; and

2. The facts upon which the decision was based with reference to applicable statutes or administrative regulations.

(12) Information submitted for the purpose of informally resolving a provider dispute shall not be considered a request for an administrative hearing.

(13) The department may waive a dispute resolution meeting, at its sole discretion, and issue a decision in lieu of the meeting, with the decision subject to administrative hearing policies established in 907 KAR 1:671.

(14)(a) The department may postpone issuing its findings of a dispute resolution meeting, or its review of the materials submitted in lieu of a dispute resolution meeting, by mailing a written notice to the eligible professional, eligible hospital, or provider stating the:

1. Reason for the delay; and

2. Anticipated completion date of the review.

(b) A postponement referenced in paragraph (a) of this subsection shall not extend beyond 180 days.

Section 14. Administrative Hearing. (1) An administrative hearing shall be conducted in accordance with KRS Chapter 13B by a hearing officer who is knowledgeable of Medicaid policy, as established in federal and state laws.

(2) The secretary of the cabinet, pursuant to KRS 13B.030(1), shall delegate by administrative order conferred powers to conduct administrative hearings under 907 KAR 1:671.

(3) The department shall not accept or honor a request for administrative appeals process by an eligible professional or hospital that is:

(a) Filed at the state level for a federal-mandated exclusion subsequent to a federal notice of the exclusion containing the federal appeal rights; or

(b) Filed at the state level for program exclusion resulting from a criminal conviction by the court of competent jurisdiction, upon exhaustion or failure to timely pursue the judicial appeal process. (4) The administrative hearing process shall be used to appeal:(a) An incentive payment;

(b)An incentive payment amount;

(c) A determination regarding a provider's demonstration of adopting, implementing, or upgrading meaningful use of electronic health record technology;

(d) An overpayment amount determined by the department to be due from the eligible provider;

(e) A determination regarding a provider's eligibility for electronic health record incentive payments by first requesting a dispute resolution meeting;

(f) A department's requirement of a provider to repay an electronic health record incentive payment overpayment; or

(g) A department's withholding of a provider's payments in accordance with 907 KAR 1:671.

(5)(a) For a written request for an administrative hearing to be timely, the written request for an administrative hearing shall be received by the department within thirty (30) calendar days of the date of receipt of the department's notice of a determination or a dispute resolution decision.

(b) A written request for an administrative hearing shall be sent to the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, 6th Floor, Frankfort, Kentucky 40621-0002.

(6) The department shall forward to the hearing officer an administrative record which shall include:

(a)The notice of action taken;

(b) The statutory or regulatory basis for the action taken;

(c) The department's decision following the dispute resolution meeting process; and

(d) All documentary evidence provided by the:

1. Eligible professional, eligible hospital, or provider; or

2. The eligible professional's, eligible hospital's, or provider's billing agent, subcontractor, fiscal agent, or another individual authorized by the eligible professional, eligible hospital, or provider to provide information regarding the matter to the department.

(7) A notice of an administrative hearing shall comply with KRS 13B.050.

(a) An administrative hearing shall be held in Frankfort, Kentucky no later than sixty (60) calendar days from the date the request for the administrative hearing is received by the department.

(b) An administrative hearing date may be extended beyond the sixty (60) calendar days by:

1. A mutual agreement between the:

a. Eligible profession, eligible hospital, or provider; and

b. The department; or

2. A continuance granted by the hearing officer.

(8) If a prehearing conference is requested, it shall be held at least seven (7) calendar days in advance of the hearing date.

(9) Conduct of a prehearing conference shall comply with KRS 13B.070.

(10) If an eligible professional, eligible hospital, or provider does not appear at a hearing on the scheduled date and the hearing has not been previously rescheduled, the hearing officer may find the eligible professional, eligible hospital, or provider in default pursuant to KRS 13B.050(3)(h).

(11) A hearing request shall be withdrawn only under the following circumstances:

(a) The hearing officer receives a written statement from an eligible professional, eligible hospital, or provider stating that the request is withdrawn; or

(b) An eligible professional, eligible hospital, or provider makes a statement on the record at the hearing that the eligible professional, eligible hospital, or provider is withdrawing the request for the hearing.

(12) Documentary evidence to be used at a hearing shall be made available in accordance with KRS 13B.090.

(13) Information relating to the selection of an eligible professional, eligible hospital, or provider for audit, investigation notes or other materials which may disclose auditor investigative techniques, methodologies, material prepared for submission to a law enforcement or prosecutorial agency, information concerning law enforcement investigations, judicial proceedings, confidential sources or confidential information shall not be revealed, unless exculpatory in nature as required pursuant to KRS 13B.090(3).

(14) A hearing officer shall preside over a hearing and shall conduct the hearing in accordance with KRS 13B.080 and 13B.090.

(15) The issues considered at a hearing shall be limited to:

(a) Issues directly raised in the initial request for a dispute resolution meeting:

(b) Issues directly raised during the disputed resolution meeting; or

(c) Materials submitted in lieu of a dispute resolution meeting.

(16) KRS 13B.090(7) shall govern the burdens of proof.

(a) The department shall have the initial burden of showing the existence of the administrative regulations or statutes upon which a determination was based.

(b) If a determination is based upon an alleged failure of a provider to comply with applicable generally accepted business, accounting, professional, medical practices or standards of health care, the department shall establish the existence of the practice or standard.

(c) The department shall be responsible for notifying the hearing officer of previous relevant violations by the eligible professional, eligible hospital, or provider under Medicare, Medicaid, or other program administered by the Cabinet for Health and Family Services, or relevant prior actions under 907 KAR 1:671, which the department wishes the hearing officer to consider in his or her deliberations.

(17) A hearing officer shall issue a recommended order in accordance with KRS 13B.110.

(18)(a) Except for the requirement that a request for an administrative appeal process be filed in a timely manner, a hearing officer may grant an extension of time specified in this section, if:

1. Determined necessary for the efficient administration of the hearing process; or

2. To prevent an obvious miscarriage of justice with regard to the provider.

(b) An extension of time for completion of a recommended order shall comply with the requirements of KRS 13B.110(2) and (3).

(19) A final order shall be entered in accordance with KRS 13B.120.

(20) The Cabinet for Health and Family Services shall maintain an official record of the hearing in compliance with KRS 13B.130.

(21) In a correspondence transmitting a final order, clear reference shall be made to the availability of judicial review pursuant to KRS 13B.140 and 13B.150.

(22) The department's appeal process for an eligible professional, eligible hospital, or provider regarding electronic health record incentive payments.

(22) The department's appeal process for an eligible professional, eligible hospital, or provider regarding electronic health record incentive payments shall be in accordance with 42 C.F.R. 495.370.

Section 15. Actions Taken at the Conclusion of the Administrative Appeal Process. (1) A stay on recoupment granted under 907 KAR 1:671 shall not extend to judicial review, unless a stay is granted pursuant to KRS 13B.140(4).

(2) If during an administrative appeal process, circumstances require a new or modified determination letter, new appeal rights shall be provided in accordance with this administrative regulation.

(3) Thirty (30) calendar days after the issuance of the final order pursuant to KRS 13B.120, the department:

(a) Shall initiate collection activities and take all lawful actions to collect the debt; and

(b) May enact:

1. An exclusion or fiscal penalty pursuant to 42 U.S.C. 1320a-7; or

2. Other action that was held in abeyance pending the decision of the administrative appeal process.

(4) A department's decision to subject an eligible professional's, eligible hospital's or provider's claims to prepayment review shall not be subject to appeal.

Section 17. Federal Financial Participation. A policy estab-

lished in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

- (1) Denies federal financial participation for the policy; or
- (2) Disapproves the policy.

NEVILLE WISE, Acting Commissioner

#### JANIE MILLER, Secretary

APPROVED BY AGENCY: December 20, 2010

FILED WITH LRC: January 3, 2011 at 3 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen, (502) 564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This is a new administrative regulation which establishes Medicaid electronic health record (EHR) incentive payment policies in accordance with federal law and regulation. EHR incentive payments are payments, authorized by the American Recovery and Reinvestment Act (AR-RA), to eligible professionals and eligible hospitals that adopt, implement, upgrade, or demonstrate "meaningful use" of certified EHR technology in the first year of participation or then demonstrate meaningful use for up to five more years of EHR incentive payment program participation. The program is not mandated upon states, but Kentucky's Medicaid program has elected to implement the program and in the first possible year of implementation - 2011 (specifically January 3, 2011 is the first day Medicaid programs are allowed to launch the initiative.) Eligible professionals may receive up to \$63,750 in aggregate in incentive payments if they participate in the program for 6 years. Eligible professionals include physicians, dentists, nurse practitioners, certified nurse midwives, and physician assistants (if the physician assistant practices in a rural health clinic or federally-qualified health center under the supervision of a physician assistant.) There is no limit to how much eligible hospitals may receive. Eligible hospitals include acute care hospitals, children's hospitals (but Kentucky currently has none), and critical access hospitals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to enable the Department for Medicaid Services (DMS) to make EHR incentive payments to eligible hospitals and professionals as authorized by the American Recovery and Reinvestment Act (ARRA.)

(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 EHR incentive payment policies in accordance with federal law and regulation.

(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 EHR incentive payment policies in accordance with federal law and regulation.

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

(a) How the amendment will change this existing administrative regulation: This 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 government affected by this administrative regulation: The Department for Medicaid Services (DMS) examined past claims data and estimates that of 22,741 Medicaid (nonhospital) providers (for example, physicians, nurse practitioners, etc.) who are in the umbrella of provider types eligible for electronic health record (EHR) incentive payments (or "eligible professionals"), that 2,450 could feasibly meet the Medicaid patient volume threshold to qualify for EHR incentive payments. DMS esti-

mates that only 85% (2,162) of those will actually acquire the certified EHR technology necessary to qualify for the incentive payments. The eligible professional provider types include physicians, dentists, nurse practitioners, certified nurse midwives, and physician assistants (if the physician assistant practices in a rural health clinic or federally-qualified health center under the supervision of a physician assistant. Medicaid recipients will also benefit from this administrative regulation.

DMS anticipates that of the 65 acute care hospitals participating in the Kentucky Medicaid program, that 61 will meet the Medicaid patient volume threshold (10%) necessary to qualify for EHR incentive payments.

DMS anticipates that of the 29 critical access hospitals participating in the Kentucky Medicaid Program, that 17 will meet the Medicaid patient volume threshold necessary (10%) to qualify for EHR incentive payments.

(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: In order to qualify for electronic health record incentive payments, eligible professionals and eligible hospitals will have to adopt, implement, upgrade, or demonstrate "meaningful use" of certified EHR technology in the first year of participation or then demonstrate meaningful use for up to five more years of EHR incentive payment program participation. An eligible professional cannot begin receiving an EHR incentive payment any later than calendar year 2016 and an eligible hospital cannot begin receiving incentive payments any time after federal fiscal year 2016 (October 1, 2016 through September 30, 2017); thus, individuals and entities must act prior to those respective deadlines in order to qualify for incentive payments.

An eligible professional's or eligible hospital's EHR technology must be tested and certified by an "Authorized Testing and Certification Body (ATCB) endorsed by the national federal entity – Office of National Coordinator – in order to qualify for incentive payments. The technologies which have been approved by the ONC ATCB are listed on the ONC Web site.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Individuals or entities will have to purchase the requisite certified EHR technology in order to qualify for EHR incentive payments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Eligible professionals (individuals) and eligible hospitals who choose to pursue (and meet all requirements) electronic health record (EHR) incentive payments will receive incentive payments. The maximum amount of incentive payments an eligible professional may receive is \$63,500 and there is no maximum amount for eligible hospitals. The Kentucky Hospital Association (KHA) provided DMS with estimates which indicate that the lowest amount of incentive payments in aggregate that a participating acute care hospital will receive will be over \$596,000 and the highest amount a participating acute care hospital will receive will be over \$5.7 million. Medicaid recipients will benefit from the adoption and meaningful use of electronic health record technology by receiving enhanced care and across diverse settings including reduced deaths and complications in hospitals. Uses of electronic health records include enabling patient data to be quickly shared, electronic note taking, electronic treatment records, electronic test results, electronic drugs orders, and the use of decision-support systems which can inform clinical staff regarding treatment options and drug interactions. The use of EHR can also improve preventive medicine by enhancing screening - as reminders (for screenings) can be generated by electronic medical date and sent to patients. A Harvard Medical School study showed that such reminders sent to patients resulted in the patients being more likely to get screened in contrast to when reminders were only sent to physicians.

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

(a) Initially: DMS estimates that 127 eligible professionals (i.e.

non-hospital) will qualify for EHR incentive payments in calendar year (CY) 2011 and that DMS will make \$2,638,987 (100% federal) in incentive payments to those eligible professionals in CY 2011. DMS estimates that sixty-one (61) of sixty-five (65) acute care hospitals will qualify for EHR incentive payments in CY 2011 and that it will make \$52,979,461 (100% federal) in incentive payments to those hospitals in CY 2011. DMS estimates that seventeen (17) of twenty-nine (29) critical access hospitals will qualify for EHR incentive payments in CY 2011 and that it will make \$6,872,308 (100% federal) in incentive payments to those hospitals in CY 2011.

(b) On a continuing basis:

DMS estimates that in CY 2012 it will make:

\$6,317,991 (100% federal) in incentive payments to eligible professionals;

\$42,383,569 (100% federal) in incentive payments to 61 acute care hospitals; and

\$3,436,154 (100% federal) in incentive payments to 17 critical access hospitals.

DMS estimates that in CY 2013 it will make:

\$11,045,507 (100% federal) in incentive payments to eligible professionals;

\$10,595,892 (100% federal) in incentive payments to sixty-one (61) acute care hospitals; and

\$2,061,692 (100% federal) in incentive payments to seventeen (17) critical access hospitals.

DMS estimates that in CY 2014 it will make:

\$16,828,621 (100% federal) in incentive payments to eligible professionals;

\$0 in incentive payments to acute care hospitals as DMS anticipates the hospitals will have met the maximum incentive payment amount by the end of CY 2013; and

\$1,374,462 (100% federal) in incentive payments to 17 critical access hospitals

DMS estimates that in CY 2015 it will make:

\$21,053,841 (100% federal) in incentive payments to eligible professionals;

\$0 in incentive payments to acute care hospitals as DMS anticipates the hospitals will have met the maximum incentive payment amount by the end of CY 2013; and

\$0 in incentive payments to critical access hospitals as DMS anticipates the hospitals will have met the maximum incentive payment amount by the end of CY 2014; and

DMS estimates that in CY 2016 it will make:

\$22,665,571 (100% federal) in incentive payments to eligible professionals.

DMS estimates that in CY 2017 it will make:

17,025,532 (100% federal) in incentive payments to eligible professionals.

DMS estimates that in CY 2018 it will make:

14,863,345 (100% federal) in incentive payments to eligible professionals.

DMS estimates that in CY 2019 it will make:

\$11,719,218 (100% federal) in incentive payments to eligible professionals.

DMS estimates that in CY 2020 it will make:

\$7,493,999 (100% federal) in incentive payments to eligible professionals.

DMS estimates that in CY 2021 it will make:

\$3,243,281 (100% federal) in incentive payments to eligible professionals.

As DMS anticipates that new eligible professionals will gradually participate in the EHR incentive payment program and that participating eligible professionals will hit the maximum payment threshold along the way, DMS is not indicating the projected number of eligible professionals beyond the first year (calendar year 2011) in this estimate.

DMS estimates that it will make a total amount of incentive payments by category as follows:

\$134,895,894 to eligible professionals;

\$105,958,922 to acute care hospitals; and

\$13,744,615 to critical access hospitals.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are 100% federal funds authorized under the American Recovery and Reinvestment Act (ARRA.)

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied as incentive payment requirements and amounts vary according to provider category. For example, the requirements and amounts for "eligible professionals" differs from those of acute care hospitals and critical access hospitals.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Electronic health record (HER) incentive payments are not mandated; however, they are authorized by federal laws 42 U.S.C. 1396b(a)(3)(F) and 42 U.S.C. 1396b(t) and federal regulations 42 C.F.R. 495.2 through 10 and 42 C.F.R. 495.300 through 370.

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. EHR incentive payments are not mandated.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation and eligible hospitals which are owned by local government will be affected. The following eligible hospitals which are expected to participate in the electronic health record incentive (EHR) payments are owned by local government: Crittenden Health System, Fleming County Hospital, Hardin Memorial Hospital, Murray-Calloway County Hospital, Taylor Regional Hospital and Westlake Regional Hospital.

Two state-owned hospitals, UK Healthcare and University of Louisville Hospital, plan to participate in the EHR incentive payment program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 495.2 through 10 and 42 C.F.R. 495.300 through 370.

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? Projected revenues by hospital by calendar year (CY) are as follows:

Hospital	CY 2011	CY 2012	CY 2013
University of Louisville	\$2,272,151	\$1,817,720	\$454,430
Hospital			
UK Healthcare	\$2,851,921	\$2,281,537	\$570,384
Crittenden Health Sys-	\$332,429	\$265,943	\$66,486
tem			
Fleming County Hospital	\$321,688	\$257,350	\$64,338
Hardin Memorial Hospit-	\$957,429	\$765,943	\$191,486
al			
Murray-Calloway Co.	\$522,320	\$417,856	\$104,464
Hospital			
Taylor Regional Hospital	\$522,320	\$417,856	\$104,464
Westlake Regional Hos-	\$561,077	\$448,862	\$112,215
pital			

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Projected revenues by hospital by calendar year (CY) are as follows:

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Hospital	CY 2011	CY 2012	CY 2013
University of Louisville	\$2,272,151	\$1,817,720	\$454,430
Hospital			
UK Healthcare	\$2,851,921	\$2,281,537	\$570,384
Crittenden Health Sys-	\$332,429	\$265,943	\$66,486
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Murray-Calloway Co.	\$522,320	\$417,856	\$104,464
Hospital			
Taylor Regional Hospital	\$522,320	\$417,856	\$104,464
Westlake Regional Hos-	\$561,077	\$448,862	\$112,215
pital			

(c) How much will it cost to administer this program for the first year? DMS estimates that 127 eligible professionals (i.e. non-hospital) will qualify for EHR incentive payments in calendar year (CY) 2011 and that DMS will make \$2,638,987 (100% federal) in incentive payments to those eligible professionals in CY 2011. DMS estimates that sixty-one (61) of sixty-five (65) acute care hospitals will qualify for EHR incentive payments in CY 2011 and that it will make \$52,979,461 (100% federal) in incentive payments to those hospitals in CY 2011. DMS estimates that seventeen (17) of twenty-nine (29) critical access hospitals will qualify for EHR incentive payments to those hospitals in CY 2011 and that it will make \$6,872,308 (100% federal) in incentive payments to those hospitals in CY 2011.

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

DMS estimates that in CY 2012 it will make:

\$6,317,991 (100% federal) in incentive payments to eligible professionals;

\$42,383,569 (100% federal) in incentive payments to 61 acute care hospitals; and

\$3,436,154 (100% federal) in incentive payments to 17 critical access hospitals.

DMS estimates that in CY 2013 it will make:

\$11,045,507 (100% federal) in incentive payments to eligible professionals;

\$10,595,892 (100% federal) in incentive payments to 61 acute care hospitals; and

\$2,061,692 (100% federal) in incentive payments to 17 critical access hospitals.

DMS estimates that in CY 2014 it will make:

\$16,828,621 (100% federal) in incentive payments to eligible professionals;

\$0 in incentive payments to acute care hospitals as DMS anticipates the hospitals will have met the maximum incentive payment amount by the end of CY 2013; and

\$1,374,462 (100% federal) in incentive payments to 17 critical access hospitals

DMS estimates that in CY 2015 it will make:

\$21,053,841 (100% federal) in incentive payments to eligible professionals;

\$0 in incentive payments to acute care hospitals as DMS antic-

ipates the hospitals will have met the maximum incentive payment amount by the end of CY 2013; and

\$0 in incentive payments to critical access hospitals as DMS anticipates the hospitals will have met the maximum incentive payment amount by the end of CY 2014; and

DMS estimates that in CY 2016 it will make:

\$22,665,571 (100% federal) in incentive payments to eligible professionals.

DMS estimates that in CY 2017 it will make:

\$17,025,532 (100% federal) in incentive payments to eligible professionals.

DMS estimates that in CY 2018 it will make:

\$14,863,345 (100% federal) in incentive payments to eligible professionals.

DMS estimates that in CY 2019 it will make:

\$11,719,218 (100% federal) in incentive payments to eligible professionals

DMS estimates that in CY 2020 it will make:

\$7,493,999 (100% federal) in incentive payments to eligible professionals.

DMS estimates that in CY 2021 it will make:

\$3,243,281 (100% federal) in incentive payments to eligible professionals.

As DMS anticipates that new eligible professionals will gradually participate in the EHR incentive payment program and that participating eligible professionals will hit the maximum payment threshold along the way, DMS is not indicating the projected number of eligible professionals beyond the first year (calendar year 2011) in this estimate.

DMS estimates that it will make a total amount of incentive payments by category as follows:

\$134,895,894 to eligible professionals;

\$105,958,922 to acute care hospitals; and

\$13,744,615 to critical access hospitals.

#### STATEMENT OF EMERGENCY 922 KAR 1:420E

This emergency administrative regulation is necessary to prevent the loss of federal funding made available under the Child Abuse Prevention and Treatment Act as amended. This administrative regulation ensures that Kentucky meets federal funding requirements in accordance with 42 U.S.C. 5106a regarding the operation of a statewide program related to child abuse and neglect, including the public disclosure of a case of a child fatality or near fatality involving suspected or substantiated child abuse and neglect. In addition, the specification of public disclosure by the cabinet will enhance public health and welfare of children through increased public oversight of cases of a child fatality or near fatality involving suspected or substantiated child abuse and neglect. An ordinary administrative regulation would not allow the agency sufficient time to specify procedures in conformity with 42 U.S.C. 5106a and address any threat to the public health and welfare of children that is posed through a lack of specific procedures for the public disclosure by the cabinet of a case of a child fatality or near fatality. This ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor JANIE MILLER, Secretary

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services **Division of Protection and Permanency** (Emergency Amendment)

922 KAR 1:420E. Child fatality or near fatality investigations.

RELATES TO: KRS 61.870-61.884, 211.680-211.686, 600.020(6), (37), (41), (42), 620.030(3), 620.040(1), (2), 620.050[<del>,</del> 42 U.S.C. 5106a(b)(2)(A) (viii), (ix), (x), (b)(4)(A), (c)(4)(A)(iii)(II), (d)(5), (6), (11)]

STATUTORY AUTHORITY: KRS 194A.050(1), 620.180(1), 42 U.S.C. 5106a [EO 2004-726]

EFFECTIVE January 3, 2011

NECESSITY. FUNCTION. AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 5106a requires the cabinet to operate a statewide program related to child abuse and neglect for funding eligibility under the Child Abuse Prevention and Treatment Act as amended. [EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Community Based Services under the Cabinet for Health and Family Services. KRS 620.180(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 620 - Dependency, Neglect, and Abuse. This administrative regulation establishes the procedures for child protection investigations by the Cabinet for Health and Family Services in a case of child fatality or near fatality.]

Section 1. Definitions. (1) "Abused or neglected child" is defined by KRS 600.020(1).

(2) "Cabinet" is defined by KRS 600.020(6).

(3)[(2)] "Child fatality" is defined by KRS 211.684.

(4)[(3)] "Near fatality" is defined by KRS 600.020(37) and 42 U.S.C. 5106a(b)(4)(A).

(5)[(4)] "Parent" is defined by KRS 600.020(42)[(41)]. (6)[(5)] "Person exercising custodial control or supervision" is defined by KRS 600.020(43)[(42)].

(7)[(6)] "Prior involvement" means any family-in-need-ofservices assessment or investigation conducted pursuant to 922 KAR 1:330, of which the cabinet has record, [with a child or family in the area of protection and permanency] prior to the child's fatality or near fatality investigation.

Section 2. Child Fatality or Near Fatality Investigations. (1) The cabinet shall investigate a report of child fatality or near fatality alleged to be the result of abuse or neglect, in accordance with KRS 620.040.

(2) If there is a surviving child in the care of the alleged perpetrator, the cabinet shall determine the safety of the surviving child through immediate assessment in accordance with 922 KAR 1:330.

(3) If a child fatality or near fatality allegedly due to abuse or neglect occurs, cabinet staff shall immediately notify the Office of the Director of the Division of Protection and Permanency.

(4) If a fatality or near fatality occurs to a child in the custody of the cabinet in an out-of-home placement, the cabinet shall make an immediate effort to notify:

(a) The biological or legal parents; and

(b) The Office of the Director of the Division of Protection and Permanency.

(5) If parental rights have been terminated and there are special circumstances including on-going contact with the child, the cabinet may notify the biological or legal parents if a fatality or near fatality occurs with the child.

(6) The cabinet shall notify the Department of Public Advocacy, Protection and Advocacy Division, in the Justice and Public Safety Cabinet if:

(a)1. A child identified as a protection and advocacy client dies as a result of alleged abuse or neglect; and

2. The alleged perpetrator is a person exercising custodial control or supervision; or

(b) A child fatality has occurred as a result of:

1. Placement in a seclusion room pursuant to 922 KAR 1:390; or

2. Therapeutic hold applied pursuant to 922 KAR 1:300.

(7) The cabinet shall notify the following persons, in writing, of a fatality of a child in the custody of the cabinet:

(a) Judge of the committing court; and (b) Guardian ad litem for the deceased child. (8) [The cabinet may make public disclosure of a fatality or near fatality in accordance with:

(a) KRS 620.050(5) and (12); and

(b) 42 U.S.C. 5106a(b)(2)(A)(x).

(0)] The biological or legal parent of a child deceased while in temporary custody or committed to the cabinet, shall be responsible for funeral arrangements, unless:

(a) Parental rights have been terminated;

(b) Parent cannot be located; or

(c) Parent is unable to make funeral arrangements.

(9)[(10)] If the alleged perpetrator was not a parent, guardian, or person exercising custodial control or supervision, notification of the child fatality or near fatality shall be in accordance with KRS 620.030(1).

(10)[(11)] The cabinet shall:

(a) Be in compliance with KRS 620.050(12) in cases where the cabinet has had prior involvement; and

(b) Provide annual reporting in accordance with 42 U.S.C.  $5106a(d)(4)_{4}(5)_{4}(6)_{5}$  and (11).

(11)[(42)] If a child fatality or near fatality occurs in a licensed facility, the cabinet shall notify the licensing authority in accordance with 42 U.S.C. 5106a(b)(2)(A)(ix).

Section 3. Notice of Initial Findings of Investigation. The cabinet shall provide notice in accordance with KRS 620.040(1) and (2), and with 922 KAR 1:330.

Section 4. Public Disclosure. (1) The cabinet may make public disclosure in accordance with:

(a) KRS 620.050(12);

(b) 42 U.S.C. 5106a(b)(2)(A)(x); and

(c) KRS 61.870-61.884.

(2) Upon written request in accordance with KRS 61.870-61.884 filed with the cabinet, the cabinet shall provide the following related to a case of a child fatality involving an abused or neglected child:

(a) The child's date of birth and sex;

(b) A summary of the cabinet's:

1. Investigation conducted pursuant to Section 2 of this administrative regulation to include the:

a. Date that the child fatality was reported to the cabinet; and

b. Child's date of death and county of death; and

2. Finding resulting from the investigation conducted pursuant to Section 2 of this administrative regulation; and

(c) A summary of any prior involvement within the five (5) calendar years preceding the child fatality, limited to:

<u>1. The allegation reported to the cabinet and its basis for acceptance:</u>

2. The investigation or the family-in-need-of-services assessment;

<u>3. The cabinet's finding resulting from the investigation or the family-in-need-of-services assessment;</u>

4. Any recommendation made by the cabinet to a court; and5. Any referral for services and the services provided.

Section 5. Prohibition from Public Disclosure. The cabinet shall not disclose information pursuant to Section 4 of this administrative regulation if a court of competent jurisdiction has prohibited the cabinet from disclosing information.

#### PATRICIA R. WILSON, Commissioner

#### JANIE MILLER, Secretary

APPROVED BY AGENCY: December 21, 2010

FILED WITH LRC: January 3, 2011 at 3 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearinger, DCBS Regulation Coordinator (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for child protective investigations and public disclosure by the Cabinet for Health and Family Services in a case of a child fatality or near fatality.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for child protective investigations and public disclosure by the cabinet in a child fatality or near fatality case.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of child protective investigative and public disclosure procedures used by the cabinet in a case of a child fatality or near fatality.

(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 procedures for a child protective investigation and public disclosure by the cabinet in a case of a child fatality or near fatality.

(2) If 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 specifies procedures for the public disclosure of a child fatality or near fatality by the cabinet in accordance with state statutes and 42 U.S.C. 5106a and 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 specify the procedures for public disclosure by the cabinet of a case of a child fatality or near-fatality in accordance with state statutes and 42 U.S.C. 5106a. These procedures are necessary to maintain Kentucky's eligibility for federal funding under the Child Abuse Prevention and Treatment Act as amended and to preserve the health and welfare of children.

(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 specification of public disclosure procedures used by the cabinet for a case of a child fatality or near fatality.

(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 specification of public disclosure procedures used by the cabinet for a case of a child fatality or near fatality and its enhanced conformity with state statutes and federal funding eligibility requirements in 42 U.S.C. 5106a.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In the past five years, 155 Kentucky children were subject to child fatalities resulting from child abuse and neglect substantiated by the cabinet, and 214 children were subject to near fatalities resulting from child abuse and neglect substantiated by the cabinet. This administrative regulation will affect individuals, business, organizations, or governmental entities that are subject to a child fatality or near fatality investigation or that request public disclosure by the cabinet of a case of a child fatality or near fatality.

(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 new actions will be required by those subject to a child fatality or near fatality investigation; however, procedures have been specified for those who seek public disclosure by the cabinet of a case of a child fatality or near fatality.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will not be subject to any costs associated with this amendment.

(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 public and those identified in question (3) through its specification of procedures for public disclosure by the cabinet of a case of a child fatality or near fatality in accor-

dance with state statutes and 42 U.S.C. 5106a. The public disclosure specified in this amendment will support the health and welfare of children through the enhanced public oversight.

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

(a) Initially: This administrative regulation is technical and conforming in nature and does not present a new cost to the administrative body to implement.

(b) On a continuing basis: This administrative regulation is technical and conforming in nature and does not present a new cost to the administrative body to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation is a combination of state and federal funding, including the Temporary Assistance for Needy Families and Social Services Block Grants, Titles IV-B and IV-E of the Social Security Act, and grants made available under the Child Abuse Prevention and Treatment Act as amended.

(7) Provide an assessment of whether an 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 established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be implemented in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 5106a

2. State compliance standards. KRS 194A.050(1), 620.180(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 5106a

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 question is not applicable.

#### 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), 620.180(1), and 42 U.S.C. 5106a.

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 governs procedures that do not generate revenue. It will generate no revenue for the state or local government in its first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for the state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation is technical and conforming in nature and will create no new cost for the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will create no new 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:

## 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, January 11, 2011)

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

RELATES TO: KRS 161.020, 161.027, 161.028, 161.030 STATUTORY AUTHORITY: KRS 161.027, 161.028, 161.030 NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher or other professional school personnel hold a certificate of legal qualification for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. Additionally, KRS 161.027 specifically requires a preparation program for principals. <u>An educator preparation[A teacher education]</u> institution shall be approved for offering the preparation program corresponding to a particular certificate on the basis of standards Board. This administrative regulation establishes the preparation and certification program for school principals, at all grade levels.

Section 1. Definitions. (1) "Level I" means the standards-based program of studies designed for minimal preparation to serve in the position of instructional leadership - school principal.

(2) "Level II" means the standards-based program of studies to attain the first five (5) year renewal of the certificate for the position of instructional leadership - school principal.

Section 2. Conditions and Prerequisites. (1) The provisional **or[and]** professional certificate for instructional leadership - school principal shall be issued to an applicant who has completed an approved program of preparation and requirements, including assessments.

(2) The provisional **or**[and] professional certificate for instructional leadership - school principal shall be valid for the position of school principal or school assistant principal for all grade levels.

(3) Prerequisites for admission to the program of preparation for the provisional <u>or[and]</u> professional certificate for instructional leadership - school principal shall include:

(a) A master's degree;

(b) Three (3) years of documented teaching experience in a public school or a nonpublic school which meets the state performance standards as established in KRS 156.160 or which has been accredited by a regional or national accrediting association;

(c) A written statement documenting the candidate's skills and understanding in the following areas:

1. Ability to improve student achievement;

2. Leadership; and

3. Advanced knowledge of curriculum, instruction, and assessment; and

(d) An agreement from a school district pledging support that includes opportunities for the candidate to participate in a high quality practicum experience. The agreement shall include:

1. A description of how the district will provide opportunities for the candidate:

a. To observe school and district leadership; and

b. To participate in school and district leadership activities;

2. Confirmation that the candidate shall be permitted to utilize aggregated school and district information and data; and

3. The signature of the district superintendent or the district superintendent's designee.

Section 3. Kentucky Administrator Standards for Preparation and Certification. The approved program of preparation for the provisional certificate for instructional leadership - school principal shall:

(1) Prepare a candidate for the position of school principal as

specified in the standards included in:

(a) The "Educational Leadership Policy Standards: ISLLC 2008"; and

(b) The "Technology Standards for School Administrators"; and
 (2) Document candidate performance using "Dispositions,
 Dimensions, and Functions for School Leaders".

Section 4. Principal Preparation Programs. (1) All principal preparation programs approved or accredited by the Education Professional Standards Board prior to May 31, 2009 shall no longer be approved or accredited as of December 31, 2011.

(a) A principal preparation program approved by the Education Professional Standards Board prior to May 31, 2009 shall cease admitting new candidates after December 31, 2011.

(b) Candidates admitted to a principal preparation program approved by the Education Professional Standards Board prior to May 31, 2009 shall complete the program by January 31, 2014.

(c) An institution of higher learning with a principal preparation program approved by the Education Professional Standards Board prior to May 31, 2009 may submit a redesigned program for approval pursuant to the requirements of subsection (2) of this section beginning May 31, 2009.

(d) An institution's redesigned principal preparation program may become operational beginning January 1, 2010, if the institution:

1. Submits a redesigned principal preparation program for review pursuant to the requirements of subsection (2) of this section; and

2. Receives approval of the redesigned program by the Education Professional Standards Board pursuant to 16 KAR 5:010, Section 22.

(e) Institutions submitting a redesigned principal preparation program shall not be subject to any submission dates for program approval for principal preparation programs <u>after[from]</u> May 31, 2009[<u>until December 31, 2012</u>].

(f)1. The Education Professional Standards Board shall appoint a Principal Preparation Program Redesign Review Committee to conduct reviews of redesigned principal preparation programs submitted for approval <u>after[between]</u> May 31, 2009[<del>and December 31, 2012</del>].

2. Principal preparation programs submitted for approval <u>af-ter[between]</u> May 31, 2009[<del>and December 31, 2012</del>] shall:

a. Be reviewed by the Principal Preparation Program Redesign Review Committee; and

b. Not be reviewed by the Continuous Assessment Review Committee, Content Program Review Committee, or the Reading Committee prior to presentation to the Education Professional Standards Board pursuant to 16 KAR 5:010, Section 22(2).

3.a. After review of a principal preparation program, the Principal Preparation Program Redesign Review Committee shall issue one (1) of the following recommendations to the Educational Professional Standards Board:

i. Approval;

ii. Approval with conditions; or

iii. Denial of approval.

b. The Education Professional Standards Board shall consider recommendations from staff and the Principal Preparation Program Redesign Review Committee and shall issue a decision pursuant to 16 KAR 5:010, Section 22(4).

(2) Beginning May 31, 2009, in addition to the requirements established in 16 KAR 5:010, Section 22, the educator preparation unit shall prepare and submit to the Education Professional Standards Board for each principal preparation program for which the institution is seeking approval a concise description of the preparation program which shall provide the following documented information:

(a) Signed collaborative agreements with school districts that

include the following:

1. Joint screening of principal candidates by both district and university;

2. Joint identification of potential program leaders and mentors;

3. District and university code sign and codelivery of courses; and

4. The manner in which the principal preparation program is based on the identified leadership needs of each district;

(b) The protocol for screening applicants that ensures the identification and admission of high quality candidates into the program;

(c) A matrix that illustrates the alignment between the standards and performance indicators identified in Section 3 of this administrative regulation and the program's curriculum and field experiences;

(d) A syllabus for each of the program's required courses identified in the documentation required by paragraph (c) of this subsection;

(e) The program's plan to collaborate with academic disciplines and programs outside of the field of education in order to supplement the candidate's knowledge and skills set;

(f) The program's plan to collaborate with each district in providing high quality field experiences that:

1. Enhance courses throughout the entire program;

2. Ensure that the candidate has a continuum of school-based experiences that range from observing, to participating, to leading; and

3. Expose the candidate to diverse student populations and school environments;

(g) The program's plan to use rigorous formative and summative evaluations of each candidate's:

1. Knowledge and skills to advocate, nurture, and sustain a school culture that promotes and supports high levels of learning for all students; and

2. Knowledge and skills to manage a school for efficiency, accountability, and safety; and

(h) The program's plan to require all candidates to conduct a capstone project and defend it to a panel of program faculty and practicing school administrators at the end of Level I preparation.

Section 5. Assessment Prerequisites for the Provisional Certificate for Instructional Leadership - School Principal. An applicant for certification as a school principal, including <u>a career and technical school[vocational]</u> principal, shall attain the specified minimum score on the assessments required by 16 KAR 6:030.

Section 6. Statement of Eligibility for Internship. (1) A statement of eligibility for internship for the provisional certificate for instructional leadership - school principal shall be issued for a five (5) year period to an applicant who:

(a) Has successfully completed an approved program of preparation;

(b) Has three (3) years of full-time teaching experience; and

(c) Has successfully completed the appropriate assessment requirements for the school principal certification or qualifies for a one (1) year period for completion of assessments under KRS 161.027(6).

(2) Application shall be made on "Application for Kentucky Certification or Change in Salary Rank", Form TC-1, incorporated by reference in 16 KAR 2:010.

(3) A request for renewal of the Statement of Eligibility pursuant to KRS 161.027(7) shall be made on Form TC-2, incorporated by reference in 16 KAR 4:060.

Section 7. (1) A professional certificate for instructional leadership - school principal, level I, shall be issued upon successful completion of the principal internship as provided in KRS 161.027 and 16 KAR 7:020.

(2) The renewal of the professional certificate for instructional leadership - school principal, level I, shall require a recommendation from the approved recommending authority regarding the successful completion of an approved level II program. The certificate shall be valid for five (5) years.

(3) Each subsequent five (5) year renewal of the professional

certificate for instructional leadership - school principal, level II, shall require successful completion of two (2) years of experience as a school principal within the preceding five (5) years.

(4) If the applicant has not successfully completed the two (2) years of experience as required by subsection (3) of this section, pursuant to KRS 161.027(9), each subsequent five (5) year renewal of the professional certificate for instructional leadership-school principal, level II, shall require:

(a) Completion of three (3) semester hours of additional graduate credit directly related to the position of school principal for each required year of experience the applicant has not completed; or

(b) Successful completion of forty-two (42) hours of approved training selected from programs approved by the Kentucky Effective Instructional Leadership Training Program provided in KRS 156.101.

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

(a) "Dispositions, Dimensions, and Functions for School Leaders" adapted from the "Kentucky Cohesive Leadership System Continuum for Principal Preparation and Development" by the Education Professional Standards Board, May 2008;

(b) "Educational Leadership Policy Standards: ISLLC 2008", as adopted by the National Policy Board for Educational Administration, December 12, 2007; and

(c) "Technology Standards for School Administrators", 2001, Collaborative for Technology Standards for School Administrators.

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

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: October 25, 2010

FILED WITH LRC: November 5, 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 Teachers' Retirement System (As Amended at ARRS, January 11, 2011)

#### 102 KAR 1:225. General compliance with federal tax laws.

RELATES TO: KRS 161.716, 26 C.F.R., 26 U.S.C 401(a)(7),(8), (25), 26 U.S.C. 414(d), (p), (u), 26 U.S.C. 503(b), 38 U.S.C. 4301 -4335

STATUTORY AUTHORITY: KRS 161.310(1), 161.716

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the board of trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.716 requires the board of trustees to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of the members of the retirement system. Kentucky Teachers' Retirement System shall administer the Retirement System as a qualified defined benefit plan pursuant to 26 U.S.C. 401(a) and 26 U.S.C. 414(d) of the Internal Revenue Code, 26 U.S.C., 26 C.F.R., and such other Internal Revenue Code Sections as applicable. This administrative regulation establishes Kentucky Teachers' Retirement System's compliance with 26 U.S.C 401(a) and 503(b) in order for the Kentucky Teachers' Retirement System to maintain its tax qualified status as a public defined benefit plan. This administrative regulation also includes provisions intended to comply with the Heroes Earnings Assistance and Relief Tax Act of 2008, "HEART Act". This administrative regulation adds provisions that have been required as part of the determination letter process regarding vested benefits.

Section 1. Compliance with 26 U.S.C. 401(a)(7) and (8) for

Vesting and Forfeitures. (1) A plan member shall be 100 percent vested in the member's accumulated contributions at all times.

(2)(a) In conformity with 26 U.S.C. 401(a)(8), a forfeiture of benefits by a member or former member of the plan shall not be used to pay benefit increases.

(b) Forfeitures shall be used to reduce employer contributions.

(3) Upon termination or partial termination of the Kentucky Teachers' Retirement System, or the complete discontinuance of contributions, a member shall have a nonforfeitable interest in his accrued benefit to the extent funded.

(4) In order to comply with Internal Revenue Service interpretations, a member shall have a nonforfeitable interest in his accrued benefit at attainment of age sixty (60) and the completion of five (5) years of service.

Section 2. Compliance with 26 U.S.C. 414(p) for Qualified Domestic Relations Orders. If benefits are payable pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in 26 U.S.C. 414(p), then the applicable requirements of 26 U.S.C. 414(p) shall be followed by the retirement system.

Section 3. Compliance with 26 U.S.C. 414(u) for Reemployed Veterans. (1) Effective December 12, 1994, Contributions, benefits, and service credit with respect to qualified military service shall be governed by 26 U.S.C. 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301 - 4335.

(2) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualifying military service, as defined in 38 U.S.C. Chapter 43 to the extent required by section 26 U.S.C. 401(a)(37) of the Internal Revenue Code, survivors of a member of the Kentucky Teachers' Retirement System, shall be entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

(3) Beginning January 1, 2009, to the extent permitted by (sections 3401(h) and 414(u)(2) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service, as defined in 38 U.S.C. Chapter 43, from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as annual compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Section 4. Compliance with 26 U.S.C. 503(b) for Prohibited Transactions. The board shall not engage in a transaction prohibited by 26 U.S.C. 503(b).

Section 5. Compliance with 26 U.S.C. 401(a)(25) for Actuarial Assumptions.

(1) Kentucky Teachers' Retirement System shall comply with 26 U.S.C. 401(a)(25) to determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the board by resolution for specific benefit calculation purposes.

(2) These benefits shall not be subject to employer discretion.

#### BARBARA G. STERRETT, Chair

APPROVED BY AGENCY: September 20, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2010, at 9 a.m. at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the heating may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at

the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2010. 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: Robert B. Barnes, General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 848-8599.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky Teachers' Retirement System's compliance with specified provisions of the Internal Revenue Code in order for the retirement system to maintain its tax qualified status as a public defined benefit plan.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and ensure compliance with specified provisions of the Internal Revenue Code.

(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 ensuring the absence of conflicts with federal laws and proper administration of the retirement system's qualified defined benefit plan.

(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 removing any conflicts with applicable federal law.

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

(a) How the amendment will change this existing administrative regulation: The amendments address the vesting rights of members to benefits in the retirement system.

(b) The necessity of the amendment to this administrative regulation: The amendments delineate when and how a member shall have a nonforfeitable interest in his accrued benefit.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments delineate when and how a member shall have a nonforfeitable interest in his accrued benefit.

(d) How the amendment will assist in the effective administration of the statues: The amendments establish when a member's right to benefits will vest.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to all members of the retirement system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The members will not have to take any overt action.

(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 members of the retirement system.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will be on notice as to the vesting of their accrued benefits.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, if new, or by the change if it is an amendment: There is no increase in fees or funding required.

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members are treated the same.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Teacher's Retirement Systems and local school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.716, 26 C.F.R., 26 U.S.C. 401(a)(7), (8), (25), 26 U.S.C. 414(d), (p), (u), 26 U.S.C. 503(b), 38 U.S.C 4301-4335

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

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

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

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

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

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

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

#### FINANCE AND ADMINISTRATION CABINET Kentucky Teachers' Retirement System (As Amended at ARRS, January 11, 2011)

#### 102 KAR 1:230. Limitations on benefits.

RELATES TO: KRS 161.611, 26 C.F.R. 1.415, 26 U.S.C. 125, 132(f)(4), 402, 414, 415, 417, 457, 3401, 6041, 6051, 6052

STATUTORY AUTHORITY: KRS 161.310(1), 161.716

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the board of trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.716 requires the board of trustees to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of members of the retirement system. This administrative regulation establishes the limitations on benefits required by 26 U.S.C. 415.

Section 1. Definitions. (1) "415(b) limit" means the limitation on benefits established by 26 U.S.C. 415(b).

(2) "415(c) limit" means the limitation on annual additions established by 26 U.S.C. 415(c).

(3) "Annual benefit" means, for purposes of the 415(b) limit, a benefit payable annually in the form of a straight life annuity (without ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to 26 U.S.C. 415(n)) and to rollover contributions (as defined in 26 U.S.C. 415(b)(2)(A)). The "benefit attributable" is determined in accordance with 26 C.F.R. 1.415(b).

(4) "Defined dollar benefit limitation" means \$160,000, as adjusted, effective January 1 each year, in the manner established by the Secretary of the United States Treasury pursuant to 26 U.S.C. 415(d), and payable in the form of a straight life annuity. A limitation as adjusted under 26 U.S.C. 415(d) applies to limitation years for which the adjustment applies.

(5) "Limitation year" means the calendar year.

(6) ["Maximum permissible benefit" means the defined benefit dollar limitation (adjusted or limited, if required, according to this administrative regulation).

(7)] "Nonqualified service credit" means, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, permissive service credit other than that allowed with respect to:

(a) Service as an employee of the Government of the United States or any state, agency, or political subdivision thereof (other than military service or service for credit that was obtained as a result of a repayment described in 26 U.S.C. 415(k)(3);

(b) Service as an employee, other than as an employee described in paragraph (a) of this subsection, of an education organization described in 26 U.S.C. 170(b)(1)(A)(ii) that is a public, private, or sectarian school that provides elementary education or secondary education through grade twelve (12), or a comparable level of education as determined pursuant to the applicable law of the jurisdiction in which the service was performed;

(c) Service as an employee of an association of employees described in paragraph (a) of this subsection; or

(d) Military service, other than qualified military service pursuant to 26 U.S.C. 414(u), recognized by the retirement system.

Section 2. Adjustments and Limitations. (1) If the member has fewer than ten (10) years participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction.

(a) The numerator shall be the number of years (or part thereof) of participation in the plan, and the denominator shall be ten (10).

(b) The reduction established in this subsection shall not apply to preretirement death and disability benefits.

(2) If the benefit of a member begins prior to age sixty-two (62), the defined benefit dollar limitation applicable to the participant at the earlier age shall be an annual benefit payable in the form of a straight life annuity, beginning at the earlier age, that shall be the actuarial equivalent of the defined benefit dollar limitation applicable to the member at age sixty-two (62) (adjusted pursuant to subsection (1) of this section, if required). The defined benefit dollar limitation applicable at an age prior to age sixty-two (62) shall be determined as the lesser of:

(a) The actuarial equivalent (at the earlier age) of the defined benefit dollar limitation computed using the interest rate and mortality table specified by the system actuary; and

(b) The actuarial equivalent (at the earlier age) of the defined benefit dollar limitation computed using a five (5) percent interest rate and the applicable mortality table as specified by the system actuary.

1. Any decrease in the defined benefit dollar limitation determined in accordance with this subsection shall not reflect a mortality decrement if benefits are not forfeited upon the death of the participant.

2. If any benefits are forfeited upon death, the full mortality decrement shall be taken into account.

(3) The reductions provided for in this subsection shall not apply to preretirement disability benefits or preretirement death benefits.

(4) If the benefit of a participant begins after the participant attains age sixty-five (65), the defined benefit dollar limitation applicable to the member at the later age shall be the annual benefit payable in the form of a straight life annuity, beginning at the later age, that shall be actuarially equivalent to the defined benefit dollar limitation applicable to the participant at age sixty-five (65) (adjusted pursuant to subsection (1) of this section, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after sixty-five (65) shall be determined as follows:

(a) The lesser of the actuarial equivalent (at the later age) of the defined benefit dollar limitation computed using the interest rate and mortality table specified by the system actuary; and

(b) The actuarial equivalent (at the later age) of the defined benefit dollar limitation computed using a five (5) percent interest rate assumption and the mortality table specified by the system actuary. For these purposes, mortality between age sixty-five (65) and the age at which benefits commence shall be ignored.

(5) If the benefit under the retirement system is other than the form specified in Section 1(3) of this administrative regulation, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors established in 26 C.F.R. 1.415(b).

(6) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then subsection (5) of this section shall be applied by either reducing the section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount determined using the assumptions established in 26 C.F.R. 1.415(b)-1(c)(2)(ii) that takes into account the additional benefits under the form of benefit as follows:

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

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

2. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five (5) percent interest assumption (or the applicable statutory interest assumption) and:

a. For limitation years prior to <u>January</u>[February] 1, 2009, the applicable mortality tables described in 26 C.F.R. 1.417(e)-1(d)(2); and

b. For limitation years after December 31, 2008, the applicable mortality tables described in 26 U.S.C. 417(e)(3)(B).

(8) Effective on and after January 1, 2009, for purposes of applying the 415(b) limit to a member, the following shall apply:

(a) A member's applicable 415(b) limit shall be applied to the member's annual benefit in the member's first limitation year without regard to any automatic cost of living adjustments; and

(b)1. To the extent that the member's annual benefit equals or exceeds the 415(b) limit, the member shall no longer be eligible for cost of living increases until the benefit plus the accumulated increases are less than the 415(b) limit;

2. In any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable 415(b) limit including any adjustment to the 26 U.S.C. 415(b)(1)(A) dollar limit pursuant to 26 U.S.C. 415(d)and 26 C.F.R. 1.415(b).

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

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

Section 4. Effect on Members. (1) Benefit increases resulting from the increase in the limitations of 26 U.S.C. 415(b) shall be provided to all current and former members, with benefits limited by 26 U.S.C. 415(b), who have an accrued benefit under the plan immediately prior to the effective date.

(2) These benefit increases shall not be provided to current and former members who have an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under 26 U.S.C. 415(b). Section 5. Benefits Not Taken into Account for 415(b) Limit. The following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit that is not directly related to retirement income benefits; and

(2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

Section 6. 415(c) Limit. Except as provided in Section 7 of this administration regulation, after-tax member contributions or other annual additions with respect to a member shall not exceed the lesser of \$40,000 (as adjusted pursuant to 26 U.S.C. 415(d)) or 100 percent of the member's compensation.

(1)(a) Annual additions shall be defined to mean the sum (for any year) of employer contributions to a defined contribution plan, post-tax member contributions, and forfeitures credited to a member's individual account.

(b) Member contributions shall be determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying the 415(c) limits only, the definition of compensation, if applicable, shall be compensation actually paid or made available during a limitation year, except as noted below and as permitted by 26 C.F.R. 1.415(c)-2, except, that member contributions picked up under 26 U.S.C. 414(h) shall not be treated as compensation.

(3) Unless another description of compensation that is permitted by 26 C.F.R. 1.415(c)-2 is specified by a retirement system, compensation shall be described as wages within the meaning of 26 U.S.C. 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement pursuant to 26 U.S.C. 6041(d), 6051(a)(3) and 6052 and shall be determined without regard to any rules under 26 U.S.C. 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in 26 U.S.C. 3401(a)(2)).

(a)1. For limitation years beginning on and after January 1, 1998, compensation shall also include amounts that would otherwise be included in compensation but for an election under 26 U.S.C. 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

2. For limitation years beginning on and after January 1, 2001, compensation shall also include any elective amounts that are not includible in the gross income of the employee by reason of 26 U.S.C. 132(f)(4).

(b) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of two and one-half (2 1/2) months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

1. The payment is:

a. Regular compensation for services during the employee's regular working hours;

b. Compensation for services outside the employee's regular working hours, such as overtime or shift differential; or

c. Commissions, bonuses, or other similar payments; and

2. Absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with unused accrued bona fide sick, vacation, or other leave that the employee would have been able to use if employment had continued.

(c) Back pay, within the meaning of 26 C.F.R. 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included pursuant to this description.

(d) If the annual additions for any member for a plan year exceed the limitation under 26 U.S.C. 415(c), the Internal Revenue Code, the excess annual addition shall be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).

Section 7. Service Purchases under Section 415(n). (1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one (1) or more contributions to purchase permissive service credit under a retirement system, then the requirements of 26 U.S.C. 415(n) shall be treated as met only if:

(a) The requirements of 26 U.S.C. 415(b) are met, determined by treating the accrued benefit derived from all these contributions as an annual benefit for purposes of the 415(b) limit; or

(b) The requirements of 26 U.S.C. 415(c) are met, determined by treating all these contributions as annual additions for purposes of the 415(c) limit.

(2) For purposes of applying this section, a retirement system shall not fail to meet the reduced limit under 26 U.S.C. 415(b)(2)(C) solely by reason of this section and shall not fail to meet the percentage limitation pursuant to 26 U.S.C. 415(c)(1)(B) solely by reason of this section.

(3)(a) Permissive service credit shall consist of service credit:

1. Recognized by a retirement system for purposes of calculating a member's benefit under a retirement system;

2. The member has not received under a retirement system; and

3. That the member may receive only by making a voluntary additional contribution, in an amount determined under a retirement system, which does not exceed the amount necessary to fund the benefit attributable to the service credit.

(b) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term may include service credit for periods for which there is no performance of service, and, notwithstanding paragraph (a)2 of this subsection, may include service credited in order to provide an increased benefit for service credit that a member is receiving under a retirement system.

(4) The retirement system shall fail to meet the requirements of this section if:

(a) More than five (5) years of nonqualified service credit are taken into account for purposes of this subparagraph; or

(b) Any nonqualified service credit is taken into account pursuant to this section before the member has at least five (5) years of participation under a retirement system.

(5) In the case of service described in Section 1(7)(a), (b), or (c) of this administrative regulation, the service shall be nonqualified service if recognition of the service would cause a member to receive a retirement benefit for the same service under more than one (1) plan.

(6) In the case of a trustee-to-trustee transfer after December 31, 2001, to which 26 U.S.C. 403(b)(13)(A) or 26 U.S.C. 457(e)(17)(A) applies, without regard to whether the transfer is made between plans maintained by the same employer:

(a) The limitations of subsection (4) of this section shall not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) The distribution rules applicable under federal law to a retirement system shall apply to these amounts and any benefits attributable to these amounts.

(7)(a) For an eligible member, the 415(c) limit shall not be applied to reduce the amount of permissive service credit that may be purchased to an amount less than the amount that was allowed to be purchased under the terms of the retirement system as in effect on August 5, 1997.

(b) For purposes of this subsection, an eligible member shall be an individual who first became a member in the retirement system before January 1, 1998.

Section 8. Modification of Contributions for 415(c) and 415(n) Purposes. The retirement system may modify a request by a member to make a contribution to a retirement system if the amount of the contribution would exceed the limits provided in 26 U.S.C. 415 by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the retirement system may establish a periodic payment plan for the member to avoid a contribution in excess of the limits established in 26 U.S.C. 415(c) or 415(n).

(2) If payment pursuant to section (1) of this subsection shall

not avoid a contribution in excess of the limits established in 26 U.S.C. 415(c) or 415(n), the retirement system may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

Section 9. Repayments of Cashouts. Any repayment of contributions, including interest thereon, to the retirement system with respect to an amount previously refunded upon a forfeiture of service credit under the retirement system or another governmental plan maintained by the Commonwealth or a local government within the Commonwealth shall not be taken into account for purposes of the 415(b) or (c) limits.

#### BARBARA G. STERRETT, Chair

APPROVED BY AGENCY: September 20, 2010 FILED WITH LRC: October 15, 2010 at 11 a.m.

CONTACT PERSON: Robert B. Barnes, General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 848-8599.

#### FINANCE AND ADMINISTRATION CABINET Kentucky Teachers' Retirement System (As Amended at ARRS, January 11, 2011)

102 KAR 1:245. Rollovers and transfers of contributions to other plans.

RELATES TO: KRS 161.220 -161.990, 26 U.S.C. 401(a), 402(c), 403(a), (b), 408, 408A, 414(p), 457(b)

STATUTORY AUTHORITY: KRS 161.310(1), 161.716

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the board of trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.716 requires the board of trustees to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of the members of the retirement system. This administrative regulation establishes what constitutes eligible rollover distributions, eligible retirement plans, distributions, distributees, and direct rollovers for purposes of compliance with 26 U.S.C. 401(a).

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

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

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

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

(c) For a specified period of ten (10) years or more;

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

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

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

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

(a) Only to:

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

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

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

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

renew a license.

(b) To an account or plan provided for in paragraph (1)2. through 4. of this subsection that agrees to separately account for amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the distribution:

1. That is includable in gross income; and

2. That is not so includable.

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

(3) "Eligible retirement plan" shall include any of the following that accepts the distributee's eligible rollover distribution:

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

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

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

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

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

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

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

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

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

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

(b) Effective January 1, 2007, a "distributee" shall also include a nonspouse beneficiary who is a designated beneficiary as defined by 26 U.S.C. 401(a)(9)(E).

1. A nonspouse beneficiary shall rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution; and

2. The account or annuity shall be treated as an "inherited" individual retirement account or annuity.

(c) "Direct rollover" shall include a payment by the plan to the eligible retirement plan specified by the distributee.

Section 3. In accordance with section 401(a)(31) of the Internal Revenue Code, a distributee may elect, at any time and in the manner prescribed in this administrative regulation, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. [For purposes of this administrative regulation and compliance with 26 U.S.C. 401(a)(31), the Internal Revenue Code, this section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at any time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.]

## BARBARA G. STERRETT, Chair

APPROVED BY AGENCY: September 20, 2010 FILED WITH LRC: October 15, 2010 at 11 a.m.

CONTACT PERSON: Robert B. Barnes, General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 848-8599.

#### **GENERAL GOVERNMENT CABINET** Kentucky State Board of Accountancy (As Amended at ARRS, January 11, 2011)

#### 201 KAR 1:065. Individual license renewal and fee.

RELATES TO: KRS 325.330

STATUTORY AUTHORITY: KRS 325.240(2), 325.330(7) NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.330(7) requires[authorizes] the board to promulgate administrative regulations establishing license renewal procedures for certified public accountants. This administrative regulation establishes the procedures and fees for a certified public accountant to

Section 1. Except as provided in Section 2 of this administrative regulation, a certified public accountant seeking to renew his or her license shall:

(1) Utilize the online License Renewal System[procedure] offered by the board at www.cpa.ky.gov; and

(2) Pay a renewal fee in the amount of \$100.

Section 2. If a certified public accountant is unable to utilize the online procedure, he or she shall:

(1) Submit a written request to obtain a paper copy of the License Renewal Form[application] to the Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202;

(2) Complete and submit the application to the board; and

(3) Submit a check or money order made payable to the Kentucky State Board of Accountancy in the amount of \$100.

Section 3. [A license shall expire on August[July 1] of the second year following the date it was issued and shall be subject to renewal as follows:

(1) Even-numbered licenses shall be renewed in evennumbered vears: and

(2) Odd-numbered licenses shall be renewed in odd-numbered vears.

Section 4.] The board shall notify a licensee that his or her license is due to expire in accordance with the renewal dates established in KRS 325.330(7)(a).

Section 4.[5.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "License Renewal System", January 2011; and (b) "License Renewal Form", January 2011["License Renewal Application", 2010][2009][, is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law[laws], at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.

KEVIN DOYLE, CPA, President

APPROVED BY AGENCY: November 4, 2010

FILED WITH LRC: November 8, 2010 at noon

CONTACT PERSON: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

#### **GENERAL GOVERNMENT CABINET** Kentucky State Board Of Accountancy (As Amended at ARRS, January 11, 2011)

201 KAR 1:140. Procedures for the reinstatement or[and] reissuance of a license.

RELATES TO: KRS 325.330(6), 325.370

STATUTORY AUTHORITY: KRS 325.240(2), 325.330(6), (7), 325.370(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.330(6) and (7) and 325.370 authorize the board to reinstate and reissue licenses that have expired, been suspended, revoked or denied renewal. This administrative regulation establishes the procedures for reinstating or[and] reissuing a license.

Section 1. Definition. "Accounting or[and] auditing course" means a field of study dealing with pronouncements of authorita-

tive accounting principles issued by the standard setting bodies and other related subjects generally classified with the accounting discipline and shall include auditing subjects related to the examination of financial statements, operations, systems and programs; the review of internal and management controls; the reporting on the results of audit findings; compilations; and reviews but shall not include courses in tax and computer software training classes [chall not meet this definition].

Section 2. A licensee who failed to renew his <u>or her</u> license by the <u>August[July]</u> 1 <u>renewal date[deadline]</u> shall be allowed to renew his <u>or her</u> license by complying with the requirements of KRS <u>325.330(7)[325.330(4)(a), (b), (c) and (d)]</u>, 201 KAR 1:100, 201 KAR 1:065, and paying <u>a \$100[the following]</u> late fee <u>if[se long as]</u> the[based on the date] license is renewed <u>online[en line]</u> on or <u>before September 1 or the</u> renewal materials <u>and payment</u> are received at the board office on or before September 1[<del>;</del>

(1) Twenty-five (25) dollars between July 2 and August 31;
 (2) Fifty (50) dollars between September 1 and October 31;
 (3) \$100 dollars between November 1 and December 31].

Section 3. (1) A license expired for a period of more than <u>one</u> (<u>1) month[six (6) months</u>] or voluntarily surrendered for any reason except when a complaint is pending before the board may be <u>con-</u> <u>sidered by the board for reinstatement[reinstated]</u> if the applicant:

(a) Submits a completed "License Reinstatement Application";

(b) Documents compliance with the continuing professional education requirements established in subsection (2) of this section; and

(c) Submits a money order or check in the amount of \$200 made payable to the Kentucky State Board of Accountancy.

(2) An applicant shall document successful completion of either sixty (60) or eighty (80) hours of continuing professional education, based on the amount of hours the applicant was to have completed when the applicant's license expired or was voluntarily surrendered. The hours shall:

(a) Include accounting or auditing courses that comprise at least one-half of the total amount of hours of continuing professional education required for the applicant:

(b) Include two (2) hours of coursework in professional ethics;

(c) Have been completed within two (2) years of the reinstatement request; and

(d) Not have been previously used to satisfy Kentucky license renewal requirements.

(3)[submits a completed "License Reinstatement Application" that includes the following information:

(a) Documentation of successful completion of <u>either sixty (60)</u> <u>er</u> eighty (80) hours of continuing professional education, of which one half (1/2) are accounting <u>er</u>][and][ auditing courses<u>\_ Included</u> <u>within sixty (60) or eighty (80) hours shall be two (2) hours of</u> <u>coursework in professional ethics. The applicant shall complete</u> <u>either sixty (60) or eighty (80) hours of continuing professional</u> <u>education courses based upon the amount of hours the applicant</u> <u>was to have completed when their license expired or voluntarily</u> <u>surrendered.][;][(b) The hours shall:</u>

1. Have been completed within two (2) years of the reinstatement request; and

2. Not have been previously used to satisfy Kentucky license renewal requirements.

(c) A money order or check in the amount of \$200 made payable to the Kentucky State Board of Accountancy.

(2)] An individual who at the time of submitting an application is actively licensed in another state that maintains a continuing education requirement shall satisfy all of the requirements of this section except for the continuing education hours <u>required by sub</u><u>section (2)[described in subsection (1)(a) and (b)]</u> of this section.

Section 4. (1) If a license was revoked for reasons other than failure to satisfy the continuing professional education requirements, it may be considered for reinstatement if the applicant for reinstatement submits to the board fifteen (15) days prior to the next scheduled meeting:

(a) A letter:

1. Requesting reinstatement;

2. Specifying the manner in which the applicant for reinstatement has complied with the terms of a disciplinary order of the board; and

3. A statement of the reasons the board <u>for the reinstatement</u> request[should reinstate him <u>or her</u>].

(2)(a) Except as provided in paragraph (b) of this subsection, the board **shall**:

1. [Shall] Review the request for reinstatement,[;] the findings of fact, conclusions of law, and board order; [and]

2. [May] Affirm or deny the request; and[or]

3. <u>If denied</u>, state in writing the corrective or remedial education, training or review required before reinstatement shall be granted.

(b) The board <u>shall not[may decline to]</u> consider a request for reinstatement submitted to the board prior to the date for resubmission that is specified in the disciplinary order of the board.

(3)(a) If an applicant for reinstatement disagrees with the board's determination under this section, he <u>or she</u> may file a written request for a hearing before the board.

(b) A hearing held pursuant to the provisions of this subsection shall be conducted in accordance with KRS 325.360 and 201 KAR 1:150.

Section 5. Incorporation by Reference. (1) "Reinstatement License Application", January 2011[(2010][2001][)"], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, between 8 a.m. to 4:30 p.m.

#### KEVIN DOYLCE, President

APPROVED BY AGENCY: November 4, 2010

FILED WITH LRC: November 8, 2010 at noon

CONTACT PERSON: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

#### GENERAL GOVERNMENT CABINET State Board of Examiners and Registration of Landscape Architects (As Amended at ARRS, January 11, 2011)

#### 201 KAR 10:050. Fees.

RELATES TO: 323A.060, 323A.070, 323A.100(1), (4) STATUTORY AUTHORITY: KRS 323A.060, 323A.100(1), 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: <u>KRS</u> 323A.060 requires the board to promulgate an administrative regulation[The board is authorized by KRS 323A.060 to promulgate administrative regulations] to establish fees for services. This administrative regulation establishes fees for landscape architect licensees.

Section 1. Fees. The following nonrefundable fees shall be paid as applicable:

(1) Renewal fees:

(a) Active license: <u>\$200; or</u> [<del>\$170</del>][-]

- (b) Inactive license: \$150;[-]
- (2) Duplicate certificate: twenty-five (25) dollars:[-]
- (3) Issuance of original license certificate: \$200;[-]

(4) Restoration of a suspended license: <u>the</u> renewal fee established in subsection (1) of this section, plus an amount calculated pursuant to KRS 323A.100(1):[-]

(5) Reactivation fee: \$170;[-]

(6) Reciprocal application fee issuance of a license on reciprocity basis: \$250<u>; and[-]</u>

(7) Examination:

(a) Processing fee. A \$100 nonrefundable processing fee shall

be submitted with a new application for examination: and[-]

(b) Examination sections:

1. Section C: \$295; and[-]

2. Section E: \$295.

#### THOMAS J. NIEMAN, President

APPROVED BY AGENCY: November 15, 2010

FILED WITH LRC: November 15, 2010 at 11 a.m. CONTACT PERSON: Jane Gardner, Executive Director, Board of Examiners and Registration of Landscape Architects, 163 West Short Street, Suite 351, Lexington, Kentucky 40507, phone (859) 246-2753, fax (859) 246-2754.

#### GENERAL GOVERNMENT CABINET Board of Social Work (As Amended at ARRS, January 11, 2011)

#### 201 KAR 23:020. Fees.

RELATES TO: KRS 335.080(1)(d), (g), 335.090(1)(d), (g), 335.100(1)(c), (f), 335.130(1)

STATUTORY AUTHORITY: KRS 335.070(3), 335.080(1)(d), (g), 335.090(1)(d), (g), 335.100(1)(c), (f), 335.130(1) NECESSITY, FUNCTION, AND CONFORMITY: KRS

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.080(1)(d), 335.090(1)(d), and 335.100(1)(c) require the board to establish examination fees by promulgation of an administrative regulation. KRS 335.080(1)(g), 335.090(1)(g), and 335.100(1)(f) require the board to establish initial license fees by promulgation of an administrative regulation. KRS 335.130(1) requires the board to establish renewal fees by promulgation of an administrative regulation. This administrative regulation establishes these examination, license, and renewal fees.

Section 1. The <u>fee for the</u> licensed clinical social worker examination [<del>fee</del>] shall be <u>paid directly to the Association of Social</u> <u>Work Boards</u> [<del>\$140</del>].

Section 2. The <u>fee for the</u> certified social worker examination [fee] shall be <u>paid directly to the Association of Social Work Boards</u> [\$140].

Section 3. The <u>fee for the</u> licensed social worker examination [fee] shall be <u>paid directly to the Association of Social Work Boards</u> [\$140].

Section 4. The initial license fee and the renewal fee for a licensed clinical social worker license shall be <u>\$200[</u>\$150].

Section 5. The initial license fee and the renewal fee for a certified social worker license shall be <u>\$125</u> [seventy-five (75) dollars].

Section 6. The initial license fee and the renewal fee for a licensed social worker shall be <u>seventy-five (75)</u> [<del>fifty (50)</del>] dollars.

#### SHARON SANDERS, Chair

APPROVED BY AGENCY: October 4, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2010 at 1 p.m., local time, at the Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2010. 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: 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 the examination, license, and renewal fees.

(b) The necessity of this administrative regulation: This administrative is necessary to set the fees that are required for examination, licensure and the renewal of a license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.080(1)(d), 335.090(1)(d), and 335.100(1)(c) allows the board to establish examination fees. KRS 335.080(1)(g), 335.090(1)(g), and 335.100(1)(f) require the board to establish initial license fees by promulgation of an administrative regulation. KRS 335.130(1) requires the board to establish renewal fees by promulgation of an administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of examination, licensure and renewal fees.

(2) If 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 the process for paying examination fees to provide that the fee be paid directly to the examination service. It also raises the initial licensure fee for the three levels of licensure. Finally the amendment raises the renewal fee, which is pay once every three years, from \$25 to \$50, depending on the level of licensure.

(b) The necessity of the amendment to this administrative regulation: This administrative is necessary to set the fees that are required for examination, licensure and the renewal of a license.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.080(1)(d), 335.090(1)(d), and 335.100(1)(c) allows the board to establish examination fees. KRS 335.080(1)(g), 335.090(1)(g), and 335.100(1)(f) require the board to establish initial license fees by promulgation of an administrative regulation. KRS 335.130(1) requires the board to establish renewal fees by promulgation of an administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation informs the applicants of examination, licensure and renewal fees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1100 applications for initial license and renewal as a licensed social worker, certified social worker, and licensed clinical social worker per 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: This amendment requires that new applicants pay the examination fee directly to the entity that administers the test. Licensees renewing their licenses will be required to pay the renewal fees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Licensed clinical social workers will pay an additional \$50 for a three year renewal. Licensed and certified social workers will pay an additional \$25 for a three year renewal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for the examination will be able to pay the examination fee directly to the examination provider. The board will continue to provide services to its licensees.

(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: This administrative regulation amendment directly establishes or increases fees. Licensed clinical social workers will pay an additional \$50 for a three year renewal. Licensed and certified social workers will pay an additional \$25 for a three year renewal.

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

(9) TIERING: Is tiering applied? Yes. The regulation establishes different fees for different levels of licensure.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? 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 335.080(1)(d), KRS 335.090(1)(d), 335.100(1)(c), 335.080(1)(g), 335.090(1)(g), 335.100(1)(f), and 335.130(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. 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 Social Work (As Amended at ARRS, January 11, 2011)

#### 201 KAR 23:070. Qualifying education and qualifying experience under supervision.

RELATES TO: KRS 335.010, 335.080(1)(c), (3), 335.100(1)(a), (b), (3)

STATUTORY AUTHORITY: KRS 335.070(3), 335.080(1)(c), (3), 335.100(1)(a), (b), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.080(1)(c) and 335.100(1)(a) require an applicant for a certified social worker license or a licensed clinical social worker license to have a master's degree or a doctoral degree in social work from an educational institution approved by the board. KRS 335.080(3)

allows a certified social worker to engage in the practice of clinical social work under the supervision of a licensed clinical social worker as directed by the board by promulgation of an administrative regulation. KRS 335.100(1)(b) requires an applicant for a licensed clinical social worker license to have acquired post-master's experience under appropriate supervision as established by the board by promulgation of an administrative regulation. KRS 335.100(3) requires a licensed clinical social worker to assume responsibility for and supervise the certified social worker's practice of clinical social work as directed by the board by promulgation of an administrative regulation. This administrative regulation establishes the educational institutions approved by the board, the definitions relating to supervision, the content of a Contract for Clinical Social Work Supervision, and the requirements for experience under supervision.

Section 1. Definitions. (1) "Educational institution approved by the board" means a graduate school of social work accredited by the Council on Social Work Education.

(2) "Practice of clinical social work" means the practice of social work that focuses on the evaluation, diagnosis, and treatment of an emotional disorder <u>or</u> [and] mental illness as related to the total health of the individual and that meets the requirements of Section 2 of this administrative regulation.

(3) "Supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in providing clinical social work services.

(4) "Supervisor of record" means the supervisor who assumes responsibility for the practice of a certified social worker pursuant to KRS 335.080(3) and 335.100(3).

Section 2. Practice of Clinical Social Work. (1) The practice of clinical social work shall be based on knowledge of psychodynamics, human relations, crisis intervention, psychopathology, and group dynamics.

(2) A practitioner of clinical social work shall:

(a) Possess [numerous skills, including] skills necessary for:

1. Individual, marital, family, and group psychotherapy; and

2. Other recognized treatment modalities; and

(b) Establish a therapeutic relationship with his client that:

1. Leads to correction of the dysfunction;

2. Includes:

a. Diagnosis using professionally recognized clinical nomenclature:

**b.[**,] Treatment planning that includes development, implementation, and modification of the plan;

c.[b.] Evaluation of progress; and

d.[c.] Termination of the treatment process; and

3. Is characterized by face-to-face contact with the client throughout the treatment process.

Section 3. Supervision. (1) A supervisor shall be a licensed clinical social worker who:

(a) Provides supervision to a certified social worker pursuant to KRS 335.080(3) and 335.100(3);

(b) Does not have:

1. An unresolved citation filed against him by the board;

2. A suspended or probated license; or

3. A previous or existing personal relationship with a supervisee; and

(c) Has:

1. Been in the practice of clinical social work for three (3) years following licensure as a licensed clinical social worker; and

2. [By August 1, 2001,] Completed a board-approved three (3) hour training course on supervisory practices and methods for licensed clinical social workers <u>relating to the requirements in KRS</u> Chapter 335 and this administrative regulation.

(2) Supervisory experience obtained in Kentucky with a supervisor who has not completed the course required by (1)(c)2 of this section shall not be approved by the board.

(3) The supervisory training course shall [This course must] be completed every licensure period to maintain supervisory status with the board.

(4)[(3)] A licensed clinical social worker shall not serve as a supervisor of record for more than six (6) certified social workers with whom he has a contract to be held accountable to the board at the same time.

(5)[(4)] An applicant receiving supervision outside of Kentucky shall demonstrate that his or her supervisor has been in the practice of clinical social work for a period of three (3) years following licensure as a clinical social worker or its equivalent effective at the time of the supervision.

(6)((5)) To be recognized as a supervisor, a licensed clinical social worker who meets the requirements of this section shall submit a written request to become a supervisor in Kentucky along with a copy of the supervisory training certificate.

Section 4. Contract for Clinical Social Work Supervision. The Contract for Clinical Social Work Supervision required by KRS 335.080(3) and 335.100(3) shall contain:

(1) The name and license number of the supervisee;

(2) The name and license number of the supervisor of record;

(3) The name and license number of other supervisors;

(4) The agency, institution, or organization where the experience will be received;

(5) A detailed description of the nature of the practice including the type of:

(a) Clients which will [shall] be seen;

(b) Therapies and treatment modalities which <u>will</u> [shall] be used including the prospective length of treatment; and

(c) Problems which will [shall] be treated;

(6) The nature, duration, and frequency of the supervision, including the:

(a) Number of hours of supervision per week;

(b) Amount of group and individual supervision; and

(c) Methodology for transmission of case information;

(7) The conditions or procedures for termination of the supervision;

(8) A statement that:

 (a) The supervisor of record understands that he shall be held accountable to the board for the care given to the supervisee's clients;

(b) The certified social worker is an employee of an agency, institution, or organization, and has Social Security and income tax deducted from his salary; and

(c) The supervisor of record and other supervisors meet the criteria established in Section 3(1) <u>through (4)[, (2), and (3)]</u> of this administrative regulation:[-]

(9) An individualized job description that:

(a) Describes in detail how the requirements of Sections 6 and7 of this administrative regulation <u>will [shall</u>] be met; and

(b) Is on office or agency letterhead and is signed by the executive director, the agency director, or the individual who heads the office<u>: and[-]</u>

(10) A copy of each supervisor's [Each supervisor shall attach a cop7y of the] supervisory training certificate attached to the contract for clinical social work supervision.

Section 5. Notice to Client. If an employee is practicing under the supervision of a licensed clinical social worker, the employee shall notify in writing each client during the period of the supervision. The notification shall contain:

(1) The name, office address, telephone number, and license number of the supervisor of record; and

(2) A statement that the employee is licensed by the board.

Section 6. Experience Under Supervision. Experience under supervision shall consist of:

(1) At least sixty (60) percent of the required experience in a direct client-professional relationship;

(2) Direct responsibility for a specific individual or group of clients; and

(3) Broad exposure and opportunity for skill development with a variety of dysfunctions, diagnoses, acuity levels, and population groups.

Section 7. Supervision Requirements. (1) Supervision shall

relate specifically to the qualifying experience and shall focus on: (a) The accurate diagnosis of a client problem leading to profi-

ciency in applying professionally recognized clinical nomenclature; (b) The development and modification of the treatment plan;

(c) The development of treatment skills suitable to each phase of the therapeutic process;

(d) Ethical problems in the practice of clinical social work; and

(e) The development and use of the professional self in the therapeutic process.

(2)(a) Supervision shall total a minimum of 200 hours, which shall include individual supervision of not less than two (2) hours during every two (2) weeks of clinical social work practice:

(b) A supervisee shall not obtain more than 100 hours of the required supervision by group supervision; and

(c) Group supervision shall not be permitted in groups of more than six (6) supervisees. [More than 100 hours shall not be obtained through group supervision in groups of six (6) or fewer members.]

(3) Documentation that establishes that an individual has been licensed in another jurisdiction at the clinical level and has been engaged in the active practice of clinical social work in that jurisdiction for five (5) years immediately preceding the filing of an application with the board meets the requirement for supervision set forth in this administrative regulation.

Section 8. Evaluation by Board. (1) The period of supervised experience required by KRS 335.100(1)(b) shall be evaluated by the board according to one (1) of the following methods:

(a) Postexperience evaluation. A candidate whose experience was obtained while employed at an agency exempted under KRS 335.010(3), (4) or (5) or while licensed in another state shall submit his application along with appropriate documentation of supervision upon completion of the experience.

(b) Transitional evaluation. A candidate who has accumulated an amount less than the full amount of qualifying experience while employed at an agency exempted under KRS 335.010 (3), (4) or (5) or while licensed in another state, and who is seeking to obtain the remainder of his experience in nonexempt employment, shall submit his application along with appropriate documentation of supervision completed to the date of his application. He shall also submit with his application a contract under paragraph (c) of this subsection for the remainder of the experience.

(c) Preapproved evaluation. Candidates not otherwise exempted under KRS 335.010(3), (4) or (5) shall submit a contract for the experience which will be taking place over the required time period and have the contract approved by the board prior to beginning supervision. This contract shall be evaluated by the board and shall be approved or disapproved within ninety (90) days of its submission.

(2) A certified social worker who desires to practice clinical social work that does not qualify as supervised experience pursuant to KRS 335.100(1)(b), shall submit a contract pursuant to KRS 335.080(3). This contract shall be evaluated by the board and shall be approved or disapproved within ninety (90) days of its submission.

Section 9. (1) Changes to that portion of the Contract for Clinical Social Work Supervision describes the nature of the practice and experience that the supervisee is to obtain as required by Section 4(5) of this administrative regulation shall be submitted to the board for approval.

(2) If the supervisee changes his supervisor of record, a new Contract for Clinical Social Work Supervision shall be submitted to the board for approval.

(3) A supervisee shall notify the board by letter of changes of supervisors who are not the supervisor of record, but who are identified in the Contract for Clinical Social Work Supervision pursuant to Section 4(3) of this administrative regulation, and attach a copy of the **supervisor's [supervisors]** supervisory training certificate.

Section 10. Incorporation by Reference. (1) <u>"Contract for Clinical Social Work Supervision," 10/2010,[7/2000]</u> is incorporated by reference.

(2) This material may be inspected, copied, or obtained, sub-

ject to applicable copyright law, at the Kentucky Board of Social Work, 911 Leawood Drive, 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, Ken-

tucky 40601, phone (502) 564-2350, fax (502) 696-8030.

#### GENERAL GOVERNMENT CABINET Board of Social Work (As Amended at ARRS, January 11, 2011)

#### 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  $[r_{i}]$ 

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) <u>of the</u> 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 as part of their thirty (30) continuing education hours.

(6)(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.

(7)[(8)] Three (3) of the continuing education hours during

each renewal period shall be completed in the area of domestic violence related training courses pursuant to KRS 194A.540.

(8)[(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 KRS 335.130(5) [HB-285].

(9)[(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 <u>and courses for supervision under 201 KAR 23:070, Section 3(1)(c)2</u>, 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. <u>Clinical Social Work Association or any of its affiliated state</u> <u>chapters</u>[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; or[-]

<u>6. A college, school, department, or program [Celleges, schools, departments or programs]</u> of social work in Kentucky which is [are] accredited by the Council on Social Work Education; or[-]

(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 tele-conference 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 shall not be automatically approved under Section 3(1) of this administrative regulation.

Section 4. Procedures for Approval of Continuing Education Providers and Programs. (1) 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:

(a)[(1)] A published course outline or similar description which includes an explanation of the course objectives;

(b)[(2)] Names and qualifications of the instructors presented in the form of curriculum vitas or resumes;

(c)[(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;

(d)[(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;

(e)[(5)] Official certificate of completion or college transcript from the sponsoring agency or college; and

(f)[(6)] <u>A completed Provider[Application for continuing educa-</u> tion credits approval submitted on the] Application for Continuing Education Credit Approval form.

(2)[(7)(a)] The board may approve a specific continuing education program if the provider of the program:

(a)[4.] Files a written request for approval;

(b)[2-] Pays an application fee of \$100 for each one day program of eight (8) hours or less; and

(c)[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.

(3)[(<del>b</del>)] The approval of a program pursuant to this section shall permit the provider to offer the program for one (1) year.

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 <u>thirty (30)</u> [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; <u>and[-]</u>

(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 **program** [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 <u>by submitting the Spon-</u> sorship Application for Continuing Education Credit Approval form;

2. Pays an initial application fee of \$250; and

3. Proposes to sponsor continuing education programs that meet the requirements established in Section 3 of this administrative regulation.[; and]

(b)[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.

(c)((b)] An approved sponsor shall submit an annual report of the continuing education programs offered during that year.

(d)[(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, <u>if</u> [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:

(<del>0</del>)] 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 <u>if [when]</u> Approval Denied. <u>If an</u> [In the event of denial, in whole or part, of any] application for approval of continuing education hours <u>is denied</u>, in whole or part, a licensee or a provider <u>may</u> [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 hold-ing 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) <u>The following ma-</u> terial is incorporated by reference:

(a) "Provider Application for Continuing Education Credit Approval", 10/2010;

(b) "Sponsorship Application for Continuing Education Credit Approval", 10/2010; and[7]

(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.

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#### GENERAL GOVERNMENT CABINET Board of Examiners of Psychology (As Amended at ARRS, January 11, 2011)

#### 201 KAR 26:115. Definition of psychological testing.

RELATES TO: KRS 319.010

STATUTORY AUTHORITY: KRS 319.032(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(b) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish and define the scope of practice within the field of psychology. This administrative regulation establishes parameters of psychological testing.[319.010(7)][319.010(6)][includes in the prac tice of psychology psychological testing in the administering and interpreting of tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotion, and motivation. The intent of this administrative regulation is to provide a definition of psychological testing sufficient to allow this board to regulate effectively this aspect of psychological practice. The ability to administer and interpret psychological testing assumes formal academic training at the graduate level in statistics, test construction, sampling theory, tests and measurement, individual differences, and personality theory. In addition, the interpretation of psychological tests for diagnostic purposes assumes formal academic training in the areas of abnormal psychology, psychopathology, psychodiagnosis and, in the case of neuropsychological diagnosis, training in neuropsychology. Competent administration and interpretation of psychological tests also requires formal supervised practice experience.1

Section 1. <u>Definition[Definitions]</u>. "Psychological testing" means the use of one (1) or more standardized measurement instruments, devices, or procedures including the use of computerized psychological tests, to observe or record human behavior, and which require the application of appropriate normative data for interpretation or classification and includes the use of standardized instruments for the purpose of the diagnosis and treatment of mental and emotional disorders and disabilities, the evaluation or assessment of cognitive and intellectual abilities, personality and emotional states and traits, and neuropsychological functioning.

Section 2. Psychological Tests. Psychological tests may include:

(1) Individual tests for the evaluation of cognitive and intellectual abilities, examples of which are:

(a) The Wechsler series;

- (b) The Stanford-Binet; and
- (c) The Kaufman Assessment Battery for Children;[-]

(2) Individual, objective, and projective tests of personality and emotional states and traits, examples of which are:

(a) The Minnesota Multiphasic Personality Inventory; and

(b) The Millon Clinical Multiaxial Inventory;

(c) The Millon Adolescent Clinical Inventory; and

(d) Projective techniques including:

- 1. The Rorschach Ink Blots;
- 2. Thematic Apperception Test; and

3. The Holtzman Ink Blots: and[-]

(3) Individual tests of neuropsychological functioning, examples of which are:

(a) The Halstead-Reitan Battery;

(b) The Luria-Nebraska Battery;

(c) The "Lezak or Kaplan Battery"; and

(d) The NEPSY.

Section 3. Services <u>that[which]</u> are described as "psychological testing" <u>shall[may]</u> only be administered and interpreted by persons credentialed by this board or who meet the formal academic training and experience qualifications described above and who are otherwise exempt by statute.

(1) Persons credentialed by this board, as well as other licensed or certified professionals, may also use tests of language, education, and achievement, as well as tests of abilities, interests, and aptitudes. With the exception of the test categories and psychological tests listed in Section 2 of this administrative regulation, the use of these other tests is not exclusively within the scope of this administrative regulation.

(2) Members of other professions **<u>shall[may]</u>** not train or supervise any person in performing psychological testing.

(3) The practice of psychology shall be construed within the meaning of the definition contained in KRS <u>319.010(7)[319.010(6)]</u> without regard to <u>if[whether]</u> payment is received for services rendered.

(4) Services <u>that[which]</u> are described as "psychological testing and treatment" <u>shall[may]</u> be administered to minor children only upon the notification of and the granting of written permission by the parent or legal guardian, unless otherwise required by the courts subject to specific state or federal law.

#### THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010

FILED WITH LRC: November 12, 2010

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

#### GENERAL GOVERNMENT CABINET Board of Examiners of Psychology (As Amended at ARRS, January 11, 2011)

#### 201 KAR 26:125. Health service provider designation.

#### RELATES TO: KRS 319.050(7)

STATUTORY AUTHORITY: KRS 319.032(2), 319.050(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.050(7) <u>requires[provides]</u> that the designation of "health service provider" shall be granted for a licensed psychologist who [delivers or] supervises a psychological health care service. This administrative regulation establishes the requirements for the granting of that designation.

Section 1. The designation "health service provider" shall refer to [:

(1)] a licensed psychologist defined in KRS 319.050(7) who is authorized to supervise[-

## (a) Delivers psychological health care services; or

(b) Supervises] a certified psychologist, temporarily licensed psychologist, licensed psychological associate, student, intern, or resident pursuing a course of graduate study in psychology in[; or

(2) An applicant for licensure at the doctoral level who is delivering psychological health care services.

Section 2. Psychological health care services shall include delivery of diagnosis, assessment, psychotherapy, treatment, or other therapeutic services to individuals, couples, families, or groups whose growth, adjustment, or functioning is impaired or who otherwise seek psychological health care services.

Section 3. A health <u>service</u> [care] provider shall be a licensed psychologist who has completed appropriate training and supervised experience in psychological health service delivery at the doctoral level. The training and experience <u>may occur in a variety</u> of psychological health care delivery sites and:

(1) Shall include, in addition to the supervised experience required for licensure as a licensed psychologist, 1,800 hours of supervised experience within one (1) or more health care settings in which the provider delivered direct psychological health care services, pursuant to Section 2 of this administrative regulation; <u>or</u> [and]

(2) The licensed psychologist holds the Certificate of Professional Qualification (CPQ) issued by the Association of State and Provincial Psychology Boards (ASPPB) or a successor organization, or is board-certified by the American Board of Professional Psychology (ABPP) or a successor organization, or the licensed psychologist holds a Certificate from the National Register of Health Service Providers in Psychology or a successor organization and has a minimum equivalent of five (5) years of full time practice at the independent practice level and has had no disciplinary action taken by a licensure board or on record in the ASPPB data base. [May occur in a variety of psychological health care delivery sites.]

Section 4. A licensed psychologist who does not have the designation "health service provider" shall not [deliver or] supervise psychological health care services.

Section 5. In addition to completion of a doctoral training program in an area of psychological health service delivery, a candidate for health service provider designation shall complete <u>all</u> [<del>required predoctoral and postdoctoral</del>] supervised experience requirements in a health care setting as established in this administrative regulation, consistent with the requirements of 201 KAR 26:190.

#### THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010 FILED WITH LRC: November 15, 2010 at 11 a.m.

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

#### GENERAL GOVERNMENT CABINET Board of Examiners of Psychology (As Amended at ARRS, January 11, 2011)

#### 201 KAR 26:130. Complaint procedure.

RELATES TO: KRS 319.005, 319.082, 319.118, 319.990 STATUTORY AUTHORITY: KRS 319.032

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.005 prohibits unlicensed persons from engaging in the practice of psychology[,] or using the title of psychologist, licensed psychologist, certified psychologist, licensed psychological practitioner or licensed psychological associate. KRS 319.082 delineates the causes for which disciplinary action may be taken against a licensed [credential] holder. KRS 319.118 authorizes the board to institute and maintain actions to restrain or enjoin violations. KRS 319.990 sets forth the criminal penalty for violations and authorizes prosecution of violators. KRS 319.032 authorizes the board to develop guidelines for use in complaints involving alleged sexual misconduct by a licensed [credential] holder, and for training of investigators in these matters. This administrative regulation is established to protect and safeguard the health and safety of the citizens of Kentucky and to provide procedures for filing, evaluating, and disposing of complaints.

Section 1. Definitions. (1) "Act" means Chapter 319 of the Kentucky Revised Statutes.

(2) "Board" is defined in KRS 319.010(2), and for purposes of this administrative regulation, shall also refer to a hearing panel.

(3) "Charge" means a specific allegation contained in any document issued by the board or hearing panel alleging a violation of a specified provision of the KRS Chapter 319 or the administrative regulations promulgated thereunder.

(4) "Formal complaint" means a formal administrative pleading authorized by the board that sets forth charges against a <u>licensed</u> [eredential] holder or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

(5) "Initiating complaint" means any allegation [in whatever form] alleging misconduct by a <u>licensed</u> [credential] holder or applicant or alleging that an unlicensed person is engaging in the practice of psychology or using the title of psychologist.

(6) "Order" means the whole or any part of a final disposition of a hearing.

(7) "Person" means any individual, partnership, corporation, association, or public or private organization of any character other

than an agency.

(8) "Presiding officer" means the person appointed by the board to preside at a hearing pursuant to KRS 319.032(1)(h), and shall include either a hearing officer or a member of the hearing panel.

(9) "Respondent" means the person against whom an initiating or a formal complaint has been made.

Section 2. Initiating Complaint. (1) Source of initiating complaint. A complaint may be initiated by the board, by the public or by any <u>governmental</u> [state] agency. A certified copy of a court record for a misdemeanor or felony conviction relating to the practice of psychology shall be considered a valid complaint.

(2) Form of initiating complaint. Initiating complaints shall be in writing and shall clearly identify the person against whom the complaint is being made. Further, the complaint shall contain the date, and shall identify by signature the person making the complaint, and shall contain a clear and concise statement of the facts giving rise to the complaint.

(3) Receipt of initiating complaint. A complaint may be received by any board member, credential holder designated by the board, by the Office of the Attorney General, or by any staff member.

(4) <u>Reply of respondent. A copy of the initiating complaint shall</u> <u>be mailed to the respondent. The respondent shall file with the</u> <u>board a written response to the initiating complaint within fifteen</u> (15)[15] days of the date on which the initiating complaint was <u>mailed</u>.

(5) Consideration of initiating complaint. At the next regularlyscheduled meeting of the board or as soon thereafter as practicable, the board <u>or a panel of the board</u> shall review the initiating complaint <u>and response</u>. At that time, the board shall determine if an investigation is warranted, and if so, the board may appoint one (1) of its members or any agent or representative of the board to conduct an investigation of the complaint.

(6)[(5)](a) If there is reasonable cause to believe that a license [eredential] holder or applicant for a license is physically or mentally incapable of practicing psychology with reasonable skill and safety to clients, the board may order the license [eredential] holder or applicant to submit to an examination by a psychologist or a physician designated by the board to determine the license [eredential] holder's or applicant's psychological or physical status to practice psychology.

(b) The expense of this examination shall be borne by the board.

(c) The board shall then consider the findings and conclusion of the examination and the final investigative report at its next regularly-scheduled meeting or soon thereafter.

(7)[(6)] Investigation.

(a) The person about whom the initiating complaint has been considered shall be contacted. With the consent of the respondent, a meeting may be scheduled at which time he or she may respond <u>further</u> to the allegations of the initiating complaint. [A copy of the complaint shall be made available to the respondent prior to the <u>meeting</u>.] The board and the respondent shall have the right to be represented at the meeting by legal counsel.

(b) Report of investigation. Upon the completion of the investigation, the person or persons making that investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(c) Consideration of complaint and investigative report. Based on consideration of the complaint, the investigative report, if any, and the psychological or physical examination, if any, the board shall determine if there has been a prima facie violation of the Act. If the investigator is a member of the board, he or she shall not vote. If it is determined that the facts alleged in the complaint or investigative report do not constitute a prima facie violation of the statute or administrative regulations, the board shall notify the person making the complaint and the respondent that no further action shall be taken at the present time. If it is determined that there is a prima facie violation of KRS 319.082 or administrative regulations, the board shall issue a formal complaint against the license [eredential] holder or applicant. In the case of a prima facie violation of KRS 319.005, the board shall file suit to enjoin the violator or shall seek criminal prosecution pursuant to KRS 319.990. Section 3. Formal Complaint. If the board determines that the initiating complaint shall be made a formal complaint, the following actions shall be initiated:

(1) Issuance of formal complaint. The board shall provide the respondent with a written formal complaint which shall set forth:

(a) Each offense charged;

(b) Notice of the respondent's right to be represented by counsel;

(c) Notice of the respondent's right to subpoena witnesses in the respondent's behalf; and

(d) Notice of the respondent's right to appeal after an adverse adjudication.

(2) Service of formal complaint. Service of process shall be provided in accordance with KRS 13B.050(2).

(3) Issuance of hearing notice. Notice of the hearing shall be provided as required by KRS 13B.050(1) and (3).

Section 4. Formal Response. Within twenty (20) days of service of the formal complaint, the respondent shall file with the board a written response to the specific allegations set forth in the formal complaint. Allegations not properly responded to shall be deemed admitted. The board may, for good cause, permit the late filing of a response.

Section 5. Allegations of Sexual Misconduct by a <u>License</u> [Credential] Holder. (1) To assure confidentiality for the complainant, the alleged victim's name shall not be used in any written document. This individual shall be identified by initials only or by some other mechanism adopted by the board for identification.

(2) Upon request, the testimony of the alleged victim may be taken by deposition in order to assure his or her confidentiality.

(3) To protect the confidentiality of all parties, the board may issue an order restraining all parties and their representatives, including counsel, from any discussion or release of information about the allegations outside of the investigative and hearing processes.

(4) In accordance with the provisions of KRS 319.032(1)(d), the board may hold some or all of the hearing procedures in closed session.

Section 6. Board Member Training for Cases of Sexual Misconduct. (1) Within six (6) months of their appointment, all board members and investigators shall undergo specialized training to cover the content specified by KRS 319.032(1)(e).

(2) No investigator shall be assigned to cases where sexual misconduct has been alleged until such training has been completed.

(3) Training shall consist of a three (3) hour course which includes the content specified by KRS 319.032 and may be delivered by means of either live presentation, individual tutorial, or video-tape.

#### THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010 FILED WITH LRC: November 15, 2010 at 11 a..m.

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

#### GENERAL GOVERNMENT CABINET Board of Examiners of Psychology (As Amended at ARRS, January 11, 2011)

201 KAR 26:155. Licensed psychologist: application procedures and temporary license.

RELATES TO: KRS 319.050

STATUTORY AUTHORITY: 319.032(1)(a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychologist. This administrative regulation establishes the requirements for applicants for licensure, and the conditions for a temporary license.

Section 1. Application. (1) An application for a credential as a licensed psychologist <u>and for temporary licensure</u> may be submitted after the requirements established in KRS 319.050(2) are met.

(2) The application required by subsection (1) or (2) of this section shall be made by submitting a completed Form Psy-1 to the board. The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160;

2. Three (3) letters of reference from persons qualified to evaluate the applicant's professional ability, including two (2) persons who have received a doctorate in psychology (Ph.D. PsyD., Ed.D.); and

3. An official transcript for all levels of education required for licensure.

Section 2. Temporary Licensure. (1) Pending successful completion of required examinations, an applicant may request permission to practice psychology at the doctoral level on a temporary basis pursuant to KRS 319.050(3). The request for a temporary credential shall be cosigned by the candidate and the proposed supervisor, who shall be a licensed psychologist approved by the board.

(2) Supervision during the period of temporary licensure shall be a minimum of one (1) hour of individual, face-to-face supervision on a weekly basis.

(3) A report of supervision shall be submitted on a regular basis as required by 201 KAR 26:171, Section 6.

(4) The candidate shall take the <u>national [Examination for Professional Practice in Psychology (]EPPP[]</u> within one (1) year of the board's written approval of temporary licensure

(5) The period of temporary licensure shall be terminated upon successful completion of all credentials and examination procedures or upon the earliest of the following:

(a) The candidate's failure to pass the EPPP within one (1) year of the date of the board's approval for temporary license.

(b) The candidate's failure to pass the <u>examinations on psy-</u> chological practice, ethical principles, and the law [oral examination] within one (1) year of completion of the <u>required supervised</u> experience [postdoctoral year].

(c) The passage of two (2) years from issuance.

(6) Under exceptional circumstances and upon written request cosigned by the board approved supervisor, the board <u>shall[may]</u> approve an extension of the period of temporary licensure.

Section 3. Grace Period for Submission of Credentials. In order to allow for processing of the candidate's materials by the board, there shall be a grace period not to exceed sixty (60) days within which candidates who have completed their degree requirements may begin [the postdoctoral year or employment] to practice psychology under supervision of a board-approved supervisor, as established in 201 KAR 26:190.

(1) Upon acceptance of employment or the beginning of the required period of supervision [postdoctoral year], the candidate and the licensed psychologist who shall serve as his or her supervisor shall immediately submit a letter of notice to the board indicating that he or she has begun to practice in Kentucky and that application materials are forthcoming. Failure to submit this notice shall be deemed as grounds for disciplinary action against the candidate and the supervisor.

(2) It is the responsibility of the candidate to ensure that all materials are forwarded to the board within thirty (30) days from the date of [agency] employment or supervision. Once the application is complete, the board shall review the material at its next

scheduled meeting and, if appropriate, issue either a temporary or permanent credential. If the candidate does not meet the requirements for the credential, or if their application material is insufficient to take any action, he or she shall be <u>notified by the board</u> and directed to cease practice until the requirements are met <u>or the necessary documentation has been submitted</u>.

(3) Under no circumstances shall the grace period be extended beyond sixty (60) days. Candidates who fail to achieve approval within this timeframe shall not practice psychology until credentialed by the board.

(4) Upon filing the notice set forth in Section 3(1) of this administrative regulation, the candidate is deemed to be practicing psychology under the jurisdiction of the board, and <u>shall comply with</u> <u>KRS Chapter 319 and 201 KAR Chapter 26[is subject to all relevant laws and regulations]</u>.

Section 4. Incorporation by Reference. (1) "Form Psy 1", (January 2002 edition), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010 FILED WITH LRC: November 15, 2010 at 11 a..m.

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

#### GENERAL GOVERNMENT CABINET Board of Examiners of Psychology (As Amended at ARRS, January 11, 2011)

#### 201 KAR 26:171. Requirements for supervision.

RELATES TO: KRS 319.032(1)(l), 319.050(3), (6), 319.056(4), 319.064(3), (4), 319.082(1), 319.092(3)(d), 319.118(1)

STATUTORY AUTHORITY: KRS 319.032(1)(a)[(1)(l)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a)[(1)(!)] requires the board to promulgate an administrative regulation governing the supervision of a certified psychologist, licensed psychological associate, candidate for licensure, or a credential holder sanctioned by the board. This administrative regulation establishes the requirements for supervision.

Section 1. Except as provided in Section 15 of this administrative regulation, a supervisory arrangement shall have the prior approval of the board, with both supervisor and supervisee petitioning the board in writing. The supervisor and supervisee shall submit to the board the description of the supervisory arrangement or a change in the supervisory arrangement at least thirty (30) days prior to the effective date of the arrangement or change.

Section 2. (1) All supervision requirements shall:

(a) Be met with individual, face-to-face, weekly contact between supervisor and supervisee except as provided in subsection (2) of this section and <u>Sections 12 and 15</u> [Section 12] of this administrative regulation; and

(b) Include additional supervision sessions as needed.

(2) An alternative format of supervision, including two (2) way interactive video, may be substituted for the supervisory contact, required by subsection (1) of this section, upon specific approval by the board.

Section 3. (1) A certified psychologist or licensed psychological associate may petition the board to be relieved of his or her obligation to maintain supervision during which period he or she shall not practice psychology.

(2) The certified psychologist or licensed psychological associate shall obtain a supervisor approved by the board before the resumption of practice.

(3) Upon <u>resumption of practice</u> [renewal], the certified psychologist or licensed psychological associate shall document compliance with continuing education requirements and shall report on their [professional] activities and employment <u>related to psychology</u> during the period without supervision.

Section 4. (1) A licensed psychologist with health service provider designation who has been approved by the board as a supervisor shall attend a board approved training session in supervisory practices within twelve (12) months of obtaining approval as a supervisor.

(2) A board approved supervisor shall obtain a minimum of three (3) continuing education hours in supervision theory or techniques in each three (3) year renewal cycle as required by 201 KAR 26:175, Section 1(3). The board shall suspend its approval of a supervisor if the supervisor does not complete the required continuing education.

Section 5. (1) The supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.

(2) The supervisor shall report to the board an apparent violation of KRS 319.082(1) on the part of the supervisee.

(3) The supervisor shall inform the board immediately of a change in the ability to supervise, or in the ability of a supervisee to function in the practice of psychology in a competent manner.

(4) The supervisor shall control, direct, or limit the supervisee's practice as appropriate to insure that the supervisee's practice of psychology is competent.

(5) The supervisor of record shall be responsible for the practice of psychology by the supervisee. If the board initiates an investigation concerning a supervisee, the investigation shall include the supervisor of record.

(6) For each person supervised pursuant to KRS 319.050(3), (6), 319.056(3), (4), 319.064(2), (4), or 319.092(3)(d), the supervisor shall maintain a record of each supervisory session that shall include the type, place, and general content of the session. This record shall be maintained for a period of not less than six (6) [five (5)] years after the last date of supervision.

Section 6. (1) In calculating the amount of time spent in fulltime practice while under supervision,  $\frac{1,800}{1,800}$  [2,000] hours of supervised practice shall be equivalent to one (1) year of experience [if the practice was obtained postlicensure].

(2) The supervisor shall provide reports to the board of the supervision of each supervisee according to the following schedule:

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(3) The report shall include:

(a) A description of the frequency, format and duration of supervision;

(b) An assessment of the functioning of the supervisee, including the strengths and weaknesses; and

(c) Other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. (1) If a supervisee has more than one (1) boardapproved supervisor, the supervisors shall be in direct contact with one another at least once every six (6) months, and they shall provide supervisory plans and reports to the board and copies to one another.

(2) A request to have more than two (2) supervisors at one (1) time shall require a special application to the board which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 8. If the supervisee is a licensed psychological associate or a certified psychologist with less than four (4) years of fulltime, postlicensure practice, or its equivalent, or a licensure candidate with temporary permission to practice, the supervisor of record shall:

(1) Read and countersign all psychological assessments;

(2) Review treatment plans, progress notes and correspondence on an as-needed basis to assess the competency of the supervisee to render psychological services;

(3) Jointly establish with the supervisee [and submit] a supervisory plan that shall be submitted to the board to the board at the beginning of the supervisory relationship. The plan shall:

(a) Be updated or revised and submitted to the board with the regular report of supervision;

(b) Include intended format, and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process.

(4) Have direct observation of the supervisee's work at least once every two (2) months. Direct observation can be accomplished through audiotaping, video camera, videotaping, one (1) way mirror or as a cotherapist;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload as appropriate to the supervisee's level of competence;

(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and

(8) Have knowledge of the supervisee's physical and emotional well-being when it has a direct bearing on the supervisee's competence to practice.

Section 9. If the supervisee is a licensed psychological associate or certified psychologist with more than four (4) years of fulltime, postlicensure practice, or its equivalent, the supervisor of record shall:

(1) Review and countersign psychological assessments as needed or appropriate;

(2) Review treatment plans, notes, and correspondence as needed or appropriate;

(3) Jointly establish with the supervisee [and submit] a supervisory plan that shall be submitted to the board to the board at the beginning of the supervisory relationship. The plan shall:

(a) Be updated or revised and submitted to the board with the regular report of supervision;

(b) Include intended format, and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process.

(4) Have direct observation of the supervisee's work on an asneeded basis;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload as appropriate to the supervisee's level of competence;

(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and

(8) Have knowledge of the supervisee's physical and emotional well-being when it has a direct bearing on the supervisee's competence to practice.

Section 10. (1) The supervisee shall:

(a) Keep the supervisor adequately informed at all times of his or her activities and ability to function; and

(b) Seek supervision as needed in addition to a regularly scheduled supervisory session.

(2) The supervisee shall:

(a) Participate with the supervisor in establishing supervisory goals and in completing the regular supervisory reports;

(b) Be jointly responsible with the supervisor for ensuring that a supervisory report or plan has been sent to the board in accordance with the reporting schedule established in Section 6(1) of this administrative regulation; and

(c) Report to the board a apparent violation of KRS 319.082(1) on the part of the supervisor.

Section 11. Identification of Provider. The actual deliverer of a service shall be identified to the client. A billing for a rendered service shall identify which service was performed by the certified psychologist, licensed psychological associate, temporary licensed psychologist, trainee, or other provider and supervised by the licensed psychologist.

Section 12. Frequency of Supervision. (1) A licensed psychological associate or certified psychologist shall have a minimum of one (1) hour of individual face-to-face supervision on a weekly basis for the first two (2) years of full-time practice or its equivalent following <u>licensure</u> [certification].

(2) After two (2) years of full-time, postlicensure practice, or its equivalent, the supervisor and supervisee may petition the board to alter the format, frequency or duration of supervision as long as the proposed change includes a minimum of two (2) one (1) hour individual face-to-face meetings every four (4) weeks, and the total amount of supervision is not less than four (4) hours per four (4) week period. This petition may include a request to change the format for mindividual to group supervision. Supervision requirements for part-time practice may be modified at the discretion of the board upon <u>approval of the submitted</u> [submission of an approvable] plan.

(3)(a) After four (4) years of full-time, postlicensure practice, or its equivalent, the supervisor and supervisee <u>may</u> [shall] petition the board for further modification of the format, frequency, or duration of supervision, with a minimum amount of one (1) hour of face-to-face supervision per month. <u>Additional modifications</u> [Board approval of additional modification] of the format, frequency or duration of supervision may be <u>submitted for approval by</u> [reviewed upon request made to] the board.

(b) Upon a change of supervisor, a new plan for supervision shall be submitted by the supervisor and supervisee to the board for approval. This plan may require additional supervision than was previously approved by the board.

(c) Upon termination of the supervisor-supervisee relationship, the final report of supervision shall be submitted to the board <u>within</u> thirty (30) days of the termination.

Section 13. Supervision of a Disciplined <u>Licensed</u> [Credential] Holder. (1) The board shall appoint an approved supervisor to supervise a disciplined <u>licensed</u> [credential] holder for the period of time defined by the board.

(2) The disciplined <u>license holder</u> [psychologist] shall be responsible for paying the fee for supervision.

(3) The supervisor shall have completed the board approved training course in supervision.

(4) The supervisor shall:

(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;

(b) Meet with the disciplined  $\underline{\text{license holder}}$  [psychologist] and the board liaison to:

1. Summarize the actions and concerns of the board;

2. Review the goals and expected outcomes of supervision submitted by the board liaison;

3. Develop a specific plan of supervision; and

4. Review the reporting requirements that shall be met during the period of supervision;

(c) Meet with the disciplined <u>license holder</u> [psychologist] at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;

(d) Submit a quarterly report to the board which reflects progress, problems, and other information relevant to the need for board-mandated supervision;

(e) Make all reasonable efforts to insure that the disciplined <u>license</u> [<del>credential</del>] holder's practice is in compliance with KRS Chapter 319 and 201 KAR Chapter 26;

(f) Report to the board <u>any</u> [<del>an</del>] apparent violation of KRS 319.082(1) on the part of the disciplined <u>license</u> [<del>crodential</del>] holder;

(g) Immediately report to the board in writing; a change in the ability to supervise, or in the ability of the disciplined <u>license</u> [eredential] holder to function in the practice of psychology in a competent manner;

(h) Review and countersign psychological assessments as needed or appropriate;

(i) Review treatment plans, notes, and correspondence as needed or appropriate;

(j) Have direct observation of the disciplined <u>license</u> [credential] holder's work on an as-needed basis;

(k) Have direct knowledge of the size and complexity of the disciplined <u>license</u> [eredential] holder's caseload;

(I) Have knowledge of the therapeutic modalities and techniques being used by the disciplined  $\underline{\mbox{license}}$  [credential] holder; and

(m) Have knowledge of the disciplined <u>license</u> [credential] holder's physical and emotional well-being when it has direct bearing on the disciplined <u>license</u> [credential] holder's competence to practice.

(5) The supervisor shall control, direct or limit the disciplined <u>license</u> [eredential] holder's practice as appropriate to ensure that the disciplined <u>license</u> [eredential] holder's practice is competent.

(6) The supervisor shall contact the board liaison with <u>any</u> [a] concern or problem with the disciplined <u>license</u> [credential] holder, his or her practice or the supervision process.

(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined <u>license</u> [credential] holder and board liaison. A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 14. Board Liaison for Disciplined License [Credential] Holder. The board shall appoint a board member to serve as a liaison between the board and the approved supervisor. The board liaison shall:

(1) Recruit the supervising psychologist from a list provided by the board;

(2) Provide the supervising psychologist with the originating complaint, agreed order or findings of the hearing and supply other material relating to the disciplinary action as deemed appropriate by the liaison;

(3) Ensure that the supervising psychologist is provided with the necessary documentation for liability purposes to clarify that he or she is acting as an agent of the board pursuant to KRS 319.118(1) and has immunity commensurate with that of <u>a</u> [the] board <u>member</u>;

(4) Provide the supervising psychologist with a written description of the responsibilities of the supervisor and a copy of the responsibilities of the liaison;

(5) Ensure that the board has sent a written notification letter to the disciplined <u>license</u> [credential] holder. The notification letter shall:

(a) State the name of the supervising psychologist; and

(b) Specify that the disciplined <u>license</u> [credential] holder shall meet with the supervising psychologist and the liaison within thirty (30) days of the date of the notification letter;

(6) Meet with the supervising psychologist and disciplined <u>license</u> [erodential] holder within thirty (30) days of the date of the notification letter to summarize the actions of the board, review the applicable statutes and administrative regulations regarding supervision requirements for a disciplined <u>license</u> [erodential] holder and assist with the development of a plan of supervision. The plan of supervision shall be written at the first meeting:

(7) Submit the report of supervision to the board for approval. The liaison shall place the report of supervision on the agenda for review and approval at the next regularly scheduled board meeting. In the interim, the supervising psychologist and disciplined <u>license [credential]</u> holder shall continue to meet;

(8) Remain available to the supervising psychologist to provide assistance and information as needed;

(9) Report <u>any</u> [a] problem or concern to the board regarding the supervision and communicate a directive of the board to the supervising psychologist;

(10) Review the quarterly report of supervision and forward to the supervision committee of the board for approval; and

(11) Meet with the supervising psychologist and the disciplined <u>license</u> [credential] holder at the end of the term of supervision to summarize the supervision.

Section 15. Psychology Graduate Students. Graduate-level psychology students who are providing services in psychological health care settings including independent practice settings shall:

(1) Be supervised by a psychologist licensed by the Board of Examiner's of Psychology with health service provider status, licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists, or by a licensed mental health professional approved by the training program[,] who is affiliated with either the university training program or the practice setting;

(2) Be registered for credit in his or her course of study;

(3) Clearly identify their status as <u>unlicensed</u> psychology trainees [and noncredential holders] to all clients and payors;

(4) Give to all clients and payors the name of the licensed psychologist responsible for their work;

(5) Not accept employment or placement to perform the same or similar activities following the completion of their universitysanctioned placement, regardless of the job title given, unless the student holds a license [eredential] from the board.

#### THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010

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

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

#### GENERAL GOVERNMENT CABINET Board of Examiners of Psychology (As Amended at ARRS, January 11, 2011)

## 201 KAR 26:185. Requirements for granting licensure as a psychologist to an applicant licensed in another state.

RELATES TO: KRS 319.032(1)(i)

STATUTORY AUTHORITY: KRS 319.032(1)(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(i) requires the board to promulgate an administrative regulation governing the granting of a license as a psychologist to an applicant from another jurisdiction. This administrative regulation establishes the requirements for granting a license to an applicant who is licensed in another state <u>that[which]</u> does not have an agreement of reciprocity with this board.

Section 1. (1) The board shall consider an applicant for licensure in psychology in Kentucky who:

(a) Is licensed in another state <u>that[which]</u> does not have an agreement of reciprocity with the Kentucky Board of Examiners of

Psychology;

(b) Holds a current valid license or certificate, in good standing, to practice psychology **<u>that[which]</u>** has been granted by:

1. At least one (1) state;

2. The District of Columbia; or

3. A Canadian province <u>that[which]</u> maintains a psychology registration board that is a constituent member of the Association of State and Provincial Psychology Boards (<u>ASPPB</u>);

(c) Has a minimum of five (5) years of full-time practice or its equivalent as determined by the board in the other jurisdiction; and

(d) <u>Has not been disciplined by any **psychology** licensure <u>board</u>. [Does not have a report of disciplinary action filed with the <u>Association of State and Provincial Psychology Boards.</u>]</u>

(2) The board shall consider <u>if[whether]</u> the applicant meets the requirements established in KRS 319.050(2) [and 319.064(2)]. If an applicant for licensure does not have <u>the</u> [a postdoctoral] supervised [year of] experience as required by KRS 319.050(2)(d)[(-e)], the board may determine that the applicant's practice experience is equivalent to the required <u>supervised</u> [year of] experience.

(3) An applicant for licensure as a psychologist shall:

(a) Submit to [an examination composed of] the Examination for Professional Practice in Psychology (EPPP):

1. Developed by the ASPPB examination contractor; and

2. Owned by the <u>ASPPB</u> [Association of State and Provincial Psychology Boards]; and

(b) Obtain <u>a</u> [an ASPPB-recommended passing score for licensure of seventy (70) percent (raw score of 140 on the paper and pencil form until April 1, 2002) or] computerized EPPP scaled score of 500 <u>or greater</u>. The board shall accept the applicant's previous examination results for the <u>national EPPP</u> [objective (EPPP)] examination if the original test scores satisfied the doctoral licensure requirement as to criterion level at the time of that examination.

(4) The board shall review the applicant's:

(a) Record as to complaints[,] or hearings held in previous jurisdictions; and

(b) Professional references.

Section 2. An applicant for licensure as a psychologist shall submit to a structured [oral] examination on Kentucky mental health law.

Section 3. In addition to demonstrating an acceptable level of knowledge of Kentucky mental health law, an applicant for licensure as a psychologist shall submit to a structured oral examination on ethical principles and professional practice administered by two (2) licensed psychologists.

(1) [The examination shall cover ethical principles, professional practice, and Kentucky mental health law.

(2) Each examiner shall independently rate the applicant's performance.

(2)[(3)] The applicant shall demonstrate an acceptable level of knowledge in each of the [three (3)] areas in order to pass the examination.

(3)[(4)] An applicant who receives a pass rating from the two (2) examiners shall have successfully passed the oral examination and **shall be[is]** eligible to be granted a license as a licensed psychologist.

#### THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010

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

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

#### GENERAL GOVERNMENT CABINET Board of Examiners of Psychology (As Amended at ARRS, January 11, 2011)

201 KAR 26:190. Requirements for supervised professional experience.

RELATES TO: KRS 319.050, 319.053, 319.056, 319.064 STATUTORY AUTHORITY: KRS 319.032, **319.050(2)(d)** 

NECESSITY, FUNCTION, AND CONFORMITY: <u>KRS</u> <u>319.050(2)(d) requires an applicant for licensure as a psychologist to have at least two (2) years of supervised professional <u>experience[Each credential issued by the board requires some</u> type of supervised experience for the applicant]. This administrative regulation establishes those requirements.</u>

Section 1. Supervisory Requirements for an Applicant for Licensure as a Psychologist.

(1) The applicant for licensure as a psychologist with the authorization to provide psychological health care services shall have completed the equivalent of two (2) years of supervised professional experience in accordance with this administrative regulation[acceptable to the beard].

(2) One (1) year of the supervised professional experience shall be a predoctoral internship of 1,800 hours with at least 100 hours of supervisory sessions.

(3) The other 1,800 hours of supervised experience may be predoctoral, postdoctoral, or a combination of pre- and postdoctoral supervised professional experience acceptable to the board.

(4) Supervised experience earned in the doctoral training program shall consist of practica, field placement, or other professional experiences not including the beginning courses and accompanying practica in assessment and treatment techniques.

(5) At least fifty (50) percent of the supervised professional experience shall be in service-related activities, such as treatment, assessment, interviews, report-writing, case presentations, and consultations.

(6) For the 1,800 hours of supervised experience earned in the doctoral training program, there shall be a minimum of 100 hours of supervisory sessions. At least seventy-five (75) percent of these supervisory sessions (seventy-five (75) hours) shall be done with a licensed psychologist supervisor, at least one-third (1/3) of which (twenty-five (25) hours) shall be conducted in an individual, face-to-face format. The other twenty-five (25) percent of the supervisor, sessions (twenty-five (25) hours) may be done with a licensed mental health professional. Of the total supervision hours, no more than fifty (50) percent (fifty (50) hours) shall[may] be done via secure interactive videoconferencing.

(7) If the supervised experience earned in the doctoral training program does not meet the 1,800 hour requirement, additional supervised professional experience satisfactory to the board may be earned with supervision by a board-approved licensed psychologist of a minimum of one (1) hour individual, face-to-face supervision on a weekly basis. [The predoctoral year, or the first year of a two (2) year postdoctoral supervised professional experience shall be 1,800 hours with at least 100 hours of supervisory sessions distributed over the year.

(2) The postdoctoral year, or the second of a two (2) year postdoctoral supervised professional experience shall be 1,800 hours with at least one (1) hour of individual face-to-face supervision on a weekly basis.

(3) Supervisors shall be licensed psychologists or doctorallevel psychologists approved by the board.]

Section 2. For a person applying for licensure as a psychologist to provide psychological health care services [with the health service provider designation,] the predoctoral internship [or first year of a two (2) year postdoctoral program] shall meet the following criteria:

(1) The experience shall occur within an organized training program, in contrast to supervised experience or on-the-job training and have a planned, programmed sequence of training experiences;

(2) The training program shall have a clearly designated staff psychologist who shall be:

(a) Responsible for the integrity and quality of the training program;

(b) Actively licensed by the Board of Examiners in Psychology; or

(c) Licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists or otherwise meets the standards of applicable state law; and

(d) For school psychology doctoral internships, the responsible psychologist director may be from an affiliate agency or from the university training program.

(3) Internship supervision shall be provided by a staff member of the internship agency or by an affiliate of that agency who has clinical responsibility for the cases being supervised. At least half of the internship supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree;

(4) The internship shall provide training in a range of assessment and treatment activities conducted directly with clients seeking psychological services;

(5) At least twenty-five (25) percent of the trainee's time shall be in direct client contact;

(6) The internship shall include a minimum of two (2) hours per week of regularly scheduled, formal, face-to-face individual supervision. There shall also be at least two (2) additional hours per week in learning activities such as case conferences, seminars dealing with clinical issues, <u>and</u> group supervision;

(7) Training shall be postclerkship, postpracticum, and postexternship level;

(8) The internship shall have a written statement or brochure **<u>that[which]</u>** describes the goals and content of the internship, stated clear expectations for quality and quantity the of trainee's work and **<u>shall be[which is]</u>** made available to prospective interns;

(9) The internship experience shall be completed within twentyfour (24) months;

(10) The trainee has a title such as "intern", "resident," "fellow," or other designation of trainee status; and

(11) The internship agency, preparing institution, and intern have a written agreement that describes the goals and content of the internship including clearly stated expectations for the nature of experiences offered in the agency and for the quantity and quality of the work.

Section 3. <u>Additional Required</u> [Postdoctoral] Supervisory Experience. (1) For a person applying for licensure as a psychologist to provide psychological health care services, the 1,800 hours of supervised professional experience in addition to the internship [The one (1) year of postdoctoral experience] required by KRS 319.050(2)(d)[<del>(c)</del>] shall be a training-oriented professional experience and practica, not to include the beginning courses and practica in assessment and treatment techniques.

(2) In addition to training in a range of diagnostic and treatment activities conducted directly with clients seeking psychological services, the supervised professional experience shall include a planned and organized sequence of activities that includes explicit training and supervision in the following areas:

- (a) Clinical skill development;
- (b) Legal and regulatory issues;
- (c) Ethical dilemmas and issues; and
- (d) Supervisory skill development.

(3) During the <u>1,800 hours of supervised professional</u> [year of postdoctoral] experience in addition to the internship, the candidate shall:

(a) [Obtain and maintain a temporary license as a psychologist as required in KAR 201 26:155, Section 2;

(b)] Be under supervision as required by 201 KAR 26:171; and

(b) Be providing psychological health care services under the supervision of a licensed psychologist or other licensed mental health professional approved by the doctoral training program who is affiliated with the training program or with the practice setting:[(+) Be employed:]

1. <u>In</u> [<del>By</del>] a:

a. Health care facility or agency;

b. Regional mental health or mental[health/mental] retardation board:

c. School, college, or university;

d. Government agency; [or] e. Independent practice; or

<u>(f)[-</u>

(4) The postdoctoral year shall be served:

a.] In a formalized postdoctoral internship program. [in a health care facility; or

b. In an informal arrangement that meets the requirements of subsection (2) of this section.]

(4)[(5)] The applicant [candidate] and the supervisor of record shall design and describe the proposed experience, including the areas listed in subsection (2) of this section[, at the time of application for temporary licensure].

(5)[(6)] If the supervised professional [postdoctoral] experience in addition to the internship is in an independent practice, a special application letter shall affirm:

(a) The identity of the applicant [temporarily-licensed psychologist], supervisor, and employer; and

(b) That the supervising licensed psychologist is not hired, employed, or engaged under contract by the applicant [candidate] and shall not be terminated by the applicant [candidate];

(c) That the applicant [candidate] is not one (1) of the owners of the independent practice or organization, but rather serves as an employee: and

(d) That the applicant [candidate] has both administrative and clinical supervision that shall be[which are] provided by the independent practice or employer.

(6)[(7)] If the supervised [postdoctoral] experience is in a university setting, the application shall also:

(a) Be proffered by a full-time faculty member;

(b) Include a plan that contains each of the areas established in subsection (2) of this section; and

(c) Include a minimum of 400 hours of direct and indirect client involvement that:

1. Is supervised by a licensed psychologist; and

2. Includes:

a. Supervising student clinical work;

b. Diagnostic and interviewing activity that occurs within clinical research projects; or

c. Clinical work in the context of teaching psychotherapy, interviewing, or psychological testing.

(7)[(8)] The board shall not grant a request for temporary licensure if the request does not contain an explicit and acceptable plan for the supervised [postdoctoral] experience as required by this section.

Section 4. A licensed psychologist applying for health service provider designation shall complete, in addition to the supervised professional experience requirement for licensure as a licensed psychologist, 1,800 hours of supervised experience within one (1) or more health care settings in which the psychologist delivered direct psychological health care services. Supervision shall be provided by a licensed psychologist approved by the board and shall consist of one (1) hour of individual supervision each week.

Section 5. An applicant for licensure as a psychological associate shall complete supervised experience consisting of courserelated field experience, practica, and formal internships adding up to a minimum of 600 supervised hours that which shall meet the following criteria:

(1) The experience shall occur within an organized training program, and consist of a planned, programmed sequence of training experiences.

(2) The preparing institution's psychology training program shall have a clearly-designated placement director who shall be responsible for the integrity and quality of the experiential component of the training program;

(3) Weekly practicum and internship supervision shall be provided by a staff member of the placement agency, by an affiliate of that agency, or by a university faculty member. At least half of the supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree and license;

(4) Field experiences, practica, and internships shall provide training in a range of diagnostic [assessment] and treatment activities conducted directly with clients seeking psychological services;

(5) At least twenty-five (25) percent of the trainee's time shall be in direct client contact;

(6) The preparing institution shall maintain a written statement or brochure describing the goals and content of the required field experiences, practica, and internships.

(7) Students participating in university-sanctioned supervised experience shall be clearly identified to clients and payors as trainees.

Section 6.[5.] An applicant for licensure as a psychological practitioner shall complete the equivalent of five (5) full-time years of psychological practice under the direct supervision of a licensed psychologist approved by the board, consistent with the requirements of 201 KAR 26:171.

(1) For purposes of this requirement, a candidate shall complete the equivalent of five (5) full-time years of supervised experience from the date of initial credentialing as a psychological associate, with a full-time year comprising at least 1800 hours of supervised professional experience.

(2) A school psychologist who is employed in a Kentucky school system, credentialed by the Professional Standards Board, and also credentialed as a psychological associate by this board, may contract for on-going clinical supervision in the school setting with a board-approved licensed psychologist who is neither an employee nor a contractor of the school system.

(a) The supervised professional experience shall meet the conditions of this administrative regulation and may be used by the licensed psychological associate employed by the school system to meet the requirements for application to become a licensed psychological practitioner.

(b) To fulfill the requirements of 201 KAR 26:171, there shall be an explicit written plan approved by the board between the school system, the school psychologist, and the board-approved supervisor that[which] delineates roles and responsibilities, not restricting the ability of the school district to direct or control the activities of its employee;

(c) A person trained in school psychology, if employed by an agency other than a public school or engaged in practice outside of the school setting, shall obtain clinical supervision in the manner specified by 201 KAR 26:171.

## THOMAS W. MILLER, Chair

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#### **GENERAL GOVERNMENT CABINET** Board of Examiners of Psychology (As Amended at ARRS, January 11, 2011)

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.

RELATES TO: KRS 319.050

STATUTORY AUTHORITY: KRS 319.032, 319.050(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.050(2)(b) requires that to obtain licensure, a psychologist shall have a doctoral degree in psychology from a regionally accredited educational institution[Certain terms are used in the statute regulating educational requirements for applicants for a credential]. This administrative regulation defines[those] terms as they relate to licensed psychologists.

Section 1. A doctoral degree in psychology [that is] acceptable to the board shall[be]:

(1) <u>Be[A doctoral degree]</u> from a recognized institution of higher learning as defined in this administrative regulation;

(2) Be clearly identified by the granting institution as a psychology program wherever the program may be administratively housed[The program, wherever it may be administratively housed, is clearly identified by the granting institution as a psychology program. The program shall specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists];

(3) Be specified in pertinent institutional catalogs and brochures as intended to educate and train professional psychologists:

(4) Require a dissertation for the degree as psychological in method and content and an expected product of doctoral training in psychology;

(5) Stand[Any dissortation required for the degree is psychological in method and content and an expected product of doctoral training in psychology;

(4) The program stands] as a recognizable, coherent, organized entity within the institution;

(6) Require[(-5)] within the psychology faculty[there is] clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

(7) Be[(6) The program is] an integrated, organized sequence of study;

(8) Require[(7) There is] an identifiable psychology faculty and a psychologist responsible for the program;

(9) Require[(8) The program has] an identifiable body of students who are matriculated in that program for a degree; and

(10) Require((0)] in areas of training for <u>psychologists who</u> deliver or supervise psychological health services, [health service providers], the program includes educational experiences with titles such as practicum, internship, or field training.

Section 2. (1) In determining the acceptability of curricular experiences and course work, the following factors shall be considered:

(a) The curriculum shall encompass a minimum of three (3) academic years of full-time graduate study.

(b) <u>A minimum of one (1) full academic year **shall**[must] be spent in residence at the institution.</u>

(c) In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following content areas. This **shall[typically will]** be met by including a minimum of three (3) or more graduate semester hours (five (5) or more graduate quarter hours) in each of these four (4) areas:

1. Biological bases of behavior, including the subject matters of physiological psychology, comparative psychology, neuropsychology, sensation and perception, <u>and</u> psychopharmacology;[-]

2. Cognitive-affective bases of behavior, including the subject matters of learning, thinking, motivation, <u>and</u> emotion;[-]

3. Social bases of behavior, including the subject matters of social psychology, group process <u>and</u> organizational psychology and systems;[-]

4. Individual differences, including the subject matters of personality theory, human development, <u>and</u> abnormal psychology.

(d)[(c)] In addition to the core program, the curriculum shall include appropriate coursework in accordance with Section 2(1) of this administrative regulation[as determined by the board] in the specialty area of training. For candidates who seek to deliver or supervise psychological health services [health service provider designation], that training shall include specific training in diagno-sis, psychological testing, and assessment of individual[/organizational] differences and the design and implementation of appropriate intervention techniques, such as[e.g.,] psychotherapy, counseling, and consultation[, etc].

(2) [The applicant shall provide any documentation required by the board in the manner and form prescribed by the board to confirm compliance with or satisfaction of the requirements of this law.

(3)] At the discretion of the board, any deficiency in course work or other requirements may be corrected by appropriate remedial work.

Section 3. A regionally accredited educational institution means accreditation by any one (1) of the following: Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, and Western Association of Schools and Colleges.

Section 4. Accreditation means accreditation by one (1) of the aforementioned associations at Level 4 (doctoral degree granting accreditation) or at Level 5 (graduate or professional degree granting accreditation).

#### THOMAS W. MILLER, Chair

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#### GENERAL GOVERNMENT CABINET Board of Examiners of Psychology (As Amended at ARRS, January 11, 2011)

#### 201 KAR 26:230. Examinations.

RELATES TO: KRS 319.032(1)(a), 319.050, 319.053, 319.064 STATUTORY AUTHORITY: KRS 319.032(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) requires the board to promulgate an administrative regulation establishing the examination requirements for an applicant for licensure. KRS 319.050(1) and 319.064(1)(c) require an applicant to successfully complete the required examination prior to licensure. This administrative regulation establishes the examination requirements.

Section 1. (1) The <u>national</u> [written] examination shall be the Examination for Professional Practice in Psychology (EPPP) developed by the <u>Association of State and Provincial Psychology</u> <u>Boards</u> (ASPPB) examination contractor and owned by the <u>ASPPB</u> [Association of State and Provincial Psychology Boards].

(a) The EPPP shall be taken by computer administration.

(b) The board shall submit to the ASPPB examination contractor a list of applicants eligible to sit for the examination.

(2) The structured examinations shall cover Kentucky mental health law. [eral examination shall be structured to cover] ethical principles, and professional practice [and Kentucky mental health law].

Section 2. General Requirements. (1) An applicant for examination shall:

(a) Submit a completed application as required by 201 KAR 26:155, Section 1 or 26:280, Section 1; and

(b) Pay the applicable fee established in 201 KAR 26:160.

(2) The applicant shall sit for the <u>national (EPPP)</u> examination within one (1) year of the notice of the application being approved by the board. An applicant may sit for the <u>national (EPPP)</u> examination at any approved ASPPB examination contractor testing center in the United States, U.S. Territories and Canada, but shall register and apply <u>for licensure</u> in only one (1) jurisdiction.

(3) If an applicant loses eligibility to sit for the <u>national (EPPP)</u> <u>examination</u> because of failure to reschedule, cancel or appear to take the examination as stated in subsection (2) of this section:

(a) The applicant shall forfeit all fees paid; and

(b) Any temporary license issued to the applicant shall be terminated.

Section 3. Examination for Licensure as a Licensed Psychologist [with the Health Service Provider Designation]. (1) The applicant shall pass: (a) The <u>national (EPPP)</u> [written] examination in accordance with subsection (2) of this section; and

(b) The <u>structured examinations on Kentucky mental health</u> <u>law, ethical principles, and professional practice</u> [oral examination in accordance with subsection (6) of this section].

(2) The applicant shall obtain <u>an</u> [a <u>computerized</u>] EPPP scaled score of 500 <u>or greater</u> or shall have obtained <u>a previous</u> <u>national</u> [an] EPPP passing score <u>which satisfied the doctoral licensure requirement as to criterion level at the time of that examination</u> [for licensure in effect at the time of test administration]. The applicant shall be notified by the board of the score, as well as of passing or failing the examination.

(3) If an applicant for licensure as a licensed psychologist fails the <u>national (EPPP)</u> examination, the candidate shall reapply to the board, pay the appropriate <u>fee to the ASPPB examination contractor</u> [fees] and be deemed eligible by the board to be permitted to sit again for the national (EPPP) examination.

(a) The candidate shall continue to function under the supervision of the board-approved supervisor until:

1. The <u>national (EPPP) examination and structured examina-</u> tions on Kentucky mental health law, ethical principles, and professional practice [written and oral examinations] are successfully completed; or

2. The temporary license is terminated.

(b) The <u>applicant for licensure as a licensed psychologist [can-</u> didate] shall not be scheduled for the [eral] examination <u>on Ken-</u> <u>tucky mental health law</u> until the <u>national</u> [objective examination] (EPPP) <u>examination</u> has been successfully passed and the <u>board</u> has determined that the requirements for supervised experience for licensure as a licensed psychologist have been met. [required two (2) years of supervised experience have been approved by the board].

(4) In addition to demonstrating an acceptable level of knowledge of Kentucky mental health law, an applicant for licensure as a licensed psychologist shall submit to a structured oral examination administered by two (2) licensed psychologists approved by the board. The structured oral examination shall not be required for an applicant who holds a Certificate of Professional Qualification in Psychology (CPQ) issued by the ASPPB or a successor organization or is board-certified by the American Board of Professional Psychology (ABPP) or a successor organization or holds a current license in good standing from a jurisdiction with a reciprocity agreement with this board.

(a) This <u>structured oral</u> examination shall cover ethical principles <u>and[-]</u> professional practice [<del>and Kentucky Mental Health Law</del>]. The applicant shall demonstrate an acceptable level of knowledge in each of the [<del>three (3)</del>] areas in order to pass the examination.

(b) Each examiner shall independently rate the applicant's performance.

(c) An applicant who receives a pass rating from each of the examiners shall have successfully passed the <u>structured</u> oral examination.

(5) If the applicant fails the first <u>structured</u> oral examination, the applicant may reapply with a remediation plan.

(a) Upon completion of the remediation plan approved by the board, the applicant shall be administered <u>a structured</u> [an] oral examination by a second team composed in the same manner as the first team.

(b) If the second <u>structured</u> oral examination is failed, the applicant may reapply with a remediation plan approved by the board.

(c) Upon completion of the approved remediation plan, the applicant shall be administered <u>a structured oral</u> [an] examination by a team of the licensed psychologist members of the board and appointed examiners as needed.

(d) A majority of the examining team shall rate the applicant as having passed <u>or failed</u> the <u>structured oral</u> examination <u>on ethical</u> <u>principles and professional practice</u>.

(6) If the applicant for licensure as a licensed psychologist fails to pass the <u>structured oral</u> examination, and wishes to apply to be credentialed as a licensed psychological associate, a completed application and the appropriate fee, as required by 201 KAR 26:160, shall be submitted [with the proposed area of competency and supervision indicated]. The board shall accept the applicant's

previous examination results to satisfy the requirements as to criteria level [and area of competency].

Section 4. Examination for Licensure as a Licensed Psychological Practitioner. (1) The applicant shall pass:

(a) A <u>national (EPPP)</u> [written] examination unless the applicant's previous examination results for the <u>national (EPPP)</u> examination satisfied the doctoral licensure requirement as to criterion level at the time of that examination; or

(b) The applicant shall obtain a computerized <u>national (EPPP)</u> scaled score of 500 <u>or greater</u>. The applicant shall be notified by the board of the score, as well as of passing or failing the examination.

(2) Pursuant to KRS 319.050(3), an applicant for licensure as a licensed psychological practitioner who has been approved to sit for the <u>national</u> [objective examination] (EPPP) examination shall continue to be supervised until all requirements for licensure as a licensed psychological practitioner have been completed.

(3) If an applicant for licensure as a licensed psychological practitioner fails to obtain a scaled score of 500 or greater on the EPPP examination, the candidate may reapply to the board, pay the appropriate fee to the ASPPB examination contractor [fees] and be permitted to sit for the national (EPPP) examination again.

(4) The <u>applicant for licensure as a licensed psychological</u> <u>practitioner [candidate]</u> shall not be scheduled for the [oral] examination <u>on Kentucky mental health law</u> until the <u>national [objective</u> <u>examination]</u> (EPPP) <u>examination</u> has been successfully passed and the required five (5) years of supervised experience or its equivalent have been approved by the board.

(5) <u>In addition to demonstrating an acceptable level of know-ledge of Kentucky mental health law</u>, an applicant for licensure as a licensed psychological practitioner shall submit to a structured oral examination administered by an examination team consisting of at least one (1) licensed psychologist and either a certified psychologist with autonomous functioning or a licensed psychological practitioner.

(a) <u>This structured oral examination shall cover ethical principles and professional practice. The applicant shall demonstrate an acceptable level of knowledge in each of the areas in order to pass the examination[, the applicant shall demonstrate an acceptable level of knowledge on the ethical principles, professional practice, and Kentucky mental health law].</u>

(b) Each examiner shall independently rate the applicant's performance, using the same criteria as the <u>structured</u> oral examination for licensed psychologist candidates.

(c) An applicant who receives a pass rating from each of the examiners shall have successfully passed the <u>structured</u> oral examination.

(6) If the applicant fails the first <u>structured</u> oral examination, the applicant may reapply and shall be administered <u>a structured</u> [an] oral examination by a second team composed in the same manner as the first team.

(7) If the applicant fails the second oral examination, the applicant may reapply and shall be administered <u>a structured</u> [an] oral examination by a team of the licensed members of the board and appointed examiners as needed. A majority of the examining team shall rate the applicant as having passed the examination.

Section 5. Examination for Licensure as a Psychological Associate. (1) The applicant shall:

(a) Obtain a <u>national (EPPP)</u> [computerized EPPP] scaled score of 400 or greater; or

(b) Have obtained an EPPP passing score for licensure at the master's level in effect at the time of <u>the applicant's previous na-</u>tional (EPPP) examination [test administration].

(c) The applicant shall be notified by the board of the score, as well as of passing or failing the examination.

(2) Pursuant to KRS 319.064(3), an applicant for licensure as a licensed psychological associate who has been approved to sit for the national (EPPP) examination and whose supervisory arrangement has been approved by the board shall be considered to be functioning under a temporary license.

(3) If an applicant for licensure as a psychological associate fails the <u>national (EPPP)</u> examination, the applicant shall:

(a) File a remediation plan, cosigned by the supervisor within thirty (30) days of notice of failure; and

(b) Be eligible to retake the <u>national (EPPP)</u> examination upon approval of the plan by the board.

#### THOMAS W. MILLER, Chair

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GENERAL GOVERNMENT CABINET Board of Examiners of Psychology (As Amended at ARRS, January 11, 2011)

#### 201 KAR 26:310. Telehealth and telepsychology.

#### RELATES TO: KRS 319.140, 29 U.S.C. 794(d)

STATUTORY AUTHORITY: KRS 319.032(2); KRS 319.140(2) NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.140 requires[sets forth the duty of] a treating psychologist utilizing telehealth to ensure a patient's informed consent and to maintain confidentiality. This administrative regulation <u>protects[is established to protect and cafeguard]</u> the health and safety of the citizens of Kentucky and <u>establishes[to provide]</u> procedures for preventing abuse and fraud through the use of telehealth, <u>prevents[prevent]</u> fee-splitting through the use of telehealth, and <u>utilizes[utilize]</u> telehealth in the provision of psychological services and in the provision of continuing education.

Section 1. Definitions. (1) "Client" is defined by 201 KAR 26:145, Section 2[2(2)];

(2) "Telehealth" is defined by KRS 319.140(3);

(3) "Telepsychology" means "[the]practice of psychology" as defined by KRS 319.010(7) between the psychologist and the patient:

(a) Provided using <u>an[any]</u> electronic communication technology: <u>or[, or;</u>]

(b) Two (2) way, interactive, simultaneous audio and video.

Section 2. Client Requirements. A credential holder using telehealth to deliver psychological services or who practices telepsychology shall, upon initial contact with the client:

 Make reasonable attempts to verify the identity of the client;
 Obtain alternative means of contacting the client other than electronically;

(3) Provide to the client alternative means of contacting the credential holder other than electronically;

(4) Document <u>if[whether]</u> the client has the necessary knowledge and skills to benefit from the type of telepsychology provided by the credential holder;

(5) Use secure communications with clients, including encrypted text messages via e-mail or secure <u>Web sites[websites]</u>, and not use personal identifying information in non-secure communications;

(6) Inform the client in writing about:

(a) The limitations of using technology in the provision of telepsychology;

(b) Potential risks to confidentiality of information due to technology in the provision of telepsychology;

(c) Potential risks of disruption in the use of telepsychology;

(d) When and how the credential holder will respond to routine electronic messages[, and];

(e) In what circumstances the credential holder will use alternative communications for emergency purposes;

(f) Who else may have access to client communications with the credential holder;

(g) How communications can be directed to a specific credential holder;

(h) How the credential holder stores electronic communications

from the client; and

<u>(i)[<del>,</del> and;</u>

(f) The reporting of clients required by 201 KAR 26:145. <u>Section 7[§7(9)]</u>.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A credential holder using telehealth to deliver psychological services or who practices telepsychology shall:

(1) Limit the practice of telepsychology to the area of competence in which proficiency has been gained through education, training, and experience;

(2) Maintain current competency in the practice of telepsychology through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;

(3) Document the client's presenting problem, purpose, or diagnosis;

(4) Follow the record-keeping requirements of 201 KAR 26:145, Section 6; and[§ 3(6)(a)1-6;]

(5) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the credential holder disposes of electronic equipment and data.

Section 4. Compliance with Federal, State, and Local Law. A credential holder using telehealth to deliver psychological services or who practices telepsychology shall <u>comply with</u>:

(1) [Comply with]State law where the credential holder is credentialed and be licensed to practice psychology where the client is domiciled; and[, and;]

(2) [Comply with] Section 508 of the Rehabilitation Act. 29 U.S.C. 794(d), to make technology accessible to a client with disabilities;

Section 5. Representation of Services and Code of Conduct. A credential holder using telehealth to deliver psychological services or who practices telepsychology:

(1) Shall not by or on behalf of the credential holder engage in false, misleading, or deceptive advertising of telepsychology;

(2) Shall comply with 201 KAR 26:145.

#### THOMAS W. MILLER, Chair

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#### GENERAL GOVERNMENT CABINET Licensing Board for Private Investigators (As Amended at ARRS, January 11, 2011)

201 KAR 41:100. Verification of 240 hour employees.

RELATES TO: KRS 329A.070

STATUTORY AUTHORITY: KRS 329A.070(9)

NECESSITY, FUNCTION AND CONFORMITY: KRS 32A9.070(9) states the board shall establish a method of verification of the number of hours an employee working under the direction of the private investigator works, to ensure the employee does not exceed 240 hours of work per year. <u>This administrative regu-</u> lation establishes a process for this verification.

Section 1. Definition. "Employee" means a person who engages in "private investigating" as defined by KRS 329A.010(4) pursuant to the limitation authorized by KRS 309.070(9).

Section 2. Registration of Employees. (1) A private investigator or private investigator firm shall provide the name and address of each employee who works for that private investigator or private investigator firm under the licensure exemption of KRS 329A.070(9). The licensee shall file with the board an Employee Registration form accompanied by a twenty (20) dollar fee for each employee.

(2) The employee shall be assigned a tracking number by the board that the licensee shall use on all reporting forms.

(3)(a) Each licensee shall maintain a daily log for each employee. The daily log shall include the dates and hours worked by the employee.

(b) Upon a request by the board, the licensee shall provide the daily log within five (5) business days of the date the log is requested.

(4) An employee may perform work for more than one (1) licensee during a one (1) year period. Each licensee employing that person shall provide the required information to the board.

Section 3. Quarterly Reports. (1) The licensee shall file a Quarterly Report with the board for each employee working under the licensee, even if no hours were worked during the reporting quarter.

(2)(a) The report shall be completed for the following quarterly dates:

1. March 31;

2. June 30;

3. September 30; and

4. December 31st.

(b) The report shall be submitted to the board by the last day of the month following the guarter's ending date.

(3) The reports shall be subject to review by the board.

Section 4. Notification of Maximum Hours. (1) If an employee reaches the maximum 240 hours of work with a licensee prior to the end of the year, that licensee shall notify the board that the employee is ineligible to work for that licensee under the KRS 329A.070(9) exception for the remainder of the year.

(2) If an employee reaches the maximum 240 hours with that licensee before the quarter expires, the licensee shall notify the board within five (5) business days and cause the employee to immediately cease working in that capacity.

Section 5. Renewal. (1) The notification of an employee working pursuant to this administrative regulation shall be valid for one (1) year from the date of issuance. A renewal application shall be received by the board no later than fortyfive (45) days before the one (1) year time period expires.

(2) An employee's ability to work shall be renewed upon:

(a) The licensee's payment of the twenty (20) dollar renewal fee; and

(b) Submission of a completed Employee Registration form. [Definition. (1) "Registrant" means an individual hired by a licensee to work under the direct supervision of the licensee pursuant to KRS 329A.070(9).

Section 2. Registration of Employees. (1) Every private investigator or private investigator firm shall register employees who work under the licensure exception of KRS 329A.070(9). The licensee shall file with the board a Temporary Employee Notification Form accompanied by a twenty (20) dollar fee.

(2) The registrant shall be assigned a tracking number the licensee will use on all reporting forms.

(3) Each licensee shall be required to maintain a daily log for each registrant, which shall include the dates and hours worked by the registrant. Upon a request by the board, the licensee shall provide the daily log within five (5) business days.

(4) A registrant may be registered under more than one licensee during a one- year period but shall not exceed 240 hours of work for all licensees under which he is registered during a oneyear period.

Section 3. Quarterly Reports. (1) The licensee shall file a quarterly report with the board for each individual registered under the licensee, even if no hours were worked during the reporting quarter.

(2) The report shall be completed for the following quarterly dates: March 31st, June 30th, Soptember 30th, and December 31st. The report shall be submitted to the board by the last day of the month following the quarter ending date.

(3) The reports are subject to review by the board and additional documentation supporting the hours reported may be requested.

Section 4. Notification of Maximum Hours. (1) Upon a registrant reaching the maximum 240 hours of work, the board will notify the registrant and all the licensees who registered the individual that the registrant is ineligible to work under the KRS 329A.070(9) exception for the remainder of the year.

(2) If a registrant reaches the maximum 240 hours permitted to be worked before the quarter expires, the registrant is required to notify the board within five (5) business days and cease from working in that capacity.

Section 5. Renewal. (1) The registration of an individual working under the licensure exception of KRS 329A.070(9) shall be valid for one (1) year from the date of issuance. A renewal application shall be received by the board, no later than forty-five (45) days before the registration expires.

(2) A registrant shall be renewed upon:

(a) Licensee's payment of the twenty (20) dollar renewal fee; and

(b) Submission of a completed, Temporary Employee Notification (Renewal) form.]

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

(a) "Employee Registration", KPI 08, 01/2011 edition; and [Temporary Employee Notification", KPI 08, 8/2010 edition and]

# (b) "Quarterly Report", KPI 09, <u>1/2011[8/2010]</u> edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

EDWARD L. MERCER, Board Chairman

APPROVED BY AGENCY: September 15, 2010

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

CONTACT PERSON: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5600, fax (502) 564-6801.

#### GENERAL GOVERNMENT CABINET Kentucky Board of Licensure for Massage Therapy (As Amended at ARRS, January 11, 2011)

#### 201 KAR 42:010. Goals for massage therapy sessions.

RELATES TO: KRS 309.350(7),[<del>KRS 309.350(6)</del>], 309.355(3) STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) <u>requires[authorizes]</u> 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 shall 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 each[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; and

(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, 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.

#### **GENERAL GOVERNMENT CABINET** Board of Licensure for Massage Therapy (As Amended at ARRS, January 11, 2011)

#### 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 comply with KRS 309.357(6)[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 with the board 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 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

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.

# **GENERAL GOVERNMENT CABINET**

#### Kentucky Board of Licensure for Massage Therapy (As Amended at ARRS, January 11, 2011)

201 KAR 42:030. Licensee's change of name, home address, or place of business.

RELATES TO: KRS 309.355(4)

#### STATUTORY AUTHORITY: KRS 309.355(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(4) requires the board to keep a register of all persons licensed as massage therapists. KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 through 309.364. This administrative regulation establishes[provides] the mechanism for a massage therapist to change the name, home address, or place of business under which the therapist is originally licensed.

Section 1. A massage therapist licensed pursuant to KRS Chapter 309 shall notify the board <u>electronically or</u> in writing of any change in the person's name, home address, or place of business within thirty (30) days after the change has taken place.

Section 2.[<del>(1)</del>] A name change shall be made only after submission of a legal document[-] that authorizes the change.[<del>(2)</del> A change in name, home address, or place of business shall be made by filing the "Name/Home Address/Place of Business Change Form".

Section 3. Incorporation by Reference. (1) "Name/Address/Place of Business Change Form (October 2005)" 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, Chair

APPROVED BY AGENCY: September 13, 2010

FILED WITH LRC: September 14, 2010 at 10 a.m.

CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Licensure for Massage Therapy, PO Box 1370, Frankfort, Kentucky 40602.

#### GENERAL GOVERNMENT CABINET Board of Licensure for Massage Therapy (As Amended at ARRS, January 11, 2011)

# 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 <u>established</u> in KRS <u>309.358[309.358(2)]</u> 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 <u>for Licen-</u> <u>sure as a Massage Therapist, and the</u> and required documentation with the board, meeting the requirements set forth in 309.358[<del>309.358(2)</del>]; and

(2) Pay the application fee as established in 201 KAR 42:020.

Section 2. To comply with KRS <u>309.358(4)[309.358(2)(d)]</u>, an applicant shall submit to the board, at the time of application, <u>an[a curriculum statement,]</u> official transcript or certificate that shows the completion of at least 600 classroom hours, <u>itemiz-ing[consisting of]</u> <u>compliance with the clock hour requirements</u> <u>established in KRS 309.363(1).</u>

Section 3. Examinations. (1)[the following minimum requirements:

(1) 125 hours of sciences to include anatomy, physiology, and kinesiology;

(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
- (I) Rocking.

(3) 200 hours of approach to the business of massage, includ-

ing:

(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 **established** in KRS 309.358(5) if the board determines that the examination:

(a)[a.] Has been scientifically constructed to be valid and objective;

(b)[b-] Reflects the curriculum content established in KRS 309.363(1)[201 KAR 42:035(2)]:

(c)[e.] Has security procedures to protect the exam content; and

(d)[d-] Has clear application, reporting and appeal procedures.

(2)[2-] Approval of exams shall be noted in the board minutes and on the board Web-site.

(3) In accordance with KRS 309.358(5), the following examinations shall be considered approved by the board:

(a)[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;

<u>b-]</u> The MBLEx[MBLex] or other exam administered by the Federation of State Massage Therapy Boards:

(b)[e-] The State of Ohio Massage Therapy Licensing Exam; or

(c)[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 <u>4.[<del>5.</del>][3.]</u> Appeals. An applicant may appeal a decision denying his or her licensure application in accordance with KRS <u>309.362(4)[309.362(2)]</u>.

Section <u>5.[6-]</u>[4-] Incorporation by Reference. (1) The [fellowing material is incorporated by reference:]"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.

#### GENERAL GOVERNMENT CABINET Board of Licensure for Massage Therapy (As Amended at ARRS, January 11, 2011)

#### 201 KAR 42:040. Renewal[and reinstatement procedures].

RELATES TO: KRS 309.357(3), (4), (5), (6), [KRS] 309.361 STATUTORY AUTHORITY: KRS 309.355[(4)], (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 **establishes the requirements for[provides directions for the]** renewal of[these] licenses.

Section 1. A license to practice massage therapy **<u>shall[may]</u>** 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 <u>to the board</u> of the Application for Renewal form <u>and[with]</u> 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) <u>A list indicating[Decumentation]</u> of completion of <u>the</u> continuing education <u>units taken[requirements]</u> during the licensure renewal period <u>as required by[established in]</u> 201 KAR 42:110. <u>The list shall:</u>

1. Itemize the number of clock hours credited for each course; and

2. Designate the courses that fulfill the three (3) required hours of ethics training; and

(d) [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.  $\mbox{(d)}$  Written] Confirmation that, since the license was issued or renewed, the licensee has not:

1. Been convicted of a felony; and

2. Had his or her license disciplined and is not currently under disciplinary review in another state; <u>or</u>

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 <u>the is-</u> <u>suance of the[issue of]</u> license, the license shall expire and the person shall not <u>practice nor represent themselves[work]</u> as a massage therapist in Kentucky.

Section 4. An expired license <u>shall[may]</u> be <u>re-newed[reinstated]</u> within <u>ninety (90) days[two (2) years]</u> of expiration if the applicant submits:

 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, <u>Section 2(2)(b), (c), or (d), or (d),[2(2)b,c, or d,or]</u> 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 on the board's Web site[through the online verification Web site].

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 <u>as required[and meet the requirements of 309.358[(2)]</u> as provided] by KRS 309.362(3).

Section 7. Incorporation by Reference. (1) "Application for Renewal[of License as a Massage Therapist]", <u>September 2010[December 2006</u>], 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.

#### GENERAL GOVERNMENT CABINET Board of Licensure for Massage Therapy (As Amended at ARRS, January 11, 2011)

201 KAR 42:050. Complaint procedure and disciplinary action.

RELATES TO: KRS <u>309.351</u>, 309.355(1), (2), (6), 309.362 STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(1) <u>requires[authorizec]</u> the board to regulate the practice of massage therapy. KRS 309.355(2) <u>requires[authorizec]</u> the board to investigate every alleged violation and take <u>appropriate</u> action[<del>, as it may doem appropriate</del>]. 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)<u>1.</u> Recommends dismissal or further investigation of the complaint: [,] or

<u>2.[(<del>c)</del>]</u> 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 <u>shall[should]</u> be submitted on a <u>Form to</u> <u>File a Complaint or Unlicensed Activity Report[board-approved</u> 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 <u>the</u> 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 **be recused**[recuse] from the matter and disclose the existence of **the**[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 <u>shall[may]</u> 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 **<u>shall[may]</u>** 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 **<u>shall[may]</u>**:

(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) <u>The following</u> material is incorporated by reference:

(a) "Form to File a Complaint", January 2011; and

(b) "Unlicensed Activity Report", January 2011.[The "Form to File a Complaint" (September 2010)][The "Complaint Form" October 2005,][is incorporated by reference.

(2) The "Unlicensed Activity' Report" (September 2010) is incorporated by reference.]

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### 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.

> GENERAL GOVERNMENT CABINET Board of Licensure for Massage Therapy (As Amended at ARRS, January 11, 2011)

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) <u>requires[authorizes]</u> 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 **or**[and] associates:[-]

(5) Make every reasonable effort to report unlicensed[massage] practice of massage therapy to the board;[-]

(6)[(<del>5)</del>] Represent his or her educational and professional qualifications honestly;

(7)[(6)] Inform clients of the limitations of the licensee's practice;

[8][(7)] 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)[(8)] 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)[(0)] Not initiate or engage in sexual conduct or activities with a client;

(11)[(10)] 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)[(11)] Respect the client's boundaries with regard to privacy, disclosure, exposure, emotional expression, beliefs, and [client's] reasonable expectations of professional behavior;

(13)[(12)] 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;

 $(8)\ \mbox{Practice}\ \mbox{massage}\ \mbox{therapy}\ \mbox{in sanitary}\ \mbox{and}\ \mbox{safe}\ \mbox{conditions};$  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) **Documentation shall not be**[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 **the**[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. The client response to massage therapy treatment; and[-]

(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. The 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.

#### GENERAL GOVERNMENT CABINET Board of Licensure for Massage Therapy (As Amended at ARRS, January 11, 2011)

#### 201 KAR 42:070. Endorsement.

RELATES TO: KRS 309.358, 309.359

#### STATUTORY AUTHORITY: KRS 309.355(3)[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. <u>KRS 309.355(3) re-</u> guires the board to promulgate administrative regulations to implement KRS 309.350 through 309.364. 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[<del>(2)</del>] shall submit:

 A completed Application for Licensure as a Massage Therapist,[form] which is incorporated by reference in 201 KAR 42:035;

#### (2) <u>To the current credentialing body, the Application for</u> <u>Licensure Via Endorsement.</u>

(a) The applicant shall request that the current credentialing body complete the Application for Licensure Via Endorsement verifying the applicant's current licensure, registration, or certification.

(b) The Kentucky Board of Licensure for Massage Therapy shall accept as verification the Application for Licensure Via Endorsement if the form is complete and submitted directly from the current credentialing body[Varifiable][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 <u>verifiable[certified]</u> 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)[<del>(a)(b)</del>].

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[<del>(2)</del>] shall submit:

(1) A completed Application for Licensure as a Massage Therapist, [form] which is incorporated by reference in 201 KAR 42:035;

(2) <u>To the current credentialing body, the Application for</u> Licensure Via Endorsement.

(a) The applicant shall request that the current credentialing body complete the Application for Licensure Via Endorsement verifying the applicant's current licensure, registration, or certification.

(b) The Kentucky Board of Licensure for Massage Therapy shall accept as verification the Application for Licensure Via Endorsement if the form is complete and submitted directly from the current credentialing body[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 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)[<del>(a)(b)</del>]; 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 <u>Therapeutic</u> Massage and Bodywork's National Certification Exam (NCE) or an examination that has been approved by the board[.][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  $309.358_{1}(2)(d)$  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, employed individuals. If this is the only documentation to establish equivalency, a minimum of four (4) <u>years' experience shall be[years experience is]</u> 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.

<u>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.</u>]

Section <u>4.[3:]</u> Incorporation by Reference. (1) <u>"Application for</u> <u>Licensure Via Endorsement", January 2011["Endorsement</u> <u>Form", September 2010]</u>[December, 2006], is incorporated by reference.

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#### THERESA CRISLER, 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, PO Box 1370, Frankfort, Kentucky 40602.

#### GENERAL GOVERNMENT CABINET Board of Licensure for Massage Therapy (As Amended at ARRS, January 11, 2011)

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) <u>requires[authorizee]</u> 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 <u>establishes[describec]</u> the process for issuing and renewing the Certificate of Good Standing to a program of massage therapy education.

Section 1. Definitions. (1) "Adjunctive course" means a course in a program of education that enhances the career of a massage therapist but is not massage theory, technique, or practice.["Adjunctive courses" means courses in a program of education that enhance the career of a massage theorapist 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) <u>"Clinic" or "clinical" means[Clinic or Clinical:</u>] a setting in which students are provided with on-site supervision and training in the practice of massage therapy.

(3) <u>"Clinical coordinator" means[Clinical coordinator:]</u>the instructor of a massage therapy course in which students are assigned to perform massage therapy sessions on non-students, on or off-campus, <u>and</u> who is responsible for assigning the student to an appropriate clinical setting,[<u>indirect</u>] supervision of student performance through regular consultation with the student and evaluating student achievement of clinical course objectives.

(4) <u>"Externship" means a course offered by an approved</u> program that:

(a) Has a syllabus that describes objectives and evaluations; and

(b) Is[Externship: 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 a practitioner as established in KRS 309.352(9)(a) through (c), (e), and (f) who may supervise a massage therapy student in a <u>business</u>[Other licensed healthcare professional: for the purposes of massage training program <u>externship</u>][clinical][experiences, supervision of the student practicing massage in a business while completing <u>an externship</u>][a clinical][requirement may be done by the practitioners cited in KRS 309.352(9)(a), (b), (c), (e), and (f)].

(6) <u>"Supervision" means</u>[Supervision for the purposes of massage training program clinical experiences or externships, supervision is] the process of verifying attendance, assigning work, consulting with <u>the</u> student, evaluating student performance, and being available for emergency assistance.[A student completing an externship or clinical experience shall not receive compensation.]

Section 2. A program applying for a Certificate of Good Standing **for a Massage Therapy Training Program** 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). Documentation shall include:

(1) A copy of the current license to operate issued by the Kentucky State Board for Proprietary Education, the Council on Postsecondary Education, or their equivalent in the state in which the school is conducting classes.

(2) 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.

 $\ensuremath{(3)}$  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, <u>and</u> licensure[<del>and placement rates</del>].

(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 <u>a Certificate of Good Standing for a Massage Therapy Training Program form with the information required by this administrative regulation[Certificate of Good Standing form with the following written information] to the board on or before the anniversary date of issue of certificate:[and]</u>

(2) Current complete name, address, email address, <u>Web</u> <u>site[website]</u>, 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 Associate's 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; **and[**-]

(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) <u>A student completing</u> an externship or clinical experience shall not receive compensation.

(2) Massage schools or businesses that provide any type of student massage **<u>shall[must]</u>** conspicuously include the respective words "student massage" in all promotional materials, and **<u>shall[must]</u>** conspicuously display a written notice in the waiting room or treatment area that services are being provided by a stu-

dent.

(3)[(2)] Clinical courses awarding credit hours toward the 600 hours required for licensure shall be supervised by a licensed massage therapist with three (3) 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 **<u>shall[will]</u>** be maintained at the school and shall meet the Standards for Documentation established In **201 KAR 42:060,[KAR 42:060]** Sections 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 or pro-gram**[institution/program] director and the externship site personnel **that**[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)[(<del>6)</del>] Externship sites **<u>shall</u>[will]** have a licensed massage therapist or other licensed healthcare professional onsite to be available for emergencies or consultation.

(a) Externs may accrue hours for reception, documentation, business-related activities other than hands-on massage services while the site supervisor is off-premises.

(b) A 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 shall[will] be maintained at the externship site and shall meet the Standards for Documentation established in 201 KAR 42:060,[KAR 42:060] Sections 3 and 2(4), and record of payment shall be available to client upon request.

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

(a) "Application for a Certificate of Good Standing for a Massage Therapy Training Program", September 2010; and

(b) "Application for Renewal of a Certificate of Good Standing for a Massage Therapy Training Program", September 2010. [(a) "Certificate of Good Standing Application", August 2010; and

#### (b) "Application for Renewal of Certificate of Good Standing", August 2010.]

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### 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.

#### GENERAL GOVERNMENT CABINET Board of Licensure for Massage Therapy (As Amended at ARRS, January 11, 2011)

201 KAR 42:110. Continuing education requirements.

RELATES TO: KRS 309.355, 309.361

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license. KRS 309.361 identifies the requirements for continuing education and prescribes the types of courses required during the renewal period. This administrative regulation establishes the procedures and standards for submitting documentation to meet the continuing education requirements for renewal of a license.

Section 1. Definitions. (1) "ABMP" means the Associated Bodywork and Massage Professionals.

(2) "AMTA" means the American Massage Therapy Association.

(3) "AOBTA" means the American Organization for Bodywork Therapies of Asia.

(4) "Board" is defined by KRS 309.350(1).

(5) "CE hour" means continuing education hours consisting of fifty (50) minutes of an organized learning activity that is either didactic or clinical experience and shall exclude meals, breaks, and registration.

(6) "Competency" means the study, development, and demonstration of knowledge and skills in meeting professional expectations as a massage therapist.

(7) "Continuing education" means participation in an approved program or learning experience that is designed to facilitate continued competency including ethical and legal practice in the therapeutic massage and bodywork profession through participation in a learning process that enhances the licensee's current knowledge, skills, and abilities in the profession.

(8) "NCBTMB" means the National Certification Board for Therapeutic Massage and Bodywork.

(9) "NCCAOM" means the National Certification Commission for Acupuncture and Oriental Medicine.

(10) "Provider" means an organization, <u>entity</u>, or individual <u>that</u> has met the requirements of the board to provide educational courses that are designed to ensure continued competence in the practice of massage therapy. [acknowledged or recognized by the board as having the capacity to provide quality continuing educational activities over an extended period.]

(11) "Self-paced learning" means a course designated for an individual to learn at his or her own pace and is often referred to as correspondence or home study with testing or an evaluation process.

Section 2. Accrual of CE Hours; Computation of Accrual. (1) A licensee shall accrue a minimum of twenty-four (24) continuing education hours during a two (2) year licensure period for renewal of a license, beginning on the date of license issue.

(2) A minimum of three (3) of the twenty-four (24) hours required by subsection (1) shall be accrued in the field of professional ethics.

(3) All hours shall be in or related to the field of massage therapy.

Section 3. Acquisition of CE Hours. (1) CE hours applicable to the renewal of a license shall be directly related to the professional growth and development of massage therapy practitioners. CE hours may be earned by completing any of the following educational activities:

(a) Courses not requiring board review and approval. Courses from the following sources shall be deemed relevant to the practice of massage therapy and shall be approved: 1. Courses and Learning Opportunities approved by the  $\ensuremath{\mathsf{NCBTMB}}\xspace;$ 

2. Courses offered by the AMTA and its state affiliates;

3. Courses approved by the NCCAOM;

4. Courses offered by the AOBTA and its state affiliates;

5. Courses offered by the ABMP;

6. Kentucky board approved massage therapy programs of instruction or massage therapy programs duly licensed to operate in other states; and

7. Relevant academic courses completed in a degree-granting college or university accredited by an agency that is approved by the Council on Higher Education Accreditation (CHEA).

(2) Programs requiring board review and approval. All other programs, including home study courses and in-service training provided by organizations, educational institutions, or other service providers not listed in subsection (1)(a) of this section, and programs or academic courses presented by the licensee require approval by the board.

(3) Presenters of relevant programs or academic courses may earn double continuing education credit for the length of presentation time, not to exceed twelve (12) hours per renewal cycle.

(4) Credit shall not be issued for repeated instruction of the same course.

(5) A licensee **<u>shall[may]</u>** not receive credit for completing the same CE course within the two (2) year renewal period.

Section 4. Documentation of CE Hours. (1) A licensee shall furnish the following information regarding completion of the appropriate number of CE hours for the current renewal period:

(a) Name of course, date, and the author or instructor;

(b) Name of providing organization and the location of the course;

(c) The number of hours attended;

(d) Provider number;

(e) Provider name and telephone number for board verification;(f) Official transcripts with a raised seal showing academic credits and grades awarded if courses are received from a univer-

sity, college, or vocational technical adult education facility; and (g) Documentation of completion, if requested by the board.

(2) A licensee who supplies false information to the board in order to comply with the CE requirements of this administrative regulation <u>shall[may]</u> be subject to disciplinary action that may include suspension or revocation of license.

Section 5. Procedures for Preapproval of Continuing Education Courses. (1) An entity seeking to obtain approval of a continuing education course prior to its offering shall complete a Continuing Education Program Application and submit it to the board at least sixty (60) days in advance of the commencement of the course, stating the:

(a) Type of learning activity;

(b) Subject matter;

(c) Names and qualifications of the instructors;

(d) Number of continuing education hours offered; and

(e) Statement of how the CE course relates to massage therapy.

(2) A CE activity shall be preapproved if the [board\_determines the] activity being presented:

(a) Is an organized course of learning;

(b) Pertains to subject matters that integrally relate to the practice of massage therapy;

(c) Contributes to the professional competency of the licensee; and

(d) Is conducted by <u>an individual with approved educational</u> <u>training or experience[individuals who have educational training</u> or experience acceptable to the board].

(3) The board shall review preapproval requests at the board meeting immediately following the submittal and receipt of all required materials.

Section 6. Responsibilities and Reporting Requirements of Licensees. A licensee shall:

(1) Identify the licensee's 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;

(2) Select approved activities by which to earn CE hours;

(3) Maintain records of CE hours, for a period of two (2) years from the date of renewal; and

(4) Document attendance and participation in a CE activity by providing official transcripts, copies of certificates, or verification of completion, if requested.

Section 7. Carry-over of CE Hours. (1) A maximum of twelve (12) CE hours may be carried over into the next renewal period.

(2) A licensee shall maintain records related to carry-over continuing education hours and submit those continuing education hours to the board **if[when]** the licensee elects to utilize those hours for the fulfillment of the continuing education requirement for the current renewal period.

(3) A continuing education course shall only be used for the fulfillment of the continuing education requirement for a single renewal period and shall not be subdivided for utilization in multiple renewal periods.

Section 8. Appeal Procedure <u>If[When]</u> Approval for CE Hours is Denied. (1) If an application for approval of CE hours is disapproved, the licensee may request reconsideration by the board. 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 the CE hours.

Section 9. Audit of CE Activities. The board may audit the documentation of a licensee's CE hours for the current renewal period. If notified by the board, the licensee shall respond to the audit within thirty (30) days of the date of the request.

Section 10. Waiver or Extension of Continuing Education. (1) The board **shall[may]**, in individual cases involving medical disability, illness, undue hardship, active military service, or other similar extenuating circumstance **that[which]** preclude the individual's completion of the requirements, waive CE requirements or grant an extension of time within which to fulfill the requirements if the board receives:

(a) A written request for waiver or extension of time;

(b) Verifying documentation signed by a licensed physician; or

(c) [Other]Documentation to support the waiver.

(2) A waiver of the minimum CE requirements or an extension of time within which to fulfill the CE requirements may be granted by the board for a period not to exceed one (1) calendar year. If the circumstance extends beyond the period of the waiver or extension, the licensee shall reapply for the waiver or extension.

Section 11. Incorporation by Reference. (1) "Continuing Education Program Application", October 2005, 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, Chair

APPROVED BY AGENCY: September 13, 2010 FILED WITH LRC: September 14, 2010 at 10 a.m.

CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Licensure for Massage Therapy, PO Box 1370, Frankfort, Kentucky 40602.

#### JUSTICE AND PUBLIC SAFETY CABINET (As Amended at ARRS, January 11, 2011)

502 KAR 12:010. Sexual assault <u>forensic-medical examina-</u> tion protocol.

RELATES	TO:	KRS	72.020,	20	9.020(4),	<u>209.030,</u>
209A.020(4),	209A.(	030,	211.600,	216	B.015,	216B.400,
216B.990(3),	314.011	(14),	Chapter	346,	421.570,	510.010-

<u>510.140, 524.140, 530.020, 530.064(1)(a), 531.310, 600.020,</u> <u>620.030, 42 U.S.C. 3796gg-4, 45 C.F.R. 164.512</u>

STATUTORY AUTHORITY: KRS [15A.160,] 216B.400[(2)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 216B.400(2) authorize the cabinet to promulgate administrative regulations developing a statewide medical protocol for sexual assault examinations. This administrative regulation establishes the procedures to be followed by medical staff before, during, and after the examination of a victim of a sexual assault.

Section 1. Definitions. (1) "<u>Basic treatment</u>" means basic medical care provided to victims of sexual offenses including a medical screening, an examination for medical injuries, treatment for sexually transmitted infections, and, if appropriate, delivery of postexposure HIV prophylaxis.

(2) "Designated storage facility" means an examination facility, local law enforcement agency, or other agency that has an agreement with an examination facility to provide secure storage for samples collected during sexual assault forensic-medical examinations that are not immediately reported to law enforcement.

(3) "Examination Facility" means a sexual assault examination facility as defined in KRS 216B.015(26).

(4) "Qualified medical professional" means any physician's assistant or advanced practice registered nurse whose training and scope of practice include performance of speculum examinations.

(5) ["Facility" means a hospital emergency room, or any facility established for the purpose of providing medical care and collecting forensic evidence for victims or sexual assault.

(2)] "Rape crisis center advocate" means a victim advocate who:

(a) Has met the requirements of KRS 421.570; and

(b) Works or volunteers for a rape crisis center regulated by the Cabinet for Health and Family Services, pursuant to KRS 211.600 and 920 KAR 2:010 [210.410, 210.450, and 908 KAR 2:070].

(<u>6)</u>[(<del>3)</del>] "Victim" means a person who <u>may have</u> [<del>reports or has</del>] suffered direct, threatened, or attempted physical or emotional harm from the commission or attempted commission of:

(a) A sexual offense, pursuant to KRS <u>510.010 to 510.140</u> [Chapter 510];

(b) Incest, pursuant to KRS 530.020; or

(c) [An assault or related offense, pursuant to KRS Chapter 508:

(d) An offense relating to:

1. The use of a minor in a sexual performance, pursuant to KRS 531.310; or

2. [Promoting a sexual performance by a minor, pursuant to KRS 531.320; or

3-] An unlawful transaction with a minor, pursuant to KRS 530.064(1)(a)[<del>, 530.065, or 530.070; or</del>

(e) An offense that endangered the welfare of an incompetent person, pursuant to KRS 530.080].

Section 2. Preforensic-<u>Medical</u> Examination Procedure. <u>If a</u> <u>person seeking treatment as a victim arrives at an examination</u> <u>facility</u>. [When a victim reporting one (1) of the designated offenses described in Section 1 of this administrative regulation arrives at a health facility, the following process shall be completed and documented by] the appropriate staff at the facility prior to conducting the forensic-medical examination shall comply with the following:

(1) <u>Reporting to the Rape Crisis Center Advocate.</u> (a) <u>Contact</u> the rape crisis center to inform the on call advocate that a victim has arrived at the examination facility for an examination; and

(b) Upon arrival of the advocate, ask if the victim wishes to have a rape crisis center advocate present for the examination or otherwise available for consultation;

(2) Limited Mandatory Reporting to the Cabinet for Health and Family Services. (a) If the victim is less than eighteen (18) years old:

1. Assess whether the victim may be an abused, neglected, or dependent child, as defined in KRS 600.020. In cases of suspected child abuse, neglect, or dependency, medical personnel shall immediately report the incident to the Cabinet for Health and Family Services; a local or state law enforcement agency; or the Com-

monwealth's attorney or county attorney in accordance with KRS 620.030; and

2. If a report is made, consult with the Cabinet for Health and Family Services or law enforcement to determine whether referral to a regional children's advocacy center or other specialized treatment facility is in the best interest of the child; and

(b) If the victim is eighteen (18) years old or older:

<u>1. The examination facility shall not contact law enforcement or</u> release any information to law enforcement without the victim's authorization;

2. Determine whether a mandatory reporting law addressing spouse abuse or abuse of a vulnerable adult applies:

a. Assess whether the victim may be an adult as defined in KRS 209A.020(4); and

b. Assess whether the victim may be an adult as defined in KRS 209.020(4); and

<u>3. If subparagraph 2.a or 2.b of this paragraph applies, immediately report the incident to the Cabinet for Health and Family</u> <u>Services and notify the victim of the report:</u>

(3) Optional Reporting to Law Enforcement.

(a) Ask the victim whether she or he wants to report the incident to law enforcement;

(b) If the victim chooses to report the incident to law enforcement, obtain the victim's consent for treatment and authorization for release of information, and contact law enforcement; and

(c) If the victim chooses not to report to law enforcement, [neither] information or [ner] samples shall not be released to law enforcement, unless the victim has specifically authorized the release of information or samples;

(4) [Contact the rape crisis center to inform the on call advocate that a victim has arrived at the health facility for an examination;

(2) Ask if the victim wishes to have a rape crisis center advocate precent for the examination.

(3) Inform the victim that all statements made during the interview[<sub>7</sub>] and the <u>sample</u> [<del>ovidence</del>] collection process[<sub>7</sub>] to physicians, nurses, other hospital personnel, <u>or</u> law enforcement officers [<del>or to rape crisis center</del>] [advocates] are not privileged and may be disclosed;

(5)[(4)] Provide a detailed explanation of the forensic-medical examination, the reasons for conducting the <u>forensic-medical examination</u> [exam] and the effect on a criminal prosecution if a forensic examination is not performed <u>or reported to law enforcement;</u>

(6)[(5)] Advise the victim that photographs and other documentation, if released to law enforcement, may be used as evidence and that the photographs may include the genitalia;

(7)[(<del>6)</del>] Advise the victim that the forensic<u>-medical</u> examination, including basic treatment, shall be conducted free of charge, but costs related to additional medical treatment may be incurred;

(8)[(7)] Inform the victim that consent for the forensic sample [evidence] collection process may be withdrawn at any time during the examination:

(9)[(8)] Inform the victim of the need for a physical examination due to the risk of sexually transmitted <u>infections</u>, including <u>HIV</u> [diseases], pregnancy, injury. or other medical problems whether or not the victim chooses to have the evidence collected;

(10)[(9)] Obtain documented consent from the victim prior to conducting the forensic-medical [rape] examination: and

(11) Document that the procedures established in this section are completed.

Section 3. The Forensic-<u>Medical</u> Examination. (1) A physical examination may be conducted for <u>basic treatment and to collect</u> <u>samples</u> [the collection of evidence] in all cases of sexual assault, regardless of the length of time <u>that</u> [which] may have elapsed between the time of the assault and the examination itself.[;]

(2) If the sexual assault occurred within ninety-six (96) hours prior to the forensic-<u>medical</u> examination, a Kentucky State Police Sexual Assault Evidence Collection Kit shall be used. This kit consists of:

(a) Instructions;

(b) Evidence envelope;

(c) Comb; and

(d) Swabs<u>.[;</u>]

(3) Personnel in attendance during the forensic examination shall be limited to the following persons:

(a) Examining physician. [er] sexual assault nurse examiner, as defined in KRS 314.011(14), or qualified medical professional;

(b) Attending nurse and additional nursing personnel;

(c) Rape crisis center advocate; and

(d) Other persons who are:

1. Dictated by the health needs of the victim; or

2. Requested by the victim.[;]

(4) Photographs, including photographs of the genitalia, may be taken if the appropriate equipment is available at the <u>examina-</u>tion [health] facility, precautions are taken to ensure confidential storage, and the victim has consented to having photographs taken.[;]

(5) The following types of <u>samples</u> [evidence] may be collected during the examination:

(a) Hairs from the head or pubic region;

(b) Fingernail cuttings, swabs, or scrapings;

(c) Clothing fibers, or other trace evidence;

(d) Bodily fluids, including:

1. Semen;

2. Blood; [and]

3. Sweat; and

4. Saliva;

(e) Clothing; and

(f) Other <u>samples that may be presented as</u> evidence [that could be presented] at a trial.[;]

(6) <u>Samples</u> [Evidence] shall not be collected if the victim is unconscious unless the collection is consistent with appropriate and necessary medical treatment.[;]

(7) The collection of <u>samples</u> [evidence] shall cease immediately if the victim dies during the process.

(8) The coroner shall be contacted if the victim dies during the <u>sexual assault medical-forensic examination and the samples</u> [collection of evidence] process and the evidence collected up to that time shall be delivered to the coroner or the <u>coroner's</u> designee. <u>Collection of samples may be completed by medical personnel if</u> requested by the coroner. [of the coroner;]

(9) The coroner shall be notified in accordance with <u>KRS</u> <u>72.020 and samples</u> [the law and evidence] shall not be collected if the victim is deceased upon arrival <u>at the examination facility</u>.

Section 4. Postforensic Examination Procedures. At the conclusion of the forensic-<u>medical</u> examination the appropriate personnel at the <u>examination</u> [health] facility shall provide the victim with:

(1) Information regarding follow-up procedures and appointments concerning:

(a) Sexually transmitted infections, including HIV [diseases];

(b) Pregnancy;

(c) Urinary tract or other infections; and

(d) Similar assault related health conditions;

(2) Information regarding the availability of follow-up counseling and support services available from a rape crisis center or other mental health agency;

(3) Information from the law enforcement officer regarding who to contact about the prosecution of the offense in cases reported to law enforcement;

(4) A garment or other appropriate clothing to wear in leaving the **examination facility** [hospital], or [provide] assistance in obtaining other personal clothing;

(5) Information about:

(a) The Crime Victim's Compensation Board, as <u>established</u> [addressed] in KRS Chapter 346; and

(b) The following administrative regulations providing aid to a crime victim:

1. 107 KAR 1:005;

2. 107 KAR 1:010;

3. 107 KAR 1:015;

4. 107 KAR 1:025; [and]

5. 107 KAR 1:040; and

(6) If the victim chooses not to report to law enforcement, information about: (a) Length of time samples will be stored;

(b) Whom the victim may contact to file a report or authorize the release of samples; and

(c) Whether the samples will be automatically destroyed or transferred for extended storage if the victim does not request release of samples to law enforcement within the specified period.

Section 5. Storage and Transfer of Samples. (1) Chain of custody documentation shall be maintained throughout all storage and transfer procedures.

(2) All samples shall be stored under circumstances that restrict access to reduce the likelihood of tampering and protect the chain of custody. The number of individuals with access to the storage area shall be limited to the minimum number possible.

(3) The following information shall be maintained for each sample stored:

(a) Patient identifier;

(b) Date collected;

(c) Description of sample;

(d) Signature of the collecting medical professional;

(e) Date and time entered into storage and signature of person receiving; and

(f) Date and time removed from storage, signature of person removing, and purpose of removal.

(4) If the victim chooses to report the incident to law enforcement as a crime or has authorized the release of samples to local law enforcement for secure storage, the examination facility shall transfer samples to local law enforcement officials as soon as possible.

(5) If the victim chooses not to report the incident to law enforcement as a crime when the examination is performed, the examination facility shall arrange for the samples to be stored securely for at least ninety (90) days.

(6) The examination facility may either store samples or transfer samples to a designated storage facility.

(7) The examination facility shall maintain documentation regarding transfers of samples.

(8) Facilities or agencies providing secure storage of samples under this section shall assure compliance with subsections (5) and (6) of this Section within a locked or otherwise secure container in a limited-access location.

(9) Storage agreements:

(a) May be long-term or case specific; and

(b) Shall designate sending and receiving facilities and certify compliance with subsections (1) through (9) of this section [Sections 1 through 9 of this administrative regulation].

(10) If the victim chooses not to report the incident to law enforcement as a crime when the examination is performed, samples shall not be released to a law enforcement agency except if:

(a) The local law enforcement agency receiving samples has entered into an agreement to serve as a designated storage facility:

(b) The victim later chooses to file a delayed report; or (c) Pursuant to court order.

Section 6. Removal of Samples from Secure Storage. Samples shall not be permanently removed from storage except if:

(1) The victim authorizes release of samples to a law enforcement agency or other entity;

(2) The time frame for storage has lapsed, as established by Section 5(5) of this administrative regulation;

(3) The victim authorizes the destruction of the samples; or (4) A court order has been issued for release or destruction.

Section 7. Destruction of Samples. (1) Ninety (90) days after the sample was collected, the examination facility or designated storage facility may destroy the sample at any time in accordance with the facility's policy.

(2) Destruction shall be conducted using biohazard precautions.

(3) Destruction shall be documented by the examination facility or designated storage facility that stored the samples.

(4) Samples may be destroyed upon the request of a victim. The victim's request for destruction shall be documented by the

#### examination facility and designated storage facility, if used.

This administration regulation was drafted in consultation with the Sexual Assault Response Team (SART) Advisory Committee pursuant to KRS 216B.400(2)(4)(10)(b)(1).

J.MICHAEL BROWN, Secretary E. A. RECKTENWALD, Executive Director MAJOR LYNN CROSS, East Troop Commander APPROVED BY AGENCY: November 10, 2010 FILED WITH LRC: November 10, 2010 at 3 p.m. CONTACT PERSON: Emily M. Perkins, Kentucky State Police, 919 Versailles Rd., Frankfort, Kentucky 40601, phone (502) 695-6391, email Emilym.perkins@ky.gov.

#### TRANSPORTATION CABINET **Department of Vehicle Regulation Division of Motor Carriers** (As Amended at ARRS, January 11, 2011)

#### 601 KAR 1:018. Special overweight or overdimensional motor vehicle load permits.

RELATES TO: KRS 175.450, 177.390-177.570, 177.9771, <u>186.010(8), 186.050(8), (9),</u> 189.221, [<del>189.222,</del>] <u>189.2225(3)</u>, 189.270, 189.2715, 189.2717, 281.752, 23 C.F.R. 658.17, 49 C.F.R. <u>367,[49 C.F.R.]</u> 393.11 STATUTORY AUTHORITY: KRS 189.270(6), 189.271(9)(b),

189.2715(1), 189.2717(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.270(6)[(1) to (5)], 189.271(9)(b), 189.2715(1), and 189.2717(1) authorize the Secretary of the Kentucky Transportation Cabinet to issue permits for the movement of motor vehicles with divisible or nondivisible loads exceeding legal weights or dimensions. This administrative regulation establishes the procedures and requirements for the issuance of an overweight or overdimensional permit. It exempts certain farm implement movements from the requirements of obtaining an overdimensional permit, but retains the associated safety requirements.

Section 1. Definitions. (1) "Boat" means a vehicle used for movement on the water and includes the trailer on which it is placed for transporting the vehicle on the highway.

"Divisible load" (2)means a load that if[which when [reasonably] divided, dismantled, disassembled, or rearranged would no longer be overweight or overdimensional.

(3) "Dual-wheel axle" means one (1) axle with two (2) wheels on each side of the axle.

(4) "Farm implement or equipment" means machinery, equipment, or vehicle used exclusively in a farm or agriculture operation including those farm implements in KRS 186.010(8)(a) that[items which] are not required by [KRS Chapter 186] to be registered.

(5) "Fully-controlled access highway" means a highway that[which]:

(a) Gives preference to through traffic;

(b) Has access only at selected public roads or streets; and

(c) Has no highway grade crossing or intersection.

(6) ["Height pole" means a vertical clearance measuring device.]["National holiday" means:

(a) New Year's Day;

(b) Memorial Day (as observed on the last Monday in May);

(c) Independence Day;

(d) Labor Day;

(e) Thanksgiving Day; and

(f) Christmas Day.]

[(7)]"Nondivisible load"[or vehicle] means a load or vehicle, which [exceeding applicable length, height, or weight limits that][which] if separated into smaller loads or vehicles would:

(a) Compromise the intended use of the vehicle, making it unable to perform the function for which it was intended;

(b) Destroy the value of the load or vehicle, making it unusable for its intended purpose; or

(c) Require more than eight (8) work hours to dismantle using

appropriate equipment.

(7)[(8)] "Overdimensional" means the motor vehicle exceeds the dimension limits set forth in 603 KAR 5:070.

- (8)[(9)] "Overweight" means the motor vehicle exceeds:
- (a) The gross weight limit established in 603 KAR 5:066;
- (b) The axle weight limit established in 603 KAR 5:066;

(c) The gross weight limits established by KRS 177.9771 for a motor vehicle transporting coal or coal by-products;

- (d) The bridge weight limit established by 603 KAR 5:066; or
- (e) The gross weight limit posted at a bridge or other structure.

(9) "Permit fee" means the fee established in KRS 189.270, 189.2715, or 189.2717 for the issuance of an overweight or overdimensional trip or annual permit, to cover the cost of processing the permit application, including:

(a) A qualification check of the applicant;

(b) A statutory compliance check; and

(c) An initial bridge and weight analysis.

(10)["Permit fee" means the fee set forth in KRS 189.270, 189.2715, or 189.2717 for the issuance of an overweight or overdimensional trip or annual permit, to cover the cost of processing the permit application, including:

(a) A qualification check of the applicant;

(b) A statutory compliance check; and

(c) An initial bridge and weight analysis.

(11)] "Pole trailer" means a motor vehicle without motive power that is[a vehicle which is]:

(a) Designed to be drawn by a motor vehicle and attached to the towing motor vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing motor vehicle; and

(b) Used for transporting long or irregularly shaped loads such as poles, pipes, or structural members that[which] generally are capable of sustaining themselves as beams between the supporting connections.

(11)["Sealed containerized ocean-going cargo unit" means a nondivisible unit of cargo that is part of international trade due to importation from, or exportation to another country.

(12)] "Single-wheel axle" means one (1) load bearing axle[a steering axle] with one (1) wheel on each side of the axle.

(12)[(13) "Steering Axle" means the axle or axles of a vehicle combination of vehicles by which the vehicle or vehicles are or guided or steered.

(14)] "Toll road" means any project constructed under the provisions of KRS Chapter 175.450[175] or KRS 177.390 through 177.570 on which a toll is collected or was in the past collected by the Transportation Cabinet.

(13)[(15) "Trunnion axle" means an axle configuration with two (2) individual axles mounted in the same transverse plane with four (4) tires on each axle connected at a pivot point that allows each individual axle to oscillate in a vertical plane to provide constant and equal weight distribution on each individual axle.

(16)][(14)] "Utility equipment" means the specialized equipment, including earth-moving equipment, necessary for the installation or operation of utility poles or pipes, [or] transformers, regulators, or other utility electrical field equipment. It does[shall] not include any equipment necessary for the construction or operation of a power generation station.

Section 2. Permit Application. (1) An applicant for an overweight or overdimensional annual or single trip permit shall submit to the Division of Motor Carriers a completed ["]Application for Annual Overweight or[/] Overdimensional Permit, TC Form 95-25 or a completed Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-10 for a single trip permit. A[". The] permit application shall contain the following:

(a) A detailed description of the equipment or load to be moved:

(b) A description and vehicle identification number of the power unit moving the equipment;

(c) Registration weight and license plate number of the power unit

(d) The carrier's[Equipment operator's] name, telephone number, and address;

(e) Routes requested for travel; and

(f) The period of time requested for travel:

1. A single trip shall be ten (10) days or less; or

2. An annual permit shall be 365 days from date of issue.

(2) A single trip permit application or request shall specify the following:

(a) The year and make of the towing vehicle;

(b) The towing vehicle's license plate number;

(c) The maximum weight for which the vehicle is registered;

(d) The state of registration of the vehicle;

(e) The name and address of the owner;

(f) The dates of travel;

(g) The serial number <u>for a[of the]</u> manufactured home; <u>and[and]</u>

(h) The specific routes of travel requested [; and

(i) A description of the cargo].

(3) If the towing vehicle for which a single trip permit is being requested is registered in a state other than Kentucky, the vehicle shall be either:

(a) Apportioned registered to operate in Kentucky; or

(b) In compliance with KRS 281.752.

(4) An annual permit application or request shall specify the following information relating to the motor vehicle:

(a) Year and make;

(b) Vehicle identification number;

(c) License plate number and unit number;

(d) The maximum weight for which it is registered;

(e) The state of apportioned registration, if not registered in Kentucky;

(f) Name and address of the motor carrier operating or the owner of the towing vehicle; [and]

(g) [f[Whether] the motor carrier operating the towing vehicle is a for-hire or private carrier; and

(h) A general description of cargo.

(5)[; and (i) Axle spacing.

(6)] If the towing vehicle issued an annual permit is registered in a state other than Kentucky, the vehicle shall be apportioned registered to operate in Kentucky.

(6)[and be subject to the fees established in 49 C.F.R. Part 367.

(7) The application for an annual permit shall contain a certification by the applicant that he <u>or she shall comply with Kentucky</u> <u>laws and regulations related to</u>][is aware of the safety requirements in][the movement of overweight <u>or</u>][/][overdimensional loads][and shall at all times comply with them][-

(8)] Special annual or trip permits to allow the movement of motor vehicles with gross weights or gross dimensions in excess of the weights and dimensions specified by statute and administrative regulation shall be issued by the[Department of Vehicle Regulation-] Division of Motor Carriers <u>if the[when, in the discretion of the department, this]</u> movement is necessary to provide transportation for specified cargo in the interest of the health, welfare, <u>or[and]</u> economy of the people.

(7)[(9)] Each trip or annual permit issued shall be limited to designated portions of the state primary road system and stated periods of time.

(8)[(10)] A separate permit shall be required for each vehicle involved in a movement.

(9)[(11)] A permit shall not be issued for a divisible load <u>that</u> <u>if[which when]</u> reasonably divided, dismantled, disassembled, or rearranged would no longer be overweight or overdimensional except as provided by KRS 189.2715 or 189.2717.

(10)[(12)] An overweight permit shall not be issued to the following:

(a) A Kentucky licensed vehicle with [, for] a gross weight exceeding that for which the truck is registered[,] unless registered for 80,000 pounds (36,287.36 kilograms);

(b) A tractor-trailer combination of less than five (5) axles;

(c) A vehicle not registered in Kentucky, unless it has met one (1) of the following conditions:

1. <u>The vehicle</u> has been apportioned registered by another jurisdiction to operate in Kentucky at 80,000 pounds (36,287.36 kilograms); or

2. The vehicle has met the provisions of KRS 281.752;

(d) A vehicle whose axle weight would exceed the product of 700 pounds (317.51 kilograms) times the aggregate width in inches

established from the manufacturer's stamped tire measurement for all tires on the axle; or

(e) A towing vehicle whose horsepower or braking capacity is not adequate to safely transport the overdimensional or overweight load.

(11)[(13)] The cabinet shall further restrict the movement or deny the permit for a[This administrative regulation shall not prohibit the permit issuing office from further restricting movements or denying a permit for any] movement that[which] may cause damage to property or that[which] may be detrimental to public safety and convenience.

(12)[(14)] An annual permit shall not be issued if the vehicle is licensed with a limited or restricted registration as identified in KRS 186.050(8) and (9) for Kentucky-based vehicles.

Section 3. Height. (1) A vehicle and load with a height in excess of thirteen (13) feet, six (6) inches shall obtain a single-trip overdimensional permit[,] pursuant to KRS 189.270(2)[,] prior to movement.

(2) The maximum height for each single-trip overdimensional permit shall be determined by the cabinet[-] based upon underpass and bridge height along the designated route.

Section 4. Weight. (1) Gross or axle overweight shall not be permitted:

(a) On a combination units of less than five (5) axles; or

(b) On a single unit except off-road equipment such as <u>a road</u> grader, mobile crane, or other self-propelled unit[road grad-<u>ers</u>][scraper][, mobile cranes, or other self-propelled units].

[(c) A self propelled off-road vehicle shall follow the axle weight limitation listed in subsection number (3) of this section.]

(2) <u>A vehicle shall not be issued an overweight permit that</u> does not have a declared gross weight of at least 80,000 <u>lbs</u>[Kentucky licensed vehicles shall not be permitted for weights exceeding that for which licensed unless licensed for the maximum of 80,000 pounds].

(3) The weight on any single axle in any combination shall not exceed the product of 700 pounds times the aggregate width in inches established by the manufacturer's stamped tire measurement of all the tires on the axle, or the following axle or axle group weights, whichever is less:

(a) Single wheel axle - 24,000 pounds;

(b)[Steering axle - 20,000 pounds;

(c) Tandem dual-wheel[duel-wheel] axle group if the combination vehicle has only five (5) axles total - 45,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tandem axle group);

(c)[(d)][(c)] Tandem <u>dual-wheel[duel-wheel]</u> axle group if the combination vehicle has six (6) or more axles total - 48,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tandem axle group);

(d)[(d)](d)] Tridem dual-wheel[duel-wheel] axle group -60,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tridem axle group);

(e)[(f) A Trunun axle group;

(g)]((o)] Five (5) axle combination units <u>not exceeding[shall not</u> exceed] 96,000 pounds gross weight;

(g)[(+)]((+)] Seven (7) axle combination units not exceeding[shall not exceed] 160,000 pounds gross weight.

(4) [Since bridge capacity is the weight-controlling factor in most instances, these] Maximum weights shall not be permitted unless all bridges <u>and roads on the moving route[involved]</u> have sufficient capacity to accommodate the load.

Section 5. Responsibility of Permit Holder. (1) Any damage to the highway, signs, **<u>guardrails</u>** or other public or private property caused by the transportation of the specialized equipment shall be the responsibility of the permit holder. The permit holder shall either repair all damage incurred or pay for the repair.

(2) A permit holder shall not cut, trim, remove, or relocate any tree, shrub, guardrail, highway sign, or other object on the highway right-of-way without the written approval of the chief district engi-

# neer or their designee in the district office where the property is physically located[having jurisdiction over the property involved].

(3) The applicant shall be responsible for providing accurate information and reviewing the permit prior to travel on Kentucky highways.

Section 6. Permit Availability. (1) The[original of the] annual permit issued by the Division of Motor Carriers shall be carried in the overweight or overdimensional vehicle at all times.

(2) <u>A valid</u>[The original or facsimile copy of a] single trip permit shall be carried in the overweight or overdimensional vehicle or equipment at all times.

(3) <u>A valid[The]</u> annual or[<del>the</del>] single trip permit shall be presented[<sub>7</sub>] upon request[<sub>7</sub>] to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

(4) <u>An annual permit not authenticated by the Division of Motor</u> <u>Carriers shall not be valid</u>[An unauthenticated photocopy of the annual permit shall not be valid].

Section 7. Duplicate Permits. (<u>1</u>) A duplicate permit <u>that[which]</u> is needed to replace a lost, stolen, or destroyed annual permit or to transfer the permit to another towing vehicle <u>shall[may]</u> be obtained from the Division of Motor Carriers by a payment of ten (10) dollars. (<u>2)[Only]</u> One (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year.

(3) An[Any] additional transfer of the annual permit requested shall be subject to the fees <u>established[set forth]</u> in KRS 189.270. (4)The original permit shall be returned to the Division of Motor <u>Carriers</u> prior to the transfer of an annual permit.

Section 8. Travel Restrictions. (1)(a)1. A single trip permit shall be valid for[a period not to exceed] ten (10) days.

<u>2.</u> A time extension shall only be granted if the permit holder proves extenuating circumstances, such as weather, fire, natural disaster, or unforeseen emergency.

(b) An annual permit shall be valid for 365 days from date of issuance.

(2)(a) As needed for[In the interests of] public safety, the department shall[may] further prohibit movements in congested areas within the peak traffic hours.

(b) The additional restrictions shall be noted on the permit **upon issuance[when issued]**.

(3) Overdimensional restrictions shall not prohibit a utility company from working in an emergency situation to restore utility service to an area otherwise experiencing an outage.

Section 9. Farm Implements. (1) Unless the movement occurs on an interstate highway, toll road, or fully-controlled access highway, a permit shall not be required for transport of overdimensional farm implements <u>from[for the following trips]</u>:

(a)[From] One (1) farm to another;

(b)[From] A farm to a repair shop or dealer; or

(c)[<del>From</del>] A repair shop or dealer to a farm.

(2) A permit holder or other operator moving overdimensional farm implements shall comply with the safety requirements set forth in this administrative regulation.

(3) The following movements of farm implements shall[only] be made under the authority of an overdimensional permit:

(a) Manufacturer to dealer;

(b) Dealer to manufacturer;

(c) Dealer to dealer; or

(d) Moves on an interstate highway, toll road, or fully-controlled access highway.

(4) On an interstate highway <u>or[-]</u> toll road[<del>, or fully controlled</del> <del>access highway,</del>] a self-propelled farm implement shall not be:

(a) Operated; or

(b) Issued a permit for movement.

(5) <u>A self propelled farm implement shall be issued a single trip</u> or annual permit to operate fully-controlled access highway where its movement:

(a) Shall not create an unreasonable impedance of the flow of traffic; and

(b) Is accompanied by escorts as established in Section 11 of this administrative regulation.

(6) If the farm equipment to be transported exceeds twelve (12) feet in width[<sub>7</sub>] the farm equipment dealer who holds the annual permit shall, prior to the proposed move, survey the entire route proposed [to be used for the movement of the overdimensional farm equipment] to confirm the roads are adequate to safely accommodate the load.

(7)[(6)] If there is any doubt of the adequacy of the highway to safely accommodate the overdimensional farm equipment[7] the <u>farm equipment</u> dealer shall:

(a) Select a different route; or

(b) Contact the <u>Division of Motor Carriers[appropriate highway</u> <u>district office</u>] for clearance to move the equipment over that specific route.

(8)[(7)] If the <u>Division of Motor Carriers</u>[highway district office] does not issue clearance for the use of a particular route whose adequacy is in doubt, that route shall not be used.

Section 10. [Buildozers and Front End Loaders. (1) A blade or bucket attached to a buildozer or front end loader that exceeds fourteen (14) feet in width shall be removed for highway movement.

(2) A blade or bucket that has been removed may be moved on a transporting vehicle without being considered a divisible load.

(3) A blade or bucket that protrudes beyond the transporting vehicle shall be loaded with the sharp edge or cutting edge of the blade or bucket facing the rear of the transporting vehicle.

<u>Section 11. Pilot Car</u>]Escort Vehicle, <u>Safety and Flag</u>[, <u>Safety</u> and <u>Flag</u>] Requirements. (1) <u>Required[Pilot car][Required]</u> escort vehicles shall accompany the overdimensional vehicle at a distance of 300 feet (91.44 meters) on open highways and shall:

(a) Maintain radio contact with the *load[loaded vehicle]*[load];

(b) Post <u>appropriate signs on the vehicle[identification signs</u> <u>or placards showing the name of the pilot car escort business and</u> <u>the state of business operation on both the right and left sides of</u> <u>the vehicle. The signs or placards shall contain lettering that:</u>

1. Sharply contrasts with the sign or placard background color; and

2. Ensures visibility for a minimum of fifty (50) feet][appropriate signs on the vehicle];

(c) Have <u>amber strobe lights or flashing lights on the escort vehicle; and</u>

(d)[two (2) or more top mounted high intensity flashing or rotating amber lights visible for a full 360 degrees for a minimum of 500 feet in daylight conditions

(d) Carry replacement bulbs for the amber flashing or rotating lights in the pilot car escort vehicle at all times during a move;

(e) Securely attach a top mounted "oversize load" sign to the pilot car escort vehicle that is visible for a distance of 100 feet from both the front and rear. The sign shall be:

1. Twelve (12) inches by sixty (60) inches;

2. Have black letters that are no less than ten (10) inches high written with a one (1) inch brush stroke;

3.Clearly note the words "oversize lead" on a yellow background;

4. Reflective if used at night;

5. Always maintained in good condition.

(e)][amber strobe lights or flashing light on the escort vehicle; and

(d) Keep its headlamps lit at all times[and ensure that the pilot car escort vehicle lighting is in working order; and

(f) Have no less than one (1) rear view mirror on each side of the pilot car escert vehicle].

(2)[A pilot car escort vehicle shall not tow cargo or equipment.

 $\overline{(3)}$  [(2)] In cities or congested areas, the [pilot car]escort [vehicle] shall travel at a distance closer than 300 feet as necessary to protect other traffic.

(3)[(4)](3)] On a two (2) lane highway, a vehicle and load with a width in excess of ten (10) feet, six (6) inches (three and two-tenths (3.2) meters) but twelve (12) feet (3.66 meters) or less shall have one (1) lead[pilot car] escort[vehicle].

(4)[(5)](4)] On a two (2) lane highway, a vehicle and load with a width exceeding twelve (12) feet (3.66 meters) shall have one (1) lead[<u>pilot\_car</u>] escort[<u>vehicle</u>] and one (1) trail[<u>pilot\_car</u>] escort[<u>vehicle</u>].

(5)[(<del>6)</del>](<del>(5)</del>] On a two (2) lane highway, a vehicle and load traveling at speeds below the average driving speed of traffic on its route shall have one (1) trail[<u>pilet car</u>] escort[<u>vehicle</u>].

(6)[(7)]((6)] On a highway that is four (4) lanes or wider[highway], a vehicle and load shall have one (1) trail[pilot\_car] escort[vehicle] if:

(a) Its width exceeds twelve (12) feet (3.66 meters); or[or]

(b) It does not maintain a speed of forty-five (45) miles per hour (72.42 kilometers per hour).

(7)[; or (c) The vehicle and load have a length of 120 feet.

(8) On a four (4) lane or wider highway, a vehicle and load with a length of over 120 feet shall have a front and rear pilot car escort vehicle.

(9)](7)] On a two (2) lane highway:

(a) A vehicle and load with a length in excess of seventy-five (75) feet (22.86 meters) but not more than eighty-five (85) feet (25.91 meters) shall have one (1) lead[<u>pilot\_car</u>] escort[<u>vehicle</u>]; and

(b) A vehicle and load with a length in excess of eighty-five (85) feet (25.91 meters) shall have one (1) lead and one (1) trail <u>escort.</u>

(8) On a four (4) lane or wider highway:

(a) A vehicle and load with a length of 120 feet shall have one (1) trail escort; and

(b) A vehicle and load with a length of over 120 feet shall have a front and rear escort.

(9)[pilot car escort vehicle.

(10) As a special provision of the permit, and due to safety considerations, the cabinet may require additional pilot car escort vehicles, lighting, warning flags, or a height pole car.

(11)(a) A marked police escort vehicle shall be required for a movement that may result in a high probability of delay, hazard to the traveling public, or damage to the highway.

(b) A police escort shall not be required to display oversize signs.

Section 11. Towing Vehicle Sign and Safety Requirements.(1)][(8) On a four (4) lane or wider highway:

(a) A vehicle and load with a length of 120 feet shall have one (1) trail escort; and

(b) A vehicle and load with a length of over 120 feet shall have a front and rear escort.

(9)] Red or orange fluorescent flags <u>that[which]</u> are a minimum of eighteen (18) inches square (11,612.7 millimeters square) shall be displayed on each vehicle and load operating under the auspices of either an overlength or an overwidth permit.

(a) A vehicle[(2) Vehicles] operating overwidth shall display four (4) warning flags; one (1) at each of the four (4) corners and[-

(3)][, and] if any portion of the load extends beyond the four (4) corners, additional flags shall be displayed at the widest points of the load.

(b) A vehicle[(4)][(b)][Vehicles] operating overlength or with a rearend overhang shall display two (2) warning flags located to indicate maximum width at the extreme rear of the vehicle or load.

(10) A vehicle[(5)][These flags shall be located to indicate maximum width of the rearend.

(10)][All vehicles]exceeding ten (10) feet, six (6) inches, three and two-tenths (3.2) meters in width or having front overhang shall display two (2) warning signs. The warning signs shall:

(a) State in black letters <u>using a brush stroke of one and</u> <u>four-tenths (1.4) inches (35.56 millimeters)</u> on a yellow background, "OVERSIZE LOAD";

(b) Not be less than seven (7) feet (2.13 meters) long and eighteen (18) inches (0.46 meters) high; and

(c)[Have a brush stroke of one and four-tenths (1.4) inches (35.56 millimeters); and

(d)] Be fastened at the front of the power unit, [and] the rearend of the towed unit, or at the rear of the load.

(<u>11)[(<del>6</del>)](a)[(11)]</u> If the utility equipment, pole, or pipe being transported exceeds fifty-five (55) feet (16.76 meters) in length, a front[<u>pilet car</u>] escort[<u>vehicle</u>] shall accompany the vehicle required to be permitted.

(b) If the front overhang exceeds ten (10) feet (3.05 meters), an amber strobe or flashing light shall be placed on the power unit of the towing vehicle and shall be in use any time the power unit is

in operation.

(12)[(7)]((12)](a) The lighting devices and reflectors set forth in 49 C.F.R. 393.11 for pole trailers and projecting loads shall be required.

(b) <u>A[Each]</u> lamp or light shall be used <u>while[at all times that]</u> <u>a[the]</u> vehicle is on or beside a highway.

(c) A front overhang <u>on a combination vehicle shall be pro-hibited[shall not be allowed on a combination vehicle]</u>.

(13) As a special provision of the permit and due to safety considerations, the Division of Motor Carriers may require additional escort vehicles, lighting, or warning flags.

(14) The provisions of this section shall not apply if the vehicle or equipment is less than twelve (12) feet wide and the vehicle equipment is:

(a) Used in part for off-road use;

(b) Not required to be registered or licensed; and (c) Not transporting cargo.

Section 11.[12.][(13) As a special provision of the permit, the Department of Vehicle Regulation may require additional escort vehicles, lighting or warning flags.

(14) The provisions of this section shall not apply if the vehicle or equipment is less than twelve (12) feet wide and the vehicle or equipment is:

(a) Used in part for off-road use;

(b) Not required to be registered or licensed; and

(c) Not transporting cargo.

Section 11.] House or Building Permits. (1)[Permits for movement of houses or other buildings shall be issued by the Department of Vehicle Regulation, Division of Motor Carriers.] An application for a permit to move a house or building shall be made on <u>House Moving Application, TC Form 95-310,[TC 95-310, House</u> <u>Moving Application,]</u> and submitted to the Division of Motor Carriers via mail, [er] hand delivery, or the motor carrier online permitting system at the Division of Motor Carriers, Transportation Cabinet Building, 200 Mero Street[3rd Floor, State Office Building, 501 <u>High Street</u>,] Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to <u>4</u> [4:30] p.m., or via fax at (502) 564-0992.

(2)(a) House moving permits shall[not] be issued for movements that occur[unless the movement is done] during off-peak traffic hours [when other traffic will be least affected].

(b) The mover shall[be required to] furnish all escorts and flagmen required to protect the public[in the interest of public safety].

(3) A permit shall not be issued for <u>the</u> movement of <u>a[any]</u> permanent building other than <u>a</u> portable storage <u>unit on a parkway</u> <u>or an interstate highway[units on either parkways, or interstate highways]</u>.

 $(4)(\underline{a})$  The Division of Motor Carriers shall contact the appropriate Department of Highways' district office for specific routing restrictions or local highway conditions prior to the issuance of  $\underline{a}$ [the] permit.

(b) Specific restrictions shall be identified on the permit <u>and[-]</u> Deviation from the restrictions shall void the permit

Section 12.[13. Permits for Sealed, Containerized, Ocean-Geing Cargo Units. (1) A vehicle moving a sealed, containerized, ocean-going cargo unit shall be eligible for a single trip permit.

(2) A vehicle eligible for a permit shall meet the size specifications and limitations established in KRS 189.222 and Section 4 of this administrative regulation.

(3) An applicant for a permit shall submit to the Division of Motor Carriers:

(a) A completed Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-10;

(b) A payment of sixty (60) dollars pursuant to KRS-189.270(2); and

(c) A copy of an international bill of lading signed by a custome official, or an international bill of lading with an equipment interchange and inspection report.

(4) A permit shall be valid for:

(a) One move;

(b) A duration of ten (10) days; and

(c) Twenty-four (24) hour continuous movement during the

#### duration of the permit.

(5) An operator shall at all times during the move have in his or her possession a copy of the documents described in subsection (3)(c) of this section.

<u>Section 14.]</u>[Section 12.] Route Deviation. All vehicles transporting a load under an annual or trip permit shall obtain prior <u>written</u> approval from the Division of Motor Carriers for any deviation from the routes approved by the Transportation Cabinet for the towing vehicle.

<u>Section 13.[15.][Section 13.]</u> Permit Required. Until <u>an autho-</u> <u>rized[a special written]</u> permit has been issued by the [<del>Department</del> <del>of Vehicle Regulation,</del>] Division of Motor Carriers under the provisions of this administrative regulation and KRS 189.270:

(1) An overweight <u>or[/]</u> overdimensional load of a width greater than eight and one-half (8 1/2) feet shall not be towed on any state-maintained highway;

(2) An overweight <u>or[</u>*A*] overdimensional load with a width greater than eight (8) feet shall not be towed on any statemaintained highway not included on the Transportation Cabinet's list of roads approved for passage of motor vehicles with increased dimensions pursuant to 603 KAR 5:070, except as provided in KRS 189.2225(3); and

(3) A manufactured home with a combined length of manufactured home and towing vehicle greater than 120 feet shall not be towed upon any Kentucky highway. The manufactured home shall not exceed eighty-five (85) feet in length[<u>or\_sixteen (16) feet in</u> <u>width</u>].

<u>Section 14.[16.][Section 14.]</u> Annual Permits. (1)(a) A permit shall not be issued for the movement of an overweight <u>or[/]</u> overdimensional load in excess of sixteen (16) feet in width inclusive of the usual[and ordinary] overhang.

(b) Mirrors on a[the] towing vehicle shall not be considered in determining the[making the determination of] width of an overweight or overdimensional load.

(2) Prior to a movement of an overweight  $\underline{or}[A]$  overdimensional load under the provisions of an annual permit, the permit holder shall [survey the route and] evaluate the entire route proposed to be used for the movement of the overweight  $\underline{or}[A]$  overdimensional load. The evaluation shall include the following:

(a) Highway width;

(b) Shoulder width and surface type;

(c) Bridge width and posted weights;

(d) Curves;

(e) Turns to be negotiated;

(f) Construction zones;

(q) Obstructions;

(h) Access control;

(i) Traffic volume; and

(j) Other routes available that <u>may[might]</u> be safer even if not as convenient.

(3) The permit holder shall use the results of the evaluation to determine the safest route available to transport the overweight <u>or[</u>/] overdimensional load.[The permit holder shall determine if there would be any place on the proposed route which would be too narrow, have curves or turns too sharp or have other obstacles which would prevent the route from safely accommodating the move. The route selected by the permit holder shall be the safest available.]

(4) If there is any doubt about the adequacy of the highway to safely accommodate the overweight <u>or</u>[*I*] overdimensional load, the permit holder shall either:

(a) Select a different route; or

(b) Contact the <u>Division of Motor Carriers</u>[appropriate highway district office] for approval[clearance] to move the[that] overweight <u>or[/]</u> overdimensional load over that specific route.

(5) [If the highway district office does not issue clearance for the use of a route whose adequacy is in doubt, that route shall not be used.

(6)] An annual permit shall not be issued or used for the movement if the height of the combination load and towing vehicle exceeds thirteen (13) feet, six (6) inches.

(6)[(7)] Acceptance and use of the annual permit shall indicate

the permit holder's acceptance of the liability associated with the move.

(7)[(8)] Moves of overweight <u>or</u>[/] overdimensional loads more than twelve (12) feet wide shall be limited to highways of four (4) or more lanes and to the shortest and best two (2) lane route designated by the [Department of Vehicle Regulation,] Division of Motor Carriers[to be used to the unit's ultimate destination]. The <u>cabinet[department]</u> shall deny movements on <u>a route[any</u> routes][deemed] unsuitable for move.

(9) The issuance cost of an annual and trip permit shall be that established by KRS 189.270.

<u>Section 15.[17.]</u>[Section 15.] Traffic Control. (1) If an overweight <u>or</u>[*I*] overdimensional load while crossing a bridge would encroach on any other lane of traffic:

(a) All approaching traffic shall be stopped; and

(b) All trailing traffic shall be prevented from attempting to pass the overweight <u>or</u>[*A*] overdimensional load until the load has cleared the bridge and has moved sufficiently to the right to safely allow following traffic to pass.

(2) An overweight <u>or[</u>/] overdimensional load shall slow the movement of other traffic as little as possible. If traffic backs up[<del>either</del>] behind[<del>or in front of</del>] the load being moved, the escort vehicles and load shall exit the highway if there is sufficient space to do so.

Section 16.[18.][Section 16.] Permit Validity. (1) Any vehicle hauling building materials to a home or home site shall be allowed to travel fifteen (15) miles off of any state highway classified to carry the registered weight of the vehicle for purpose of delivery.

(a) The vehicle shall:

1. Not be required to have a permit for overweight or overlength; and

2. Be within the limits of the registration and within axle weight limits.

(b) An operator shall be required to provide a bill of lading **while[when]** engaged in the transportation of home building materials.

(2)(a) Travel on all overweight and overdimensional permits shall not be permitted in Boone, Kenton, Campbell, Fayette, Jefferson County (Louisville) or at the Owensboro, Kentucky 2155 bridge from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday.

(b) An overweight or overdimensional load originating in Fayette County shall be exempt from traffic rush hour restrictions on Interstate 64 and Interstate 75 in Fayette County and on connecting routes to both interstates up to a distance of three (3) miles from the interstates.

(3) If[<u>satisfactory]</u> proof of an emergency is furnished to the Division of Motor Carriers, moves <u>shall[may]</u> be authorized during the hours restricted pursuant to KRS 189.270(11)(a).

(4) The provisions of this section shall not apply to <u>a farm im-</u> plement[farm implements] or equipment as defined in Section 1(4) of this administrative regulation if the farm implement or equipment:

(a) Is less than twelve (12) feet wide;

(b) Is used in part for off-road use; and

(c) Is not transporting cargo.

(5) Travel shall not be made in excess of the posted limitations on any bridge or other highway structure.

Section 17.[19. Inclement][Section 17.] Weather Conditions. (1) Moves of overdimensional loads <u>more than twelve (12) feet</u> wide[more than twelve (12) feet wide] shall not be made on any highway <u>if wind velocity exceeds twenty-five (25) MPH; or[any</u> of the following weather conditions exist:

(a) Winds sufficient to cause the wheels of the trailer to deflect more than six (6) inches from the path of the wheels of the drawing vehicle;

(b) Wind velocity exceeding twenty-five (25) MPH;

(c) Snow or ice covered highways; or

(d) Driving rain, fog, snow, or other atmospheric conditions that restrict visibility:][If wind velocity exceeds twenty-five (25) MPH]

(2)[If] If adverse weather conditions[conditions] or road condi-

# tions <u>would cause these moves[that the Kentucky State Police</u> <u>have determined</u>][would cause these moves] to be dangerous.

<u>Section 18.[20.]</u>[Section 18.] Brakes. (1) The number, type, size, and design of brake assemblies required to assist the towing vehicle in controlling and stopping a manufactured home or boat shall be sufficient to assure that the maximum stopping distance from an initial velocity of twenty (20) miles per hour <u>shall[does]</u> not exceed forty (40) feet.

(2) Manufactured homes <u>that[which]</u> are not equipped with brakes on all axles shall certify that the towing unit has sufficient brake assembles to meet the braking distance specified in this section. <u>Certification shall be in the form of:</u>

(a) A manufacturer's statement;

(b) Documented technical data; or

(c) An engineering analysis or its equivalent stating that the braking distance has been met.[(a) This certification shall be in the form of a manufacturer's statement, documented technical data, or adequate engineering analysis or its equivalent, specifying that the braking distance requirement has been met.]

(3) The certification[(b) This certificate] shall be carried in the towing unit at all times and shall be presented upon request[ $_{1}$ ] to any law enforcement officer.

<u>Section 19.[20.][Section 19.]</u> Annual Farm Equipment Permits. (1) An annual permit shall not be issued for the movement of the following:

(a) Self-propelled farm equipment <u>that[which]</u> exceeds thirteen
 (13) feet eleven (11) inches in width;

(b) <u>A</u> motor vehicle transporting farm equipment if the vehicle or load exceeds thirteen (13) feet eleven (11) inches in width unless the transporter is a farm equipment dealer transporting farm equipment from <u>the[his]</u> dealership to a farm[,] or from a farm to the[his] dealership;

(c) A motor vehicle transporting farm equipment <u>that[which]</u> exceeds sixteen (16) feet in width;

(d) Farm equipment if the length of the trailer and towing unit combined exceeds ninety-five (95) feet in length;

(e) Farm equipment if the length of the straight truck and load exceeds fifty-five (55) feet; or

(f) A motor vehicle transporting farm equipment if the power unit does not have sufficient horsepower or braking capacity to safely handle the load being transported.

(2) A permit for the movement of farm equipment with a width greater than twelve (12) feet but <u>not exceeding[which does not exceed]</u> sixteen (16) feet shall only be:

(a) Issued to a farm equipment dealer; and

(b) Valid <u>if[when he is transporting]</u> the farm equipment <u>is</u> <u>transferred</u> from <u>a[his]</u> dealership to a farm or from a farm to <u>a[his]</u> dealership.

(3) A motor vehicle for which a permit <u>is</u>[was] issued to a farm equipment dealer to transport farm equipment with a width greater than thirteen (13) feet eleven (11) inches shall be:

(a) Titled, registered, and licensed in Kentucky; or

(b) Apportioned licensed in another jurisdiction to operate in Kentucky.

Section **20.**[21.][21.] Denial of Permit Application. (1) In accordance with 23 C.F.R. 658.17, the[Transportation Cabinet,] Division of Motor Carriers shall deny a permit application if:

(a) The route includes any portion of the interstate highway system; and

(b) The load is divisible.

(2) The Transportation Cabinet <u>shall[may]</u> deny or restrict a permit for the use of any route if it <u>is[would be]</u> detrimental to public safety or convenience. The Transportation Cabinet shall consider the following <u>while[when]</u> making <u>a[the]</u> determination on the application:

(a) The strength of all bridges and structures on the route;

(b) Traffic congestion on the route;

(c) Horizontal and vertical alignment of the route;

(d) The availability of alternate routes that afford greater safety;

(e) Urban development in residential and commercial areas on the route;

(f) The proximity of schools to the route; and

(g) Any other condition that would unduly compromise public safety and convenience.

Section **<u>21.[22.]</u>** Incorporation by Reference. (1) The following material is incorporated by reference:

(a) <u>"Application for Annual Overweight or Overdimensial Per-</u> mit", TC Form 95-25, August 2010;

(b) "Housing Moving Application", TC Form 95-310, November2007;

(c) "Kentucky Overweight or Overdimensional Permit Worksheet", TC Form 95-10 August, 2010.[23 C.F.R. 658.17, Truck Size and Weight, Route Designations - Length, Width and Weight Limitations, April 1, 2000;

(b) 49 C.F.R. 393.11, Lighting Devices, Reflectors, and Electrical Equipment, October 1, 2000;

(c) Application for Annual Overweight/Overdimensional Permit, TC 95-25, July 1998; and

(d) Form TC 95-310, House Moving Application, July 2003 edition.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Motor Carriers, <u>Transportation Cabinet Building, 200 Mero Street[3rd Floor State</u> Office Building, 501 High Street], Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to <u>4[4:30]</u> p.m.[The telephone number is (502) 564-4540.]

THOMAS O. ZAWACKI, Commissioner

MIKE HANCOCK, Acting Secretary

APPROVED BY AGENCY: August 11, 2010

FILED WITH LRC: August 12, 2010 at 11 a.m.

CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

#### LABOR CABINET Department of Workers' Compensation (As Amended at ARRS, January 11, 2011)

 $803\ {\rm KAR}\ 25{\rm :}091.$  Workers' compensation hospital fee schedule.

RELATES TO: KRS <u>216B.105</u>, 342.020, 342.035, 342.315 STATUTORY AUTHORITY: KRS 342.020, 342.035<u>(1)</u>, 342.260<u>(1)</u>

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) and 342.260(1) require the Commissioner of the Department [requires the Executive Director of the Office] of Workers' Claims to promulgate administrative regulations to adopt a medical fee schedule for fees, charges and reimbursements under KRS 342.020. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical, and surgical supplies and appliances. [EO 2008-472, effective June 2, 2008, reorganized the Office of Workers' Claims as the Department of Workers' Claims and established the commissioner, rather than executive director, as the head of the department.] This administrative regulation establishes hospital fees for services and supplies provided to workers' compensation patients pursuant to KRS 342.020.

Section 1. Definitions. (1) "Ambulatory surgery center" means a public or private institution that is:

(a) Hospital based or freestanding;

(b) Operated under the supervision of an organized medical staff; and

(c) Established, equipped, and operated primarily for the purpose of treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.

(2) "Hospital" means a facility:[-] surgical center:[-] or psychiatric, rehabilitative, or other treatment or specialty center <u>that[which]</u> is licensed pursuant to KRS 216B.105.

(3) "Hospital-based practitioner" means a provider of medical services who is an employee of the hospital and who is paid by the

hospital.

(4) "Independent practitioner" means a physician or other practitioner who performs services that are covered by the <u>Kentucky</u> Workers' Compensation Medical Fee Schedule for Physicians, <u>incorporated by reference in 803 KAR 25:089</u>, on a contract basis and who is not a regular employee of the hospital.

(5) "New hospital" means a hospital <u>that</u>[which] has not completed its first fiscal year.

Section 2. Applicability. This administrative regulation shall apply to all workers' compensation patient hospital fees for each hospital for each compensable service or supply.

Section 3. Calculation of Hospital's Base and Adjusted Cost-tocharge Ratio; Reimbursement. (1)(a) <u>The commissioner shall cal-</u> <u>culate cost-to-charge ratios and notify each hospital of its adjusted</u> <u>cost-to-charge ratio on or before February 1 of each calendar year</u>.

(b) A hospital's base cost-to-charge ratio shall be based on the latest cost report, or HCFA-2552, which has been supplied to the Cabinet for Health and Family Services, Department of Medicaid Services, pursuant to 907 KAR 1:815 and utilized in 907 KAR 1:820 and 1:825 on file as of October 31 of each calendar year.

(c)[(b)] The base cost-to-charge ratio shall be determined by dividing the net expenses for allocation as reflected on Worksheet A, Column 7, Line 95, plus the costs of hospital-based physicians and nonphysician anesthetists reflected on lines 12, 13, and 35 of Worksheet A-8, by the total patient revenues as reflected on Worksheet G-2 of the HCFA-2552. The adjusted cost-to-charge ratio shall be determined as set forth in paragraph (d)[(e)] of this subsection.

(d)[(e)]1. The base cost-to-charge ratio shall be further modified to allow for a return to equity by multiplying the base cost-tocharge ratio by 132 percent except that a hospital with more than 400 licensed acute care beds as shown by the Cabinet for Health and Family Services, Office of Inspector General's Web site or a hospital that is designated as a Level I trauma center by the American College of Surgeons shall have a return to equity by multiplying its base cost-to-charge ratio by 138 percent.

2. If a hospital's base cost-to-charge ratio falls by ten (10) percent or more of the base for one (1) reporting year, the next year's return to equity shall be reduced from 132 percent to 130 percent or 138 percent to 135 percent as determined by subparagraph 1. of this paragraph.

a. This reduction shall be subject to an appeal pursuant to Section 4 of this administrative regulation.

b. Upon written request of the hospital seeking a waiver and a showing of extraordinary circumstances, the commissioner <u>shall</u> [may] waive the reduction for no more than one (1) consecutive year.

c. The determination of the commissioner shall be made upon the written documents submitted by the requesting hospital.

(e)[(d)]1. Except as provided in subparagraph 2 of this paragraph, a hospital's adjusted cost-to-charge ratio shall not exceed fifty (50) percent, including the return to equity adjustment.

2. The adjusted cost-to-charge ratio shall not exceed sixty (60) percent for a hospital that:

a. Has more than 400 licensed acute care beds as shown by the Cabinet for Health and Family Services, Office of Inspector General's Web site;

b. Is designated as a Level I trauma center by the American College of Surgeons;

c. Services sixty-five (65) percent or more patients covered and reimbursed by Medicaid or Medicare as reflected in the records of the Cabinet for Health and Family Services, Department of Medicaid Services; or

d. Has a base cost-to-charge ratio of fifty (50) percent or more.

(2)(a) Except as provided in paragraph (b) of this subsection, the reimbursement to a hospital for services or supplies furnished to an employee <u>that[which]</u> are compensable under KRS 342.020 shall be calculated by multiplying the hospital's total charges by its adjusted cost-to-charge ratio after removing any duplicative charges, billing errors, or charges for services or supplies not confirmed by the hospital records.

(b) If part of a bill for services or supplies is alleged to be non-

compensable under KRS 342.020 and that part of the bill is challenged by the timely filing of a medical fee dispute or motion to reopen, the noncontested portion of the bill shall be paid in accordance with paragraph (a) of this subsection.

Section 4. Appeal of Assigned Ratio. (1) [Each hospital subject to the provisions of this administrative regulation shall be notified of its proposed base cost-to-charge ratio by the commissioner by U.S. mail within thirty (30) days of the date the base cost-to-charge ratio is assigned by the Commissioner of the Department of Workers' Claims.

(2)(a)] A hospital may request a review of its assigned ratio. <u>A</u> written appeal to request a review shall be filed [by filing a written appeal] with the commissioner no later than thirty (30) calendar days after the ratio has been assigned and <u>the</u> hospital notified of its proposed cost-to-charge ratio.

(2)[(b)] The determination of the commissioner shall be made upon the written documents submitted by the requesting hospital.

Section 5. <u>Calculations of New Hospitals, Hospitals that do not</u> <u>file Worksheets A and G-2 of HCFA-2552 and ASC's within the</u> <u>Commonwealth of Kentucky.</u>

(1)(a) [Revision of Hospital Cost-to-charge Ratio. (1)(a) The commissioner shall calculate cost-to-charge ratios and notify each hospital of its adjusted cost-to-charge ratio on or before February 1 of each calendar year.

(b)] A new hospital shall be assigned a cost-to-charge ratio equal to the average adjusted cost-to-charge ratio of all existing instate acute care hospitals until it has been in operation for one (1) full fiscal year.

(b)[(c)] A hospital that does not file Worksheets A and G-2 of HCFA 2552 shall be assigned a cost-to-charge ratio as follows:

1. A psychiatric, rehabilitation, or long-term acute care hospital shall be assigned a cost-to-charge ratio equal to <u>125 percent of</u> the average adjusted cost-to-charge ratio of all in-state acute care hospitals;

2. An ambulatory surgery center shall be assigned a cost-tocharge ratio equal to:

a. <u>120[Seventy (70)]</u> percent of the average adjusted cost-tocharge ratio of all acute care hospitals located in the same county as the ambulatory surgery center; [<del>or</del>]

b. [If no acute care hospital is located in the county of the ambulatory surgery center,] <u>120[seventy (70)]</u> percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in counties contiguous to the county in which the ambulatory surgery center is located, if an acute care hospital is not located in the county of the ambulatory surgery center; or

c. The adjusted cost-to-charge ratio of the base hospital if:

(i)[+] The center is hospital based;

(ii)[ii.] It is a licensed ambulatory surgery center pursuant to 902 KAR 20:106[20:105]; and

(iii)[iii.] It is a Medicare provider based entity; and

3. All other hospitals not specifically mentioned in subparagraphs 1 or 2 of this paragraph shall be assigned a cost-to-charge ratio equal to:

a. The average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the facility; or

b. If there are no hospitals in the county, the average of all acute care hospitals located in contiguous counties.

(2) An assigned cost-to-charge ratio shall remain in full force and effect until a new cost-to-charge ratio is assigned by the commissioner.

Section 6. Calculation for Hospitals and Ambulatory Surgery Centers Located Outside the Commonwealth of Kentucky. (1) A hospital or ambulatory surgery center located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it accepts a patient for treatment who is covered under KRS Chapter 342.

(2) The base cost-to-charge ratio for an out-of-state hospital shall be calculated in the same manner as for an in-state hospital, using Worksheets A and G-2 of the HCFA 2552.

(3) An out-of-state ambulatory surgery center having no contiguous Kentucky counties shall be assigned a cost-to-charge ratio equal to seventy (70) percent of the average adjusted cost-tocharge ratio of all existing in-state acute care hospitals.

(4) An out-of-state ambulatory surgery center having one (1) or more contiguous Kentucky counties shall be assigned a cost-to-charge ratio in accordance with Section 5(1)(b)[(c)]2.b. of this administrative regulation.

Section 7. Reports to be Filed by Hospitals. Each bill submitted by a hospital pursuant to this administrative regulation shall be submitted on a statement for services, Form UB-04 (Formerly UB-92), as required by 803 KAR 25:096.

Section 8. Billing and Audit Procedures. (1) A hospital providing the technical component of a procedure shall bill and be paid for the technical component.

(2)(a) An independent practitioner providing the professional component shall bill for and be paid for the professional component.

(b) An independent practitioner billing for the professional component shall submit the bill to the insurer on the appropriate statement for services, HCFA 1500, as required by 803 KAR 25:096.

Section 9. Miscellaneous. (1) A new hospital shall [be required to] file a letter with the commissioner setting forth the start and end of its fiscal year within ninety (90) days of the date it commences operation.

(2)(a) An independent practitioner who does not receive direct compensation from the contracting hospital shall use the statement for services defined by 803 KAR 25:096 <u>if[when]</u> billing for professional services and shall be compensated pursuant to the Kentucky Workers' Compensation Medical Fee Schedule for Physicians, incorporated by reference in 803 KAR 25:089.

(b) An independent practitioner who is directly compensated for services by the contracting hospital shall not bill for the service, but shall be compensated pursuant to the practitioner's agreement with the hospital.

(c) The hospital may bill for the professional component of the service under the Kentucky Workers' Compensation Medical Fee Schedule for Physicians if the independent practitioner is directly compensated for services by the contracting hospital.

(3) A hospital-based practitioner shall not bill for a service he performs in a hospital if the service is regulated by 803 KAR 25:089, but he shall receive payment or salary directly from the employing hospital.

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

(a) Form <u>UB-04[UB-40, "Universal Billing Form"]</u>, 10-23-06; and

(b) HCFA 1500, ["Health Care Financing Administration",] 12-90.
 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

#### DWIGHT T. LOVAN, Commissioner

APPROVED BY AGENCY: September 9, 2010 FILED WITH LRC: September 15, 2010

CONTACT PERSON: Charles E. Lowther, General Counsel, Department of Worker's Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 782-4464, fax (502) 564-0681.

#### PUBLIC PROTECTION CABINET Department of Insurance Property and Casualty Division (As Amended at ARRS, January 11, 2011)

806 KAR 13:120. Workers' compensation[<del>small</del>] deductible policies.

RELATES TO: KRS 304.13-057, <u>304.13-167</u>, 304.13-400-304.13-420

STATUTORY AUTHORITY: KRS 304.2-110, 304.13-410 NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner to [provides that the commissioner] [Executive Director] [of Insurance may] make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. KRS 304.13-410 requires the commissioner to promulgate administrative regulations concerning calculations for premium reductions for deductible workers' compensation insurance policies. [provides that premium reductions for deductible workers' compensation insurance policies shall be calculated by the insurer in accordance with administrative regulations promulgated by the commissioner] [Executive Director] [of Insurance.] This administrative regulation establishes the method of calculating premium reductions for workers' compensation insurance policies with deductibles.

# Section 1. <u>Definition. "Commissioner" is defined in KRS 304.1-</u>050(1).

Section 2. All insurers authorized to write workers' compensation insurance in Kentucky, when establishing the premium for a workers' compensation insurance policy with a deductible ranging from \$100 to \$10,000 shall use only the following deductibles: \$100, \$200, \$300, \$400, \$500, \$1,000, \$1,500, \$2,500, \$5,000, \$7,500, \$10,000.

Section <u>3.[2-]</u> Application of this Administrative Regulation. (1) General.

(a) This administrative regulation **shall apply** [applies] to all insurers and licensed advisory organizations introducing or revising workers' compensation insurance deductible discounts for policies with deductibles of \$100 to \$10,000 or their application in Kentucky.

(b) A licensed advisory organization filing shall be self- contained and fully documented and shall not simply adopt the deductible plan or factors of another filing.

(c) An insurer may:

 $\underline{1.}$  File a self-contained and fully documented deductible discount plan; or

2. Adopt[it may choose to adopt] the filed deductible plan and discounts of a licensed advisory organization or another insurer.

(2) Form of the deductible. The deductible discounts shall be determined by the multiplication of the deductible discount factors by the manual premiums. Separate deductible discounts for each deductible option shall be applicable for each hazard group <u>as</u> <u>defined by the advisory organization designated by the commissioner pursuant to KRS 304.13-167[defined in Appendix A]</u>.

(3) Experience and retrospective rating. Experience rating modifications shall be based on[net losses and premiums, that is,] losses net of deductibles and manual premiums less the deductible discount. The parameters of the experience rating plan shall also be adjusted to account for the deductible.

(4) Premium discount programs. For insurers that have a premium discount program based on the standard premium of a policy, the deductible discounts shall be applied prior to the application of premium discounts. The deductible discount shall be calculated by multiplying the discount factor by the manual premium. Premium discounts then are calculated based on the standard premium, after deductibles.

Section <u>4. Deductible Discount Provisions.</u> [3. Methodology. (1) General.] The deductible discount <u>shall recognize</u>[recognizes] the reduction in losses[(claim costs)] borne by the insurer as a result of the insured's selection of a deductible. <u>The deductible discount</u> <u>shall be calculated based on a loss elimination ratio and shall include the following adjustments:</u>

(1) The size of loss distribution including distribution including an analysis of historical data which shall determine a mathematical function or a discrete empirical distribution table:

(2)[The most critical factor in the calculation is the loss elimination ratio ("LER"), which estimates the percentage of losses eliminated as a result of the deductible. Typically, two (2) types of adjustments are required to calculate the deductible discount from the

#### LER:

(a)] Recognition of factors which imply additional costs or savings associated with the deductible <u>including</u>:

(a) Credit[. These include credit] risks that the insured will not repay the insurer for the deductible amount:

(b)[,] Changes in insurer cash flow:

1. Deductibles paid by an insurer in accordance with KRS 304.13-400(3)(a) shall be considered a loan, the effects of which may be recognized in the filing; and

2. This factor shall be equal to the amount or proportion of dollars that are eliminative by the deductible times a reasonable interest rate to account for the loss in investment income

(c) Adverse selection and[,] and higher levels of risk.

<u>1. Loss elimination ratios may be reduced for adverse selection</u> by up to five (5) percent.

2. Filings which include greater reductions shall be clearly supported by actuarial evidence of higher loss ratios by deductible and class to clearly show that the deductible discounts are consistently high across classes and time.

3. For the initial filing, data from other states with deductibles may be used to support the selection of this factor; and

(3)[and possible antiselection. These types of factors are treated in this administrative regulation as adjustments to the otherwise indicated LER.

(b)] Recognition that many insurer operating expenses are not reduced by the introduction of deductibles including:

(a) Loss adjustment expenses including allocated and unallocated expenses;

(b) Overhead expenses; and

(c) General expenses including all expenses incurred other than loss adjustment expense, commissions, other acquisition expenses, premium taxes, licenses, and fees.[This consideration is treated in this administrative regulation through the deductible discount formula.

(2) Formula.

(a) The formula for pricing of deductibles in Kentucky shall be as follows:

$$p(x) = \frac{(1-c-k-r+i)sd(x)E}{E+e+a}$$

where:

p(x) - is the discount factor for a deductible of "x";

 a - is loss adjustment expenses as a percentage of standard premiums after premium discounts (based on the insurer's filings);
 c - is a factor to account for credit risk;

d(x) - is the LER, which is defined as the percentage of losses eliminated by the deductible:

e -- is the general expenses as a percentage of standard premium after premium discounts (based on the insurer's filings);

E - is the losses excluding loss adjustment expense as a percentage of standard premiums after premium discounts;

i -- is a factor to account for the differences in investment income earned by the insurer between policies with deductible and those without a deductible:

k - is a factor to account for interest on the loan due to prepayment of losses below the deductible;

r -- is a factor to account for the increased risk associated with deductible policies: and

s - is a factor to account for adverse selection.

(b) Loss adjustment expenses include allocated and unallocated expenses. General expenses include all expenses incurred other than loss adjustment expense, commissions, and ether expenses that vary directly with the premium. Losses are expected losses for a policy with no deductible. The manual premium shall be used to calculate loss and expense ratios.

(c) Loss elimination ratio. The loss elimination ratio shall be determined by the size of loss distribution. To determine the size of loss distribution function it is necessary to analyze historical data. The analysis shall determine a mathematical function or a discrete empirical distribution table.

1. Source of data. The data used in the analysis shall be relevant and appropriate. The ideal data for analysis is recent Kentucky-based number of claims and dollars of loss for medical and indemnity combined, by size of loss and hazard group on a per occurrence basis. The current National Council on Compensation Insurance Unit Statistical Plan incorporated by reference and available from the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601-1847, 8 a.m. to 4:30 p.m. (ET), weekdays, may be used subject to the following adjustment:

a. The per claimant size of loss distribution shall be adjusted by scaling the x axis by a factor of five (5) percent to ten (10) percent. That is, if s(x) is the probability density function of the per claimant size of loss distribution and f(x) is the probability density function of the per occurrence size of loss distribution, and the adjustment factor is selected as ten (10) percent, then f(x) equals s(x/1.1).

b. An alternative to this shall be to estimate mathematically the per occurrence size of loss distribution using a simulation method or by taking convolutions of the size of loss distribution. In either case, key inputs shall be the size of claims distribution and the distribution of the number of claimants per occurrence. Methodology shall be fully documented in the filing.

c. If a filer has data that is more suitable for the determination of deductible discounts than National Council on Compensation Insurance Unit Statistical Plan data, its use shall be encouraged. (d) Transition of the statistical Plan data is the state of the st

(d) Trending.

1. The size of loss distribution or data shall be trended to the effective period of the deductible factors. The trend factor shall be consistent with the historical data and with the most recent rate filing. The trend period shall reflect the average accident date of the underlying data and the average accident date of those policies issued during the effective period of the deductible factors.

2. While trends may affect the shape of the size of loss distribution, these adjustments are difficult to codify and are probably not significant in the short term. Thus, filers may use the assumption that the effect of the trend is uniform for claims of all sizes. Alternative assumptions may be used if thoroughly documented and supported in the filing.

(e) Loss development. Loss development for losses below \$10,000 has a significantly shorter "tail" than for total losses. The assumption that no development takes place on this layer of loss after three (3) to five (5) years may be used in the calculation of the LER. Thus, the size of loss distributions below \$10,000 shall be taken as:

#### $F(x) = g(x)/LDF \ x \le $10,000$

Where g(x) is the distribution function determined from the size of loss data reported as of three (3) to five (5) years and LDF is the loss development factor to ultimate for all claims. Alternative assumptions may be used if thoroughly documented and supported in the filing.

(3) Investment income and increased risk.

(a) It is expected that loss payments by the insurer on losses from policies with deductibles shall be made later than those from policies without deductibles, since the insured is responsible for losses below the deductible which would be paid first. Losses above a deductible are also more volatile than losses from the first dollar of loss. The increased volatility increases the risk borne by the insurer.

(b) The adjustment for investment income works in a direction opposite that of the adjustment for increased risk. It shall be assumed that these items completely offset each other. If the filer wishes to include an explicit factor for one (1) of these items, the filer shall also include an explicit factor for the other, and the filing document shall support the use of these factors.

(4) Loan on the prepayment of losses.

(a) The provision in KRS 304.13-400(3)(a) that every dollar of loss that is eliminated by the deductible shall first be paid by an insurer and then be reimbursed by the insured amounts to a loan, the effects of which may be recognized in the filing. This factor shall be equal to the amount or proportion of dollars that are eliminated by the deductible times a reasonable interest rate to account for the loss in investment income.

(b) This rate shall reflect the investment earned during the period of the loan. Insurers shall reflect repayment of losses three (3) months after the claim. Thus, the factor "k" shall be determined by the following formula:

# $k = (1+y)^{1/4} - 1$

Where y is the yield on ninety (90) day United States treasury bills.

(5) Adverse selection. In some lines of insurance there has been evidence of antis election with respect to deductibles, that is, those that choose to purchase insurance with a deductible tend to have losses that exceed those losses which are expected. LERs may be reduced for adverse selection by up to five (5) percent, unless a greater reduction is clearly supported by facts such as loss ratios by deductible and class which clearly show that the deductible discounts are consistently, across classes and time, high. For the initial filing, data from other states with deductibles may be used to support the selection of the factor.

(6) Credit risk. This factor is intended to account for losses below the deductible paid by insurers and not reimbursed by insured's due to bankruptcy. If the percentage of businesses that become bankrupt annually in Kentucky is expected to be "z," then the load should assume that z% of the amount "on loan" shall not be reimbursed. This shall be calculated as follows:

#### c = z/4

Factors between 0 and 2.5 percent may be used.]

Section <u>5.[4.]</u> Effect on Rate Making. (1) Data. <u>The designated</u> <u>advisory organization's statistical plan</u>[Rate-making data from the National Council on Compensation Insurance Unit Statistical plan] shall [<del>be modified to</del>] include a field indicating the deductible on the policy. Financial data calls shall[<del>also</del>] segregate data by deductible.

(2) Gross versus net data. <u>Adjustments[KRS 304.13 057 requires that net data be used in rate making. However, adjustments]</u> to net data shall be made in the rate-making process to account for the presence of deductibles. <u>Losses[That is, losses]</u> shall be loaded by the <u>loss elimination ratio, adjusted for anti-selection[LER (adjusted for] antiselection]</u> to a gross basis prior to the rate-making process. The <u>loss elimination ratio[LER</u>] and antiselection factor shall be the same as in the current approved filing.

(3) Methodology. Rate-making methods shall be modified to account for the presence of deductibles. <u>An adjustment shall be</u> <u>made[For example, there shall be an adjustment]</u> in classification rate making for differences in the distribution of exposures by deductible among classes.[Also, there shall be an adjustment] in the trending procedure for the presence of a shift in the distribution by deductible.

[Section 5. Interrogatories to be Answered in Rate Filings. Every rate filing for a workers' compensation insurance deductible shall include a completed interrogatories form as set forth in Appendix B to this administrative regulation.

APPEND	APPENDIX A							
TABLE O	TABLE OF CLASSIFICATIONS BY HAZARD GROUP							
Code	Hazard	Code	Hazard	Code	Hazard			
No.	Group	No.	Group	No.	Group			
0005	#	<del>1438</del>	##	<del>2065</del>	#			
0008	#	<del>1452</del>	##	<del>2070</del>	Ħ			
<del>0016</del>	#	<del>1463</del>	##	<del>2081</del>	#			
<del>0034</del>	#	<del>1470</del>	ш	<del>2089</del>	#			
<del>0035</del>	#	<del>1472</del>	##	<del>2095</del>	#			
<del>0036</del>	#	<del>1624</del>	##	<del>2101</del>	#			
<del>0037</del>	#	<del>1642</del>	##	<del>2105</del>	#			
<del>0042</del>	##	<del>1654</del>	##	<del>2110</del>	#			
<del>0050</del>	#	<del>1655</del>	##	<del>2111</del>	#			
<del>0079</del>	#	<del>1699</del>	##	<del>2112</del>	#			
<del>0083</del>	#	<del>1701</del>	##	<del>2114</del>	#			
0106	##	<del>1710</del>	##	<u>2121</u>	#			
<del>0113</del>	#	<del>1741</del>	₩	<del>2130</del>	#			
<del>0169</del>	#	<del>1747</del>	##	<del>2131</del>	#			
<del>0170</del>	#	<del>1748</del>	##	<del>2143</del>	#			
<del>0251</del>	#	<del>1803</del>	₩	<del>2150</del>	#			
0400	#	<del>1852</del>	#	<del>2156</del>	#			
<del>0401</del>	#	<del>1853</del>	#	<del>2157</del>	#			
<del>0908</del>	#	<del>1860</del>	#	<del>2172</del>	+			
<del>0909</del>	#	<del>1924</del>	#	<del>2174</del>	Ŧ			
<del>0912</del>	#	<del>1925</del>	#	<del>2177</del>	Ŧ			

		1	I		T
<del>0913</del>	ł	<del>2001</del>	#	<del>2211</del>	#
<del>0917</del>	#	<del>2002</del>	H .	<del>2220</del>	#
<del>1005</del>	##	<del>2003</del>	##	<del>2286</del>	#
1164	₩	<del>2014</del>	Ш	2288	#
1165	##	2016	#	2300	ł
1219	IV.	2021	#	2302	#
1320	нн НН	2030	<del></del>	2305	#
<del>1320</del> 1322					
	#	<del>2039</del>	#	<del>2361</del>	+
<del>1430</del>	##	<del>2041</del>	ł	<del>2362</del>	#
<del>2380</del>	ł	<del>2747</del>	Ŧ	<del>3082</del>	##
<del>2386</del>	Ŧ	<del>2759</del>	#	<del>3085</del>	##
<del>2388</del>	H .	<del>2790</del>	H-	<del>3091</del>	#
2402	##	2802	H.	<del>3110</del>	#
2413	#	2812	#	3111	#
2416	#	2826	#	3113	#
2417	- H	2835	+	3114	
-					
<del>2501</del>	#	<del>2836</del>	+	<del>3118</del>	#
<del>2503</del>	#	<del>2841</del>	H	<del>3119</del>	ł
<del>2534</del>	#	<del>2881</del>	#	<del>3122</del>	#
<del>2570</del>	##	<del>2883</del>	#	<del>3126</del>	#
<del>2576</del>	ł	<del>2913</del>	#	<del>3131</del>	Ŧ
<del>2578</del>	#	<del>2915</del>	#	<del>3132</del>	##
2585	#	2916	#	3145	4
2586	#	2923	#	<del>3146</del>	H
2587	#	2942	+	<del>3169</del>	#
		-	-	1	
<del>2589</del>	#	<del>2960</del>	#	<del>3175</del>	#
2600	#	3004	#	<u>3179</u>	#
<del>2623</del>	#	<del>3018</del>	#	<del>3180</del>	#
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<del>2660</del>	H .	<del>3027</del>	#	<del>3220</del>	#
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2714	#	3064	#	3255	+
2731	#	<del>3066</del>	#	<del>3257</del>	#
2735	#	<del>3076</del>	#	<del>3270</del>	#
<del>2741</del>	ł	<del>3081</del>	₩	<del>3300</del>	+
<del>3303</del>	H	<del>3824</del>	#	4301	H
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3581           3612           3620           3629           3632           3634           3635	# # # # # #	4101 4111 4112 4113 4114 4114 4130 4131	## # # # # #	4459 4470 4484 4493 4511 4557 4558	# # # # # #
3581           3612           3620           3629           3632           3634           3635           3638           3639	# # # # # #	4101 4111 4112 4113 4114 4130 4131 4133 4150	## # # # # # # #	4459           4470           4484           4493           4511           4557           4558           4561           4568	# # # # # # #
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	#	4282	#	4703	#
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4741	#	<del>5222</del>	##	<del>6237</del>	##
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4751	##	<del>5348</del>	##	<del>6252</del>	##
4770	₩	<del>5402</del>	H H	<del>6260</del>	₩
4773	₩	5403	##	6306	#
4774	₩	5437		6319	#
4775	<del>IV</del>	<del>5443</del>	#	<del>6325</del>	#
<del>4776</del>	₩	<del>5445</del>	##	<del>6400</del>	#
<del>4777</del>	##	<del>5462</del>	##	<del>6504</del>	#
4779	₩	<del>5474</del>	ш	6801F	##
<del>4799</del>	₩	<del>5479</del>	#	<del>6811</del>	##
4800	1	<del>5480</del>	##	6824F	##
thru	₩	5491	ш Ш	6826F	#
4811		5506		6834	#
4812	<u> </u>		 ₩		#
	1	5507		6836	
thru 4005		5508	#	6843F	₩
4825		<del>5538</del>	<u>#</u>	6845F	<u>#</u>
4860		<del>5551</del>	##	<del>6854</del>	₩
thru	₩	<del>5606</del>	##	6872F	₩
4883		<del>5610</del>	##	6874F	##
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<del>5059</del>	₩	<del>6017</del>	Ш	7309F	₩
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<del>5102</del>	-##	<del>6045</del>	##	7317F	₩
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<del>5192</del>	#	<del>6229</del>	##	<del>7382</del>	##
<del>5213</del>	##	<del>6233</del>	##	<del>7390</del>	Щ
<del>5215</del>	#	<del>6235</del>	##	<del>7403</del>	#
7405	₩	<del>8006</del>	H.	<del>8204</del>	Ш
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<del>9016</del>	#	<del>9403</del>	Ш		

iv) Investment income and increased risk factors (list on separate sheet if necessary):

a) Do they offset each other? Yes Y No Y

b) If NO, is documentation provided? Yes Y No Y

 v) Factor to account for the loan on prepayment of losses (list on separate sheet if necessary):

vi) Adverse selection adjustment:

If the above factor is greater than 5 percent, provide documentation.

vii) Credit risk adjustment:

5. How are deductibles accounted for in the rate-making methodology?

6. How are deductibles accounted for in the experience rating plans?

Form WCD-1 (11-92)]

SHARON P. CLARK; Commissioner

ROBERT VANCE, Secretary

APPROVED BY AGENCY: November 10, 2010

FILED WITH LRC: November 15, 2010 at 11 a.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.

#### PUBLIC PROTECTION CABINET Department of Insurance Property and Casualty Division (As Amended at ARRS, January 11, 2011)

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

RELATES TO: KRS 304.1-050(1), 304.44-010, 304.44-020, 304.44-060, 304.44-120

STATUTORY AUTHORITY: KRS 304.2-110, 304.44-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 <u>authorizes</u> [provides that] the Commissioner of Insurance <u>to</u> promulgate [may make] reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. KRS 304.44-120 authorizes the administrator of the mine subsidence fund to supervise in all respects consistent with the provisions of KRS 304.44, the operation and management of the mine subsidence insurance program and to do all things necessary or convenient to accomplish the purpose of KRS 304.44. This administrative regulation establishes procedures for counties and urban-county governments to notify the commissioner of their decision to approve the availability of mine subsidence within the county and establishes an annual effective date for participation in the mine subsidence insurance program.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 304.1-050(1).

(2) "County" means a county, charter county, urban-county government, or a consolidated local government.

(3) "Eligible location" means those counties within the Commonwealth of Kentucky that have underground coal-bearing stratum or underground coal mines.

(4) "Mine subsidence insurance fund" is defined by KRS 304.44-010(3).

(5) "Qualified location" means a county in which the fiscal court had certified to the commissioner its approval of the availability of mine subsidence insurance within that county.

Section 2. Approval of Qualified Locations. (1)(a) In accordance with KRS 304.44-060, any county whose fiscal court has voted to approve or remove the availability of mine subsidence insurance in the county, shall provide documentation of the vote to the commissioner.

(b) Upon receipt of the documentation of an approval of the availability of mine subsidence insurance in the county, the commissioner shall:

1. Consider whether the county is an eligible location; and

2. If the county is an eligible location, approve the county as a qualified location for participation in the mine subsidence insurance fund in accordance with subsection (2) of this section. Approval shall be on a prospective basis only.

(c) An approval as a qualified location shall continue until the commissioner receives notification from the county that the fiscal court has voted to remove the availability of mine subsidence insurance in the county.

(2)(a) If the commissioner receives the documentation of an approval or removal of the availability of mine subsidence insurance in the county as described in subsection (1) of this section more than 100 days prior to July 1, approval or removal as a qualified location shall be effective on July 1 of that same each year.

(b) If the commissioner receives the documentation of an approval or removal of the availability of mine subsidence insurance in the county described in subsection (1) of this section less than 100 days prior to July 1, approval as a qualified location shall be effective on July 1 of the subsequent year.

Section 3. Notification to Insurers of Qualified Locations. (1) Eighty-five (85) days prior to July 1 of each year, the commissioner shall provide to insurers notice of the qualified locations participating in the mine subsidence insurance fund.

(2) The addition or removal of qualified locations shall apply to new insurance policies written and existing insurance policies renewed on or after July 1 of each year.

# SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: November 10, 2010

FILED WITH LRC: November 15, 2010 at 11 a.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.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, January 11, 2011)

#### 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

FUNCTION, AND CONFORMITY: KRS NECESSITY, 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 administrative regulation establishes new sampling and testing procedures for substances prohibited by this administrative regulation [the prohibited substances identified herein], and establishes penalties for individuals who [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:

(a) The commission's review of a report of finding issued by the commission laboratory and its review of split sample analysis results; or

(b)[, 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) "Sampling" means the act of collecting a specimen from a horse.

(4) "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, hemoglobinbased 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; **[er]** 

(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; [er]

(d) It has raced at an association licensed pursuant to KRS 230.300 within the previous twelve (12) calendar months; [er]

(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) <u>A horse subject to testing under subsection (1) of this</u> <u>section</u> [-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-ofcompetition 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 <u>individual or individuals</u> [individual(e)] 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:

(a) 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) If [When] a designated horse is located in another jurisdic-

tion, 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.

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 sub-sequent 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. <u>If there is</u> [In the ovent 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)(a) of this section and the issuance of a steward's order: and[-]

(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:

(a) Upon sale or transfer of the horse to another owner or trainer before 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.

(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 regarding a trainer's responsibility, 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. <u>The commission may conduct</u> [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 <u>in accordance with 810 KAR 1:130. If there is[. In the</u> 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.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, January 11, 2011)

## 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 substances prohibited by this administrative regulation [the prohibited substances identified herein], and establishes penalties for individuals who [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:

(a) The commission's review of a report of finding issued by the commission laboratory and its review of split sample analysis results; or

(b)[, 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) "Sampling" means the act of collecting a specimen from a horse.

(4) "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, hemoglobinbased 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; **[er]** 

(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; [<del>or</del>]

(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) <u>A horse subject to testing under subsection (1) of this</u> <u>section</u> [If a horse to be tested is not covered under subsection (1), 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-ofcompetition 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 <u>individual or individuals</u> [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:

(a) 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) If [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 sub-sequent 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. <u>If there is</u> [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)(a) of this section and the issuance of a judge's order: and[-]

(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:

(a) Upon sale or transfer of the horse to another owner or trainer before 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.

(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 regarding a trainer's responsibility, 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. <u>The commission may conduct</u> [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 <u>in accordance with 811 KAR 1:260. If there is</u>[.-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.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, January 11, 2011)

#### 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 substances prohibited by this administrative regulation [the prohibited substances identified herein], and establishes penalties for individuals who [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:

(a) The commission's review of a report of finding issued by the commission laboratory and its review of split sample analysis results; or

(b)[, 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) "Sampling" means the act of collecting a specimen from a horse.

(4) "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, hemoglobinbased 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; [er]

(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; [<del>or</del>]

(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) <u>A horse subject to testing under subsection (1) of this</u> <u>section</u> [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-ofcompetition 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 <u>individual or individuals</u> [individual(c)] 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:

(a) 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) If [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 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 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. <u>If there is</u> [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)(a) of this section and the issuance of a steward's order; and[-]

(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:

(a) Upon sale or transfer of the horse to another owner or trainer before 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.

(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 regarding a trainer's responsibility, 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. <u>The commission may conduct</u> [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 <u>in accordance with 811 KAR 2:170. If there is[</u>. 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.

#### PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Plumbing (As Amended at ARRS, January 11, 2011)

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

RELATES TO: KRS 318.054, 318.130

STATUTORY AUTHORITY: KRS <u>318.130</u>, <u>318.054</u> [<u>318.134</u>] NECESSITY, FUNCTION, AND CONFORMITY: KRS <u>318.054</u> authorizes the <u>department</u> [<u>office</u>], after review by the State Plumbing Code Committee, to adopt continuing education requirements for plumbers. This administrative regulation establishes the process by which providers of continuing education courses are <u>approved and</u> registered with the <u>department</u> [<u>office</u>] and <u>continu-</u> ing education [<del>their</del>] courses approved.

Section 1. <u>Requirements for Continuing Education Providers.</u> (1) Continuing education providers shall either be a:

(a) Trade association with affiliation to the plumbing trade;

(b) Trade school;

(c) College;

(d) Technical school;

(e) Business dedicated solely to providing continuing education and **that[**which] provides at least one (1) course quarterly within each congressional district;

(f) Plumbing contracting company that employs full-time training personnel to conduct continuing education programs providing continuing education for journeymen only; or

(g) Plumbing manufacturer or distributor that employs full-time training personnel to conduct continuing education programs providing continuing education for journeymen only.

(2) Provider Registration. [(1)] The <u>department</u> [office] shall maintain a list of approved continuing education course providers. An approved provider shall meet the criteria established in Section 2 of this administrative regulation.

(3)[(2)] Each continuing education course provider shall register with the <u>department</u> [effice] as required by subsection (3) of this section before submitting course materials for <u>department</u> approval [by the office]. Registration shall be valid for two (2) years from the date of issuance.

(4)[(3)] Course providers shall register on Form PLB-3 provided by the department [Office] and shall include the following:

(a) The <u>company</u> name, mailing address, email address, telephone, and fax numbers of the provider;

(b) <u>Contact person</u>[The names and addresses of any persons who have received or will receive any portion of revenues generated from the course]; and

(c) The fee, if any, to be charged to participants.

(5) Each[(4) The] course provider shall report to the <u>depart-</u> <u>ment</u> [Office] any change to the information submitted in the initial <u>application[registration]</u> within thirty (30) days after the change takes effect.

(6) For each course approved the provider shall distribute to each applicant in attendance a questionnaire for the purpose of rating the course.

(a) Questionnaires shall include:

1.[(i)] Name of the course;

2.[(ii)] Date the course was taken;

3. Questions[(iii) Question(c)] ranking the quality of the course:

4. Questions[(iv) Question(s)] ranking the quality of the course materials provided; and

5. Questions[(v) Question(s)] ranking the quality of the instructor.

(b) Completed questionnaires shall be submitted with license renewal applications.

Section 2. Continuing Education Course Approval. (1) A separate application for approval shall be submitted to the <u>department</u> [office] on Form PLB-4 provided by the <u>department</u> [office] for each course offered by a course provider.

(2) An application for approval of a continuing education course shall be submitted only by approved providers registered with the <u>department</u> [office]. Applications shall be submitted at least sixty (60) days prior to the course offering.

(3) A continuing education course shall provide instruction in at least one of the subject areas specified in Section 3 of this administrative regulation.

(4) The course application shall include the following:

(a) A course syllabus;

(b) Name of the course;

(c) Name and registration number of the provider;

(d) Name of the instructor or presenter along with his or her qualifications;

(e) The amount of actual time needed to present the course; [and]

(f) The objectives of the course; and

(g) A statement of the practicality of the course to the plumbing trade.

(5) Content changes made to the course shall require <u>subsequent submission</u> [resubmission] to the <u>department for review and approval[office]</u>.

(6) Course approval shall be valid for two (2) years from the date approved by the <u>department[office]</u>.

(7) The office shall issue a course number for each approved course. The course number and the provider's number shall appear on all advertisements <u>and certificates</u> for the course.

(8) Providers shall submit to the <u>department a quarterly sche-</u> <u>dule including date and locations of courses by January 1, April 1,</u> <u>July 1, and October 1 annually and the department</u> [office dates and locations of courses ninety (90) days in advance, and the office] shall be notified at least thirty (30) days prior to a course's offering of changes made to scheduled courses.

(9) The department shall receive written notification of scheduling changes at least ten (10) working days prior to the originally scheduled course date by fax or e-mail to the Director of Plumbing [Providers shall provide at least one (1) course in each of the congressional districts within each quarter of the year].

(10) Cancellations.

(a) The provider shall give notice of cancellation no less than five (5) working days prior to a scheduled class unless the Governor declares a state of emergency or other conditions exist that would preclude a five (5) day notification of cancellation; [Except for a cancellation due to an emergency, a notification of cancellation shall be made no less than five (5) working days prior to the scheduled class:]

(b) If the <u>scheduled</u> class is canceled, providers shall, at the option of the registrant, issue a full refund or <u>allow the registrant to</u> <u>attend a rescheduled</u> [reschedule the] course;

(c) A registrant who notifies a provider of cancellation prior to five (5) working days of a scheduled course <u>may choose either</u> [shall be allowed the choice of] a full refund or to attend a subsequent course; and

(d) Providers shall not cancel a course with ten (10) or more registrants, <u>unless cancellation is the result of an emergency</u>.

Section 3. Continuing Education Course Content. (1) All courses shall contain information beneficial in the day-to-day operation of a plumbing business.

(2) Courses relating to business shall include one (1) or more of the following:

- (a) Business law;
- (b) Accounting practices; or
- (c) Insurance.

(3) Courses relating to job safety shall directly relate to the construction trade.

(4) Courses related to the Kentucky state plumbing code shall include one (1) or more of the following:

(a) KRS Chapter 318;

(b) Basic plumbing principles;

(c) 815 KAR 20:001 through 815 KAR 20:195;

- (d) Kentucky Building Code; or
- (e) Kentucky Residential Code.

(5) Providers requesting approval of courses for topics not listed in this section shall demonstrate the relevancy of the topic to the plumbing trade.

Section 4. Continuing Education Course Records. (1) Each registered course provider shall establish and maintain [the following records for each course] for three (3) years the following records for each approved [the date of the] course:

(a) Certificates of completion as provided in subsection (2) of this section;

(b) An attendance sign-in and sign-out sheet; and

(c) A course syllabus.

(2) Certificates of completion.

(a) Each registered course provider shall <u>issue</u> [complete] a certificate of completion for each participant <u>who</u> enrolled and <u>completed</u> [completing] an approved continuing education course.

(b) Certificates of completion shall contain [at a minimum include] the following information about the individual participant:

- 1. Name;
- 2. Address;
- License <u>number or numbers[number(s)]</u> [number];
- 4. Date of attendance; and
- 5. Course or courses[Course(s)] [Courses] completed.
- (c) One (1) copy of each certificate of completion shall be:
- 1. Sent to the department [office] electronically;
- 2. Retained on file by the provider in compliance with subsection (1) of this section[4]; and

3. Given to the participant upon completion of the course.

Section 5. Course Audits. (1) Records requested in writing by the department shall be delivered to the department within ten (10) days of the requesting date [of the provider shall be provided to the office within ten (10) days upon written request].

(2) Representatives of the <u>department</u> [office] may, at any time, attend <u>an approved continuing education</u> [a] course to ensure that the course <u>meets the stated objectives and that applicable re-</u> <u>quirements are being met</u> [is meeting its stated objectives and that applicable requirements are being followed].

Section 6. Disciplinary Action. The <u>department</u> [office] may deny, suspend, or revoke approval of any course provider or may issue a fine to any course provider who:

(1) Obtains or attempts to obtain registration or course approval through fraud, false statements, or misrepresentation;

(2) Does not provide complete and accurate information in either the initial registration or in any notification of changes to the information;

(3) Advertises a course as being approved by the <u>department</u> [office] before the approval is received; or

(4) Fails to comply with the requirements of this administrative regulation.

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

(a) Form PLB-3, "Application for Approval as a <u>Plumbing</u> Continuing Education Course Provider", <u>November 2010</u> [for <u>Plumbing</u> <u>Licensure</u>", <u>October</u>, 2007]; and

(b) Form PLB-4, "Application for <u>a Plumbing</u> Continuing Education Course <u>Approval</u>", <u>November 2010.</u> [for Plumbing Liconsure", October, 2007.]

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

RICHARD MOLONEY, Commissioner ROBERT D. VANCE, Secretary APPROVED BY AGENCY: November 15, 2010 FILED WITH LRC: November 15, 2010 at 11 a.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) 573-0365, Ext. 144, fax (502) 573-1057.

## CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Health Care (As Amended at ARRS, January 11. 2011)

902 KAR 20:410. Specialty intermediate care clinics.

# RELATES TO: KRS <u>198B.260</u>, <u>209</u>, <u>216B.010-216B.131</u>, <u>216B.990</u>, <u>218A</u>, <u>311</u>, <u>314</u>, <u>507.020</u>, <u>507.030</u>, <u>507.040</u>, <u>508.010-508.032</u>, <u>509-511</u>, <u>513</u>, <u>514.030</u>, <u>530</u>, <u>531</u>, <u>45</u> C.F.R. <u>160</u>, <u>164</u> [<u>216B.010-216B.131</u>, <u>216B.990</u>]

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 stateowned 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<sup>is</sup> 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 <u>2(2)(f)</u> [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;
- (I) 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 **<u>if</u>** [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, assistance 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;
- (I) Pharmacists
- (j) Audiologists;(k) Optometrists;
- (I) Dieticians;
- (m) Behavior specialists;
- (n) Board certified behavior analysts;
- (o) Opthomalogists;
- (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 <u>the</u> [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:

(a)[1-] Employee's name and address;

(b)[2-] Evidence that the health care professional has a valid license or other valid credential required for the professional to be able to practice;

(c)[3.] Record of training and experience; and

(d)[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:

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 **if** [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, registered 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, <u>if</u> [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.

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Mental Health and Mental Retardation Services **Division of Administration and Financial Management** (As Amended at ARRS, December 14, 2010, and January 11, 2011)

## 908 KAR 3:050. Per diem rates.

RELATES TO: KRS 210.710, 210.720, 210.730

STATUTORY AUTHORITY: KRS 194A.050(1), 210.720(2), 210.750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.720(2) requires the Secretary of the Cabinet for Health and Family Services to establish the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet at frequent intervals which shall be the uniform charge for persons receiving those services. KRS 210.750 authorizes the secretary to promulgate administrative regulations to implement KRS 210.700 to 210.760, the Patient Liability Act of 1978. This administrative regulation establishes the patient cost per day for board, maintenance and treatment at facilities operated by the cabinet.

Section 1. Facility Rates. (1) Facilities operated by the cabinet shall charge a per diem rate for room and board and a separate charge for each treatment service listed in subsection (2) of this section that is provided.

(a) The per diem rate [through the effective date of this administrative regulation.] for room and board for each facility shall be as follows:

[Facility	Rate
Central State Hospital	\$ <u>660]</u> [595]
[Central State - ICF/MR	\$ <u>1,060</u> ][ <u>1,015</u> ]
[Western State Hospital	\$ <u>610]</u> [480]
[Western State Nursing Facility	\$ <u>295</u> ][ <del>265</del> ]
[Outwood ICF/MR	\$ <u>365][310]</u>
[Oakwood Community Center	\$ <u>865</u> ][860]
[Hazelwood Center	\$ <u>660]</u> [700]
[Glasgow State Nursing Facility	\$ <u>360][355]</u>
[ <del>Del Maria</del>	\$ <u>665</u> ][645]
[Meadows	\$ <u>730</u> ][635]
[Windsong	\$ <u>601][670]</u>
Eastern State Hospital	<del>\$410</del>
Volta House	<del>\$140</del>

(b) Effective the effective date of this administrative regulation, the per diem shall be as follows:]

Facility	Rate		
Central State Hospital	\$ <u>660[685]</u> [660]		
Central State - ICF/MR	\$ <u>1,025</u> [ <del>1060</del> ]		
Western State Hospital	\$ <u>710[720]</u> [ <del>610</del> ]		
Western State Nursing Facility	\$ <u>345[350]</u> [ <del>295</del> ]		
Outwood ICF/MR	\$ <u>390</u> [ <del>365</del> ]		
Oakwood Community Center	<u>Unit 1</u>	<u>\$960</u>	
	<u>Unit 2</u>	<u>\$910</u>	
	Unit 3	<u>\$910</u>	

	<u>Unit 4</u>	<u>\$985[</u> \$		
		<del>865</del> ]		
Hazelwood Center	\$ <u>780[</u> 66	\$ <u>780[<del>660</del>]</u>		
Glasgow State Nursing Facility	\$ <u>325[</u> 36	\$ <u>325[<del>360</del>]</u>		
Del Maria	\$ <u>640[66</u>	\$ <u>640[<del>665</del>]</u>		
Meadows	\$ <u>670[</u> 73	\$ <u>670[<del>730</del>]</u>		
Windsong	\$ <u>720[</u> 61	\$ <u>720[<del>610</del>]</u>		
Eastern State Hospital	\$ <b>440[</b> 44	\$ <u>440[445]</u> [410]		
Volta House	\$140			

(2) A separate charge shall be imposed if the following treatment services are provided at a Department for Mental Health and Mental Retardation Services facility listed in subsection (1) of this section:

(a) Physician's[Physicians] services;

(b) EEG;

(c) EKG;

(d) Occupational therapy;

(e) Physical therapy;

(f) X-ray;

(a) Laboratory:

(h) Speech therapy; (i) Hearing therapy;

(j) Psychology;

(k) Pharmacy; (I) Respiratory therapy;

(m) Anesthesia;

(n) Electroshock therapy:

(o) Physician assistant; or

(p) Advanced practice registered nurse [practitioner].

Section 2. Board, Maintenance and Treatment Charges. Cost per day for board, maintenance and treatment charges shall be established using the last available cost report increased for inflation. Current rates shall be posted at each facility.

STEPHEN HALL, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: October 13, 2010

FILED WITH LRC: October 13, 2010

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health and Family Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

## VOLUME 37, NUMBER 8 - FEBRUARY 1, 2011

# ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Medical Management (Amended After Comments)

907 KAR 3:215. Tobacco cessation coverage and reimbursement.

# RELATES TO: KRS 205.520(3), 205.560(1)(j)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560(1)(j), 42 U.S.C. 1396r-8(d).

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the department's coverage and reimbursement of tobacco cessation services.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

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

(3) "FDA" means the United States Food and Drug Administration.

(4) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(5) "Legend drug" means a drug:

(a) Defined by the United States Food and Drug Administration as a legend drug; and

(b) Required to bear the statement: "Caution: Federal law prohibits dispensing without prescription."

(6) "Medically necessary" means that a covered benefit is determined by the department to be needed in accordance with 907 KAR 3:130.

(7)[(6)] "Physician" is defined by KRS 311.550(12).

(8)[(7)] "Physician assistant" is defined by KRS 311.840(3).

(9)[(8)] "Recipient" is defined by KRS 205.8451(9).

(10)(<del>0)</del>] "Supervising physician" is defined by KRS 311.840(4). (11)(<del>10)</del>] "Tobacco cessation product" means:

(a) Nicotine replacement therapy:

<u>1.[(a)]</u> Gum;

<u>2.[(b)]</u> Lozenge;

<u>3.[(c)]</u> Patch;

4.[<del>(d)</del>] Inhaler; or

<u>5.[(e)]</u> Spray<u>; or</u>

(b) A legend drug approved by the United States Food and Drug Administration for tobacco cessation.

Section 2. Provider Requirements for a Tobacco Cessation Assessment. A tobacco cessation assessment provider shall be: (1) A physician who is:

(a) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672: and

(b) Currently participating in the Medicaid Program pursuant to 907 KAR 1:671;

(2) A physician assistant working under the supervision of a supervising physician who is:

(a) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672; and

(b) Currently participating in the Medicaid Program pursuant to 907 KAR 1:671;

(3) An APRN who is:

(a) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672; and

(b) Currently participating in the Medicaid Program pursuant to 907 KAR 1:671; or

(4) Any of the following employed by a local health department:

(a) A physician assistant working under the supervision of a supervising physician;

(b) A physician; or

(c) An APRN.

Section 3. Tobacco Cessation Assessment and Referral. (1) The department shall reimburse for a tobacco cessation assessment if:

(a) The tobacco cessation assessment is provided:

<u>1.[(a)]</u> By a provider listed in Section 2 of this administrative regulation; and

2.[(b)] To a recipient: and

(b) The department receives, from the provider, the completed Tobacco Cessation Referral Form corresponding to the assessment.

(2) A tobacco cessation assessment shall:

(a) Be performed over a period of at least ten (10) [thirty (30)] minutes;

(b) Be performed face-to-face with the recipient;

(c) Include:

1. Asking the recipient about tobacco use;

2. Advising the recipient to quit using tobacco;

3. Assessing the recipient's readiness to quit using tobacco;

 Compiling a tobacco usage, medical, and psychosocial history of the recipient;

5. Incorporating a review of the recipient's coping skills and barriers to quitting; and

6. The provider's obtaining of a signed and dated Tobacco Cessation Referral Form from the recipient declaring the recipient's intent to quit using tobacco; and

(d) Be conducted once per course of treatment.

(3)(a) A provider shall complete a Tobacco Cessation Referral Form with the recipient in accordance with the instructions on the form;

(b) Via the Tobacco Cessation Referral Form, a provider and recipient shall choose a tobacco cessation program for the recipient unless:

1. The provider recommends that the recipient should not have to participate in a tobacco cessation program; or

2. A hardship which prevents the recipient from accessing a tobacco cessation program exists; and

(c) If a tobacco cessation program is not selected for a recipient due to subparagraph 1. or 2. of this paragraph, the provider shall denote this on the tobacco cessation referral form.

(4) A provider shall:

(a) Submit a completed Tobacco Cessation Referral Form to the department in accordance with the instructions on the form; and

(b) Give a copy of the completed Tobacco Cessation Referral Form to the recipient; and

(c) Maintain, for at least six (6) years from the date a Tobacco Cessation Referral Form was completed, a:

1. Paper copy of the Tobacco Cessation Referral Form; or

2. Readily accessible electronically formatted copy of the Tobacco Cessation Referral Form.

(5) The department shall reimburse for no more than two (2) tobacco cessation assessments per recipient per calendar year.

(6) If a recipient has a hardship which is not revealed or denoted during an assessment, the department may:

(a) Determine that a hardship exists; and

(b) Exempt the recipient from the requirement to participate in a tobacco cessation program.

Section 4. Tobacco Cessation Medication. (1) If a physician, APRN, or physician assistant working under a supervising physician as specified in Section 2 of this administrative regulation prescribes a medically necessary tobacco cessation medication for a recipient, the physician, APRN, or physician assistant shall prescribe:

(a) An initial one (1) month supply of the medication; and

(b) Up to two (2) refills of the medication.

(2) In order for the department to reimburse for a refill of a medication referenced in subsection (2) of this section for a recipient:

(a) Who is not participating in a tobacco cessation program:

<u>1. The department shall have received, from the provider or the</u> recipient, a completed Tobacco Cessation Referral Form corresponding to the recipient's assessment; and

2. The recipient shall have contacted the department and reguested the refill; or

(b) Who is participating in a tobacco cessation program:

<u>1. The department shall have received, from the provider or the</u> recipient, a completed Tobacco Cessation Referral Form corresponding to the recipient's assessment; and

2. The recipient shall:

a. For the first refill:

(i) Have participated in the first month of a tobacco cessation program; and

(ii) Contacted the department to request a refill and to express the intent to continue participating in the tobacco cessation program; or

b. For the second refill:

(i) Have participated in the second month of a tobacco cessation program; and

(ii) Contacted the department to request a refill and to express the intent to continue participating in the tobacco cessation program. [(a) A recipient who is referred to a tobacco cessation program shall, after participating in the first month of the tobacco cessation program, contact the department as instructed on the Tobacco Cessation Referral Form and indicate the intent to continue participation in the tobacco cessation program for another month.

(b) If the recipient indicates that he or she will continue participation in the program in accordance with paragraph (a) of this subsection, the department shall reimburse for the first refill of the tobacco cessation medication as established in subsection (1)(b) of this section.

(c) If the department does not receive confirmation that a recipient intends to continue participation in the tobacco cessation program, the department shall not reimburse for a refill as established in subsection (1)(b) of this section.

(3)(a) A recipient who is referred to a tobacco cessation program shall, after participating in the second month of the program, contact the department as instructed on the Tobacco Cessation Referral Form and indicate the intent to continue participating in the tobacco cessation program for another month.

(b) If the recipient indicates that he or she will continue participation in the program in accordance with paragraph (a) of this subsection, the department shall provide reimbursement for the second refill of the tobacco cessation medication as established in subsection (1)(b) of this section.

(c) If the department does not receive confirmation that the recipient intends to continue participation in the tobacco cessation program, the department shall not reimburse for a refill as established in subsection (1)(b) of this section.]

Section 5. Tobacco Cessation Reimbursement. (1) For the department to reimburse for a tobacco cessation medication or product provided to a recipient:

(a) The tobacco cessation medication or product shall be medically necessary;

(b) The tobacco cessation medication or product shall be approved by the FDA for tobacco cessation;

(c) The tobacco cessation medication or product shall be prescribed for the recipient in accordance with Section <u>4[2]</u>of this administrative regulation;

(d) If the tobacco cessation medication or product is a refill, the recipient shall have met the requirements established in Section 4(2) or (3) of this administrative regulation unless the recipient is exempt from the requirements pursuant to Section 3(3)(b) or (6); and

(e) If subject to prior authorization, the tobacco cessation medication or product shall have been prior authorized by the department.

(2) The department shall reimburse for a combination of nico-

tine replacement therapy that consists of no more than two (2) tobacco cessation medications or products.

(3) The department shall reimburse for a tobacco cessation medication in accordance with 907 KAR 1:018.

(4) Reimbursement for a tobacco cessation medication shall be limited to two (2) courses of treatment per recipient per calendar year.

(5) The department shall reimburse for a tobacco cessation assessment provided by:

(a) A physician, in accordance with 907 KAR 3:010, Section 2(2)(b);

(b) A physician assistant, in accordance with 907 KAR 3:010, Section 3(6) and (7)(a); or

(c) An APRN, in accordance with 907 KAR 1:104, Section 2(1)(b).

Section 6. Reporting Requirements. (1) A recipient shall:

(a) Upon the department's request, provide information to the department regarding the recipient's success or failure at tobacco cessation as a result of receiving a service reimbursed by the department; or

(b) Upon the provider's request, provide information to the provider regarding the recipient's success or failure at tobacco cessation as a result of receiving a service reimbursed by the department.

(2) A provider shall, upon the department's request, provide information to the department in accordance with 907 KAR 1:672 [regarding the recipient's success or failure at tobacco cessation as a result of receiving a service reimbursed by the department].

Section 7. Cost Sharing Exemption for Tobacco Cessation Medications. The department shall impose no cost sharing for any tobacco cessation medication referenced in this administrative regulation.

Section 8. Federal Financial Participation. A provision established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the provision; or

(2) Disapproves the provision.

Section 9. Appeal. An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be conducted in accordance with 907 KAR 1:563.

Section 10. Incorporation by Reference. (1) The "Tobacco Cessation Referral Form", <u>December</u> [July] 2010 edition, is incorporated by reference.

(2) The material referenced in subsection (1) of this section is available at:

(a) <u>http://www.chfs.ky.gov/dms/incorporated.htm;</u> or

(b)The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ELIZABETH A. JOHNSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: January 13, 2011

FILED WITH LRC: January 14, 2011 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

#### Contact person: Lee Barnard or Stuart Owen

(a) What this administrative regulation does: This is a new administrative regulation which establishes the Department for Medicaid Services' (DMS's) tobacco cessation program provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid tobacco cessation program provisions as mandated by the Kentucky legislature pursuant to KRS 205.560(1)(j) and as funding for the pro-

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gram has been provided in the 2010-2012 biennium budget.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation establishes the tobacco cessation program for all Medicaid recipients. Previously, DMS only covered tobacco cessation for pregnant women.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation establishes the tobacco cessation program for all Medicaid recipients. Previously, DMS only covered tobacco cessation for pregnant women.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation; however, it is being amended via the public comment process. The amendments after comments include inserting a definition of legend drug; clarifying that a legend drug approved by the United States Food and Drug Administration for tobacco cessation qualifies as a tobacco cessation product; reducing the mandated assessment duration from at least thirty (30) minutes to at least ten (10) minutes; requiring a Tobacco Cessation Referral Form to have been submitted by the provider or the recipient to DMS in order for DMS to pay for a recipient's refill of tobacco cessation medication; and require that providers must keep copies (paper or electronic) of Tobacco Cessation Referral Forms for at least six years (consistent with federal medical record maintenance requirements.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation; however, the assessment reduction (from 30 minutes to 10 minutes) is necessary to address a concern expressed by the Kentucky Medical Association (KMA) and the Tobacco Cessation Referral Form requirements are necessary to enable DMS to be able to evaluate the success of the tobacco cessation initiative and to evaluate the various components of the program as DMS is being allocated funds by the legislature to implement this program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments in response to comments conform to the content of authorizing statutes by establishing policies as authorized by KRS 194A.030(2).

(d) How the amendment will assist in the effective administration of the statutes: The amendments in response to comments will assist in the effective administration of the authorizing statutes by establishing policies as authorized by KRS 194A.030(2).

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients who attempt to quit using tobacco, tobacco cessation programs approved by DMS for Medicaid recipients, and providers who refer Medicaid recipients to a tobacco cessation program will be affected by the 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: Providers who perform tobacco cessation assessments will have to perform an assessment, bill DMS for the assessment using CPT code 99407, complete a Tobacco Cessation Referral Form (in conjunction with the recipient) during the assessment and submit the completed Tobacco Cessation Referral Form to DMS. Recipients who want a refill of tobacco cessation medication will be required to participate in a tobacco cessation counseling program (unless exempt) and contact DMS to confirm participation in a tobacco cessation counseling program in order to procure a refill of tobacco cessation medication.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Medicaid recipients will be able to receive tobacco cessation program benefits and providers will be able to be reimbursed for tobacco cessation assessments.

(5) Provide an estimate of how much it will cost to implement

this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) estimates that implementing this administrative regulation will cost approximately \$6.2 million (\$1.5 million commonwealth share/\$4.7 million federal share) for state fiscal year (SFY) 2011.

(b) On a continuing basis: DMS estimates that implementing the administrative regulation will cost approximately \$5.2 million ((\$1.5 million commonwealth share/\$3.7 million federal share) for SFY 2012.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds from state general fund appropriations. The Kentucky legislature allocated \$1.5 million in state funds for each of SFY 2011 and 2012 to implement this administrative regulation. Federal matching funds are projected to equal \$4.7 million in SFY 2011 and \$3.7 million in SFY 2012.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: DMS understands that \$1.5 million in general share funds was appropriated for state fiscal year 2011 and state fiscal year 2012 for the amendment via the budget bill HB 1 of the 2010 Extraordinary Session of the General Assembly even though the legislation does not explicitly address smoking cessation appropriation for DMS.

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

(9) Tiering: Is tiering applied? No, the provisions apply 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 Department for Medicaid Services will be affected by this administrative regulation and local health departments, who perform tobacco cessation assessments for Medicaid recipients, will be affected.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. No state or federal regulation, other than this administrative regulation, requires or authorizes this action.

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

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

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

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) estimates that implementing this administrative regulation will cost approximately \$1.5 million commonwealth share/\$4.7 million federal share) for state fiscal year (SFY) 2011.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that implementing this administrative regulation will cost approximately \$5.2 million (\$1.5 million commonwealth share/\$3.7 million federal share) for SFY 2012.

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

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

# **PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JANUARY 14, 2011**

## EDUCATION PROFESSIONAL STANDARDS BOARD (Amendment)

16 KAR 5:010. Standards for accreditation of educator preparation units and approval of programs.

RELATES TO: KRS 161.028, 161.030, 164.945, 164.946, 164.947, 20 U.S.C. 1021-1030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel, and KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126 to be issued in accordance with the administrative regulations of the board. This administrative regulation establishes the standards for accreditation of an educator preparation unit and approval of a program to prepare an educator.

Section 1. Definitions. (1) "AACTE" means the American Association of Colleges for Teacher Education.

(2) "Biennial report" means the report prepared by the EPSB summarizing the institutionally-prepared annual reports for a two (2) year period.

(3) "Board of examiners" means the team who reviews an institution on behalf of NCATE or EPSB.

 $\ensuremath{\left(4\right)}$  "EPSB" means the Education Professional Standards Board.

(5) "NCATE" means the National Council for Accreditation of Teacher Education.

(6) "NCATE accreditation" means a process for assessing and enhancing academic and educational quality through voluntary peer review.

(7) "State accreditation" means recognition by the EPSB that an institution has a professional education unit that has met accreditation standards as a result of review, including an on-site team review.

Section 2. Accreditation Requirements. (1) An institution offering an educator certification program or a program leading to a rank change:

(a) Shall be accredited by the state; and

(b) May be accredited by NCATE.

(2) State accreditation shall be:

(a) A condition of offering an educator certification program or a program leading to a rank change; and

(b) Based on the national accreditation standards which include the program standards enumerated in KRS 161.028(1)(b), and which are set out in the "Professional Standards for the Accreditation of Teacher Preparation Institutions" established by NCATE. The accreditation standards shall include:

1. Standard 1 - Candidate Knowledge, Skills, and Dispositions. Candidates preparing to work in schools as teachers or other professional school personnel know and demonstrate the content, pedagogical, and professional knowledge, skills, and dispositions necessary to help all students learn. Assessments indicate that candidates meet professional, state, and institutional standards.

2. Standard 2 - Assessment System and Unit Evaluation. The unit has an assessment system that collects and analyzes data on applicant qualifications, candidate and graduate performance, and unit operations to evaluate and improve the unit and its programs.

3. Standard 3 - Field Experience and Clinical Practice. The unit and its school partners design, implement, and evaluate field experiences and clinical practice so that teacher candidates and other school personnel develop and demonstrate the knowledge, skills, and dispositions necessary to help all students learn.

4. Standard 4 - Diversity. The unit designs, implements, and evaluates curriculum and experiences for candidates to acquire and apply the knowledge, skills, and dispositions necessary to help all students learn. These experiences include working with diverse higher education and school faculty, diverse candidates, and di-

verse students in P-12 schools.

5. Standard 5 - Faculty Qualifications, Performance, and Development. Faculty are qualified and model best professional practices in scholarship, service, and teaching, including the assessment of their own effectiveness as related to candidate performance; they also collaborate with colleagues in the disciplines and schools. The unit systematically evaluates faculty performance and facilitates professional development.

6. Standard 6 - Unit Governance and Resources. The unit has the leadership, authority, budget, personnel, facilities, and resources including information technology resources, for the preparation of candidates to meet professional, state, and institutional standards.

(3) NCATE accreditation shall not be a condition of offering an educator certification program or a program leading to a rank change.

(4) All educator preparation institutions and programs operating in Kentucky that require licensure by the Council on Postsecondary Education under KRS 164.945, 164.946,164.947, and 13 KAR 1:020 shall:

(a) Be accredited by the state through the EPSB under this administrative regulation as a condition of offering an educator certification program or a program leading to rank change; and

(b) Comply with the EPSB "Accreditation of Preparation Programs Procedure".

Section 3. Developmental Process for New Educator Preparation Programs. (1) New educator preparation institutions requesting approval from the EPSB to develop educator preparation programs that do not have a historical foundation from which to show the success of candidates or graduates as required under Section 9 of this administrative regulation shall follow the four (4) stage developmental process established in this section to gain temporary authority to admit candidates.

(2) Stage One.

(a) The educator preparation institution shall submit an official letter from the chief executive officer and the governing board of the institution to the EPSB for review and acceptance by the board indicating the institution's intent to begin the developmental process to establish an educator preparation program.

(b) The EPSB staff shall make a technical visit to the institution.

(c) The institution shall submit the following documentation:

1. Program descriptions required by Section 11 of this administrative regulation;

2. Continuous assessment plan required by Section 11(2) of this administrative regulation; and

3. Fulfillment of Preconditions 1, 2, 3, 5, 7, 8, and 9 established in Section 9 of this administrative regulation.

(d) The EPSB shall provide for a paper review of this documentation by the Reading Committee and the Continuous Assessment Review Committee.

(e) Following review of the documentation, EPSB staff shall make an additional technical visit to the institution.

(3) Stage Two.

(a) A board of examiners team shall make a one (1) day visit to the institution to verify the paper review.

(b) The team shall be comprised of:

1. One (1) representative from a public postsecondary institution;

2. One (1) representative from an independent postsecondary institution; and

3. One (1) representative from the Kentucky Education Association.

(c) The team shall submit a written report of its findings to the EPSB.

(d) The EPSB shall provide a copy of the written report to the institution.

(e)1. The institution may submit a written rejoinder to the report within thirty (30) working days of its receipt.

2. The rejoinder may be supplemented by materials pertinent to the conclusions found in the team's report.

(f) The Accreditation Audit Committee shall review the materials gathered during Stages One and Two and make one (1) of the following recommendations to the EPSB with regards to temporary authorization:

1. Approval;

2. Approval with conditions; or

3. Denial of approval.

(4) Stage Three.

(a) The EPSB shall review the materials and recommendations from the Accreditation Audit Committee and make one (1) of the following determinations with regards to temporary authorization:

1. Approval;

2. Approval with conditions; or

3. Denial of approval.

(b) An institution receiving approval or approval with conditions shall:

1. Hold this temporary authorization for two (2) years; and

2. Continue the developmental process and the first accreditation process established in this administrative regulation.

(c) An institution denied temporary authorization may reapply.

(d) During the two (2) year period of temporary authorization, the institution shall:

1. Admit candidates;

2. Monitor, evaluate, and assess the academic and professional competency of candidates; and

3. Report regularly to the EPSB on the institution's progress.

(e) During the two (2) year period of temporary authorization, the EPSB:

1. May schedule additional technical visits; and

2. Shall monitor progress by paper review of annual reports, admission and exit data, and trend data.

(5) Stage Four.

(a) The institution shall host a first accreditation visit within two (2) years of the approval or approval with conditions of temporary authorization.

(b) All further accreditation activities shall be governed by Section 9 of this administrative regulation.

Section 4. Schedule and Communications. (1) The EPSB shall send an accreditation and program approval schedule to each educator preparation institution no later than August 1 of each year. The first accreditation cycle shall provide for an on-site continuing accreditation visit at a five (5) year interval. The regular accreditation cycle shall provide for an on-site continuing accreditation visit at a seven (7) year interval.

(2) The accreditation and program approval schedule shall be directed to the official designated by the institution as the head of the educator preparation unit with a copy to the president. The head of the educator preparation unit shall disseminate the information to administrative units within the institution, including the appropriate college, school, department, and office.

(3) The EPSB shall annually place a two (2) year schedule of on-site accreditation visits for a Kentucky institution in the agenda materials and minutes of an EPSB business meeting.

(4) The EPSB shall coordinate dates for a joint state and NCATE accreditation on-site visit.

(5) At least six (6) months prior to a scheduled on-site visit, an institution seeking NCATE or state accreditation shall give public notice of the upcoming visit.

(6) The governance unit for educator preparation shall be responsible for the preparation necessary to comply with the requirements for timely submission of materials for accreditation and program approval as established in this administrative regulation.

Section 5. Annual Reports. (1)(a) Each institution shall report annually to the EPSB to provide data about:

1. Faculty and students in each approved program;

2. Progress made in addressing areas for improvement identified by its last accreditation evaluation; and

3. Major program developments in each NCATE standard.

(b)1. An institution seeking accreditation from NCATE and EPSB shall complete the Professional Educator Data System (PEDS) sponsored by AACTE and NCATE and located online at http://www.aacte.org. After the PEDS is submitted electronically,

the institution shall print a copy of the completed report and mail it to the EPSB at 100 Airport Road, Frankfort, Kentucky 40601.

2. An institution seeking state-only accreditation shall complete the Annual State-Only Institutional Data Report online at <u>http://www.kyepsb.net/teacherprep/index.asp</u> and submit it electronically to the division contact through the EPSB Web site.

(2)(a) The EPSB shall review each institution's annual report to monitor the capacity of a unit to continue a program of high quality.

(b) The EPSB may pursue action against the unit based on data received in this report.

(3) The Accreditation Audit Committee shall submit a biennial report, based on data submitted in the annual reports, to the unit head in preparation for an on-site accreditation visit.

Section 6. Content Program Review Committee. (1)(a) The EPSB shall appoint and train a content program review committee in each of the certificate areas to provide content area expertise to EPSB staff and the Reading Committee.

(b) Nominations for the content program review committees shall be solicited from the education constituent groups listed in Section 13 of this administrative regulation.

(2)(a) A content program review committee shall review an educator preparation program to establish congruence of the program with standards of nationally-recognized specialty program associations and appropriate state performance standards.

(b) A content program review committee shall examine program content and faculty expertise.

(3) A content program review committee shall submit written comments to EPSB staff and the Reading Committee for use in the program approval process.

(4) A content program review committee shall not make any determination or decision regarding the approval or denial of a program.

Section 7. Continuous Assessment Review Committee. (1) The EPSB shall appoint and train a Continuous Assessment Review Committee to be comprised of P-12 and postsecondary faculty who have special expertise in the field of assessment.

(2) The Continuous Assessment Review Committee shall conduct a preliminary review of each institution's continuous assessment plan.

(3) The Continuous Assessment Review Committee shall meet in the spring and fall semesters of each year to analyze the continuous assessment plan for those institutions that are within one (1) year of their on-site visit.

(4) The Continuous Assessment Review Committee shall provide technical assistance to requesting institutions in the design, development, and implementation of the continuous assessment plan.

Section 8. Reading Committee. (1) The EPSB shall appoint and train a Reading Committee representative of the constituent groups to the EPSB.

(2) The Reading Committee shall conduct a preliminary review of accreditation materials, annual reports, and program review documents from an educator preparation institution for adequacy, timeliness, and conformity with the corresponding standards.

(3) For first accreditation, the Reading Committee shall:

(a) Review the preconditions documents prepared by the institution; and

(b) Send to the EPSB a preconditions report indicating whether a precondition has been satisfied by documentation. If a precondition has not been met, the institution shall be asked to revise or send additional documentation. A preconditions report stating that the preconditions have been met shall be inserted into the first section of the institutional report.

(4) For continuing accreditation and program approval, the Reading Committee shall:

(a) Determine that a submitted material meets requirements;

(b) Ask that EPSB staff resolve with the institution a discrepancy or omission in the report or program;

(c) Refer an unresolved discrepancy or omission to the on-site accreditation team for resolution; or

(d) Recommend that the evaluation and approval process be

terminated as a result of a severe deficiency in the submitted material.

(5) The EPSB shall discuss a recommendation for termination with the originating institution. The institution may submit a written response which shall be presented, with the Reading Committee comments and written accreditation and program, by EPSB staff for recommendation to the full EPSB.

Section 9. Preconditions for First Unit Accreditation. (1) Eighteen (18) months prior to the scheduled on-site visit of the evaluation team, the educator preparation institution shall submit information to the EPSB, and to NCATE if appropriate, documenting the fulfillment of the preconditions for the accreditation of the educator preparation unit, as established in subsection (2) of this section.

(2) As a precondition for experiencing an on-site first evaluation for educator preparation, the institution shall present documentation to show that the following conditions are satisfied:

(a) Precondition Number 1. The institution recognizes and identifies a professional education unit that has responsibility and authority for the preparation of teachers and other professional education personnel. Required documentation shall include:

1. A letter from the institution's chief executive officer that designates the unit as having primary authority and responsibility for professional education programs;

2. A chart or narrative that lists all professional education programs offered by the institution, including any nontraditional and alternative programs. The chart or narrative report shall depict:

a. The degree or award levels for each program;

b. The administrative location for each program; and

c. The structure or structures through which the unit implements its oversight of all programs;

3. If the unit's offerings include off-campus programs, a separate chart or narrative as described in subparagraph 2 of this paragraph, prepared for each location at which off-campus programs are geographically located; and

4. An organizational chart of the institution that depicts the professional education unit and indicates the unit's relationship to other administrative units within the college or university.

(b) Precondition Number 2. A dean, director, or chair is officially designated as head of the unit and is assigned the authority and responsibility for its overall administration and operation. The institution shall submit a job description for the head of the professional education unit.

(c) Precondition Number 3. Written policies and procedures guide the operations of the unit. Required documentation shall include cover page and table of contents for codified policies, by-laws, procedures, and student handbooks.

(d) Precondition Number 4. The unit has a well-developed conceptual framework that establishes the shared vision for a unit's efforts in preparing educators to work in P-12 schools and provides direction for programs, courses, teaching, candidate performance, scholarship, service, and unit accountability. Required documentation shall include:

1. The vision and mission of the institution and the unit;

2. The unit's philosophy, purposes, and goals;

3. Knowledge bases including theories, research, the wisdom of practice, and education policies, that inform the unit's conceptual framework;

4. Candidate proficiencies aligned with the expectations in professional, state, and institutional standards; and

5. A description of the system by which the candidate proficiencies described are regularly assessed.

(e) Precondition Number 5. The unit regularly monitors and evaluates its operations, the quality of its offerings, the performance of candidates, and the effectiveness of its graduates. Required documentation shall include a description of the unit's assessment and data collection systems that support unit responses to Standards 1 and 2 established in Section 2(2)(b)1 and 2 of this administrative regulation.

(f) Precondition Number 6. The unit has published criteria for admission to and exit from all initial teacher preparation and advanced programs and can provide summary reports of candidate performance at exit. Required documentation shall include:

1. A photocopy of published documentation (e.g., from a cata-

log, student teaching handbook, application form, or Web page) listing the basic requirements for entry to, retention in, and completion of professional education programs offered by the institution, including any nontraditional, alternative or off-campus programs; and

2. A brief summary of candidate performance on assessments conducted for admission into programs and exit from them. This summary shall include:

a. The portion of Title II documentation related to candidate admission and completion that was prepared for the state; and

b. A compilation of results on the unit's own assessments.

(g) Precondition Number 7. The unit's programs are approved by the appropriate state agency or agencies and the unit's summary pass rate meets or exceeds the required state pass rate of eighty (80) percent. Required documentation shall include:

1. The most recent approval letters from the EPSB and CPE, including or appended by a list of approved programs. If any program is not approved, the unit shall provide a statement that it is not currently accepting new applicants into the nonapproved program or programs. For programs that are approved with qualifications or are pending approval, the unit shall describe how it will bring the program or programs into compliance; and

2. Documentation submitted to the state for Title II, indicating that the unit's summary pass rate on state licensure examinations meets or exceeds the required state pass rate of eighty (80) percent. If the required state pass rate is not evident on this documentation, it shall be provided on a separate page.

(h) Precondition Number 8. If the institution has chosen to pursue dual accreditation from both the state and NCATE and receive national recognition for a program or programs, the institution shall submit its programs for both state and national review.

(i) Precondition Number 9. The institution is accredited, without probation or an equivalent status, by the appropriate regional institutional accrediting agency recognized by the U.S. Department of Education. Required documentation shall include a copy of the current regional accreditation letter or report that indicates institutional accreditation status.

Section 10. Institutional Report. (1) For a first accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a written narrative describing the unit's conceptual framework and evidence that demonstrates the six (6) standards are met. The written narrative may be supplemented by a chart, graph, diagram, table, or other similar means of presenting information. The institutional report, including appendices, shall not exceed 100 pages in length. The report shall be submitted to the EPSB and to NCATE, if appropriate.

(2) For a continuing accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a report not to exceed 100 pages addressing changes at the institution that have occurred since the last accreditation visit, a description of the unit's conceptual framework, and evidence that demonstrates that the six (6) standards are met. The narrative shall describe how changes relate to an accreditation standard and the results of the continuous assessment process, including program evaluation. The report shall be submitted to the EPSB and to NCATE, if appropriate.

Section 11. Program Review Documents. Eighteen (18) months for first accreditation and twelve (12) months for continuing accreditation in advance of the scheduled on-site evaluation visit, the educator preparation unit shall prepare and submit to the EPSB for each separate program of educator preparation for which the institution is seeking approval a concise description which shall provide the following information:

(1) The unit's conceptual framework for the preparation of school personnel which includes:

(a) The mission of the institution and unit;

(b) The unit's philosophy, purposes, professional commitments, and dispositions;

(c) Knowledge bases, including theories, research, the wisdom of practice, and education policies;

(d) Performance expectations for candidates, aligning the expectations with professional, state, and institutional standards; and

(e) The system by which candidate performance is regularly assessed;

(2) The unit's continuous assessment plan that provides:

 (a) An overview of how the unit will implement continuous assessment to assure support and integration of the unit's conceptual framework;

(b) Each candidate's mastery of content prior to exit from the program, incorporating the assessment of the appropriate performance standards;

(c) Assessment of the program that includes specific procedures used to provide feedback and make recommendations to the program and unit; and

(d) A monitoring plan for candidates from admission to exit;

(3) Program experiences including the relationship among the program's courses and experiences, content standards of the relevant national specialty program associations (e.g., National Council of Teachers of Mathematics, National Council for the Social Studies, The Council for Exceptional Children, North American Association for Environmental Education, etc.), student academic expectations as established in 703 KAR 4:060, and relevant state performance standards established in 16 KAR 1:010 or incorporated by reference into this administrative regulation including:

(a) NCATE Unit Standards established in Section 2(2)(b) of this administrative regulation;

(b) Kentucky's Safety Educator Standards for Preparation and Certification;

(c) National Association of School Psychologists, Standards for School Psychology Training Programs, Field Placement Programs, Credentialing Standards; and

(d) Kentucky's Standards for Guidance Counseling Programs;

(4)(a) Identification of how the program integrates the unit's continuous assessment to assure each candidate's mastery, prior to exit from the program, of content of the academic discipline, and state performance standards as established in 16 KAR 1:010; and

(b) Identification of how the program utilizes performance assessment to assure that each candidate's professional growth is consistent with the Kentucky Teacher Standards as established in 16 KAR 1:010;

(5) A list of faculty responsible for and involved with the conduct of the specific program, along with the highest degree of each, responsibilities for the program, and status of employment within the unit and the university; and

(6) A curriculum guide sheet or contract provided to each candidate before or at the time of admittance to the program.

Section 12. Teacher Leader Master's Programs and Planned Fifth-Year Programs for Rank II. (1) All master's programs for rank change or planned fifth-year program for Rank II approved or accredited by the EPSB prior to May 31, 2008 shall no longer be approved or accredited as of December 31, 2010.

(a) Master's programs for initial certification shall be exempt from the requirements of this section.

(b) A master's program or planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 shall cease admitting new candidates after December 31, 2010.

(c) Candidates admitted to a master's program or planned fifthyear program for Rank II approved by the EPSB prior to May 31, 2008 shall complete the program by January 31, 2013.

(d) An institution of higher learning with a master's program or a planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 may submit a redesigned program for approval pursuant to the requirements of subsection (2) of this section beginning May 31, 2008.

(e) An institution may become operational beginning January 1, 2009, if the institution:

1. Submits a redesigned master's program or a planned fifthyear program for Rank II for review pursuant to the requirements of subsection (2) of this section; and

2. Receives approval of the redesigned program by the EPSB pursuant to Section 22 of this administrative regulation.

(f) [Institutions submitting a redesigned master's program or planned fifth-year program for Rank II shall not be subject to any submission dates for program approval until December 31, 2010.

(g)]1. The EPSB shall appoint a Master's Redesign Review

Committee to conduct reviews of redesigned master's programs and planned fifth-year programs for Rank II submitted for approval <u>after [between]</u> May 31, 2008 [and December 31, 2010].

2. A master's program or a planned fifth-year program for Rank II submitted for approval <u>after</u> [between] May 31, 2008 [and December 31, 2010] shall not be reviewed by the Continuous Assessment Review Committee, Content Program Review Committee, or the Reading Committee prior to presentation to the EPSB pursuant to Section 22(2) of this administrative regulation, but shall be reviewed by the Master's Redesign Review Committee.

3.a. After review of a master's program or planned fifth-year program for Rank II, the Master's Redesign Review Committee shall issue one (1) of the following recommendations to the Educational Professional Standards Board:

i. Approval;

ii. Approval with conditions; or

iii. Denial of approval.

b. The EPSB shall consider recommendations from staff and the Master's Redesign Review Committee and shall issue a decision pursuant to Section 22(4) of this administrative regulation.

(2) Beginning May 31, 2008, the educator preparation unit shall prepare and submit to the EPSB for each separate master's program or planned fifth-year program for Rank II for which the institution is seeking approval a concise description which shall provide the following information:

(a) Program design components which shall include the following descriptions and documentation of:

1. The unit's plan to collaborate with school districts to design courses, professional development, and job-embedded professional experiences that involve teachers at the elementary, middle, and secondary levels;

2. The unit's collaboration plan with the institution's Arts and Science faculty to meet the academic and course accessibility needs of candidates;

3. The unit's process to individualize a program to meet the candidate's professional growth or improvement plan;

4. The unit's method to incorporate interpretation and analysis of annual P-12 student achievement data into the program; and

5. The institution's plan to facilitate direct service to the collaborating school districts by education faculty members.

(b) Program curriculum that shall include core component courses designed to prepare candidates to:

1. Be leaders in their schools and districts;

2. Evaluate high-quality research on student learning and college readiness;

3. Deliver differentiated instruction for P-12 students based on continuous assessment of student learning and classroom management;

4. Gain expertise in content knowledge, as applicable;

5. Incorporate reflections that inform best practice in preparing P-12 students for postsecondary opportunities;

6. Support P-12 student achievement in diverse settings;

7. Enhance instructional design utilizing the Program of Studies, Core Content for Assessment, and college readiness standards:

8. Provide evidence of candidate mastery of Kentucky Teacher Standards utilizing advanced level performances and Specialized Professional Associations (SPA) Standards if applicable; and

9. Design and conduct professionally relevant research projects; and

(c) The unit's continuous assessment plan that includes, in addition to the requirements of Section 11(2) of this administrative regulation:

1. Instruments to document and evaluate candidate ability to demonstrate impact on P-12 student learning;

2. Clinical experiences and performance activities; and

3. A description of a culminating performance-based assessment.

(3)(a) A master's program for rank change approved pursuant to this section shall be known as a Teacher Leader Master's Program.

(b) Upon completion of a Teacher Leader Master's Program and recommendation of the institution, a candidate may apply to the EPSB for a Teacher Leader endorsement.

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(c)1. An institution with an approved Teacher Leader Master's Program may establish an endorsement program of teacher leadership coursework for any candidate who received a Master's degree at an out of state institution or who received a master's degree from a Kentucky program approved prior to May 31, 2008.

2. Upon completion of the teacher leadership course work and recommendation of the institution, a candidate who has received a master's degree at an out of state institution or a master's degree from a Kentucky program approved prior to May 31, 2008, may apply to the EPSB for a Teacher Leader endorsement.

Section 13. Board of Examiners. (1) A Board of Examiners shall:

(a) Be recruited and appointed by the EPSB. The board shall be comprised of an equal number of representatives from three (3) constituent groups:

1. Teacher educators;

2. P-12 teachers and administrators; and

3. State and local policymaker groups; and

(b) Include at least thirty-six (36) members representing the following constituencies;

1. Kentucky Education Association, at least ten (10) members;

2. Kentucky Association of Colleges of Teacher Education, at least ten (10) members; and

3. At least ten (10) members nominated by as many of the following groups as may wish to submit a nomination:

a. Kentucky Association of School Administrators;

b. Persons holding positions in occupational education;

c. Kentucky Branch National Congress of Parents and Teachers;

d. Kentucky School Boards Association;

e. Kentucky Association of School Councils;

f. Kentucky Board of Education;

g. Kentucky affiliation of a national specialty program association;

h. Prichard Committee for Academic Excellence;

i. Partnership for Kentucky Schools; and

j. Subject area specialists in the Kentucky Department of Education.

(2) An appointment shall be for a period of four (4) years. A member may serve an additional term if renominated and reappointed in the manner prescribed for membership. A vacancy shall be filled by the EPSB as it occurs.

(3) A member of the Board of Examiners and a staff member of the EPSB responsible for educator preparation and approval of an educator preparation program shall be trained by NCATE or trained in an NCATE-approved state program.

(4) The EPSB shall select and appoint for each scheduled onsite accreditation a team of examiners giving consideration to the number and type of programs offered by the institution. Team appointments shall be made at the beginning of the academic year for each scheduled evaluation visit. A replacement shall be made as needed.

(5) For an institution seeking NCATE accreditation, the EPSB and NCATE shall arrange for the joint Board of Examiners to be co chaired by an NCATE appointed team member and a state team chair appointed by the EPSB. The joint Board of Examiners shall be composed of a majority of NCATE appointees in the following proportions, respectively: NCATE and state - six (6) and five (5), five (5) and four (4), four (4) and three (3), three (3) and two (2). The size of the Board of Examiners shall depend upon the size of the institution and the number of programs to be evaluated.

(6) For an institution seeking state-only accreditation, the EPSB shall appoint a chair from a pool of trained Board of Examiners members.

(7) For state-only accreditation, the Board of Examiners shall have six (6) members.

(8) The EPSB shall make arrangements for the release time of a Board of Examiner member from his place of employment for an accreditation visit.

Section 14. Assembly of Records and Files for the Evaluation Team. For convenient access, the institution shall assemble, or make available, records and files of written materials which supplement the institutional report and which may serve as further documentation. The records and files shall include:

(1) The faculty handbook;

(2) Agenda, list of participants, and products of a meeting, workshop, or training session related to a curriculum and governance group impacting professional education;

(3) Faculty vitae or resumes;

(4) A random sample of graduates' transcripts;

(5) Conceptual framework documents;

(6) A curriculum program, rejoinder, or specialty group response that was submitted as a part of the program review process;

(7) Course syllabi;

(8) Policies, criteria, and student records related to admission and retention;

(9) Samples of students' portfolios and other performance assessments;

(10) Record of performance assessments of candidate progress and summary of results including a program change based on continuous assessment;

(11) Student evaluations, including student teaching and internship performance; and

(12) Data on performance of graduates, including results of state licensing examinations and job placement rates.

Section 15. Previsit to the Institution. No later than one (1) month prior to the scheduled on-site evaluation visit, the EPSB shall conduct a previsit to the institution to make a final review of the arrangements. For an NCATE-accredited institution, the previsit shall be coordinated with NCATE.

Section 16. On-site Accreditation Visit. (1) At least one (1) staff member of the EPSB shall be assigned as support staff and liaison during the accreditation visit.

(2) The educator preparation institution shall reimburse a state team member for travel, lodging, and meals in accordance with 200 KAR 2:006. A team member representing NCATE shall be reimbursed by the educator preparation institution.

(3) The evaluation team shall conduct an on-site evaluation of the self-study materials prepared by the institution and seek out additional information, as needed, to make a determination as to whether the standards were met for the accreditation of the institution's educator preparation unit and for the approval of an individual educator preparation program. The evaluation team shall make use of the analyses prepared through the preliminary review process.

(4)(a) An off-campus site which offers a self-standing program shall require a team review. If additional team time is required for visiting an off-campus site, the team chair, the institution, and the EPSB shall negotiate special arrangements.

(b) Off-campus programs shall be:

1. Considered as part of the unit and the unit shall be accredited, not the off-campus programs; and

2. Approved in accordance with Section 28 of this administrative regulation.

(5) In a joint team, all Board of Examiners members shall vote on whether the educator preparation institution has met the six (6) NCATE standards. A determination about each standard shall be limited to the following options:

(a) Met;

(b) Met, with one (1) or more defined areas for improvement; or (c) Not met.

(6)(a) The Board of Examiners shall review each program and cite the areas for improvement for each, if applicable.

(b) The Board of Examiners shall define the areas for improvement in its report.

(7) The processes established in subsections (5) and (6) of this section shall be the same for first and continuing accreditation.

(8) The on-site evaluation process shall end with a brief oral report:

(a) By the NCATE team chair and state team chair for a joint state/NCATE visit; or

(b) By the state team chair for a state-only visit.

Section 17. Preparation and Distribution of the Evaluation Report. (1) For a state-only visit, the evaluation report shall be prepared and distributed as follows:

(a) The EPSB staff shall collect the written evaluation pages from each Board of Examiners member before leaving the institution.

(b) The first draft shall be typed and distributed to Board of Examiners members.

(c) A revision shall be consolidated by the Board of Examiners chair who shall send the next draft to the unit head to review for factual accuracy.

(d) The unit head shall submit written notification to the EPSB confirming receipt of the draft.

(e) The unit head shall submit to the EPSB and Board of Examiners chair within ten (10) working days either:

1. A written correction to the factual information contained in the report; or

2. Written notification that the unit head has reviewed the draft and found no factual errors.

(f) The Board of Examiners chair shall submit the final report to the EPSB and a copy to each member of the Board of Examiners.

(g) The final report shall be printed by the EPSB and sent to the institution and to the Board of Examiners members within thirty

(30) to sixty (60) working days of the conclusion of the on-site visit.
 (2) For a joint state/NCATE visit, the evaluation report shall be prepared and distributed as required by this subsection:

(a) The NCATE chair shall be responsible for the preparation, editing and corrections to the NCATE report.

(b) The state chair shall be responsible for the preparation, editing and corrections of the state report in the same manner established in subsection (1) of this section for a state-only visit.

(c) The EPSB Board of Examiners report for state/NCATE continuing accreditation visits shall be prepared in accordance with the format prescribed by NCATE for State/NCATE accreditation visits and available on its Web site at http://www.ncate.org/boe/boeResources.asp.

Section 18. Institutional Response to the Evaluation Report. (1)(a) The institution shall acknowledge receipt of the evaluation report within thirty (30) working days of receipt of the report.

(b) If desired, the institution shall submit within thirty (30) working days of receipt of the report a written rejoinder to the report which may be supplemented by materials pertinent to a conclusion found in the evaluation report.

(c) The rejoinder and the Board of Examiners report shall be the primary documents reviewed by the Accreditation Audit Committee and EPSB.

(d) An unmet standard or area of improvement statement cited by the team may be recommended for change or removal by the Accreditation Audit Committee or by the EPSB because of evidence presented in the rejoinder. The Accreditation Audit Committee or the EPSB shall not be bound by the Board of Examiners decision and may reach a conclusion different from the Board of Examiners or NCATE.

(2) If a follow-up report is prescribed through accreditation with conditions, the institution shall follow the instructions that are provided with the follow-up report.

(3) If the institution chooses to appeal a part of the evaluation results, the procedure established in Section 24 of this administrative regulation shall be followed.

(4) The institution shall make an annual report relating to the unit for educator preparation and relating to the programs of preparation as required by Section 5 of this administrative regulation.

Section 19. Accreditation Audit Committee. (1) The Accreditation Audit Committee shall be a committee of the EPSB, and shall report to the full EPSB. The EPSB shall appoint the Accreditation Audit Committee as follows:

(a) One (1) lay member;

(b) Two (2) classroom teachers, appointed from nominees provided by the Kentucky Education Association;

(c) Two (2) teacher education representatives, one (1) from a state-supported institution and one (1) from an independent educator preparation institution, appointed from nominees provided by

the Kentucky Association of Colleges for Teacher Education; and (d) Two (2) school administrators appointed from nominees

provided by the Kentucky Association of School Administrators. (2) The chairperson of the EPSB shall designate a member of

the Accreditation Audit Committee to serve as its chairperson.

(3) An appointment shall be for a period of four (4) years except that three (3) of the initial appointments shall be for a two (2) year term. A member may serve an additional term if renominated and reappointed in the manner established for membership. A vacancy shall be filled as it occurs in a manner consistent with the provisions for initial appointment.

(4) A member of the Accreditation Audit Committee shall be trained by NCATE or in NCATE-approved training.

(5) Following an on-site accreditation visit, the Accreditation Audit Committee shall review the reports and materials constituting an institutional self-study, the report of the evaluation team, and the institutional response to the evaluation report. The committee shall then prepare a recommendation for consideration by the EPSB.

(a) The committee shall review procedures of the Board of Examiners to determine whether approved accreditation guidelines were followed.

(b) For each institution, the committee shall make a recommendation with respect to the accreditation of the institutional unit for educator preparation as well as for approval of the individual programs of preparation.

(c) For first accreditation, one (1) of four (4) recommendations shall be made:

1. Accreditation;

2. Provisional accreditation;

3. Denial of accreditation; or

4. Revocation of accreditation.

(d) For regular continuing accreditation, one (1) of four (4) recommendations shall be made:

1. Accreditation;

2. Accreditation with conditions;

3. Accreditation with probation; or

4. Revocation of accreditation.

(6) For both first and continuing accreditation, the Accreditation Audit Committee shall review each program report including a report from the Reading Committee, Board of Examiners team, and institutional response and shall make one (1) of three (3) recommendations for each individual preparation program to the EPSB:

(a) Approval;

(b) Approval with conditions; or

(c) Denial of approval.

(7) The Board of Examiners Team Chair may write a separate response to the recommendation of the Accreditation Audit Committee's if the Accreditation Audit Committee decision differs from the Board of Examiners' evaluation report.

(8) The Accreditation Audit Committee shall compile accreditation data and information for each Kentucky institution that prepares school personnel. It shall prepare for the EPSB reports and recommendations regarding accreditation standards and procedures as needed to improve the accreditation process and the preparation of school personnel.

Section 20. Official State Accreditation Action by the Education Professional Standards Board. (1) A recommendation from the Accreditation Audit Committee shall be presented to the full EPSB.

(2) The EPSB shall consider the findings and recommendations of the Accreditation Audit Committee and make a final determination regarding the state accreditation of the educator preparation unit.

(3) Decision options following a first accreditation visit shall include:

(a) Accreditation.

1. This accreditation decision indicates that the unit meets each of the six (6) NCATE standards for unit accreditation. Areas for improvement may be cited, indicating problems warranting the institution's attention. In its subsequent annual reports, the professional education unit shall be expected to describe progress made in addressing the areas for improvement cited in the EPSB's action report. 2. The next on-site visit shall be scheduled five (5) years following the semester of the visit;

(b) Provisional accreditation.

1. This accreditation decision indicates that the unit has not met one (1) or more of the NCATE standards. The unit has accredited status but shall satisfy provisions by meeting each previouslyunmet standard. EPSB shall require submission of documentation that addresses the unmet standard or standards within six (6) months of the accreditation decision, or shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the provisional accreditation decision was granted. If the EPSB decides to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two (2) years. Following the focused visit, the EPSB shall decide to:

a Accredit or

b. Revoke accreditation.

2. If the unit is accredited, the next on-site visit shall be scheduled for five (5) years following the semester of the first accreditation visit;

(c) Denial of accreditation. This accreditation decision indicates that the unit does not meet one (1) or more of the NCATE standards, and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates; or

(d) Revocation of accreditation. This accreditation decision indicates that the unit has not sufficiently addressed the unmet standard or standards following a focused visit.

(4) Decision options following a continuing accreditation visit shall include:

(a) Accreditation.

1. This accreditation decision indicates that the unit meets each of the six (6) NCATE standards for unit accreditation. Areas for improvement may be cited, indicating problems warranting the institution's attention. In its subsequent annual reports, the professional education unit shall be expected to describe progress made in addressing the areas for improvement cited in EPSB's action report.

2. The next on-site visit shall be scheduled for seven (7) years following the semester of the visit;

(b) Accreditation with conditions.

1. This accreditation decision indicates that the unit has not met one (1) or more of the NCATE standards. If the EPSB renders this decision, the unit shall maintain its accredited status, but shall satisfy conditions by meeting previously unmet standards. EPSB shall require submission of documentation that addresses the unmet standard or standards within six (6) months of the decision to accredit with conditions, or shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the accreditation with conditions decision was granted. If the EPSB decides to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two (2) years. Following the focused visit, the EPSB shall decide to:

a. Continue accreditation; or

b. Revoke accreditation.

2. If the EPSB renders the decision to continue accreditation, the next on-site visit shall be scheduled for seven (7) years following the semester in which the continuing accreditation visit occurred;

(c) Accreditation with probation.

1. This accreditation decision indicates that the unit has not met one (1) or more of the NCATE standards and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates. As a result of the continuing accreditation review, the EPSB has determined that areas for improvement with respect to standards may place an institution's accreditation in jeopardy if left uncorrected. The institution shall schedule an onsite visit within two (2) years of the semester in which the probationary decision was rendered. This visit shall mirror the process for first accreditation. The unit as part of this visit shall address all NCATE standards in effect at the time of the probationary review at the two (2) year point. Following the on-site review, the EPSB shall decide to:

a. Continue accreditation; or

b. Revoke accreditation.

2. If accreditation is continued, the next on-site visit shall be scheduled for five (5) years after the semester of the probationary visit; or

(d) Revocation of accreditation. Following a comprehensive site visit that occurs as a result of an EPSB decision to accredit with probation or to accredit with conditions, this accreditation decision indicates that the unit does not meet one (1) or more of the NCATE standards, and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates. Accreditation shall be revoked if the unit:

1. No longer meets preconditions to accreditation, such as loss of state approval or regional accreditation;

2. Misrepresents its accreditation status to the public;

3. Falsely reports data or plagiarized information submitted for accreditation purposes; or

4. Fails to submit annual reports or other documents required for accreditation.

(5) Notification of EPSB action to revoke continuing accreditation or deny first accreditation, including failure to remove conditions, shall include notice that:

(a) The institution shall inform students currently admitted to a certification or rank program of the following:

1. A student recommended for certification or advancement in rank within the twelve (12) months immediately following the denial or revocation of state accreditation and who applies to the EPSB within the fifteen (15) months immediately following the denial or revocation of state accreditation shall receive the certificate or advancement in rank; and

2. A student who does not meet the criteria established in subparagraph 1 of this paragraph shall transfer to a state accredited education preparation unit in order to receive the certificate or advancement in rank; and

(b) An institution for which the EPSB has denied or revoked accreditation shall seek state accreditation through completion of the first accreditation process. The on-site accreditation visit shall be scheduled by the EPSB no earlier than two (2) years following the EPSB action to revoke or deny state accreditation.

Section 21. Revocation for Cause. (1) If an area of concern or an allegation of misconduct arises in between accreditation visits, staff shall bring a complaint to the EPSB for initial review.

(2) After review of the allegations in the complaint, the EPSB may refer the matter to the Accreditation Audit Committee for further investigation.

(3)(a) Notice of the EPSB's decision to refer to the matter and the complaint shall be sent to the institution.

(b) Within thirty (30) days of receipt of the complaint, the institution shall respond to the allegations in writing and provide evidence pertaining to the allegations in the complaint to the EPSB.

(4)(a) The Accreditation Audit Committee shall review any evidence supporting the allegations and any information provided by the institution.

(b) Upon completion of the review, the Accreditation Audit Committee shall issue a report containing one (1) of the following four (4) recommendations to the EPSB:

1. Accreditation;

2. Accreditation with conditions;

3. Accreditation with probation; or

4. Revocation of accreditation.

(5) The institution shall receive a copy of the Accreditation Audit Committee's report and may file a response to the Accreditation Audit Committee's recommendation.

(6)(a) The recommendation from the Accreditation Audit Committee and the institution's response shall be presented to the EPSB.

(b) The EPSB shall consider the findings and recommendations of the Accreditation Audit Committee and make a final determination regarding the accreditation of the educator preparation unit.

Section 22. Program Approval Action Outside the First or Regular Continuing Accreditation Cycle. (1) Approval of a program shall be through the program process established in Section 11 of this administrative regulation except that a new program not submitted during the regular accreditation cycle or a program substantially revised since submission during the accreditation process shall be submitted for approval by the EPSB prior to admission of a student to the program.

(2) For a new or substantially revised program, the EPSB shall consider a recommendation by staff, including review by the Continuous Assessment Review Committee, Content Program Review Committee, and the Reading Committee.

(3) A recommendation made pursuant to subsection (2) of this section shall be presented to the full EPSB.

(4) Program approval decision options shall be:

(a) Approval, with the next review scheduled during the regular accreditation cycle unless a subsequent substantial revision is made;

(b) Approval with conditions, with a maximum of one (1) year probationary extension for correction of a specified problem to be documented through written materials or through an on-site visit. At the end of the extension, the EPSB shall decide that the documentation supports:

1. Approval; or

2. Denial of approval; or

(c) Denial of approval, indicating that a serious problem exists which jeopardizes the quality of preparation of school personnel.

(5) The EPSB shall order review of a program if it has cause to believe that the quality of preparation is seriously jeopardized. The review shall be conducted under the criteria and procedures established in the EPSB "Emergency Review of Certification Programs Procedure" policy incorporated by reference. The on-site review shall be conducted by EPSB staff and a Board of Examiners team. The review shall result in a report to which the institution may respond. The review report and institutional response shall be used by the Executive Director of the EPSB as the basis for a recommendation to the full EPSB for:

(a) Approval;

(b) Approval with conditions; or

(c) Denial of approval for the program.

(6) If the EPSB denies approval of a program, the institution shall notify each student currently admitted to that program of the EPSB action. The notice shall include the following information:

(a) A student recommended for certification or advancement in rank within the twelve (12) months immediately following the denial of state approval and who applies to the EPSB within the fifteen (15) months immediately following the denial of state approval shall receive the certification or advancement in rank; and

(b) A student who does not meet the criteria established in paragraph (a) of this subsection shall transfer to a state approved program in order to receive the certificate or advancement in rank.

Section 23. Public Disclosure. (1) After a unit and program approval decision becomes final, the EPSB shall prepare official notice of the action. The disclosure notice shall include the essential information provided in the official letter to the institution, including the decision on accreditation, program approval, standards not met, program areas for improvement, and dates of official action.

(2) The public disclosure shall be entered into the minutes of the board for the meeting in which the official action was taken by the EPSB.

(3) Thirty (30) days after the institution has received official notification of EPSB action, the EPSB shall on request provide a copy of the public disclosure notice to the Kentucky Education Association, the Council on Postsecondary Education, the Association of Independent Kentucky Colleges and Universities or other organizations or individuals.

Section 24. Appeals Process. (1) If an institution seeks appeal of a decision, the institution shall appeal within thirty (30) days of receipt of the EPSB official notification. An institution shall appeal on the grounds that:

(a) A prescribed standard was disregarded;

(b) A state procedure was not followed; or

(c) Evidence of compliance in place at the time of the review and favorable to the institution was not considered.

(2) An ad hoc appeals board of no fewer than three (3) mem-

bers shall be appointed by the EPSB chair from members of the Board of Examiners who have not had involvement with the team visit or a conflict of interest regarding the institution. The ad hoc committee shall recommend action on the appeal to the EPSB.

(3) The consideration of the appeal shall be in accordance with KRS Chapter 13B.

Section 25. Approval of Alternative Route to Certification Programs. (1) Alternative route programs authorized under KRS 161.028(1)(s) or (t) shall adhere to the educator preparation unit accreditation and program approval processes established in this administrative regulation and in the EPSB policy and procedure entitled "Approval of Alternative Route to Certification Program Offered Under KRS 161.028" as a condition of offering an educator certification program or program leading to a rank change.

(2) The EPSB shall consider a waiver upon request of the institution offering the alternative route program. The request shall be submitted in writing no later than thirty (30) days prior to the next regularly-scheduled EPSB meeting. In granting the waiver, the board shall consider the provisions of this administrative regulation and any information presented that supports a determination of undue restriction.

Section 26. In compliance with the Federal Title II Report Card State Guidelines established in 20 U.S.C. 1027 and 1028, the EPSB shall identify an educator preparation unit as:

(1) "At-risk of low performing" if an educator preparation program has received a:

(a) State accreditation rating of "provisional"; or

(b) State accreditation rating of "accreditation with conditions"; or

(2) "Low performing" if an educator preparation program has received a state accreditation rating of "accreditation with probation".

Section 27. The Education Professional Standards Board shall produce a state report card, which shall include:

(1) General information on the institution and the educator preparation unit;

(2) Contact information for the person responsible for the educator preparation unit;

(3) Type or types of accreditation the unit holds;

(4) Current state accreditation status of the educator preparation unit;

(5) Year of last state accreditation visit and year of next scheduled visit;

(6) Table of the unit's approved certification program or programs;

(7) Tables relating the unit's total enrollment disaggregated by ethnicity and gender for the last three (3) years;

(8) Tables relating the unit's faculty disaggregated by the number of full-time equivalents (FTE), ethnicity, and gender for the last three (3) years;

(9) Table of the number of program completers (teachers and administrators) for the last three (3) years;

(10) Table relating pass rates on the required assessments;

(11) Table relating pass rates for the Kentucky Teacher Internship Program;

(12) Table relating pass rates for the Kentucky Principal Internship Program (if applicable);

(13) Table indicating student teacher satisfaction with the preparation program;

(14) Table relating teacher intern satisfaction with the preparation program;

(15) Table relating new teacher (<3 years) and supervisor satisfaction with the preparation program.

Section 28. Approval of Off-site and On-line Programs. (1) Institutions in Kentucky with educator preparation programs shall seek approval from the Education Professional Standards Board before offering courses or whole programs at an off-campus site.

(a) The institution shall submit a written request to the board to begin offering courses at the off-site location describing the location and physical attributes of the off-campus site, resources to be provided, faculty and their qualifications, and a list of courses or programs to be offered.

(b) The off-site location shall be approved by the board before the institution may begin offering courses at the location.

(2)(a) Until May 31, 2008, initial and continuing on-line educator preparation programs shall be regionally or nationally accredited and accredited or approved, as applicable, by the program's state of origin.

(b) Beginning June 1, 2008, initial and continuing on-line educator preparation programs originating from outside Kentucky shall be regionally accredited, accredited or approved, as applicable, by the program's state of origin, and accredited by NCATE.

Section 29. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Professional Standards for the Accreditation of Teacher Preparation Institutions", 2008 Edition, National Council for Accreditation of Teacher Education;

(b) "Education Professional Standards Board Accreditation of Preparation Programs Procedure", August 2002;

(c) "Education Professional Standards Board Approval of Alternative Route to Certification Program Offered under KRS 161.028", August 2002;

(d) "Education Professional Standards Board Emergency Review of Certification Programs Procedure", September 2003;

(e) "Kentucky's Safety Educator Standards for Preparation and Certification", May 2004;

(f) "National Association of School Psychologists, Standards for School Psychology Training Programs, Field Placement Programs, Credentialing Standards", July 2000; and

(g) "Kentucky's Standards for Guidance Counseling Programs" derived from the Council for Accreditation of Counseling and Related Education Programs (CACREP) Standards, Education Professional Standards Board, November 2004.

(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: January 10, 2011

FILED WITH LRC: January 11, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 28, 2011 at 9 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 28, 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: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for accreditation of an educator preparation unit and approval of a program to prepare an educator.

(b) The necessity of this administrative regulation: This admin-

istrative regulation is necessary to alert educator preparation institutions of the requirements for accreditation and program approval.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards for, approve, and evaluate college, university, and school district programs for the preparation of teachers and other professional school personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the standards and the review process for accreditation of educator preparation units and approval of 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 amendment makes the Master's Redesign Review Committee a standing committee so that all future master's degree and planned fifth-year programs for rank change in Kentucky will be reviewed by one committee.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure consistency in program review and implementation for all master's degree and planned fifth-year programs for rank change.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards for, approve, and evaluate college, university, and school district programs for the preparation of teachers and other professional school personnel.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will maintain the current standards of review for all future institutions of higher learning seeking to provide master's degree and planned fifth-year programs for rank change.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 30 Educator Preparation Institutions and any institutions seeking future accreditation for an educator preparation program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The 30 Educator Preparation Institutions and institutions seeking future approval for master's degree or planned fifth-year programs for rank change will have to submit programs to the Master's Redesign Review Committee for initial approval.

(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 impact the institutions financially.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs will benefit from only having one reviewing committee for their master's degree and planned fifth year programs for rank change. Also, all programs will be subject to the same standards for approval.

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

(a) Initially: There should be no additional cost to the Education Professional Standards Board.

(b) On a continuing basis: There should be no additional cost to the Education Professional Standards Board.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, if new, or by the change if it is an amendment: No fees are associated with this amendment.

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

(9) TIERING: Is tiering applied? No, all educator preparation programs will be treated the same.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public colleges and universities, the Education Professional Standards Board, and the 174 school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no cost to the any government agency.

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

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

(c) How much will it cost to administer this program for the first year? There should be no cost to administer this program since the institutions will be required to directly reimburse the Board of Examiners team members.

(d) How much will it cost to administer this program for subsequent years? There should be no cost to administer this program since the institutions will be required to directly reimburse the Board of Examiners team members.

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

Revenues (+/-): No additional revenue is anticipated.

Expenditures (+/-): Educator Preparation Institutions will have to expend an additional \$6000 every seven (7) years to maintain accreditation. This is an approximate amount and will differ depending on the location of the institution and the size of the institution's educator preparation program.

Other Explanation:

## EDUCATION PROFESSIONAL STANDARDS BOARD (Amendment)

16 KAR 6:010. [Written] Examination prerequisites for teacher certification.

RELATES TO: KRS 161.020, 161.028(1), 161.030(3), (4) STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3) and (4) requires the Education Professional Standards Board to select the appropriate assessments required prior to teacher certification. This administrative regulation establishes the written examination pre-requisites for teacher certification.

Section 1. A teacher applicant for certification shall successfully complete the appropriate written tests identified in this adminis-

trative regulation prior to Kentucky teacher certification.

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

(1) An applicant for Interdisciplinary Early Childhood Education certification (birth to primary) shall take "Interdisciplinary Early Childhood Education (0023)" with a passing score of 166.

(2) An applicant for Elementary certification (grades P-5) shall take "Elementary Education: Content Knowledge (0014)" with a passing score of 148.

(3) An applicant for certification at the middle school level (grades five (5) through nine (9)) shall take the content test or tests based on the applicant's content area or areas with the corresponding passing scores as identified in this subsection:

(a) Middle School English and Communications: "Middle School English Language Arts (0049)" - 158;

(b) Middle School Mathematics: "Middle School Mathematics (0069)" - 148;

(c) Middle School Science: "Middle School Science (0439)" - 144; or

(d) Middle School Social Studies: "Middle School Social Studies (0089)" - 149.

(4) An applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take the content test or tests corresponding to the applicant's content area or areas with the passing scores identified in this subsection:

(a) Biology: "Biology: Content Knowledge (0235)" - 146;

(b) Chemistry: "Chemistry: Content Knowledge (0245)" - 147;

(c) Earth Science: "Earth and Space Sciences: Content Knowledge (0571)" 1 147;

(d) English:

1."English Language, Literature and Composition: Content Knowledge (0041)" - 160; and

2. "English Language, Literature and Composition Essays (0042)" - 155;

(e) Mathematics:

1. "Mathematics: Content Knowledge (0061)" - 125; and

2. "Mathematics: Proofs, Models and Problems, Part 1 (0063)" - 141;

(f) Physics: "Physics: Content Knowledge (0265)" - 133; or

(g) Social Studies:

1. "Social Studies: Content Knowledge (0081)" - 151; and

2. "Social Studies: Interpretation of Materials (0083)" - 159.

(5) An applicant for certification in all grades shall take the content test or tests corresponding to the applicant's area or areas of specialization identified in this subsection, and, if a passing score is established in this subsection, the applicant shall achieve the passing score or higher:

(a) Art:

1. "Art: Content Knowledge (0133)" - 158; and

2. "Art Making (0131)" - 154;

(b) French:

<u>1. Until August 31, 2011,</u> "French: World Language (5174)" - no passing score; and

2. Beginning September 1, 2011, "French: World Language (5174)" - 162[(0174)"];

(c) German:

<u>1. Until August 31, 2011,</u> "German: World Language (5183)" - no passing score; and

2. Beginning September 1, 2011, "German: World Language (5183)" - 163[(0183)"];

(d) Health: "Health Education (0550)" - 630;

(e) Health and Physical Education:

1.<u>a. Until August 31, 2011.</u> "Health and Physical Education: Content Knowledge (0856)" <u>- no passing score</u>; and

b. Beginning September 1, 2011, Health and Physical Education: Content Knowledge (0856)" - 156; and

2. "Physical Education: Movement Forms - Analysis and Design (0092)" - 151;

(f) Integrated Music:

1. "Music: Content Knowledge (0113)" - 154; and

2. "Music: Concepts and Processes (0111)" - 145;

(g) Instrumental Music:

1. "Music: Content Knowledge (0113)" - 154; and

2. "Music: Concepts and Processes (0111)" - 145;

(h) Vocal Music:

1. "Music: Content Knowledge (0113)" - 154; and

2. "Music: Concepts and Processes (0111)" - 145;

(i) Latin: "Latin (0600)" - 700;

(j) Physical Education:

1.a. Until August 31, 2012, "Physical Education: Content Knowledge (0091)" - 147; and

<u>b.[2-]</u> "Physical Education: Movement Forms-Analysis and Design (0092)" - 151; <u>or</u>

2. Beginning September 1, 2011, "Physical Education: Content and Design (0095)" - 169.

(k) School Media Librarian: "Library Media Specialist (0311)" - 156;

(I) School Psychologist: "School Psychologist (0401)" - 161; or (m) Spanish:

<u>1. Until August 31, 2011,</u> "Spanish: World Language (<u>5195)</u>" - <u>no passing score; and</u>

2. Beginning September 1, 2011, "Spanish: World Language (5195)" - 168[(0195)"].

(6) An applicant for certification for teacher of exceptional children in Communication Disorders, Learning and Behavior Disorders, Hearing Impaired, Hearing Impaired with Sign Proficiency, Visually Impaired, or Moderate and Severe Disabilities shall take the content test or tests based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:

(a) Communication Disorders:

1.<u>a. Until August 31, 2012,</u> "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; <u>or</u> <u>b. Beginning September 1, 2011, "Special Education: Core</u>

b. Beginning September 1, 2011, "Special Education: Core Content Knowledge and Applications (0354)" - 151; and

2. "Speech-Language Pathology (0330)" - 600;

(b) Hearing Impaired:

1.<u>a. Until August 31, 2012,</u> "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; <u>or</u>

b. Beginning September 1, 2011, "Special Education: Core Knowledge and Applications (0354)" - 151; [and]

2. "Education of Deaf and Hard of Hearing Students (0271)" - 167:

(c) Hearing Impaired With Sign Proficiency:

1.<u>a. Until August 31, 2012.</u> "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; <u>or</u>

b. Beginning September 1, 2011, "Special Education: Core Knowledge and Applications (0354) - 151;

2. "Education of Deaf and Hard of Hearing Students (0271)" - 167; and

3. One (1) of the following tests with a passing score of Intermediate Level:

a. "Sign Communication Proficiency Interview (SCPI)"; or

b. "Educational Sign Skills Evaluation (ESSE)";

(d) Learning and Behavior Disorders:

1. Until August 31, 2012:

 $\underline{a.}$  "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and

<u>b.[2-]</u> "Education of Exceptional Students: Mild to Moderate Disabilities (0542)" - 172; or

2. Beginning September 1, 2011, "Special Education: Core Knowledge of Mild to Moderate Applications (0543)" - 158;

(e) Moderate and Severe Disabilities:

1. Until August 31, 2012:

a. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and

<u>b.[2-]</u> "Education of Exceptional Students: Severe to Profound Disabilities (0544)" - 156; or

2. Beginning September 1, 2011, "Special Education: Core Knowledge of Mild to Moderate Applications (0543)" - 158; or

(f) Visually Impaired:

1.<u>a. Until August 31, 2012,</u> "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; <u>or</u>

<u>b. Beginning September 1, 2011, "Special Education: Core</u> Knowledge and Applications (0354) - 151; and 2. "Teaching Students with Visual Impairments (0281)" - 161.

(g) A holder of an exceptional child certificate in Learning and Behavior Disorders or Moderate and Severe Disabilities who is seeking additional certification for any exceptional children teaching certificate listed in this subsection, shall not be required to take "Education of Exceptional Students: Core Content Knowledge (0353)" or "Special Education: Core Knowledge and Applications (0354)".

(7)(a) Except as provided in paragraph (b) of this subsection, an applicant for Career and Technical Education certification to teach in grades five (5) - twelve (12) shall take the content test or tests corresponding to the applicant's area or areas of specialization identified in this paragraph, and, if a passing score is established in this paragraph, the applicant shall achieve the passing score or higher:

1. Agriculture: "Agriculture (0700)" - 520;

2. Business and Marketing Education:

a. Until August 31, 2011, "Business Education (0101)" - no passing score; and

b. Beginning September 1, 2011, "Business Education (0101)" - 154;

3. Family and Consumer Science: "Family and Consumer Sciences (0121)" - 162; or

4. Engineering and Technology Education: "Technology Education (0050)" - 600.

(b) An applicant for Industrial Education shall take the content test or tests corresponding to the applicant's area or areas of specialization with the passing scores identified in 16 KAR 6:020.

(8) An applicant for a restricted base certificate in the following area or areas shall take the content test or tests based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:

(a) English as a Second Language: "English to Speakers of Other Languages (0361)" - 157;

(b) Speech/Media Communications: "Speech Communication (0221)" - 146; or

(c) Theater: "Theatre (0640)" - 630.

(9) An applicant for an endorsement in the following content area or areas shall take the content test or tests based on the applicant's area or areas of specialization with the passing scores identified in this subsection:

(a) English as a Second Language: "English to Speakers of Other Languages (0361)" - 157;

(b) Learning and Behavior Disorders, grades 8 - 12:

1. Until August 31, 2012, "Education of Exceptional Students: Mild to Moderate Disabilities (0542)" - 172; or

2. Beginning September 1, 2011, "Special Education: Core Knowledge and Mild to Moderate Applications (0543)" - 158;

(c) Literacy Specialist: "Reading Specialist (0300)" - 520;

(d) Gifted Education, grades primary - 12: "Gifted Education (0357)" - 152; or

(e)[(d)] Reading Primary through Grade 12:

1. Until August 31, 2011, "Teaching Reading (0204)" - no passing score; and

2. Beginning September 1, 2011, "Teaching Reading (0204)" -153.

....

Section 3. In addition to the content area test or tests established in Section 2 of this administrative regulation, each new teacher shall take the pedagogy test and meet the passing score identified in this section that corresponds to the grade level of certification sought. If a certified teacher is seeking additional certification in any area, the applicant shall not be required to take an additional pedagogy test.

(1) An applicant for Elementary certification (grades <u>prima-ry[preschool]</u> - 5) shall take "Principles of Learning and Teaching: Grades Kindergarten - 6 (0522)", with a passing score of161.

(2) An applicant for certification at the middle school level (grades five (5) through nine (9)) shall take "Principles of Learning and Teaching: Grades 5 - 9 (0523)", with a passing score of161.

(3) An applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)", with a passing score of161.

(4) An applicant for certification in all grades with a content area identified in Section 2(5) of this administrative regulation shall take either:

(a) "Principles of Learning and Teaching: Grades kindergarten - six (6) (0522)", with a passing score of 161;

(b) "Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)", with a passing score of 161; or

(c) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)", with a passing score of 161.

(5) An applicant applying only for certification for teacher of exceptional children shall not be required to take a separate pedagogy test established in this section. The content area test or tests established in Section 2 of this administrative regulation shall fulfill the pedagogy test requirement for a teacher of exceptional children.

(6) An applicant for Career and Technical Education certification in grades five (5) through twelve (12) shall take either:

(a) "Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)", with a passing score of 161; or

(b) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)", with a passing score of 161.

(7) An applicant for a restricted base certificate shall take one (1) of the following pedagogy tests corresponding to the grade range of the specific restricted base certificate:

(a) "Principles of Learning and Teaching: Grades kindergarten - six (6) (0522)", with a passing score of 161;

(b) "Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)", with a passing score of 161; or

(c) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)", with a passing score of 161.

Section 4. Assessment Recency. (1) A passing score on a test established at the time of administration shall be valid for the purpose of applying for certification for five (5) years from the test administration date.

(2) A teacher who fails to complete application for certification to the Education Professional Standards Board within the applicable recency period of the test and with the passing score established at the time of administration shall retake the appropriate test or tests and achieve the appropriate passing score or scores required for certification at the time of application.

(3) The test administration date shall be established by the Educational Testing Service or other authorized test administrator.

Section 5. (1) An applicant for initial certification shall take the assessments on a date established by:

(a) The Educational Testing Service; or

(b) The agency established by the Education Professional Standards Board as the authorized test administrator.

(2) An applicant shall authorize test results to be forwarded by the Educational Testing Service, or other authorized test administrator, to the Kentucky Education Professional Standards Board and to the appropriate teacher preparation institution where the applicant received the relevant training.

(3)(a) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration.

(b) An applicant shall seek information regarding the dates and location of the tests and make application for the appropriate examination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Education Professional Standards Board and processed in the normal certification cycle.

Section 6. An applicant shall pay the appropriate examination fee established by the Educational Testing Service or other authorized test administrator for each relevant test required to be taken.

Section 7. An applicant who fails to achieve at least the minimum score on any of the appropriate examinations may retake the test or tests during one (1) of the scheduled test administrations.

Section 8. The Education Professional Standards Board shall collect data and conduct analyses of the scores and institutional

reports provided by the Educational Testing Service or other authorized test administrator to determine the impact of these tests.

#### LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: January 10, 2011 FILED WITH LRC: January 11 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 28, 2011 at 9 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 28, 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: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director of Legal Services (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the written examination prerequisites and the corresponding passing scores for teacher certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to teacher candidates of the assessment requirements for obtaining and maintaining a teaching certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 places the responsibility of selecting the assessments and determining the minimum acceptable level of achievement on each assessment on the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the required teacher certification assessments and their corresponding minimum acceptable scores.

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

(a) How the amendment will change this existing administrative regulation: This amendment also establishes passing scores beginning September 1, 2011 for the following tests: French: World Language, German: World Language, Spanish: World Language, Business Education, Health and Physical Education: Content Knowledge, Teaching Reading, Reading Specialist, and Physical Education: Content and Design. The amendment also adopts new specialty tests for individuals seeking certification in exceptional children certification.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the required assessments and corresponding scores are adequately set to produce the most competent educators.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statues, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This

amendment establishes the required assessments and corresponding passing scores for Kentucky teacher certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment more closely aligns assessment options with teacher preparation program requirements and opportunities within an actual school setting.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 Kentucky school districts, 30 educator preparation programs, and educators seeking new and additional teacher certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The school districts will not be required to take any additional action. The educator preparation programs will need to continue to direct students to the Education Professional Standards Board website for current assessment requirements. Applicants will need to continue to refer to the Education Professional Standards board website for current assessment requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional cost to the entities impacted by the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs and applicants will be positively affected by the clarifications to the regulation. The districts will be positively affected by a supply of teachers who are competent in their content area.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, regional universities, and the Education Professional Standards Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028(1) and 161.030

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be none.

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

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

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

(d) How much will it cost to administer this program for subsequent years? There should be no revenue generated.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a revenue costing regulation, but merely establishes the testing requirements for teacher candidates to obtain certification.

#### FINANCE AND ADMINISTRATION CABINET Kentucky Teachers' Retirement System (Amendment)

## 102 KAR 1:175. Investment policies.

RELATES TO: KRS 161.430

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

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

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

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

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

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

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

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

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

(d)1.The system may utilize the services of a consultant to advise the investment committee, as well as to assist in evaluating the effectiveness of investment counselors.

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

(e) Investment counselors shall provide reports documenting

their results at least quarterly and meet with the investment committee if requested.

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

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

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

(b) The investment committee shall be provided a complete record of each investment transaction or holding;

(c) The staff shall maintain a file of investment directives that indicates the committee's separate review of each specific longterm investment; and

(d) An "authorization for investment" shall be approved by the executive secretary or the chief investment officer.

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

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

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

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

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

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

(e) More than thirty (30) [fifteen (15)] percent of the assets of the system shall not be invested in the stocks of companies domiciled outside of the United States. Any amounts so invested shall be included in the sixty-five (65) percent limitation established under this subsection.

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

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

(h)1. The amount invested in an additional category or categories of investments shall not equal more than  $\frac{\text{fifteen (15)}}{\text{fifteen (15)}}$  [ten (10)] percent of the assets of the system.

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

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

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

(2)(a) A fixed income investment shall be rated at the time of purchase <u>as investment grade by at least</u> [within the four (4) highest credit classifications identified by] one (1) of the major rating services.

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

(c) [Notwithstanding the provisions of this subsection,] The fixed income investment portfolio as a whole shall maintain an average rating of investment grade by at least one (1) of the major rating services [equal to at least the second highest credit classifi-

#### cation].

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

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

(b)] Other foreign debt <u>purchases</u> shall [not] be <u>subject to all</u> other fixed income restrictions in this section. Foreign debt shall not in aggregate equal more than ten (10) percent of the assets of the system. [purchased unless approved by the board as an additional category of investment.]

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

(1)(a) The system's position in a single stock shall not exceed two and one-half (2.5) percent of the system's assets.

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

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

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

(4) The system shall not buy bullion, stamps, rare coins, or other collectibles, unless approved by the board as an additional category of investment.

#### MS. BARBARA STERRETT, Chair

APPROVED BY AGENCY:

FILED WITH LRC: January 14, 2011 at

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2011, at 9 a.m. at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by this date, the meeting may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 28, 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: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8500, fax (502) 848-8599.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides, in regulatory format, the retirement system's investment policies and procedures.

(b) The necessity of this administrative regulation: KRS 161.430(1) requires the Board of Trustees to establish investment policies and procedures by administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing investment policies and procedures in regulatory format for investment of the retirement system's funds and assets. (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing the statutorily required regulatory format for the retirement system's investment policies and procedures.

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

(a) How the amendment will change this existing administrative regulation: The amendment modifies the existing parameters for investment in the stock of foreign companies, additional categories of investments, fixed income and foreign debt.

(b) The necessity of the amendment to this administrative regulation: To modify the existing parameters for investments.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by continuing to provide in regulatory format investment policies and procedures as required by the statute.

(d) How the amendment will assist in the effective administration of the statues: Investment policies and procedures are required by statute to be promulgated in an administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment applies to the Board of Trustees and the investment committee.

(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: Kentucky Teachers' Retirement System will continue to follow the investment policies and procedures set forth in the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to Kentucky Teachers' Retirement System other than the normal costs of investing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The retirement system will continue to be in compliance with the statute that requires investment policies and procedures to be established in administrative regulation.

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

(a) Initially: The only cost to implement this administrative regulation will be the normal costs of investing.

(b) On a continuing basis: The only continuing costs would be the normal costs of investing.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative and investment management expenses of the retirement system are paid by trust and agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members are treated the same.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Teachers' Retirement System.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310, 161.430.

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 contains investment policies and procedures and the purpose of the proposed amendment is to maintain flexibility under future market conditions.

(b) How 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 contains investment policies and procedures and the purpose of the proposed amendment is to maintain flexibility under future market conditions.

(c) How much will it cost to administer this program for the first year? The only cost is the normal cost of investing.

(d) How much will it cost to administer this program for subsequent years? The only cost will be the normal cost of investing.

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:

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

#### 201 KAR 2:015. Continuing education.

RELATES TO: KRS 214.610, 315.065, 315.116, 315.120 STATUTORY AUTHORITY: KRS 315.110(1), 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.065(2) and (3) require the board to establish continuing education requirements for pharmacists. This administrative regulation establishes requirements for the continuing pharmacy education of registered pharmacists and requires all registered pharmacists holding a license issued by the board to participate in continuing pharmacy education as a means of renewal of their licenses.

Section 1. Definition. "Continuing education unit" or "CEU" is defined by KRS 315.010(7).

Section 2. (1) Continuing education hours for credit may be compiled in the following areas if the sponsor grants the participant a certificate of completion:

(a) Cassette and audiovisual presentation;

(b) In-company professional seminars;

 (c) Accredited school of pharmacy continuing education programs;

(d) Postgraduate courses in pharmaceutical sciences;

(e) Correspondence courses;

(f) Programs granted continuing education credit by other states;

(g) The <u>Accreditation</u> [American] Council <u>for Pharmacy</u> [en Pharmaceutical Education];

(h) Continuing education television series;

(i) Programs sponsored by allied professional groups; or

(j) Professional society and association sponsored programs.

(2) The board approval of each program shall expire at the end of three (3) years.

Section 3. Continuing education sponsors shall be responsible for submitting to the board for final accreditation continuing education programs for participants.

(1) A sponsor shall be any person, school, association, company, corporation or group who wishes to develop a continuing education program.

(2) Programs shall be submitted to the board at least sixty (60)

days prior to planned participation so the participants can know the value of the experience prior to actual participation.

(3) Program changes shall be made to and accredited by the board, or the evaluation and accreditation of the program shall be void.

(4) Continuing education credit shall be given only once for each program per participant.

(5) Sponsors shall retain a file of each participant's program completion for three (3) years.

Section 4. (1) Sponsors and pharmacists requesting approval of continuing pharmacy education shall submit Kentucky Board of Pharmacy Continuing Education Program Approval Form. Pharmacists shall keep valid records, receipts, and certifications of continuing pharmacy education programs completed for three (3) years, except the pharmacist shall keep a copy of his/her HIV/AIDS <u>CE certificate for ten (10) years</u>, and submit the certification to the board on request.

(2) Submission of a fraudulent statement or certificate concerning continuing pharmacy education shall subject the pharmacist to discipline as provided in KRS 315.121.

### Section 5. (1) A pharmacist shall:

(a) Complete a minimum of one and five-tenths (1.5) CEU (fifteen (15) contact hours) annually between January 1 and December 31; and

(b) Not transfer or apply excess hours or units for future years. (2)[; and

(c) Submit a list of accredited continuing pharmacy education programs with their annual renewal.

(2) If a licensee fails to submit a list of continuing pharmacy education programs by the 1st day of February, the executive director of the board shall notify the licensee at his last known address that his license may be suspended.

(3)] A pharmacist may be granted a deferral on a year-to-year basis at the discretion of the board for illness, incapacity, or other extenuating circumstances.

(3)[(4)] A pharmacist first licensed by the board within twelve (12) months immediately preceding the annual renewal date shall be exempt from the continuing pharmacy education provisions.

Section 6. All pharmacists shall keep the board informed of their correct addresses.

Section 7. CEU may be transferred from another state to Kentucky if the transfer state recognizes Kentucky CEU.

Section 8. A licensee who failed to timely renew his license shall:

(1) Comply with the applicable provisions of KRS 315.120(2) or (3); and

(2) Complete fifteen (15) hours of continuing education for each year the applicant failed to renew his license, up to a maximum of seventy-five (75) hours.

Section 9. (1) <u>At least once</u> every ten (10) years, a pharmacist shall successfully complete a continuing education course of not less than one (1) contact hour (0.1 CEU) concerning HIV/AIDS that complies with KRS 214.610(1).

(2) The continuing education course shall be:

(a) Approved by the Cabinet for Health <u>and Family</u> Services HIV/AIDS Branch; or

(b) Conducted by a provider approved by the <u>Accreditation</u> [American] Council <u>for Pharmacy</u> [on Pharmaceutical] Education (ACPE).

Section 10. Incorporation by Reference. (1) The Kentucky Board of Pharmacy Continuing Education Program Approval Form, 2002, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, 23 Millcreek Park, Frankfort, Kentucky 40601-0230, Monday through Friday, 8 a.m. to 4:30 p.m.

JOEL THORNBURY, Board President

FILED WITH LRC: January 13, 2011 at 11 a.m.

APPROVED BY AGENCY: January 11, 2011

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, February 22, 2011, at 9 a.m. at the Board's office located at State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. Monday, February 28, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for continuing education for pharmacists.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 315.065(2) and (3).

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation is in conformity with the authorizing statute that requires the board to promulgate administrative regulations that establishes the requirements for obtaining continuing pharmacy education credit.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will set the requirements for continuing pharmacy education credit for pharmacists.

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

(a) How the amendment will change this existing administrative regulation: This will require pharmacists to keep their continuing education certificate for HIV/AIDS for ten (10) years.

(b) The necessity of the amendment to this administrative regulation: Pharmacists must obtain at least one hour of HIV/AIDS continuing education at least once every ten (10) years.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment authorizes the board to promulgate regulations regarding continuing education requirements for pharmacists.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will establish the requirement that a pharmacist shall maintain a copy of his/her HIV/AIDS continuing education certificate for ten (10) years.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that all pharmacists 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: Pharmacists will be required to keep a copy of his/her HIV/AIDS CE certificate for ten (10) years.

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

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

entities identified in question (3): Pharmacists will have a record showing proof of obtaining the required HIV/AIDS CE.

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

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

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

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

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

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

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

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation would impact the Kentucky Board of Pharmacy.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.065, KRS 315.121 and KRS 315.191 requires or authorizes the action taken by this administrative regulation

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

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

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

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

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

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

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

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

201 KAR 20:056. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization.

RELATES TO: KRS 314.011(8), 314.042, 314.091, 314.161, 314.470

STATUTORY AUTHORITY: KRS 314.042(7), 314.131(1), 314.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the licensure of an advanced practice registered nurse. This administrative regulation establishes the requirements for licensure, renewal, and reinstatement, programs, and recognition of a national certifying organization.

Section 1. An applicant for licensure as an advanced practice registered nurse in Kentucky shall:

(1) Complete an "Application for Licensure as an Advanced Practice Registered Nurse" as required by 201 KAR 20:370, Section 1(1);

(2) Provide a copy of a current active Registered Nurse license or validation of Registered Nurse licensure if the state of licensure does not issue licensure cards;

(3) Submit the fee required by 201 KAR 20:240, Section 1(2)(k); and

(4) Comply with the requirements established in KRS 314.042 and Sections 2 and 4 through 10 of this administrative regulation.

(5) If the applicant is applying only for a license as an advanced practice registered nurse, the applicant shall also provide:

(a) 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;

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

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

(d) A letter of explanation that addresses each conviction, if applicable.

Section 2. Postbasic Program of Study and Clinical Experience. (1) An organized postbasic program of study and clinical experience shall conform to the following criteria in order to be acceptable to the board. The program shall:

(a) Be an established, ongoing, and organized program offered on a routine basis to an enrollee;

(b)1. Be accredited or approved for the education of nurses by a recognized accreditation or approval body; or

2. Be sponsored by a sponsoring organization, which shall hold the accreditation or approval for the education of nurses by a recognized accreditation or approval body;

(c) Have a program design which prepares an enrollee to function in a role consistent with the advanced practice registered nursing designation;

(d) Have a program design which includes purpose, philosophy, objectives, curriculum content, and plan to evaluate achievement of objectives and measurement of learning outcomes of students;

(e) Have a designated faculty responsible for planning, development, implementation, and evaluation of curriculum and students;

(f) Include didactic components that prepare the student to perform the additional acts delineated by the board pursuant to KRS 314.011(8) and include at least pharmacology, advanced physical assessment, advanced pathophysiology, and medical management of disease and differential diagnosis;

(g) Include a supervised clinical experience that includes application of all the didactic components; and

(h) Upon successful completion, award a diploma or certificate.

(2)(a) If the applicant for licensure as an advanced practice registered nurse completed a postbasic program of study after January 1, 2005, the applicant shall hold a master's degree, or doctorate, or postmaster's certificate awarding academic credit by a college or university related to the advanced practice registered nurse designation.

(b) If the applicant for licensure as an advanced practice registered nurse completed a postbasic program of study before January 1, 2005, the program shall be evaluated by the board on an individual basis to determine if the program is acceptable to the board by sufficiently preparing a student for advanced practice registered nursing.

Section 3. National Certifying Organizations. (1) A nationally

established organization or agency which certifies registered nurses for advanced practice registered nursing shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing organization or a subdivision of this type of organization;

(b) Eligibility requirements for certification are delineated;

(c) Certification is offered in specialty areas of clinical practice consistent with the population focus required by and defined by KRS 314.011;

(d) Scope and standards of practice statements are promulgated;

(e) Mechanism for determining continuing competency is established; and

(f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.

(2) The board recognizes the following national certifying organizations:

(a) American Nurses Credentialing Center;

(b) American College of Nurse Midwives:

(c) ACNM Certification Council;

(d) Council on Certification/Recertification of Nurse Anesthetists:

(e) Pediatric Nursing Certification Board;

(f) National Certification Corporation; [and]

(g) American Academy of Nurse Practitioners; and

(h) American Association of Critical-Care Nurses Certification Corporation.

(3) The following certification examinations for nurse practitioners (NP) and clinical nurse specialists (CNS) offered by the national certifying organizations identified in subsection 2 of this section shall be deemed to meet the definition of population focus of KRS 314.011(21):

(a) Acute Care NP;

(b) Adult NP;

(c) Adult Psychiatric and Mental Health NP;

(d) Family NP;

(e) Family Psychiatric and Mental Health NP;

(f) Gerontological NP;

(g) Neonatal NP;

(h) Pediatric NP;

(i) Pediatric/Primary Care NP;

(j) Pediatric/Acute Care NP;

(k) Women's Health NP;

(I) Adult Health CNS:

(m) Adult Psychiatric and Mental Health CNS;

(n) Child and Adolescent Psychiatric and Mental Health CNS;

(o) Gerontological CNS; [and] (p) Pediatric CNS;

(q) Adult Acute Care CNS;

(r) Pediatric Acute Care CNS; and

(s) Neonatal Acute Care CNS.

(4) The board recognizes the following national certifying organizations only for those individuals who received certification prior to the effective date of this administrative regulation and who have continually renewed their Kentucky advanced practice registered nurse license since that date: [(a) American Association of Critical Care Nurses Certification Corporation; and

(b)] Oncology Nursing Certification Corporation.

Section 4. Practice Pending Licensure. (1) A registered nurse who meets all the requirements for practice as an advanced practice registered nurse, and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:110 pending licensure by endorsement, shall be authorized to practice as an advanced practice registered nurse for a period of time not to exceed the expiration date of the temporary work permit.

(2) Authorization to practice pursuant to this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(3) An individual authorized to practice pursuant to subsection (1) of this section may use the title "APRN Applicant" or "APRN App.".

Section 5. License Renewal. (1) The advanced practice registered nurse license shall expire or lapse when the registered nurse license or privilege expires or lapses.

(2) To be eligible for renewal of the license as an advanced practice registered nurse, the applicant shall:

(a) Renew the registered nurse license or privilege on an active status:

(b) Submit a completed "ARPN License Renewal Application" form as required by 201 KAR 20:370, Section 1(1);

(c) Submit the current renewal application fee, as established in 201 KAR 20:240, Section 1(2)(I); and

(d) Maintain current certification by a recognized national certifying organization.

(3) An advanced practice registered nurse who fails to renew the registered nurse license or privilege or is otherwise unable to legally practice as a registered nurse shall not practice as or use the title of advanced practice registered nurse until:

(a) A current active license has been issued by the board or a privilege is recognized by the board; and

(b) The advanced practice registered nurse license has been reinstated.

(4) An advanced practice registered nurse shall provide evidence of current certification by a recognized national certifying organization upon recertification and at the request of the board.

Section 6. License Reinstatement. (1) If a nurse fails to renew the advanced practice registered nurse license as prescribed by KRS 314.042 and this administrative regulation, the license shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of the advanced practice registered nurse license, the applicant shall:

(a) Submit a completed "Application for Licensure as an Advanced Practice Registered Nurse" form as required by 201 KAR 20:370, Section 1(1);

(b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(m); and

(c) Maintain current certification by a recognized national certifying organization.

(3) If the applicant is applying for reinstatement of a license as an advanced practice registered nurse, the applicant shall also provide a:

(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;

(b) Report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

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

(d) Letter of explanation that addresses each conviction, if applicable.

Section 7. Certification or Recertification. (1)(a) An advanced practice registered nurse shall maintain current certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation throughout the licensure period.

(b) The board shall conduct an audit to verify that an advanced practice registered nurse has met the requirements of subsection (1)(a) of this section.

(2) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not practice or use the title of advanced practice registered nurse until the requirements of Sections 1 through 8 of this administrative regulation have been met.

(3) An advanced practice registered nurse who is decertified by the appropriate national organization shall:

(a) Notify the board of that fact; and

(b) Not practice as or use the title of advanced practice registered nurse during the period of decertification.

Section 8. (1) An application shall be valid for a period of one (1) year from the date of submission to the board.

(2) After one (1) year from the date of application, the applicant shall be required to reapply.

Section 9. The requirements of Sections 1 through 11 of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:

(1) A postbasic educational program for preparation for advanced practice registered nursing; or

(2) An advanced practice registered nurse refresher course.

Section 10. A registered nurse who holds himself out as a clinical specialist or is known as a clinical specialist shall be required to be licensed as an advanced practice registered nurse if his practice includes the performance of advanced practice registered nursing procedures.

Section 11. A nurse practicing as an advanced practice registered nurse who is not licensed as an advanced practice registered nurse by the board, an advanced practice registered nurse whose practice is inconsistent with the specialty to which he has been designated, or an advanced practice registered nurse who does not recertify and continues to practice as an advanced practice registered nurse shall be subject to the disciplinary procedures set in KRS 314.091.

CAROL KOMARA, Board President

APPROVED BY AGENCY: December 9, 2010 FILED WITH LRC: January 11, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2011 at 10 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 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 comments shall be accepted until close of business February 28, 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

email nathan.goldman@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets requirements for Advanced Practice Registered Nurse (APRN) licensure, program requirements, and recognition of national certifying organizations.

(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 several certifying examinations that will be recognized by the Board for APRN licensure.

(b) The necessity of the amendment to this administrative regulation: The Board determined that it would accept acute care as a population focus. These examinations were inadvertently omitted the last time this administrative regulation was amended.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to recognize these examinations.

(d) How the amendment will assist in the effective administration of the statutes: By recognizing these examinations.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants that pass these certification examinations will be able to obtain APRN licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in guestion (3): There is no cost to comply, other than the application fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They can be licensed as APRNs.

(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? 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? 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:

## GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:059. Advanced practice registered nurse controlled substances prescriptions.

RELATES TO: KRS 314.011(8)(c)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.011(8)(c) authorizes the Controlled Substances Formulary Development Committee to make recommendations to the Board of Nursing concerning any limitations for specific controlled substances. This administrative regulation implements that provision.

Section 1. Specific Controlled Substances. The following controlled substances have been identified as having the greatest potential for abuse or diversion:

(1) Diazepam (Valium), a Schedule IV medication;

(2) Clonazepam (Klonopin), a Schedule IV medication;

(3) Lorazepam (Ativan), a Schedule IV medication;

(4) Alprazolam (Xanax), a Schedule IV medication;

(5) Carisoprodol (Soma), a Schedule IV medication;

(6) Combination Hydrocodone products in liquid or solid dosage form, Schedule III medications.

Section 2. Limitations. [(1)] Prescriptions for the medications listed in Section 1[(1), (2), (3), and (4)] of this administrative regulation shall be limited to a [fourteen (14) day supply without any refills.

(2) Prescriptions for the medication listed in Section 1(5) of this administrative regulation shall be limited to a] thirty (30) day supply without any refills. [(3) Prescriptions for the medications listed in Section 1(6) of this administrative regulation shall be limited to a fourteen (14) day supply without any refills.]

CAROL KOMARA, Board President

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: January 13, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2011 at 10 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 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 comments shall be accepted until close of business February 28, 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,

email nathan.goldman@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: Pursuant to KRS 314.011(8)(c), this administrative regulation sets limitations on APRN prescriptive authority for specific controlled substances that have been determined to have the greatest potential for abuse or diversion.

(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 limitations on APRN prescriptive authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting limitations on APRN prescriptive 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: It changes the length of time for which prescriptions may be written for the identified drugs. The Controlled Substances Formulary Development Committee recommended to the Board of Nursing that the limitations be changed from a prescription limited to 14 days to a prescription limited to 30 days.

(b) The necessity of the amendment to this administrative regulation: There has been no evidence that APRNs are abusing their prescriptive authority as regards the identified drugs. The 14 day limitation causes a hardship on patients who would be required to make another visit to the APRN for another prescription.

(c) How the amendment conforms to the content of the authorizing statutes: The statute states that the Committee shall make recommendations to the board.

(d) How the amendment will assist in the effective administration of the statutes: It will benefit patients by allowing an APRN to write a prescription for these drugs for 30 days.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All APRNs, approximately 4,000.

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

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

(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 able to assist their patients.

(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? 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? 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:

## GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (Amendment)

201 KAR 30:050. Examination[<del>, continuing education,</del>] and experience requirement.

RELATES TO: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally-related transactions. KRS 324A.035(3)(d), (e), and (f) require the board to establish by administrative regulations requirements for experience and[-] examination of applicants[-, and continuing education of appraisers]. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the examination[-, continuing education-] and experience requirements for appraisers of real property in federally-related transactions.

Section 1. Examination. (1) An applicant for certification as a certified general real property appraiser, certified residential real property appraiser, or licensed real property appraiser shall pass an examination specific for the certification or license applied for and approved by:

(a) The board; and

(b) The Appraiser Qualifications Board of the Appraisal Foundation.

(2) <u>Under no circumstances shall a score from an examination</u> [Scores from the examinations shall] be acceptable <u>longer than</u> [for] two (2) years <u>after the date on which the applicant passes the</u> <u>examination</u>.

(3) An applicant shall [have a period of two (2) years from the last day of the month in which the applicant passed the examination to] complete all the education and experience requirements for the credential [for] which the individual is seeking prior to being approved to sit for the national appraisal examination [has applied].

(4)(a) An individual shall submit a complete Appraiser Licensure/Certification Application, incorporated by reference in 201 KAR 30:030, which documents the completed education and experience to the board prior to being approved to sit for the national appraisal examination.

(b) The applicant shall submit the following information with the application:

1. Proof of completion of the education required by 201 KAR 30:190;

2. Proof of completion of the required experience as specified in Section 2 of this administrative regulation including any reports identified by the board; and

3. The fee required by 201 KAR 36:060.

(5)(a) An applicant shall verify experience credit in a form approved by the board.

(b) An applicant shall submit satisfactory reports, file memoranda, and other documentation as required by the board to confirm the applicant's appraisal experience. [The failure to complete all experience requirements within the two (2) year period specified in subsection (3) of this section shall require a new application to the board and completion of the education and the examination applicable at the time of the new application.]

Section 2. Required Experience. (1)(a) Prior to certification as a general real property appraiser, an applicant shall have acquired 3,000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than thirty (30) calendar months.

(b) Prior to certification as a residential real property appraiser, an applicant shall have acquired 2,500 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.

<u>1. No more than fifty (50) percent of the residential experience</u> shall be claimed for appraisal review or appraisal consulting assignments.

2. No more than fifty (50) percent of the residential experience shall be claimed for appraisal of vacant land.

<u>3. At least fifty (50) percent of the residential experience</u> claimed shall include development of the cost approach, sales comparison approach, and income approach.

4. No more than fifty (50) percent of the residential experience shall be claimed for restricted use appraisal reports.

(c) Prior to licensure as a licensed real property appraiser, an applicant shall have acquired 2,000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.

<u>1. No more than fifty (50) percent of the residential experience</u> <u>shall be claimed for appraisal review or appraisal consulting as-</u> signments.

2. No more than fifty (50) percent of the residential experience shall be claimed for appraisal of vacant land.

<u>3. At least fifty (50) percent of the residential experience</u> claimed shall include development of the cost approach, sales comparison approach, and income approach.

4. No more than fifty (50) percent of the residential experience shall be claimed for restricted use appraisal reports.

(d) [The appraisal experience required by this section may have been acquired in any calendar years, whether or not the calendar years are consecutive. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(<del>o</del>)] For certification as a general real property appraiser, at least 1,500 hours of appraisal experience shall consist of nonresidential appraisal experience.

<u>1. No more than fifty (50) percent of the residential experience</u> shall be claimed for appraisal review or appraisal consulting assignments.

2. No more than fifty (50) percent of the residential experience shall be claimed for appraisal of vacant land.

<u>3. At least fifty (50) percent of the residential experience</u> claimed shall include development of the cost approach, sales comparison approach, and income approach.

4. No more than fifty (50) percent of the residential experience shall be claimed for restricted use appraisal reports.

(e) The appraisal experience required by this section may have been acquired in any calendar years, whether or not the calendar years are consecutive. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(f) Real property appraisal assignments completed for experience credit shall be completed:

1. In compliance with the requirements of USPAP as incorporated in 201 KAR 30:040 and defined in KRS 324.010(7);

2. Under the supervision of a certified residential real property appraiser for experience of one (1) to four (4) unit residential properties; and

3. Under the supervision of a certified general real property appraiser for experience of all property uses other than residential properties.

(g) To count towards the requirements of this section, the experience shall be acquired while the applicant is licensed or certified by the board as one (1) of the types of appraisers identified in

201 KAR 30:030 Section 1(2), (3), or (4).

(2)[<del>(a) An applicant shall verify experience credit in a form approved by the board.</del>

(b) The board may request reports, file memoranda, and other documentation, if necessary to confirm the applicant's appraisal experience.

(3)] The requirements of USPAP shall not apply to the board, its agents, and employees when conducting an appraisal review for purposes of confirming an applicant's experience under this administrative regulation.

Section 3. [Continuing Education: Number of Hours Required. Certified general real property appraisers, certified residential real property appraisers, licensed real property appraisers, and associate real property appraisers shall:

(1) Complete fourteen (14) hours of approved continuing education each license year; and

(2) Furnish the board with proof of compliance.

Section 4. Continuing Education. (1) Continuing education credit may be granted for:

(a) Approved continuing education courses; or

(b) Participation, other than as a student, in appraisal educational programs and processes not to exceed seven (7) hours of the required fourteen (14) hours of continuing education for each licensure year.

(2) Appraisal educational programs and processes shall include:

(a) Teaching;

(b) Program development;

(c) Authorship of textbooks; or

(d) Similar activities that are determined by the board to be equivalent to obtaining continuing education.

(3) Continuing education credit shall be granted if a course:

(a) Is at least two (2) hours in duration;

(b) Subject ensures that an appraiser's skill, knowledge, and competency in real estate appraisal will be maintained or increased; and

(c) Has been approved by the board.

(4) Application for continuing education credit shall be submitted to the board in writing and documented by the approved provider of instruction.

(5)(a) All credential holders shall successfully complete the 7hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent, between January 1 and June 30 of each even numbered year.

(b) Equivalency shall be determined through the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board.

(c) USPAP continuing education credit shall only be awarded when the class is instructed by an AQB Certified Instructor who is also a State Certified General Real Property Appraiser or a State Certified Residential Real Property Appraiser.

(6) The board shall defer continuing education requirements for up to 180 days for credential holders returning from active military duty.

Section 5.] Incorporation by Reference. (1) "Appraiser Assignment Log", 8/09, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

DORSEY HALL, Chair

APPROVED BY AGENCY: January 13, 2011

FILED WITH LRC: January 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 25, 2011 at 1 p.m., at 135 West Irvine Street, Suite 301, Richmond, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2008, five workdays prior to the hearing, of their intent to attend. If no notifica-

tion of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 28, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 West Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the requirements for applying for a certificate or license.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the standards for being a certified or licensed appraiser.

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

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

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

(a) How the amendment will change this existing administrative regulation: The amendment requires completion of education and experience prior to examination. The amends also removes the continuing education requirements that will be promulgated in a separate regulation

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to identify the experience required and the process for taking the examination.

(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 necessary to administer the law.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clearly identifies the standards for experience and the application process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately one thousand five hundred persons certified 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: An applicant will be required to meet the qualifications for licensure.

(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 additional costs for complying with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants will know the requirements for licensure.

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

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

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

changes.

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

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

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

(9) TIERING: Is tiering applied? Tiering was applied to set forth the requirements for the different levels of certificate holders.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65.

(2) State compliance standards. This administrative regulation meets the qualifications promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the educational standards promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351.

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 Real Estate Appraisers Board (Amendment)

## 201 KAR 30:070. Grievances.

RELATES TO: KRS 324A.020, 324A.050, 324A.052 STATUTORY AUTHORITY: KRS 324A.020, 334A.035, 324A.052

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.020 authorizes the board to investigate allegations of wrongdoing. KRS 324A.050 authorizes the board to take disciplinary action against the certificate or license of an appraiser for violations of KRS Chapter 324A. This administrative regulation establishes the procedures for filing grievances with the board.

Section 1. Grievance and Answers. (1)(a) A grievance against a licensee or a certificant shall be submitted on "Sworn Statement of Grievance", incorporated by reference or in a form containing the information required by that document.

(b) A grievance shall contain a concise statement of the facts, transaction or occurrence upon which it is based.

(c) [A grievance shall be notarized.

(4) Exhibits or other documents shall be attached to the grievance.

(d) A copy of the grievance and attachments shall be served on the licensee or certificant by the board:

1. At the last known address of the licensee or certificant; and

2. By certified mail, return receipt requested.

(2)(a) The licensee or certificant shall file with the board an answer to the grievance on "Sworn Answer to Grievance", incorporated by reference.

#### (b) [The answer shall be notarized.

 $(\overline{\mathbf{e}})$ ] The answer shall be filed with the board within twenty (20) days after service of the grievance.

(c)[(d)] A copy of the answer shall be served on the grievant by the licensee or certificant, by certified mail, return receipt requested, to the address shown on the grievance.

Section 2. Investigations. (1) The board may conduct an investigation of the facts alleged in a grievance:

(a) Upon receipt of a grievance and answer; or

(b) If an answer is not filed with the board, upon expiration of the period specified in Section 1(2)(c) of this administrative regulation.

(2) A party shall be granted access to information resulting from an investigation that:

(a) Was conducted by the board or board personnel;

(b) Was authorized by the board or board personnel; and

(c) Is related to the subject matter of the grievance.

(3) A party shall be permitted to rebut or comment upon the information or investigation specified in subsection (1) of this section.

(4) An investigation, or information resulting from an investigation, shall be disclosed to a party if it:

(a) Was the basis for action appealed by an applicant or appraiser; or

(b) Relates to the subject matter of a complaint.

(5) The requirements of USPAP shall not apply to the board, its agents, and employees when preparing an investigation for enforcement and disciplinary cases under this administrative regulation.

Section 3. Dismissal of Grievance. The board may dismiss a grievance if it determines that the facts stated in the grievance, or facts known to the board upon investigation, fail to establish a violation of KRS 324A.050. The board shall notify the grievant and the licensee or certificant in writing if it dismisses the grievance.

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

(a) "[Sworn]Statement of Grievance", January 2011[February 2003], Kentucky Real Estate Appraisers Board; and

(b) "[Sworn]Answer to Grievance", January 2011[February

2003], Kentucky Real Estate Appraisers Board.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

DORSEY HALL, Chair

APPROVED BY AGENCY: January 13, 2011

FILED WITH LRC: January 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 25, 2011 at 1 p.m., at 135 West Irvine Street, Suite 301, Richmond, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2008, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 28, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 West Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the process for filing grievances with the board.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to set out the process for filing and investigating 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 regarding grievances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying grievance 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 eliminates the requirement that grievances and answers be notarized.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the grievance process.

(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 necessary to administer the law.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will make it easier to file and answer grievances.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1500 persons are licensed or certified 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: A licensee against whom a grievance is filed will be required to respond to the allegations.

(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 additional costs for complying with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensees will not be required to have their signatures notarized.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 324A.020, 324A.035(3)(b) and 12 U.S.C. 3345.

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 Real Estate Appraisers Board (Amendment)

## 201 KAR 30:150. Education provider approval.

RELATES TO: KRS 324A.035(3)(d), (f), 12 U.S.C. 3331-3351 STATUTORY AUTHORITY: KRS 324A.020, 324A.035(3)(d),

NECESSITY, FUNCTION, AND CONFORMITY: KRS

(f)

# VOLUME 37, NUMBER 8 - FEBRUARY 1, 2011

324A.035(3)(d) and (f) require the board to establish requirements for education and continuing education of appraisers. This administrative regulation establishes the requirements for approval of education providers for real estate appraisers.

Section 1. Definitions. (1) "Approved instructor" means an instructor who has been approved under 201 KAR 30:160 to teach continuing education on qualifying education.

(2) "Education provider" means a school or organization that teaches continuing education courses, programs, or seminars required by 201 KAR 30:050 or qualifying education courses required by 201 KAR 30:050 and 30:190.

Section 2. Education Provider Approval. (1) To apply for approval as an real estate appraiser education provider or to renew approval, a provider shall submit a:

(a) Completed Application for Real Estate Appraiser Education Provider, including the information required concerning curriculum, approved instructors, educational materials and policies;

(b) Copy of the Certificate of Approval from the State Board for Proprietary Education or the Kentucky Department of Education, if applicable;

(c) Sample schedule outlining how a course will be presented; and

(d) Completed course outline for each course, which shall include:

1. A Real Estate Appraisal Instructor Application for each instructor, as required by 201 KAR 30:160;

2. A copy of a contract or agreement signed by the student which outlines the class schedule, grading system, and attendance requirements;

3. A copy of the written material, including the textbook and other materials that will be used in the classroom;

4. A sample copy of a education provider brochure or information sheet promoting the education provider;

5. A copy of legal documentation required to support an answer made on the form, if applicable; and

6. A sample copy of an official transcript from the education provider.

(2) An approved real estate appraisal education provider shall include a statement in the education provider's application for admission into the program that informs the prospective students that a criminal conviction may prevent that person from qualifying for licensure by the Real Estate Appraisers Board. Failure to include this notification may result in suspension of an approved education provider's approval until the information is included in the application.

(3) Courses from institutions which have been accredited by a regional accrediting agency approved by the U.S. Department of Education or listed in the Transfer of Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers are approved by the board without review.

(4) The applicant will be required to supply a syllabus or course outline to verify that the content of the course satisfies an area of study outlined in 201 KAR 30:190.

Section 3. Requirements for an Approved Education Provider. (1) An approved education provider shall notify the board within fourteen (14) days of a material change in the information originally furnished on the application or in an attachment to the application.

(2) A renewal application shall be submitted by June 30 of each year.

(3) The curriculum offered by the education provider shall:

(a) Include a minimum of two (2) academic hours for a continuing education course;

(b) Include a minimum of fifteen (15) academic hours, including examination time, for each qualifying education course;

(c) Be conducted for a maximum of no more than eight (8) hours during a twenty-four (24) hour period; and

(d) Consist of courses covering the topics listed by the Real Estate Appraisers Board in 201 KAR 30:050, Section 3, or 201 KAR 30:190.

(4) An approved real estate appraisal education provider shall

maintain accurate and permanent records on each student enrolled in a course.

(a) A permanent record shall include:

1. Each student's record of courses completed or attempted, academic hours awarded, and final grades; and

2. A board-approved Certificate of Completion form for each student and proof that it was mailed to each student upon completion of a course.

(b) A permanent record shall:

1. Be maintained for five (5) years; and

2. Include student attendance records and test scores.

(c) The education provider shall submit to the board a roster with the names of the individuals who attended the course and each student's final examination grade with numerical score within ten (10) days of the completion of each course.

(5) An approved real estate appraisal education provider shall file with the board a Notification Form for Course Dates and Locations no later than ten (10) days prior to beginning a qualifying education course or a continuing education class.

(6) An approved real estate appraisal education provider shall permit an inspection and monitoring by the board or its designee to evaluate all aspects of the administration or operation of the education provider.

(7) Education provider status approval shall be withdrawn if the board determines that:

(a) Information contained on the application or renewal is inaccurate or misleading;

(b) The establishment or conduct of the education provider is not in compliance with this administrative regulation;

(c) The instruction is so deficient as to impair the value of the course; or

(d) The education provider failed to meet any policy or statement made in its application.

(8) If an education provider has been given notice of a deficiency under this section, the board shall give the education provider an opportunity to correct the deficiency within thirty (30) days.

(9) An effort made directly or indirectly by a education provider, official or employee, or a person on their behalf to reconstruct the national real property appraisal licensing or certification examination for any licensed or certified real property appraiser, or a portion of these examinations shall result in immediate revocation of education provider approval.

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

(a) "Application for Approved Real Estate Appraisal Education Provider", 2005;

(b) "Course Outline", 2005;

(c) "Certificate of Completion", 2005; and

(d) "Notification Form for Course Dates and Locations", 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

### DORSEY HALL, Chair

APPROVED BY AGENCY: January 13, 2011

FILED WITH LRC: January 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 25, 2011 at 1 p.m., at 135 West Irvine Street, Suite 301, Richmond, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2008, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend 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 shall be accepted until February 28, 2011. Send written notification of intent to attend the public hearing or

written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 West Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the requirements for approval of education providers for real estate appraisers.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the standards of practice required of certified and licensed appraisers.

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

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

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

(a) How the amendment will change this existing administrative regulation: The amendment recognizes courses from accredited institutions.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to specify the standards education.

(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 necessary to administer the law.

(d) How the amendment will assist in the effective administration of the statutes: The standards of practice will assist by clearly identifying the standards for education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately one thousand five hundred persons certified 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: Educators will be required to meet the standards.

(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 additional costs for complying with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Educators will know the requirements for providing classes.

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

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

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

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

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

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

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

## FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65.

(2) State compliance standards. This administrative regulation meets the qualifications promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the educational standards promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351.

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 Real Estate Appraisers Board (Amendment)

201 KAR 30:190. Educational requirements for certification.

RELATES TO: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of

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real property in federally-related transactions. KRS 324A.035(3)(d) requires the board to establish by administrative regulations requirements for education of appraisers. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally-related transactions including the education requirements for appraisers of real property in setablishes the education requirements for appraisers of real property in federally-related transactions stablishes the education requirements for appraisers of real property in federally-related transactions that will be effective after December 31, 2007.

Section 1. Definitions. (1) "AQB" means the Appraiser Qualification Board of the Appraisal Foundation.

(2) "ASB" means the Appraiser Standards Board of the Appraisal Foundation.

(3) "Class hour" means sixty (60) minutes, of which at least fifty (50) minutes are instruction attended by the student, including time for examinations.

(4) "Required Core Curriculum" means the list of course topics identified in Section 7 of this administrative regulation.

Section 2. (1) Credit for the qualifying education requirements set out in this administrative regulation may be obtained only from the following providers:

(a) Colleges or universities;

(b) Community or junior colleges;

(c) Real estate appraisal or real estate related organizations;

(d) State or federal agencies or commissions;

(e) Proprietary schools;

(f) Providers approved by the board in accordance with 201 KAR 30:150; and

(g) The Appraisal Foundation or its boards.

(2) Experience may not be substituted for education.

Section 3. Criteria Specific to Qualifying Education. (1) A class hour shall be credited only for educational offerings with content that follows the Required Core Curriculum in Section 7 of this administrative regulation for each respective credential.

(2) The course content requirement may be general or it may be specific to a property type.

(3) A class hour may be obtained only if:

(a) The minimum length of the educational offering is at least fifteen (15) hours; and

(b) The student successfully completes an approved closedbook examination pertinent to that educational offering.

(4) If an individual qualifying education course covers multiple topics identified within the Required Core Curriculum, there shall be appropriate testing of each component.

(5) Courses taken to satisfy the qualifying education requirements shall not be repetitive.

(6) Courses shall foster problem-solving skills in the education process by utilizing case studies as a major teaching method when applicable.

(7) USPAP courses.

(a) An applicant shall take the 15-Hour National USPAP Course, or its equivalent, and pass the associated 15-Hour National USPAP Course Examination as approved by the AQB.

(b) At least one (1) of the course instructors shall be an AQB Certified USPAP Instructor who is also a state certified appraiser.

(c) USPAP course content equivalency shall be determined by the AQB or by an alternate method established by the AQB.

Section 4. Qualifying Education for Associate Real Property Appraiser Effective January 1, 2008. (1) Regardless of the applicant's accrual of education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained his or her certification as a associate real property appraiser shall be required to fulfill the requirements of this section if the certification <u>was</u> [ie] not issued on or before December 31, 2007.

(2) Prior to applying for an associate real property appraiser certification, an applicant shall have completed ninety (90) class hours as specified in the Required Core Curriculum Section 7 of this administrative regulation, which shall include at least fifteen (15) hours related to <u>market analysis and highest and best use</u> [basic income].

(3) An applicant shall pass:

(a) The Required Core Curriculum examination for each course taken; and

(b) The 15-Hour National USPAP Course or its equivalent and examination as stated in Section 3(7) of this administrative regulation.

Section 5. Qualifying Education for Licensed Real Property Appraisers Effective January 1, 2008. (1) Regardless of the applicant's accrual of education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained licensure shall be required to fulfill the requirements of this section if the license <u>was[ie]</u> not issued on or before December 31, 2007.

(2) The prerequisite for taking the AQB approved examination shall be successful completion of 180 class hours as specified in the required core curriculum Section 7.

(3) The applicant shall successfully complete the 15-Hour National USPAP Course, or its equivalent, and examination required by Section 3(7) of this administrative regulation. There is no alternative to successful completion of the examination.

(4) An applicant for the licensed real property certificate shall hold an associate degree, or higher, from an accredited college, junior college, community college, or university, unless the requirements of subsection (5) of this section are satisfied.

(5)(a) In lieu of the associate degree, an applicant for the certified residential real property certification shall successfully pass twenty-one (21) semester credit hours in the following collegiate subject matter courses from an accredited college, junior college, community college, or university:

1. English Composition;

2. Principles of Economics (Micro or Macro);

3. Finance;

4. Algebra, Geometry, or higher mathematics;

Statistics;

6. Introduction to Computers-Word processing/spreadsheets; and

7. Business or Real Estate Law.

(b) If the accredited college, junior college, community college, or university accepts the College-Level Examination Program (CLEP) examinations and issues a transcript for the examination, showing its approval, it shall be accepted as credit for the college course.

Section 6. Qualifying Education for Certified Residential Real Property Appraisers Certification Effective January 1, 2008. (1) Regardless of the applicant's accrual of education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained certification as a certified residential real property appraiser shall be required to fulfill the requirements of this section if the certification is not issued on or before December 31, 2007.

(2) The prerequisite for taking the AQB approved examination shall be completion of 200 class hours as specified in the required core curriculum Section 7.

(3) The applicant shall successfully complete the 15-Hour National USPAP Course, or its equivalent, and the examination required by Section 3(7) of this administrative regulation.

(4) An applicant for the certified residential real property certificate shall hold an associate degree, or higher, from an accredited college, junior college, community college, or university, unless the requirements of subsection 5 of this section are satisfied.

(5)(a) In lieu of the associate degree, an applicant for the certified residential real property certification shall successfully pass twenty-one (21) semester credit hours in the following collegiate subject matter courses from an accredited college, junior college, community college, or university:

1. English Composition;

2. Principles of Economics (Micro or Macro);

3. Finance;

4. Algebra, Geometry, or higher mathematics;

5. Statistics;

 $\ensuremath{\mathsf{6.}}$  Introduction to Computers-Word processing/spreadsheets; and

7. Business or Real Estate Law.

(b) If the accredited college, junior college, community college, or university accepts the College-Level Examination Program® (CLEP) examinations and issues a transcript for the examination, showing its approval, it shall be accepted as credit for the college course.

Section 7. Qualifying Education for Certified General Real Property Appraiser Certification Effective January 1, 2008. (1) Regardless of the applicant's accrual of education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained certification as a certified general real property appraiser shall be required to fulfill the requirements of this section if the certification is not issued on or before December 31, 2007.

(2) The prerequisite for taking the AQB approved examination shall be completion of 300 class hours as specified in the required core curriculum Section 7.

(3) The applicant shall complete the 15-Hour National USPAP Course and examination.

(4) An applicant shall demonstrate that his or her education includes the core courses listed in these criteria, with particular emphasis on nonresidential properties.

(5) An applicant for the certified general real property certificate shall hold a bachelors degree or higher from an accredited college or university, unless the requirements of the subsection (6) of this section are satisfied.

(6)(a) In lieu of the bachelor's degree, an applicant for the certified general real property appraiser credential shall successfully pass thirty (30) semester credit hours or its equivalent in the following collegiate level subject matter courses from an accredited college, junior college, community college or university:

1. English Composition;

2. Micro Economics;

3. Macro Economics;

4. Finance;

5. Algebra, Geometry, or higher mathematics;

6. Statistics;

7. Introduction to Computers-Word processing/spreadsheets;

8. Business or Real Estate Law; and

9. Two (2) elective courses in accounting, geography, ageconomics, business management, or real estate.

(b) If the accredited college, junior college, community college, or university accepts the College-Level Examination Program® (CLEP) examinations and issues a transcript for the examination showing its approval, it shall be accepted as credit for the college course.

Section 8. [Effective January 1, 2008,] The required core curriculum and class hours for each of the types or classification of licensees or certificate holders shall be as follows:

(1) Associate Real Property Appraiser consisting of ninety (90) class hours.

(a) Basic appraisal principles-thirty (30) class hours.

(b) Basic appraisal procedures-thirty (30) class hours.

(c) Market analysis and highest and best use [Basic income property appraising]-fifteen (15) class hours.

(d) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) hours.

(2) Licensed real estate appraiser consisting of 150 class hours.

(a) Basic appraisal principles- thirty (30) class hours.

(b) Basic appraisal procedures-thirty (30) class hours.

(c) [Basic income property appraising-fifteen (15) class hours.

(d) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) class hours.

(d)[(<del>o</del>)] Residential market analysis and highest and best usefifteen (15) class hours.

(e)[(f)] Residential appraiser site valuation and cost approachfifteen (15) class hours.

(f)((g)) Residential sales comparison and income approaches-

thirty (30) class hours.

(g)[(h)] Residential report writing and case studies-fifteen (15) class hours.

(h)[(i)] Statistics, modeling and finance-fifteen (15) class hours. (i)[(j)] Advanced residential applications and case studies-fifteen (15) class hours.

(3) Certified residential real estate appraiser consisting of 200 class hours.

(a) Basic appraisal principles-thirty (30) class hours.

(b) Basic appraisal procedures-thirty (30) class hours.

(c) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) class hours.

(d) Residential market analysis and highest and best usefifteen (15) class hours.

(e) Residential appraiser site valuation and cost approachfifteen (15) class hours.

(f) Residential sales comparison and income approaches-thirty (30) class hours.

(g) Residential report writing and case studies-fifteen (15) class hours.

(h) Statistics, modeling and finance-fifteen (15) class hours.

(i) Advanced residential applications and case studies-fifteen (15) class hours.

(j) Appraisal subject matter electives-twenty (20) class hours.

(4) Certified general real estate appraiser consisting of 300 class hours.

(a) Basic appraisal principles-thirty (30) class hours.

(b) Basic appraisal procedures-thirty (30) class hours.

(c) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) class hours.

(d) General appraiser market analysis and highest and best use-thirty (30) class hours.

(e) Statistics, modeling and finance-fifteen (15) class hours.

(f) General appraiser site valuation and cost approach-thirty (30) class hours.

(g) General appraiser sales comparison approach-thirty (30) class hours.

(h) General appraiser income approach-sixty (60) class hours.

(i) General appraiser report writing and case studies-thirty (30) class hours.

(j) Appraisal subject matter electives-thirty (30) class hours.

(5) The required core curriculum classes shall cover the topics set out in this subsection.

(a) Basic appraisal principles.

1. Real property concepts and characteristics, including basic real property concepts, real property characteristics, and legal description.

2. Legal consideration including forms of ownership, public and private controls, real estate contracts, and leases.

3. Influences on real estate values, including governmental influences, economic influences, social influences, environmental, geographic and physical influences.

Types of value including market value and other value types.
 Economic principles including classical economic principles

and application and illustrations of the economic principles.

6. Overview of real estate markets and analysis including market fundamentals, characteristics, and definitions, supply analysis, demand analysis, use of market analysis.

7. Ethics and how they apply in appraisal theory and practice.

(b) Basic appraisal procedures.

1. Overview of approaches to value.

2. Valuation procedures.

a. Defining the problem;

b. Collecting and selecting data;

c. Analyzing;

d. Reconciling and final value opinion; and

e. Communicating the appraisal.

3. Property description.

a. Geographic characteristics of the Land or Site;

b. Geologic characteristics of the Land or Site;

c. Location and neighborhood characteristics;

d. Land/site considerations for highest and best use; and

e. Improvements-architectural styles and types of construction.

4. Residential applications.

- (c) The 15-Hour National USPAP Course or its equivalent.
- 1. Preamble and ethics rules.
- 2. Standard 1.
- 3. Standard 2.
- 4. Standards 3 to 10.
- 5. Statements and advisory opinions.
- (d) Residential market analysis and highest and best use.
- 1. Residential markets and analysis.
- a. Market fundamentals, characteristics and definitions;
- b. Supply analysis;
- c. Demand analysis; and
- d. Use of market analysis.
- 2. Highest and best use.
- a. Test constraints;
- b. Application of highest and best use;
- c. Special considerations;
- d. Market analysis; and
- e. Case studies.
- (e) Residential appraiser site valuation and cost approach.
- 1. Site valuation.
- a. Methods; and
- b. Case studies.
- 2. Cost approach.
- a. Concepts and definitions:
- b. Replacement or Reproduction cost new;
- c. Accrued depreciation:
- d. Methods of estimating accrued depreciation; and
- e. Case studies.
- (f) Residential sales comparison and income approaches. 1. Valuation principles & procedures-sales comparison ap-
- proach.
  - 2. Valuation principles & procedures-income approach.
  - 3. Finance and cash equivalency.
  - 4. Financial calculator introduction.
  - 5. Identification, derivation and measurement of adjustments.
  - 6. Gross rent multipliers.
  - 7. Partial interests.
  - 8. Reconciliation.
  - 9. Case studies and applications.
  - (g) Residential report writing and case studies.
  - 1. Writing and reasoning skills.
  - 2. Common writing problems.
  - 3. Form reports.
  - 4. Report options and USPAP compliance.
  - 5. Case studies.
  - (h) Statistics, modeling and finance.
  - 1. Statistics.
  - 2. Valuation models (AVM's and mass appraisal).
  - 3. Real estate finance.
  - (i) Advanced residential applications and case studies.
  - 1. Complex property, ownership and market conditions.
  - 2. Deriving and supporting adjustments.
  - 3. Residential market analysis.
  - 4. Advanced case studies.
- (j) General appraiser market analysis and highest and best use.
  - 1. Real estate markets and analysis.
  - a. Market fundamentals, characteristics and definitions;
  - b. Supply analysis; and
  - c. Demand analysis.
  - d. Use of market analysis.
  - 2. Highest and best use.
  - a. Test constraints;
  - b. Application of highest and best use;
  - c. Special considerations:
  - d. Market analysis; and
  - e. Case studies.
  - (k) General appraiser sales comparison approach.
  - 1. Value principles.
  - 2. Procedures.
  - 3. Identification and measurement of adjustments.
  - 4. Reconciliation.
  - 5. Case studies.
  - (I) General appraiser site valuation and cost approach.

- 1. Site valuation.
- a. Methods; and
- b. Case studies;
- 2. Cost approach.
- a. Concepts and definitions;
- b. Replacement or Reproduction cost new;
- c. Accrued depreciation;
- d. Methods of estimating accrued depreciation; and
- e. Case studies;
- (m) General appraiser income approach.
- 1. Overview.
- 2. Compound interest.
- 3. Lease analysis.
- 4. Income analysis.
- 5. Vacancy and collection loss.
- 6. Estimating operating expenses and reserves.
- 7. Reconstructed income and expense statement.
- 8. Stabilized net operating income estimate.

APPROVED BY AGENCY: January 13, 2011

- 9. Direct capitalization.
- 10. Discounted cash flow.
- 11. Yield capitalization.
- 12. Partial interests.
- 13. Case studies.

4. Case studies.

DORSEY HALL, Chair

(859) 623-2598.

Contact person: James J. Grawe

(1) Provide a brief summary of

tion for persons seeking certification.

educational requirements for applicants.

tion, provide a brief summary of:

- 2055 -

(n) General appraiser report writing and case studies.

FILED WITH LRC: January 14, 2011 at noon PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on

February 25, 2011 at 1 p.m., at 135 West Irvine Street, Suite 301,

Richmond, Kentucky. Individuals interested in attending this hear-

ing shall notify this agency in writing by February 18, 2008, five

workdays prior to the hearing, of their intent to attend. If no notifica-

tion 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 hear-

ing 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 regula-

tion. Written comments shall be accepted until February 28, 2011. Send written notification of intent to attend the public hearing or

tucky Board of Real Estate Appraisers, 135 West Irvine Street,

Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: Larry Disney, Executive Director, Ken-

(a) What this administrative regulation does: This administra-

(b) The necessity of this administrative regulation: This regula-

(c) How this administrative regulation conforms to the content

(d) How this administrative regulation currently assists or will

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

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of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regula-

assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the

education requirements of certified and licensed appraisers.

tions regarding the educational requirements for certification.

written comments on the proposed administrative regulation to:

- 1. Writing and reasoning skills.
- 2. Common writing problems. 3. Report options and USPAP compliance.

(a) How the amendment will change this existing administrative regulation: The amendment requires market analysis and highest and best use as a component of education.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to identify the education requirements.

(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 necessary to administer the law.

(d) How the amendment will assist in the effective administration of the statutes: The educational standards will assist by identifying the qualifications to acquire a certificate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons currently involved in obtaining education for licensure or certification by the board, but estimates the number to be under 100.

(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 applicants will have to obtain the specified education for certification.

(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 additional costs for complying

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Persons seeking licensure will know the required education.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3345

(2) State compliance standards. This administrative regulation requires compliance with the Real Property Appraiser Qualification Criteria and Interpretations which will be effective January 1, 2008 as promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

(3) Minimum or uniform standards contained in the federal mandate.

The federal mandate requires that persons who are certified by the state must meet the criteria for certification as promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.020, 324A.035(3)(b) and 12 U.S.C. 3345.

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:

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

# 301 KAR 1:155. Commercial fishing requirements.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990, 217.015(20)[<del>, EO 2008-516</del>]

STATUTORY AUTHORITY: KRS 150.025(1), <u>150.175(3), 50</u> <u>C.F.R. 17[<del>(c)</del>, <del>(h)</del>, <del>150.175(3)</del>]</u>

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, and to regulate the buying, selling, or transporting of fish and wildlife. KRS 150.175(3) authorizes the department to establish a commercial fishing license that allows the taking and selling of rough fish. 50 C.F.R. Part 17 protects the shovelnose sturgeon from harvest because following: similarity of appearance with the endangered pallid sturgeon[150.175(3) authorizes the Department of Fish and Wildlife Resources to protect certain rough fishes as designated by administrative regulation. KRS 150.025(1)(c) and (h) authorizes the department to control, by administrative regulation, the buying, selling, and transporting of wildlife. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the new Tourism, Arts and Heritage Cabinet]. This administrative regulation establishes commercial fishing requirements, protects certain species from overharvest, and regulates the buying and selling of[paddlefish, shovelnose sturgeon, and bowfin as protected species and regulates the selling and buying of these] roe-bearing species of rough fish.

Section 1. Definitions. (1) "Buyer's permit" means a Roebearing Fish Buyer's Permit.

(2)["Closed areas" means all waters not listed in 301 KAR 1:150 as being open to commercial fishing.

(3)] "Commercial fisherman" means a person holding a valid resident or nonresident commercial fishing license.

(3)[(4) "Commorcial fishing gear" means the equipment described in 301 KAR 1:146.

(5)] "Harvester's permit" means a Roe-bearing Fish Harvester's Permit.

(4) "Immediate family member" means a person's spouse, mother, father, grandparent, son, or daughter.

(5)[(6)] "Overflow lake" means a permanent or temporary body of water that receives overflow flood waters from an adjacent stream.

(6)[(7) "Restricted areas" means within fifty (50) yards of the outlet or inlet of an overflow lake or within fifty (50) yards of the mouth of a stream, except the mouth of the Ohio River as established in this administrative regulation, or within 200 yards of dams as established in KRS 150.445.

(8)] "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin, regardless of the sex of the fish or the presence or absence or roe.

(7)[(9)] "Roe-bearing Fish Buyer's Permit" means a permit issued by the Department of Fish and Wildlife Resources that entitles the permittee to buy roe-bearing species or roe in accordance with this administrative regulation.

(8)[(10)] "Roe-bearing Fish Harvester's Permit" means a permit issued by the Department of Fish and Wildlife Resources to a licensed commercial fisherman that entitles the permittee to harvest and sell roe-bearing species in accordance with this administrative regulation.

(9)[(11)] "Sport fish" means those species so designated by 301 KAR 1:060.

(10)[(12)] "Unlicensed helper" means a person without a commercial fishing license who is assisting a commercial fisherman.

(11)[(13)] "Unprocessed roe" means roe that has been removed from a roe-bearing fish by a food-processing plant, as defined by KRS 217.015(20), prior to its sale at a roe-bearing fish buyer's facility.

Section 2. Unlicensed Helpers. (1) A commercial fisherman shall not utilize more than two (2) unlicensed helpers while actively fishing.

(2) A commercial fisherman shall ensure that an unlicensed helper complies with all boating safety requirements established in KRS Chapter 235.

(3) An unlicensed helper shall:

(a) Be accompanied by a licensed commercial fisherman while using commercial fishing gear;

(b) Be permitted to transport roe or roe-bearing fish in the absence of a commercial fisherman with a Fish Transportation Permit as established in 301 KAR 1:125.[be accompanied by a licensed commercial fisherman while using commercial fishing gear:]

Section 3. Tagging and Using Commercial Gear. A commercial fisherman shall:

(1) Tag commercial fishing gear <u>pursuant to 301 KAR 1:146[60</u> that a conservation officer is able to find and read the commercial gear tag without undue difficulty];

(2) Not use commercial fishing gear within:

(a)[Within] Fifty (50) yards of the outlet or inlet of an overflow lake; or

(b)[Within] Fifty (50) yards of the mouth of a stream except the mouth of the Ohio River; and

(c) 200 yards of a dam, as established in KRS 150.445.

(3) Not use commercial nets from April 1 through October 31:

(a) In bays and inlets of Kentucky or Barkley Lakes; or

(b) Within a distance of 200 yards from the mouth of bays or inlets in Kentucky or Barkley Lakes.

Section 4. <u>Roe-bearing Fish Harvester's Permit. (1) In order to</u> retain their permit privilege, a Roe-bearing Fish Permit holder shall submit the following by September 15:

(a) A completed Application for Roe-bearing Fish Harvester's Permit; and

(b) The permit fee as established in 301 KAR 3:022.

(2) A mailed application and fee shall be postmarked on or before September 15.

(3) Prior to being issued a harvester's permit, a person must possess a valid commercial fishing license.

(4) A Roe-bearing Fish Harvester's Permit shall not be sold to

<u>a resident of a state that will not sell a nonresident harvester's</u> permit, or its equivalent, to Kentucky residents.

(5) The maximum number of resident Roe-bearing Fish Harvester's Permits available each year shall be 101.

(6) The maximum number of nonresident Roe-bearing Permits available each year shall be eighteen (18).

(7) A Roe-bearing Fish Harvester permittee shall be eligible to transfer permit privileges to:

(a) An immediate family member; or

(b) An unlicensed helper who:

<u>1. Has been employed by the permittee for a period of at least</u> one (1) year in that capacity; and

2. Complies with the requirements of this administrative regulation.

(8) To transfer a permit, the harvester permittee shall send to the department:

(a) A notarized letter documenting the name and relationship of the transferee; and

(b) If an unlicensed helper, proof of employment of the unlicensed helper for a period of one (1) year.

(9) Transferability shall be voided if a commercial fishing license or harvester's permit is revoked or suspended as established in Section 13 of this administrative regulation.

Section 5. Roe-bearing Fish Harvester Permit Lottery. (1) There shall be a lottery for the unfilled harvester permits below the guota.

(2) A person shall apply for the lottery by submitting the following to the department by September 15;

(a) A completed Roe-bearing Fish Harvester Permit Application: and

(b) The appropriate permit fee as established in 301 KAR 3:022.

(3) A mailed application shall be postmarked by September 15 to be eligible.

(4) A person chosen in the lottery shall first obtain a commercial fishing license prior to obtaining a Harvester's Permit.

(5) The department shall return all permit fees to those not chosen in the lottery.

(6) If the department receives fewer resident or nonresident harvester's permit applications than the number of available permits, then completed applications received after September 15 will be filled in the order they were received until the quota has been reached.

(7) If the number of Harvester Permit applications received on a day after September 15 exceeds the number of permits available, then a second lottery will be held to determine the recipients of the available permits.

Section 6. Roe-bearing Fish Harvester Permit Requirements. (1)[Commercial Roe-bearing Fish Harvester's Permit. (1) For the 2008 commercial fishing season:

(a) The department shall sell roe bearing fish harvester's permits between the dates of October 6, 2008 and November 5, 2008 only to:

1. A resident of Kentucky who possesses a valid 2008 commercial fishing license; or

2. A person who possesses a valid nonresident 2008 commercial fishing license and previously:

a. Reported harvesting roe-bearing fish from March 1, 2006 to September 7, 2007; or

b. Purchased a shovelnose sturgeon permit for the 2006 - 2008 seasons:

(b) Initial permit applications.

1. An eligible licensed commercial fisherman shall submit to the department by November 5, 2008, a completed Application for a Roe-bearing Fish Harvester 's Permit along with permit fees as established in 301 KAR 3:022.

2. Mailed applications shall be postmarked not later than November 5, 2008; and

(c) The number of harvester's permits sold after the 2008 season shall not exceed 120 percent of the total number of resident and nonresident harvester's permits sold in 2008.

(2) Beginning with the 2009 commercial fishing season:

(a) The number of resident permits available shall be 120 percent of the resident permits cold in 2008.

(b) The number of nonresident permits available shall be 120 percent of the nonresident permits cold in 2008.

(c) A permittee wishing to renew a harvester's permit shall:

1. Possess a valid commercial fishing license and submit to the department by September 15, a completed Application for a Roebearing Fish Harvester's Permit along with permit fees as established in 301 KAR 3:022; and

2. Mailed applications postmarked by September 15.

(d) A harvester permittee shall be eligible to transfer permit privileges to an immediate family member, or to an unlicensed helper who has been employed by the permittee for a period of at least one (1) year in that capacity and who complies with the requirements of this administrative regulation.

1. The harvester permittee shall send to the department a notarized letter documenting the name and relationship of the transferee and documents showing employment for a period of one (1) year for an unlicensed helper.

2. Transferability shall be voided if a commercial fishing license or harvester's permit is revoked or suspended as established in Section 11 of this administrative regulation; and

(e) If the number of either resident or nonresident harvester's applications is lower than the number issued in 2008, the unfilled permits shall be available using methods described in subsection (3) of this section.

(3) Lottery drawings for resident and nonresident harvester's permits.

(a) Harvester's permits shall not be sold to a resident of a state that will not sell a nonresident harvester's permit, or its equivalent, to a Kentucky resident.

(b) Unfilled harvester's permits.

1. A person wishing to apply for an unfilled resident or nonresident harvester's permit in the lottery drawings shall submit a completed Application for a Roe-bearing Fish Harvester's Permit to the department, by September 15, along with permit fees as established in 301 KAR 3:022.

2. Mailed applications shall be postmarked by September 15.

(c) A person chosen in the lettery drawing for an unfilled harvester's permit shall obtain a valid commercial fishing license prior to obtaining the harvester's permit.

(d) If a person is not chosen in the lottery drawing, permit fees shall be returned.

(e) If the department receives fewer resident or nonresident harvester's permit applications than the number of available permits, then those unused permits shall carry over to the next year.

(4) Roe-bearing fish harvester's permit requirements.

(a)] A harvester's permit shall be required for a licensed commercial fisherman to harvest, transport, or sell roe fish or unprocessed roe.

(2)[(b)] A harvester's permit shall not be required for a special commercial fishing permittee to harvest and sell roe-bearing fish flesh or unprocessed roe from Kentucky and Barkley lakes during the special commercial fishing season, as established in 301 KAR 1:140.

(3)[(-)] A harvester's permit shall not be issued unless all monthly reports, as established in this Section and Section 12[40] of this administrative regulation, have been completed and submitted to the department.

(4)[(d)] A harvester permittee shall:

(a)[1.] Have the harvester's permit in possession while:

1.[a.] Fishing for roe-bearing fish; and

2.[b.] Transporting or selling roe-bearing fish or unprocessed roe:

(b)[2-] Only sell, ship, barter, or provide harvested roe from roe-bearing fish to a Kentucky permitted buyer as established in Section  $\underline{7[5]}$  of this administrative regulation;

(c)[3-] Possess a valid bill of lading if transporting unprocessed roe to a Kentucky permitted buyer;

(d) Properly report to the department by:

<u>1. Completing a Daily Roe-bearing Fish Harvester's Transaction Report for each day of the month that roe-bearing fish are</u> harvested or are sold to a Kentucky permitted buyer:

2. Submitting all daily reports that are completed within a ca-

lendar month to the department by the tenth day of the following month; and

3. Completing and submitting to the department a monthly report as established in Section 12 of this administrative regulation.[4. Complete a Daily Roe-bearing Fish Harvester's Transaction Report as follows:

a. Complete and submit a Daily Roe-bearing Fish Harvester's Transaction Report for each day that roe-bearing fish are harvested or are sold to a Kentucky permitted buyer; and

b. All Daily Roe-bearing Fish Harvester's Transaction Reports that are completed within a calendar month shall be submitted to the department by the tenth day of the following month; and

5. Complete and submit to the department a monthly report as established in Section 10 of this administrative regulation.]

Section <u>7. Buyer's Permit Requirements. (1)[5. Buyer's Permit</u> Requirements. (1) Except as established in Section 4(4) of this administrative regulation,] A buyer's permit shall be required to buy, sell, barter, receive, or ship unprocessed roe from roe-bearing fish harvested in Kentucky.

(2) A person shall apply for a buyer's permit by submitting a completed Application for Commercial Roe-bearing Fish Buyer's Permit along with <u>the appropriate permit fee to the department, as established in 301 KAR 3:022[permit fees, as established in 301 KAR 3:022, to the department]</u>.

(3) A buyer permittee shall:

(a) Not knowingly purchase illegally taken fish or unprocessed roe from any state;

(b) Have in possession a valid buyer's permit while purchasing, receiving, or transporting unprocessed roe;

(c) Maintain for a period of three (3) years an accurate record of all unprocessed roe purchased from roe fish <u>harve-</u><u>sters[harvested]</u> in Kentucky;

(d) Maintain for a period of three (3) years an accurate record of all unprocessed roe purchased from roe fish <u>harve-</u> <u>sters[harvested]</u> in another state including:

1. Name, address, and telephone number of the seller;

2. License number of the seller; and

3. Number of pounds of unprocessed roe purchased;

(e) Submit a completed Monthly Commercial Roe-bearing Fish Buyer's Report to the department by the tenth day of the following month;

(f) Sign the Daily Roe-bearing Fish Harvester's Transaction Report for each transaction with a harvester permittee prior to purchasing or receiving unprocessed roe from the harvester permittee;

(g) Retain a copy of the Daily Roe-bearing Fish Harvester's Transaction Report for each transaction with a harvester permittee for a period of three (3) years; and

(h) Allow a conservation officer access to all records and reports, as established in this section, upon request, during normal business hours.

Section <u>8.[6-]</u> Commercial Fishing Season and Size Limits. (1) The commercial fishing season shall be open year round in the waters listed in 301 KAR 1:150 except for:

(a) Kentucky and Barkley lakes as described in 301 KAR 1:140;

(b) The shovelnose sturgeon [<del>(Scaphirhynchus platorynchus)</del>]season, which shall extend from October 15 through May 15 <u>in the Ohio River Basin only;</u> and

(c) The paddlefish [<del>(Polyodon spathula)</del>]season which shall extend from:

1. November 1 through April 30 in all waters open to commercial fishing, except Barkley and Kentucky Lakes, as specified[for all legal commercial fishing gear as established by 301 KAR 1:146 generally in all waters open to commercial fishing, except Barkley and Kentucky Lakes, which seasons are established] in 301 KAR 1:140; and

2. <u>November 1 through May 31 for commercial trotlines in all</u> waters open to commercial fishing,[May 1 through May 31 for commercial trotlines only in all waters open to commercial fishing] except the Ohio and Mississippi Rivers.

(2) There shall not be a size limit on any commerciallyharvested rough fish,[size limits on any commercially-harvested rough fish] except that a commercial fisherman shall only harvest:

(a) Shovelnose sturgeon between twenty-four (24) and thirtytwo (32) inches, as measured from the tip of snout to the fork of the tail fin; and

(b) Paddlefish that are thirty-two (32) inches or greater, as measured from the beginning of the eye to the fork of the tail fin, except for Kentucky and Barkley lakes as specified in 301 KAR 1:140.

(3) A harvester or buyer permittee shall not possess:

(a) Unprocessed Paddlefish roe after June 5; or

(b) Unprocessed Shovelnose sturgeon roe after May 20.

Section <u>9.[7. Fish]</u> Species Ineligible for Commercial Harvest. (1) A commercial fisherman shall not <u>harvest, and shall immediate-ly release the following species[take]</u>:

(a) Sport fish listed in 301 KAR 1:060;

(b) Pallid sturgeon[(Scaphirhynchus albus)], a federallyendangered species;[er]

(c) Lake sturgeon;

(d) Shovelnose sturgeon caught in the Mississippi River; and

(e) All turtle species.

(2)[(Acipenser fulvescens).

(2) If a commercial fisherman catches a fish listed in subsection (1) of this section, the fish shall be immediately returned, without undue injury, to the waters where it was taken.

(3)] A licensed commercial fisherman shall only sell roebearing fish or unprocessed roe from roe-bearing fish harvested by commercial fishing methods established in and permitted by 301 KAR 1:146.

Section 10.[8-] Tending Gear and Removing Fish. (1) A commercial fisherman shall:

(a)[(1)] Tend and remove the fish from:

1.[(<del>a)</del>] Baited hoop nets or slat traps at least every seventy-two (72) hours; and

2.[(b)] Other commercial fishing gear at least every twenty-four (24) hours;

(b)[(2)] Not possess eggs of any species of fish outside of the fish's body cavity while on the water or adjacent bank; and

(c)[(3)] Remove commercial fishing gear from the water when finished fishing.

Section <u>11. Roe Fish Egg Checking Methodology. A commercial fisherman shall use a ten (10) gauge or smaller[9. Roe Fish Egg Checking Methodology. A commercial fisherman may use a ten (10) gauge] needle to examine roe fish for the presence of eggs.</u>

Section <u>12.[40.]</u> Reporting. A commercial fisherman shall report to the department his or her monthly catch for all months licensed, including months the licensee did not fish, by the tenth day of the following month by completing a Monthly Report of Commercial Fish Harvest in Kentucky form provided by the department.

Section <u>13.[11.]</u> License and Permit Suspension, Nonrenewal, and Revocation.

(1) The department shall suspend the commercial fishing license, harvester's permit, or buyer's permit, of a person who fails to complete and submit to the department any reports required by this administrative regulation by the following methods:

(a) The first time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive by mail a courtesy reminder letter.

(b) The second time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive a warning letter.

(c) The third and subsequent times during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the license or permit shall be suspended until all reports have been received.

(2) The department shall not renew the commercial fishing license or harvester's permit of a person who fails to complete and submit to the department all reports required by this administrative

regulation.

(3) The department shall revoke the commercial fishing license or harvester's permit, for a period of two (2) years, of a person who has been convicted of a federal commercial fishing violation or the following state violations involving commercial fishing:

(a) Use of illegal commercial fishing gear;

(b) Knowingly placing commercial fishing gear in a restricted area, as established in Section 3(2) of this administrative regulation;

(c) Harvesting of prohibited species of fish;

(d) Commercially fishing in waters not open to commercial fishing as established by 301 KAR 1:150; or

(e) Knowingly falsifying commercial harvest data.

(4) The department shall revoke the buyer's permit, for a period of two (2) years, of a person[who]:

(a) [Has been]Convicted of a federal commercial fishing violation; or

(b) <u>Who[Has]</u> falsified data on the Monthly Commercial Roebearing Fish Buyer's Report.

(5) An individual whose permit or license has been denied, suspended, not renewed, or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section <u>14. Boundaries. The department shall make available</u> on its Web site at fw.ky.gov the Global Positioning System (GPS) coordinates detailing the Kentucky and Ohio border[<del>12. Boundaries. The department shall make available on its Web site at</del> <u>www.kdfwr.state.ky.us</u> Global Positioning System (GPS) coordinates detailing the boundary with Ohio,] on the Ohio River, for download to personal devices.

Section <u>15.[13.]</u> Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Commercial Roe-bearing Fish Harvester's Permit", 2008;

(b) "Application for Commercial Roe-bearing Fish Buyer's Permit", 2008;

(c) "Daily Roe-bearing Fish Harvester's Transaction Report", 2008;

(d) "Monthly Commercial Roe-Bearing Fish Buyer's Report", 2008;

(e) "Monthly Report of Commercial Fish Harvest in Kentucky"; and

(f) List of GPS coordinates for Ohio River Boundary with Ohio, 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BENJY KINMAN, Deputy Commissioner for

DR. JONATHAN GASSETT, Commissioner MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: January 12, 2011 FILED WITH LRC: January 13, 2011

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2011, 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 5 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, vou may submit written comments on the proposed administrative regulation by February 28, 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) 564-7109, extension 4507, fax (502) 564-9136.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes commercial fishing requirements and regulates the buying and selling of roe-bearing species of rough fish.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect certain species from harvest, to establish reasonable limits on commercial fishing pressure, and to conserve the populations of roe-bearing fish species so as to provide a sustainable resource for the future.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to set seasons; establish bag or creel limits; and to regulate the buying, selling, or transporting of fish and wildlife. KRS 150.175(3) authorizes the establishment of a commercial fishing license that allows the taking and selling of rough fish. 50 C.F.R. 17 protects the shovelnose sturgeon from harvest in the Mississippi River because of similarity of appearance with the federally protected pallid sturgeon.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists the above statutes by establishing certain seasons, protecting certain species from harvest, and restricting the harvest of some species of rough fish that are susceptible to overharvest due to commercial activity, most notably roe-bearing fish 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 will allow a potential increase in the number roe-harvester permits issued since the previous version of this regulation did not allow anyone to apply for or purchase a roe-harvest permit after September 15. It will remove turtles from the list wildlife species that are allowed to be commercially harvested, and also protects sturgeons from any harvest in the Mississippi River due to a new federal rule. It also restricts the size of needles used to examine roe fish.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to extend the period of time when commercial fishermen may apply for roe-harvest permits, and to restrict the commercial harvest of turtles and protect those species from a growing export market that currently threatens turtle populations in other states and countries. It also is necessary to conform to new federal rules on sturgeon.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who commercial fish and harvest roebearing fish species within the state will potentially be affected. Currently, there are 101 resident and 18 nonresident commercial roe-harvest permits available annually. Any commercial fisherman who formerly harvested turtles would be affected, however, according to commercial fishing reports, no turtles have been harvested by fishermen during the past several years.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Commercial fishermen must not commercially harvest turtles. Commercial fishermen wanting to harvest roe-bearing fish species will be required to apply for a roe-harvest permit by September 15. Those applicants that were issued a roeharvester's permit in the previous year will be issued a new permit. The remaining applicants will be given a permit if there are less than or equal to the maximum number of applicants. Commercial fishermen must comply with a 10-gauge or smaller needle to check for roe. If the number of permits issued is below the quota, commercial fishermen may apply for a lottery drawing for the unfilled permits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no change in the cost of permits for commercial fisherman and roe-harvesters as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who apply for a roe-harvest permit after September 15 will have a chance to receive the permit, whereas prior to this amendment, no one could apply for a permit after September 15.

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

(a) Initially: Initially, the number of permits issued after September 15 is expected to be less than 6. Therefore there will a minimal increase in administrative cost to issue and track the permits.

(b) On a continuing basis: There will be no additional cost on a continuing basis after the first year of implementation.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals who apply for a roe-harvest permit were treated equally.

# FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government? Yes

2. What units, parts or divisions of state or local government will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the department to set seasons and creel limits, and to regulate the buying, selling, and transporting of wildlife. KRS 150.175 authorizes the department to establish a commercial fishing license allowing the take of rough fish. 50 C.F.R. Part 17 protects the shovelnose sturgeon and pallid sturgeon from harvest in the Mississippi River.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency 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 for the first year? Approximately \$3,000 will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government for subsequent years? Approximately \$3,000 per year will be generated during subsequent years.

(c) How much will it cost to administer this program for the first year? Staff currently spends about 100 hours per year administering the program at a cost of about \$4,400. The number of permits is not expected to increase significantly.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program in subsequent years is \$4,400.

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

Revenues (+/-):

Expenditures (+/-): Other Explanation:

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

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

RELATES TO: KRS 150.010, 150.170(4), 150.180, 150.990 STATUTORY AUTHORITY: KRS 150.025(1), 150.177, 150.178, 150.390(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations [to implement KRS Chapter 150 and]to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits can be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

Section 1. Definitions. (1) "Antlered elk" means an elk having visible polished antler protruding above the hairline[at least one (1) antler with four (4) or more antler points that are each at least one (1) inch long when measured from the main beam which also counts as one (1) point].

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

(3) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that may lure, entice, or attract wildlife, but shall not include the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planning or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

(4) "Baiting" means to place, deposit, tend, distribute, or scatter bait.

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

(6) "Elk" means Cervus elaphus nelsoni.

(7) "Elk Hunting Unit" or "EHU[orEHU]" means a designated area in the restoration zone with specific management restrictions.

(8) "Elk Management Unit" or "EMU" means a designated area in the restoration zone with specific management restrictions for a post-season[orEMU" means a designated area in the restoration zone with specific management restrictions for a postseason] antlerless elk guota hunt.

(9) "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters an agreement with the department to allow public access and hunting for at least five (5) years.

(10) "Out-of-zone" means all counties not included in the restoration zone.

(11) "Restoration zone" means the following Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

(12) "Spike" means an elk having one (1) or two (2) antler points on each side

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

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk that are causing property damage. A person authorized to destroy an elk shall:

(a) Attach a department-issued disposal permit to an elk prior to moving the carcass; and

(b) Not remove the disposal permit until the carcass is processed.

Section 3. Regular Elk Quota Hunts. (1) The elk quota hunt lottery application period shall be December 1 to April 30.

(2) A person shall apply for the elk quota hunt via the department's Web site at <u>fw.ky.gov[http://fw.ky.gov</u>] and provide the applicant's:

(a) Name;

(b) Social Security number;

(c) Date of birth;

(d) Mailing address or phone number; and (e) Nonrefundable application fee of ten (10) dollars.

(3) The commissioner may extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.

(4) There shall be a random electronic drawing.

(5) Five (5) either-sex elk permits shall be available for a special youth-only quota hunt to be held for three (3) consecutive days beginning the last Saturday in September on Paul Van Booven WMA and adjacent private lands as allowed by the landowner[on Paul Van Booven WMA and adjacent private lands as allowed by the landowner, beginning the last Saturday in September].

(a) There shall be a separate random electronic drawing for the youth-only elk quota hunt.

(b) The application period for the youth-only elk quota hunt shall be December 1 through April 30.

(c) A youth shall apply via the department's Web site at <u>fw.ky.gov[http://fw.ky.gov</u>] and provide the applicant's:

1. Name;

2. Social Security number;

3. Date of birth;

4. Mailing address;

5. Phone number; and

6. Nonrefundable application fee of ten (10) dollars.

(d) An applicant shall not apply for the youth-only elk quota hunt more than once per application period.

(e) An applicant for the youth-only elk quota hunt may also apply for the regular quota hunt as established in this section.

(f) A youth applicant drawn for the youth-only elk quota hunt shall not be drawn in the regular quota hunt lottery held during the same calendar year.

(g) A youth drawn for the youth-only elk quota hunt shall be ineligible to be drawn for the youth-only elk quota hunt in subsequent years.

(6) No more than ten (10) percent of all drawn applicants shall be nonresidents.

(7) A quota hunt permit awarded via a departmentadministered lottery drawing shall not be transferable.

(8)[Beginning December 1, 2010,] There shall be four (4) separate regular elk quota hunt lotteries consisting of:

(a) Antlered archery and[or spike archery or] crossbow;

(b) Antlered [or spike]firearms;

(c) Antlerless archery and crossbow; and

(d) Antlerless firearms.

(9) An applicant shall:

(a) Apply only once for an individual lottery;

(b) Not apply for more than two (2) of the four (4) lotteries;

(c) Not be eligible to be drawn in more than one (1) of the four (4) lotteries;

(d) Only be selected by a random electronic drawing; and

(e) Pay a nonrefundable application fee of ten (10) dollars for each lottery entry.

(10) A person who is drawn for an antlered elk quota hunt shall be ineligible to be drawn for any antlered elk quota hunt for the following three (3) years.

(11) A person who does not have access to the department's Web site to apply for any quota hunt may contact the department

### toll free at 1-800-858-1549 for assistance in applying.

Section 4. Landowner Cooperator Permits. (1) With the approval of the commission, the commissioner shall issue to a landowner cooperator:

(a) One (1) either-sex permit annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement;

(b) Two (2) antierless-only permits annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement; or

(c) One (1) antlerless-only permit annually per 5,000 acres of land enrolled with the department in an elk hunting access agreement for the duration of the agreement.

(2) A recipient of a landowner cooperator permit shall comply with the season, bag limit, and hunter requirements in Sections 5 and 6 of this administrative regulation.

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

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

(b) Prior to hunting, the landowner cooperator or person who has received the transferred permit shall provide the department the hunter's:

1. Name;

2. Social Security number;

3. Address; and

4. Telephone number.

(c) The permit shall not be transferable after being used for the harvest of one (1) elk.

(4) Public access agreements with the department shall be recorded in writing.

Section 5. Hunter Requirements. (1) <u>A person shall carry proof</u> of purchase of a valid Kentucky hunting license and valid elk permit while hunting, unless exempted by KRS 150.170.

(2) The statewide bag limit shall be one (1) elk per hunter per license year.

(3)[(2)] An elk hunter in the restoration zone may be accompanied by up to two (2) other individuals.

(4)[(3)] A person drawn for a regular quota hunt shall be assigned to a single EHU and shall not hunt outside that EHU, except that a drawn applicant who owns land in the elk restoration zone may hunt on his or her land.

(5)[(4)] An elk hunter or any person accompanying an elk hunter shall comply with hunter orange requirements established in 301 KAR 2:172.

(6)[(5)] An elk hunter shall not:

(a) Take elk except during daylight hours;

(b) Use dogs, except to recover wounded elk using leashed tracking dogs;

(c) Hunt over bait;

(d) Drive elk from outside the assigned EHU;

(e) Take an elk while it is swimming;

(f) Use electronic calls or electronic decoys; or

(g) Take an elk if the hunter is in a vehicle, boat, or on horseback, except that a disabled hunter who has a hunting method exemption permit issued pursuant to 301 KAR 3:027, by the department may use a stationary vehicle as a hunting platform.

(7)[(6)] A person shall:

(a) Obtain a vehicle tag from the department prior to hunting elk in the restoration zone; and

(b) Display the vehicle tag in the windshield of the vehicle while hunting elk.

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

(9)((8)] An adult accompanying a person under (16) years old shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(10)[(<del>0)</del>] A hunter may use any deer hunting method authorized by 301 KAR 2:172.

(11) (10) A person shall not use any of the following items to take an elk:

(a) Any weapon or device prohibited for deer hunting pursuant to 301 KAR 2:172;

(b) A modern firearm less than 270 caliber;

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

(d) A shotgun less than 20 gauge;

(e) Any arrow without a broadhead point;

(f) A handgun with a barrel length of less than six (6) inches, a bore diameter less than.270 inches (.270 caliber), and when fired, the bullet shall produce at least 550 ft/lbs of energy at 100 yards.

(12)[(11)] A quota elk hunter shall only take an elk of the type and sex determined by the permit drawn.

(13)[(12)] An individual who receives or is transferred a landowner cooperator permit or a special commission permit may hunt in all of the antlered-only or antlerless-only quota hunts in accordance with the seasons and limits established in Section 6 of this administrative regulation.

Section 6. Elk Quota Hunt Seasons and Limits. (1) A person drawn for an antlerless or antlered archery and crossbow permit shall not hunt when an elk firearms season is open.

(2) A person drawn for an antlered archery and crossbow permit shall use:

(a) Archery equipment to take an antlered elk beginning the third Saturday in September through the third Monday in January; and

(b) A crossbow to take an antlered elk:

1. For two (2) consecutive days beginning the third Saturday in October; and

2. From the second Saturday in November through December 31.

(3) A person drawn for an antierless archery and crossbow permit shall use:

(a) Archery equipment to take an antierless elk beginning the third Saturday in October through the third Monday in January; and (b) A crossbow to take an antierless elk:

1. For two (2) consecutive days beginning the third Saturday in October; and

2. From the second Saturday in November through December 31.

(4) A person drawn for an antlered firearms permit shall use a modern gun or muzzleloader to take an antlered elk during one (1) of the following two (2) seven (7) day periods randomly assigned by the department:

(a) From the first Saturday in October for seven (7) consecutive days; or

(b) From the second Saturday in October for seven (7) consecutive days.

(5) A person drawn for an antlerless firearms permit shall use a modern gun or muzzleloader to take an antlerless elk during one (1) of the following two (2) seven (7) periods randomly assigned by the department:

(a) From the second Saturday in December for seven (7) consecutive days; or

(b) From the third Saturday in December for seven (7) consecutive days.[who is participating in a quota hunt may use archery equipment to take an elk beginning with the third Saturday in October through the third Monday in January.

(2) A person who is participating in a quota hunt may use a crossbow to take and elk:

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

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

(3) A person who is F participating in a quota hunt may use archery equipment, a modern firearm, a muzzleloader, or a crossbow:

(a) For antilered and spike elk during one (1) of two (2) seven (7) consecutive day periods as randomly assigned by the department as follows:

1. The first seven (7) day period shall begin the first Saturday in October; and

2. The second seven (7) day period shall begin the second Saturday in October; and

(b) For antierless elk during one (1) of two (2) seven (7) con-

secutive-day periods as randomly assigned by the department as follows:

1. The first seven (7) day period shall begin the second Saturday in December; and

2. The second seven (7) day period shall begin the third Saturday in December.]

Section 7. EHU boundaries. (1) EHU 1 - Starting at the Martin/Lawrence County line at the Tug Fork of the Big Sandy River, the boundary proceeds southeast following the Tug Fork to the Pike County/Buchanan County, Virginia line. The boundary then proceeds southwest following the Kentucky/Virginia state line to U.S. Hwy 23. The boundary proceeds north following U.S. Hwy 23 to the Johnson/Lawrence County line. The boundary proceeds east following the county line of Johnson/Lawrence and Martin/Lawrence, completing the boundary.

(2) EHU 2 - Starting at the Johnson/Lawrence County line on U.S. Hwy 23, the boundary proceeds south to the intersection of U.S. Hwy 23 with State Hwy 80. The boundary then follows State Hwy 80 west to the intersection with State Hwy 15. The boundary then goes north following State Hwy 15 to the intersection of State Hwy 15 with the Breathitt/Wolfe County line. The boundary then follows the county lines of Magoffin/Wolfe County, Magoffin/Morgan County, and Johnson/Morgan County northeast to U.S. Hwy 23, completing the boundary.

(3) EHU 3A - Starting at the intersection of U.S. Hwy 23 and State Hwy 80, the boundary proceeds south following U.S. Hwy 23 to the intersection of U.S. Hwy 23 with the Kentucky/Virginia state line. The boundary then follows U.S. Hwy 119 west to the intersection of U.S. Hwy 119 with State Hwy 15. The boundary then follows State Hwy 15 northwest to the intersection of State Hwy 15 with State Hwy 80. The boundary then follows State Hwy 80 northeast to the intersection of State Hwy 80 and U.S. Hwy 23, completing the boundary.

(4) EHU 3B - Starting at the intersection of State Hwy 550 and Kentucky 1697, go north on State Hwy 550 through Mousie and Betty to the intersection with State Hwy 7 near Lackey. Turn south on State Hwy 7, travel past Dema to intersection with State Hwy 899. Turn south on State Hwy 899, go through Pippa Passes to intersection with Kentucky 1697 at Alice Lloyd College. Go west on Kentucky 1697 to intersection with State Hwy 550 in Garner, completing the boundary.

(5) EHU 4 - Starting at the Breathitt/Wolfe County line on State Hwy 15, the boundary proceeds south following State Hwy 15 to the intersection of State Hwy 15 and Hal Rogers Parkway. The boundary then follows Hal Rogers Parkway west to the Clay/Laurel County line. The boundary then follows the county lines of Clay/Jackson County, Clay/Owsley County, Perry/Owsley County, Breathitt/Owsley County, Breathitt/Lee County, and Breathitt/Wolfe County northeast to State Hwy 15 at the Breathitt/Wolfe County line, completing the boundary.

(6) EHU 5 - Starting at the intersection of the Hal Rogers Parkway and State Hwy 15, the boundary proceeds south following State Hwy 15 to the intersection of State Hwy 15 and U.S. Hwy 119. The boundary then follows U.S. Hwy 119 east to the intersection of U.S. Hwy 119 and U.S. Hwy 23. The boundary then follows U.S. Hwy 23 south to the intersection of U.S. Hwy 23 with the Kentucky/Virginia line. The boundary then follows the Kentucky/Virginia state line southwest to the intersection of the state line with U.S. Hwy 421. The boundary then follows U.S. Hwy 421 north to the intersection of U.S. Hwy 421 and State Hwy 66, then north along State Hwy 66 to the intersection of State Hwy 66 and Hal Rogers Parkway. The boundary then follows Hal Rogers Parkway northeast to the intersection of Hal Rogers Parkway and State Hwy 15, completing the boundary.

(7) EHU 6A - Starting at the intersection of the Hal Rogers Parkway and State Hwy 66, the boundary proceeds south following State Hwy 66 to the intersection of State Hwy 66 with State Hwy 221 at Straight Creek. The boundary proceeds east on State Hwy 221 to the intersection with U.S. Hwy 421. The boundary then proceeds south on U.S. Hwy 421 to the intersection with the Kentucky/Virginia state line. The boundary then follows the state line west to the Kentucky/Tennessee state line and continues west to the intersection of the Wayne/McCreary County line with the Kentucky/Tennessee state line. The boundary then follows the county lines of McCreary/Wayne County, McCreary/Pulaski County, McCreary/Laurel County, Whitley/Laurel County, Knox/Laurel County, and Clay/Laurel County northeast to the intersection of Hal Rogers Parkway and the Clay/Laurel County Line. The boundary then follows Hal Rogers Parkway east to the intersection of Hal Rogers Parkway and State Hwy 66, completing the boundary.

(8) EHU 6B - Starting at the intersection of State Hwy 66 and the Hal Rogers Parkway at Big Creek, the boundary proceeds south on State Hwy 66 to the intersection with U.S. Hwy 421. The boundary then follows U.S. Hwy 421 south to the intersection with Kentucky 2058 near Helton, then follows Kentucky 2058 west to Kentucky 1780 at Spruce Pine. The boundary proceeds north on Kentucky 1780 to the intersection with Kentucky 1850 at Warbranch, then west along Kentucky 1850 to the intersection with State Hwy 66 near Queendale. The boundary then follows State Hwy 66 north to the intersection with Hal Rogers Parkway at Big Creek, completing the boundary.

(9) EHU 6C - Starting at the intersection of U.S. Hwy 421 and Kentucky 2058 near Helton, the boundary proceeds south on U.S. Hwy 421 to the intersection with State Hwy 221. The boundary then follows State Hwy 221 west to the intersection with Kentucky 1780 and turns north to follow Kentucky 1780 to the intersection with Kentucky 2058 at Spruce Pine. It then follows Kentucky 2058 east to the intersection with U.S. Hwy 421, completing the boundary.

(10) EHU 6D - Starting at the intersection of Kentucky 1780 and Kentucky 1850 at Warbranch, the boundary proceeds south on Kentucky 1780 to the intersection with State Hwy 221. The boundary then follows State Hwy 221 west to the intersection with Kentucky 2011, turning north along Kentucky 2011 to the intersection of Kentucky 2011 and State Hwy 66. It then follows State Hwy 66 north to Kentucky 1850, then proceeds east on Kentucky 1850 to the intersection with Kentucky 1780, completing the boundary.

(11) EHU 6E - Starting at the intersection of State Hwy 66 and Kentucky 2011 near Beverly, the boundary proceeds south along Kentucky 2011 to the intersection with State Hwy 221 at Stoney Fork. The boundary then follows State Hwy 221 west to the intersection with State Hwy 66 at Straight Creek, turning north along State Hwy 66 to the intersection with Kentucky 2011, completing the boundary.

Section 8. Post-season Quota Hunt for Elk on Private Land. (1) A modern firearms quota hunt for antlerless elk and spikes shall take place beginning on the fourth Saturday in January for fourteen (14) consecutive days.

(2) Each hunter shall be randomly drawn from the pool of applicants:

(a) Who were not drawn for the previous elk quota hunts; and

(b) Who are residents of the elk restoration zone.

(3) A drawn applicant shall comply with the requirements in Section 5 of this administrative regulation except that an applicant may hunt only in the assigned EMU or on land the applicant owns within another EMU.

(4) EMU boundaries shall be:

(a) Knott County EMU - Starting at the intersection of State Hwy 550 and State Hwy 7 near Lackey, the boundary proceeds south along State Hwy 7 to the intersection with State Hwy 582 then southeast on State Hwy 582 to the intersection of State Hwy 582 and 160. The boundary then proceeds north on State Hwy 160 to the intersection with State Hwy 550 at Hindman, turning northeast on State Hwy 550 to the intersection with State Hwy 7, thus completing the boundary.

(b) Stoney Fork EMU - Starting at the intersection of State Hwy 2058 and U.S. Hwy 421 near Helton, the boundary then proceeds south along U.S. Hwy 421 to the intersection of U.S. Hwy 421 and U.S. Hwy 119 near Harlan, then west along U.S. Hwy 119 to the intersection of U.S. Hwy 119 and U.S. Hwy 25E. The boundary then goes north following U.S. Hwy 25E to the intersection with State Hwy 66, then north on State Hwy 66 to the intersection of State Hwys 66 and 1850, then east along State Hwy 1850 to the intersection of State Hwys 1650 and 1780 at Warbranch. The boundary then proceeds south on State Hwy 1780 to its intersection with State Hwy 2058 near Spruce Pine, then east on State

Hwy 2058 back to U.S. Hwy 421 at Helton, thus completing the boundary.

(5) Any public hunting area within an EMU shall be closed to elk hunting during this season.

Section 9. Tagging and Checking Requirements. Immediately after taking an elk and prior to removing the hide or head from the carcass, a hunter shall:

(1) Record on a hunter's log the following information:

(a) The species harvested;

(b) The sex of the animal;

(c) Date of harvest; and

- (d) County of harvest; and
- (2) Check the harvested elk by:

(a) Calling (800) 245-4263 and providing the requested information; or

(b) Completing the online check-in process at fw.ky.gov[calling (800) 245-4263 and recording the confirmation number on a hunter's log].

Section 10. Elk Hunting on Public Land. (1) A person drawn for an elk quota hunt or the recipient of a special commission permit may hunt on Wildlife Management Areas (WMA), state forests, the Big South Fork National River and Recreation Area, the Daniel Boone National Forest, and the Jefferson National Forest within the restoration zone under the conditions of the permit received.

(2) Portions of Paintsville Lake WMA that lie out of the restoration zone are subject to the requirements established in Section 11 of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

(4) Paul Van Booven WMA.

(a) The archery and crossbow seasons shall be open as established in Section 6 of this administrative regulation.

(b) Firearms shall not be used to hunt elk, except that youths participating in the youth-only elk quota hunt may use any deer hunting method authorized by 301 KAR 2:172 to take elk.

(c) The WMA shall be closed to all other hunting during the youth-only elk quota hunt.

(5) A person shall not mimic the sound of an elk on public land open to elk hunting from September 1 until the opening of the elk archery season.

Section 11. Out-of-zone Elk Hunting. (1) The methods for taking deer and the deer seasons established in 301 KAR 2:172 shall apply to a person taking elk outside of the restoration zone.

(2) Unless exempted by KRS 150.170, a person who is hunting out-of-zone elk shall possess:

(a) A valid Kentucky hunting license; and

(b) An out-of-zone elk permit.

(3) A person may take an elk of either sex, which shall not count toward the person's deer bag limit.

(4)[(a) A person taking an out-of-zone elk shall possess an outof-zone elk permit as established in 301 KAR 3:022.

(b) A landowner shall be exempt from this permit requirement pursuant to KRS 150.170(4).

(2) Either sex elk may be taken and shall not count toward a person's deer bag limit.

(3)] Any elk harvested out-of-zone shall be telechecked pursuant to Section 9 of this administrative regulation.

Section 12. A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours to obtain a disposal permit.

BENJY KINMAN, Deputy Commissioner for DR. JONATHAN GASSETT, Commissioner MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: January 12, 2011

FILED WITH LRC: January 13, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2011, at 9 a.m. at the Department of Fish and Wildlife

Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by 5 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 February 28, 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 administrative regulation establishes elk hunting requirements and legal methods to handle elk depredation problems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the boundaries of the units to which hunters are assigned, to establish hunting procedures and seasons, and to effectively manage elk in the Common-wealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations governing the taking of wildlife. KRS 150.170(4) exempts landowners, the dependents, and their tenants from license requirements. KRS 150.177 and KRS 150.178 authorize the issuance of commission permits and landowner cooperator permits. KRS 150.390 authorizes the department to promulgate administrative regulations for the removal of elk that are causing destruction to property and to establish elk hunting seasons and requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The elk population continues to increase and requires continued harvest as the statute provides. This regulation establishes seasons and requirements for elk hunting.

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

(a) How the amendment will change this existing administrative regulation: This amendment stipulates that the first two weeks of archery season shall be for antlered elk only, sets the season dates for archery, crossbow and firearms seasons, allows for internet checking of harvested elk, and prohibits elk calling on public land prior to the opening of the elk season.

(b) The necessity of the amendment to this administrative regulation: See 1 (b) above.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 35,000 to 50,000 people who apply to hunt elk in Kentucky each year. Property owners sustaining damage from elk can benefit from the late season depredation hunt. Residents of the elk zone who applied for the regular season hunt shall be eligible for the late season depredation hunt.

(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: Hunters may apply for 2 elk lotteries with their choice of weapon and elk gender. Hunters drawn for archery/crossbow permits may not hunt during firearms season dates, and vice versa. Elk calling on public land will be prohibited.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): For the 2011-2012 season, hunters may apply for 2 lotteries per season, at the cost of \$10 per application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunters may apply for up to 2 of the 4 lotteries. Hunters drawn for antiered archery tags will get 2 weeks prior to the October firearms season to hunt.

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

(a) Initially: Other than a minor administrative cost, there will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency 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. The department already has the mechanisms in place for administering quota hunt application procedures, random drawings and other aspects of the elk hunts.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Additional fees for direct implementation of this regulation are not necessary, as infrastructure for conducting all aspects of elk management and quota hunts already exists (see "6" above).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation amendment does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes and No. Tiering was only applied on the Post-Season Quota Hunt on Private Land. Only residents of the elk restoration zone are eligible to participate in this hunt and they must hunt on private land. This hunt is designed to help local landowners suffering damage from elk in 2 areas with depredating elk problems. Elsewhere tiering is not applied and all hunters are eligible to participate.

## 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? Yes

2. What units, parts or divisions of state or local government will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, KRS 150.170, KRS 150.177, KRS 150.178, KRS 150.390.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency 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 for the first year? For the 2009 elk season, 46,009 people paid the \$10 lottery application fee (\$460,090 of revenue to the department). A total of 926 of the 1,000 drawn hunters paid for elk permits, generating \$53,575 in additional revenue to the department. The number of lottery participants is likely to increase, although the exact increase cannot be predicted.

(b) How much revenue will this administrative regulation generate for the state or local government for subsequent years? Each year has brought increases in the number of applicants and thus the direct revenue to KDFWR. There is also a positive economic impact to cities, counties and local businesses in and near the elk restoration zone, but the specific dollar amount is unknown.

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

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

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

Revenues (+/-): See 4 (a) and (b) above.

Expenditures (+/-): No additional expenditures; see 4 (c) and (d) above.

Other Explanation:

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

# 301 KAR 2:178. Deer hunting on Wildlife Management Areas, state parks, and other public lands.

RELATES TO: KRS 150.010, 150.340, 150.370(1), 150.390, 150.990

STATUTORY AUTHORITY: 148.029(5), 150.025(1), 150.620 NECESSITY, FUNCTION, AND CONFORMITY: KRS

148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to implement wildlife management plans on state parks. 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 to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes deer hunting seasons, application procedures, and other matters pertaining to deer hunting on Wildlife Management Areas that differ from statewide requirements and on state parks.

Section 1. Definitions. (1) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that may lure, entice, or attract wildlife.

(2) "Centerfire" means a type of firearm that detonates a cartridge by the firing pin striking a primer in the middle of the end of the cartridge casing.

(3) "In-line muzzleloading gun" means a firearm capable of being loaded only from the discharging end of the barrel or cylinder, that is also equipped with an enclosed ignition system located directly behind the powder charge.

(4) "Mobility-impaired" means an individual who meets the requirements of Section 2(1) of 301 KAR 3:026.

(5) "Modern firearm season" means the ten (10) or sixteen (16) consecutive day period beginning the second Saturday in November when breech-loading firearms may be used to take deer pursuant to 301 KAR 2:172.

(6) "Optical enhancement" means any sighting device other than open or "iron" sights.

(7) "Quota hunt" means a Wildlife Management Area or state park hunt where a participant is selected by a random drawing.

(8) "Statewide requirements" mean the season dates, zone descriptions, and other requirements for deer hunting established in 301 KAR 2:172.

(9) "Wildlife management area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

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

Section 2. General WMA Requirements. (1) Unless specified in this administrative regulation, statewide requirements shall apply to a WMA.

(2) A hunter shall not take more than one (1) deer per day on a WMA, except:

(a) During a quota hunt;

(b) The Grayson Lake WMA open youth deer hunt; or

(c) West Kentucky WMA firearms season[during a quota hunt]. (3) Unless specified in Section 6 of this administrative regulation, if a WMA is in two (2) or more deer hunting zones as established in 301 KAR 2:172, then the WMA shall be regulated by the most liberal zone requirements of the zones in which it lies.

(4) Deer hunting on WMAs listed in Section 6 of this administrative regulation, shall be permitted only as stated, except archery hunting is allowed under the statewide archery requirements established in 301 KAR 2:172, unless otherwise noted.

(5) An open firearm deer hunt, beginning on the Wednesday following the third Monday in January for ten (10) consecutive days, shall:

(a) Be limited to members of the United States Armed Forces and the National Guard and reserve component who:

1. Are residents of Kentucky or nonresidents stationed in Kentucky; and

2. Were deployed out-of-country during any portion of the most recent regular statewide deer season.

(b) Only be on a WMA designated as open for this special hunt; and

(c) Follow statewide requirements established in 301 KAR 2:172.

(6) On a WMA, a person:

(a) Shall not use a nail, spike, screw-in device, wire, or tree climber for attaching a tree stand or climbing a tree;

(b) May use a portable stand or climbing device that does not injure a tree;

(c) Shall not place a portable stand in a tree more than two (2) weeks before opening day, and shall remove it within one (1) week following the last day, of each hunting period;

(d) Shall plainly mark the portable stand with the hunter's name and address;

(e) Shall not use an existing permanent tree stand; and

(f) Shall not place, distribute, or hunt over bait.

(7) A person without a valid quota hunt confirmation number

shall not enter a WMA during a quota hunt on that area except: (a) To travel through a WMA on an established road or to use

an area designated open by a sign; or (b) One (1) assistant who shall not be required to have applied for the quota hunt, may accompany a mobility-impaired hunter who was drawn to hunt.

(8) A person hunting any species except waterfowl hunting or hunting at night, or a person accompanying a hunter shall wear hunter orange clothing as specified in 301 KAR 2:172 while on a WMA when firearms are permitted for deer hunting or while hunting within the sixteen (16) county elk zone when firearm elk season is in progress.

Section 3. General Quota Hunt Procedures. (1) A quota hunt applicant who is not selected and applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

(2) If selected for a quota hunt other than the Taylorsville Lake WMA antierless-only hunt, a person shall lose all accumulated preference points.

(3) A random selection of hunters with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(4) If a person does not apply for a deer quota hunt in a given year, then all accumulated preference points shall be forfeited.

(5) Each applicant's preference points are independent of each other. If applying as a party, the entire party is selected if one (1) member of the party is selected.

(6) The commissioner may extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(7) A hunter may take up to two (2) deer on a quota hunt, only one (1) of which may be an antlered deer, except as authorized in Section 6 of this administrative regulation.

(8) There shall be one (1) person drawn from the eligible quota hunt applicants who were not selected in the original drawing. This

person shall receive one (1) deer permit that carries with it all the privileges of the Special Commission Permit described in 301 KAR 3:100.

Section 4. Quota Hunt Application Process. A person applying for a quota hunt shall:

(1) Call the toll free number listed in the current fall hunting and trapping guide from a touch-tone phone <u>or apply online at</u> <u>fw.ky.gov</u> between September 1 and September 30;

(2) Enter each applicant's Social Security number;

(3) Indicate a first and second choice of hunts; and

(4) Pay a three (3) dollar application fee for each applicant, prior to the draw by:

(a) Check;

(b) Money order;

(c) Visa; or

(d) Master Card.

(5) Not apply more than one (1) time;

(6) Not apply as a group of more than five (5) persons; and

(7) Not be eligible to participate in a quota hunt unless selected pursuant to this administrative regulation, or accompanying a <u>mobility-impaired[movement-impaired]</u> hunter.

Section 5. Quota Hunt Participant Requirements. Except as otherwise specified in this administrative regulation, a person selected to participate in a quota hunt shall:

(1) Possess an annual Kentucky hunting license, except as provided in KRS 150.170(3) and 150.170(6);

(2) Possess a deer permit that authorizes the taking of deer with the equipment being used and in accordance with the zone restrictions where the hunt will occur;

(3) Possess an unused bonus deer permit, if the person has already taken the two (2) deer authorized by possession of the statewide deer permit;

(4) Not be required to possess a deer permit if the person possesses and presents a senior/disabled combination hunting and fishing license at time of check-in, is on military furlough for more than three (3) days, or is under twelve (12) years of age;

(5) Hunt on assigned date and in assigned areas selected by a random drawing of applicants if necessary;

(6) Comply with hunting equipment restrictions specified by the type of hunt;

(7) Check in at the designated check station:

(a) Either:

1. On the day before the hunt, between noon and 8 p.m. local time; or

2. On the day of the hunt, between 5:30 a.m. and 8 p.m. Eastern time; and

(b) With documentation of the participant's:

1. Social Security number or draw confirmation number; and

2. Purchase of a current statewide deer permit;

(8) Check out at the designated check station:

(a) If finished hunting;

(b) If the hunter's bag limit is reached; or

(c) By 8 p.m. Eastern time on the final day of the hunt;

(9) Take a harvested deer to the designated check station by 8 p.m. Eastern time the day the deer was harvested.

(10) Be declared ineligible to apply for the next year's drawing if the hunter fails to check out properly; and

(11) Comply with all waterfowl, pheasant, quail, and deer quota hunt requirements, including the fifteen (15) inch minimum outside antler spread harvest restriction for antlered deer when in effect, or be ineligible to apply for any quota hunt for these species the following year.

Section 6. Hunting Dates, Requirements and Restrictions. (1) Adair WMA. The crossbow season shall be open under statewide requirements.

(2) Ballard WMA.

(a) On the main tract, the quota hunt shall be for two (2) consecutive days beginning on the first Saturday in November.

(b) On the main tract, the archery, crossbow, and youth firearm seasons shall be open under statewide requirements through October 14, except that the two (2) mile driving loop marked by signs

shall be closed to all hunting;

(c) The crossbow, modern firearm, youth firearm, and muzzleloader seasons shall be open under statewide requirements only on the 400 acre tract south of Sallie Crice Road.

(d) A hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(3) Barren River WMA. The area shall be open under statewide requirements except that on the Peninsula Unit, including Narrows, Goose and Grass Islands, a person shall not hunt deer with a modern firearm.

(4) Beaver Creek WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The limit shall be one (1) deer during the quota hunt.

(c) The crossbow season shall be open under statewide requirements.

(d) A deer hunter shall not take an antiered deer with antiers having an outside spread of less than fifteen (15) inches.

(5) Boatwright WMA. The area shall be open under statewide requirements, except that:

(a) On the Swan Lake Unit the archery and crossbow season shall be open under statewide requirements through October 14; and

(b) The October youth deer season shall be open under statewide requirements.

(6) Cedar Creek Lake WMA. The crossbow season shall be open under statewide requirements.

(7) Clay WMA.

(a) On the main tract, crossbow and youth firearm seasons shall be open under statewide requirements, except archery hunting shall be prohibited during the quota fox hunting field trials as established in 301 KAR 2:049.

(b) The remainder of the WMA shall be open under statewide requirements for the archery, crossbow, and youth seasons, except during the quota deer hunt.

(c) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(d) A quota hunt participant shall be given one (1) preference point for each female deer checked-in.

(e) Hunters drawn for the quota hunt may harvest up to four (4) deer, only one (1) of which may be antlered.

(8) Dewey Lake WMA.

(a) The crossbow and youth firearm seasons shall be open under statewide requirements.

(b) The use of firearms shall be prohibited for deer hunting on the portion of the area extending southward from the dam to Shoreline Campground Number One, and including all property from the WMA boundary downslope to the lake edge.

(c) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(9) Dix River WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open under statewide requirements.

(10) Fishtrap Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning on the Saturday before Thanksgiving.

(b) The limit for the quota hunt shall be one (1) deer.

(c) The crossbow and youth firearm season shall be open under statewide requirements.

(11) Grayson Lake WMA.

(a) An open youth hunt shall:

1. Be the first Saturday in November for two (2) consecutive days;

2. Have a two (2) deer bag limit, only one (1) of which may be an antlered deer; and

3. Have bonus deer permits apply.

(b) A person who has not checked in shall not enter the Grayson Lake WMA during the open youth hunt, except to:

1. Travel through the WMA on an established public road; or

2. Use an area designated as open by signs.

(c) The property of Camp Webb shall be open for a mobilityimpaired deer hunting event during the first weekend of October as established in 301 KAR 3:110.

(d) The crossbow hunt shall be from the first Saturday in September through the third Monday in January, except during the November open youth hunt.

(e) The statewide youth firearm season shall be open under statewide requirements.

(12) Green River Lake WMA and Dennis-Gray WMA.

(a) The crossbow season shall be open under statewide requirements.

(b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(c) Fifteen (15) openings shall be reserved in the quota hunt for mobility-impaired persons.

(d) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches

(e) The Green River Lake and Dennis-Gray WMAs shall be considered to be located in the Eastern Time Zone.

(13) Higginson-Henry WMA.

(a) The youth firearm deer season shall be open under statewide requirements.

(b) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(c) A hunter shall not take more than one (1) deer from the WMA per license year.

(14) J.C. Williams WMA. The crossbow season shall be open under statewide requirements.

(15) Kentucky River WMA. The crossbow and youth firearm seasons shall be open under statewide requirements.

(16) Kleber WMA.

(a) The crossbow season shall be open under statewide requirements, except during a quota hunt.

(b) The quota hunts shall be for:

1. Two (2) consecutive days beginning the first Saturday in November; and

2. Two (2) consecutive days beginning the first Saturday in December.

(c) The youth firearm season shall be open under statewide requirements.

(17) Knobs State Forest WMA. The crossbow season shall be open under statewide requirements.

(18) Lake Barkley WMA shall be open under statewide requirements except

(a) The North Refuge is closed from November 1 to February 15; and

(b) Duck Island is closed from October 15 to March 15.

(19) Lewis County WMA.

(a) The modern firearm and youth firearm seasons shall be open under statewide requirements, except that the use of centerfire rifles and handguns shall be prohibited.

(b)[The October muzzleloader season shall be open under statewide requirements.

(c)] The crossbow <u>and muzzleloader seasons[season</u>] shall be open under statewide requirements.

(20) Livingston County WMA. The crossbow, youth firearm, muzzleloader, and modern firearm seasons shall be open under statewide requirements, except a person shall not hunt deer with a modern gun during the modern firearm deer season.

(21) Curtis Gates Lloyd WMA. The crossbow season shall be open under statewide requirements.

(22) Marion County WMA.

(a) The crossbow, muzzleloader, and youth firearm seasons shall be open under statewide requirements.

(b) There shall be a quota hunt for:

<u>1. Five (5) consecutive days beginning the second Saturday in</u> <u>November; and</u>

2. Five (5) consecutive days beginning the Thursday following the second Saturday in November.

(c) A quota hunt participant shall not be required to check in and out of the WMA, but shall telecheck or internet-check harvested deer as specified in 301 KAR 2:172.

(23) Mill Creek WMA.

(a) The crossbow season shall be open under statewide requirements.

(b) The quota hunt shall:

1. Be for two (2) consecutive days beginning the first Saturday in November; and

2. Have a one (1) deer bag limit.

(24)[(23)] Miller Welch-Central Kentucky WMA. The archery hunt shall be:

(a) On Wednesdays, from the first Saturday in September through December 17, except during scheduled field trials as posted on the area bulletin board; and

(b) December 18 through the third Monday in January.

(25)(24)] Mud Camp Creek WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open under statewide requirements.

(26)[(25)] Mullins WMA. The crossbow season shall be open under statewide deer requirements.

(27)[(26)] Ohio River Islands WMA, Stewart Island Unit.

(a) The muzzleloader season shall be for two (2) consecutive days beginning the third Saturday in October.

(b) The archery season shall be from the first Saturday in September through October 14.

(c) The crossbow season shall be from October 1 through October 14.

(d) The October youth season shall be open under statewide requirements.

(e) The remainder of the WMA shall be open under statewide requirements.

(28) Otter Creek Outdoor Recreation Area.

(a) The archery and crossbow seasons shall be open under statewide requirements.

(b) There shall be a quota hunt for:

<u>1. Two (2) consecutive days beginning the third Saturday in</u> <u>November; and</u>

2. Two (2) consecutive days beginning the second Saturday in December.

(29)[(27)] Paintsville Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The crossbow and youth firearm seasons shall be open under statewide requirements.

(c) A person shall not use firearms for deer hunting on:

1. The area extending eastward from the drainage of Glade Branch, along the north edge of the lake, to the No Hunting Area surrounding Rocky Knob Recreation Area and enclosing all property from the WMA boundary downslope to the lake edge; and

2. The islands to the south and that portion of the area extending eastward along the south edge of the lake from the drainage of Shoal Branch to the No Hunting Area surrounding the dam and ranger station, and extending downslope to the edge of the lake.

(d) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(30)[<del>(28)</del>] Peabody WMA.

(a) The crossbow, youth firearms, and muzzleloader seasons shall be open under statewide requirements.

(b) The modern firearm season shall be open under statewide requirements for ten (10) consecutive days beginning the second Saturday in November.

(31)[(29)] Pennyrile State Forest-Tradewater WMA.

(a) The crossbow season shall be open under statewide requirements.

(b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(c) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(32)(30)] Pioneer Weapons WMA. Statewide requirements shall apply except that a person:

(a) Shall not use a modern firearm;

(b) Shall not use an in-line muzzleloading gun;

(c) Shall not use a scope or optical enhancement; and

(d) May use a crossbow during the entire archery season. (33)[<del>(31)</del>] Dr. James R. Rich WMA.

(a) The crossbow season shall be open under statewide requirements, except during a quota hunt.

(b) The quota hunts shall be for:

1. Two (2) consecutive days beginning the first Saturday in November; and

2. Two (2) consecutive days beginning the first Saturday in December; and

(c) The youth firearm season shall be open under statewide

requirements.

(34)[(32)] Robinson Forest WMA.

(a) A person shall not hunt deer on the main block of Robinson Forest.

(b) The remainder of the WMA shall be open under statewide requirements.

(35)[(33)] Sloughs WMA.

(a) On the Sauerheber Unit, the archery, crossbow, muzzleloader, and youth firearm seasons shall be open under statewide requirements through October 31, except that the Crenshaw and Duncan II Tracts shall be open under statewide requirements through the end of modern firearm season.

(b) The remainder of the WMA shall be open under statewide requirements.

(36)[(34)] South Shore WMA.

(a) The youth firearm, October muzzleloader, and modern firearm seasons shall be open under statewide requirements through November 14, except that the use of centerfire rifles and handguns shall be prohibited.

(b) The archery and crossbow seasons shall be open under statewide requirements, except the area shall be closed November 15 through January 15.

(37)[(35)] Sturgis WMA.

(a) The area shall be closed to the statewide archery season.

(b) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in November.

(c) There shall be an archery and crossbow quota hunt for two (2) consecutive days beginning the fourth Saturday in October.

(d) There shall be a youth quota hunt for two (2) consecutive days beginning the second Saturday in October.

(e) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(38)[(36)] T.N. Sullivan WMA. The crossbow season shall be open under statewide requirements.

(39)[(37)] R.F. Tarter WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open under statewide requirements.

(40)[(38)] Taylorsville Lake WMA.

(a) There shall be a quota hunt for:

1. Two (2) consecutive days beginning the first Saturday in November for antlerless deer;

2. Two (2) consecutive days beginning the first Saturday in December; and

3. Two (2) consecutive days beginning the <u>first[second]</u> Saturday in January.

(b) Seven (7) openings shall be reserved in each quota hunt for mobility-impaired persons.

(c) The youth firearm season shall be open under statewide requirements.

(d) The crossbow season shall be open under statewide requirements.

(e) Applicants drawn for the antierless-only quota hunt shall not lose any accumulated preference points.

(41)[(30)] Twin Eagle WMA. The crossbow season shall be open under statewide requirements.

(42)[(40)] Twin Knobs Campground.

(a) The quota hunt shall be on the second Saturday in December for mobility-impaired persons.

(b) The area shall be closed to the statewide archery season.

(43)[(41)] Paul Van Booven WMA.

(a) The area shall be closed to vehicle access from an hour after sunset to an hour before sunrise, except that a hunter may retrieve downed game.

(b) The crossbow, muzzleloader, and youth firearm seasons shall be open under statewide requirements.

(c) There shall be a quota hunt for:

1. Five (5) consecutive days beginning the second Saturday in November; and

2. Five (5) consecutive days beginning the Thursday following the second Saturday in November.

(d) The bag limit for a quota hunt shall be one (1) deer.

(e) A quota hunt participant shall not be required to check in and out of the WMA, but shall <u>check in a harvested deer pursuant</u> to[telecheck harvested deer as specified in] 301 KAR 2:172.

(f) A hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(44)[(42)] West Kentucky WMA.

(a) All tracts shall be open under statewide requirements for the archery and crossbow seasons, except that:

1. Tract 8A shall be closed to all deer hunting; and

2. All tracts shall be closed to archery and crossbow hunting during quota and firearm deer hunts.

(b) Tracts 1-6 shall be open to shotgun and muzzleloader hunters participating in the quota and open firearm deer hunts.[Tract 7 and "A" Tracts shall not be open for quota or firearm deer hunts.]

(c) Tract 7 and "A" Tracts shall not be open for quota or firearm deer hunts.

(d) The quota hunt shall be for five (5) consecutive days beginning the Saturday prior to Thanksgiving.

(e) The firearms season shall:

1. Be for three (3) consecutive days beginning the Saturday preceding the third Monday in January;

2. Be limited to the first 200 hunters;

3. Require a hunter to check-in at a designated check station from 4 p.m. to 8 p.m. Central Time on the day before the hunt or between 4:30 a.m. and 7 p.m. Central Time on hunt days;

4. Shall require a hunter to check out at the designated check station:

a. When finished hunting;

b. If the hunter's bag limit is reached; or

c. By 7 p.m. Central time on the final day of the hunt.

5. Have a two (2) deer bag limit, only one (1) of which may be an antlered deer;

6. Have bonus deer permits apply; and

7. Require every person to check in during, except for:

a. A person traveling on an established public road; or

b. A person in an area designated as open by signs.

(f) Firearm hunters shall not use centerfire rifles or handguns;

(g) A person shall not carry a firearm in posted zones pursuant to the agreement between the department and the U.S. Department of Energy.

(h) Archery hunters shall check-in with U.S. Energy Corporation security personnel before hunting on the "A" Tracts.

(i) Crossbow hunting is prohibited on the "A" Tracts.

(j) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(k) A hunter shall sign in for the hunting tract of their choice and <u>except after Noon</u> shall not hunt outside of that tract at the check in prior to each day's hunt.

(45)[(43)] Yatesville WMA. The crossbow, youth firearm, muzzleloader, and modern firearm seasons shall be open under statewide requirements, except a person shall not take antlerless deer with a firearm during the modern firearm deer season.

(46)[(44)] Yellowbank WMA.

(a) The crossbow and youth firearm deer seasons shall be open under statewide requirements.

(b) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(47)[(45)] Zilpo Campground.

(a) The quota hunt shall be on the second Saturday in December for mobility-impaired persons.

(b) The area shall be closed to the statewide archery season.

Section 7. State Park Deer Seasons. (1) A state park may allow archery and crossbow hunting from the first Saturday in September through the third Monday in January for antiered or antierless deer.

(2) A state park may allow up to sixteen (16) days of firearm hunting and up to eleven (11) days of muzzleloader hunting from the first Saturday in September through the third Monday in January for antiered or antierless deer.

(3) The following state parks shall be open to deer hunting as specified below and according to requirements in Section 8 of this administrative regulation:

(a)[(1)] Lake Barkley State Resort Park. Deer hunting shall be permitted on the <u>second[first]</u> Tuesday of January for two (2) consecutive days.

(b)[(2)] Greenbo Lake State Resort Park. Deer hunting shall be permitted on the <u>second[first]</u> Tuesday of January for two (2) consecutive days.

(c)[(3)] Green River Lake State Park.

<u>1.[(a)]</u> Archery and crossbow deer hunting shall be permitted beginning the second Thursday of December for four (4) consecutive days.

2.((b)] Archery and crossbow deer hunting shall be permitted beginning the third Thursday of December for four (4) consecutive days.

<u>3.[(c)]</u> A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches.

(d)[(4)] Yatesville Lake State Park. Muzzleloading firearm, archery, and crossbow deer hunting shall be permitted under statewide deer requirements on the second Monday of December for three (3) consecutive days.

(e)[(5)] Jenny Wiley State Resort Park.

<u>1.[(<del>a)</del>]</u> Deer hunting shall be permitted on the first Saturday of January for two (2) consecutive days.

2[(b)] The bag limit shall be two (2) deer, only one (1) of which may be antiered.

3.[(G)] The hunt shall be open to the first fifteen (15) mobilityimpaired persons who check in at the park on the day before the hunt.

<u>4.[(d)]</u> A person who participates in the hunt shall comply with the requirements established in 301 KAR 3:026.

 $5[(\Theta)]$  A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches.

Section 8. State Park Deer Hunt Requirements. (1) Except for the open <u>hunts at Jenny Wiley State Resort Park and[hunt at]</u> Yatesville Lake State Park, a person shall not hunt on a state park unless:

(a) Selected by a random drawing as described in Section 3 of this administrative regulation;[or]

(b) The person is a member of a successful applicant's hunting party; or

(c) They were selected as part of a process administered by the Department of Parks, pursuant to Section 7 of this administrative regulation.

(2) A person participating in a state park hunt, except for the quota <u>hunts[hunt]</u> at Green River Lake State Park and the Yatesville Lake State Park open deer hunt, shall:

(a) Check in and check out as required in Section 5 of this administrative regulation;

(b) Furnish at check-in a driver's license or other form of government-issued identification; and

(c) Check in:

1. Between noon and 8 p.m. Eastern Time the day before the hunt at the state park campground if hunting in the Yatesville Lake State Park open deer hunt; or

2. At the park the day before the hunt if hunting in the Jenny Wiley State Resort Park deer hunt; and

(d) Not be eligible to apply for a quota hunt the following year if the person does not check out as required in Section 5 of this administrative regulation.

(3) A person participating in a state park deer hunt shall:

(a) Comply with the provisions of 301 KAR 2:172; and

(b) Check harvested deer daily at the designated park check station, except that the deer taken in the Green River Lake State Park quota <u>hunts[hunt,]</u> and the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park shall be telechecked <u>or checked in on the department's Web site at fw.ky.gov, pursuant to[according to requirements established in]</u> 301 KAR 2:172.

(4) A person participating in a state park deer hunt shall not:

(a) Take more than two (2) deer in a quota hunt, only one (1) of which may be antlered;

(b) Hunt over bait;

(c) Injure a tree by using:

1. A tree stand except a portable stand;

2. Climbing devices that nail or screw to the tree; or

3. Climbing spikes;

(d) Leave a deer stand unattended for more than twenty-four (24) hours;

(e) Discharge a firearm within 100 yards of a maintained road or building; and

(f) Hunt:

1. In an area posted as closed by signs; or

2. Outside park boundaries.

(5) A person participating in a state park deer hunt, other than the open hunts at Jenny Wiley State Park and Yatesville Lake State Park and any department administered state park quota hunt, may take up to two (2) bonus deer that shall not count toward their statewide limit if:

(a) They take no more than one (1) bonus antiered deer; and (b) The person obtains the valid bonus deer tag(s) from the state park hunt administrators.

BENJY KINMAN, Deputy Commissioner for DR. JONATHAN GASSETT, Commissioner MARCHETA SPARROW, Secretary

APPROVED BY THE AGENCY: January 12, 2011

FILED WITH LRC: January 13, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2011, at 10 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 5 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 February 28, 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) 564-7109, extension 4507, fax (502) 564-9136.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the deer hunting seasons, limits, and equipment restrictions under which deer may be taken on wildlife management areas, state parks, and other public lands.

(b) The necessity of this administrative regulation: To establish deer hunting seasons, limits, and methods of taking deer to control and manage deer populations and hunting pressure on wildlife management areas, state parks, and other public lands.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations governing hunting seasons, including deer. KRS 150.620 authorizes the department to manage public lands for hunting and fishing. This administrative regulation establishes hunting season dates, equipment restrictions, quota hunt application procedures, and checking requirements for deer hunting on certain public lands.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statute by establishing guidelines for effectively managing deer herds on Wildlife Management Areas (WMAs) and state parks, including the establishment of guidelines to ensure safe, orderly hunting practices on public lands.

(2) If 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 an online quota hunt application, opens the December segment of muzzle-loading firearm

deer season at the Lewis County WMA, establishes firearm quota hunts on the new Marion County WMA, specifies how deer may be hunted on the new Otter Creek Outdoor Recreation Area. The amendment also enables the Kentucky Department of Parks to allow deer hunting at any park, provided that such hunts are held within the statewide deer archery season dates and do not exceed the total number of firearms days allowed statewide.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide a framework for deer hunting and hunter management for WMAs and state parks that is safe and effective for controlling deer numbers and maximizing hunter opportunity.

(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: Persons who wish to deer hunt on WMAs or state parks in Kentucky will be affected. In 2010, there were 8,507 total quota hunt applicants for 4,004 available slots.

(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: Those who hunt deer on WMAs and state parks must comply with the individual hunt requirements for those sites, as listed in the fall hunting guide published by the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no direct cost to hunters as a result of this amendment to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Deer hunters will benefit from increased hunting opportunity on several public lands, the ability to apply for quota hunts on the internet, and access to two new public recreation areas.

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

(a) Initially: There will be no additional cost to the agency to implement this regulation.

(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 a fee or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not used because all persons who hunt deer on WMAs or state parks are required to abide by these guidelines.

### 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? Yes

2. What units, parts or divisions of state or local government will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Wildlife and Law Enforcement Divisions 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 148.029, 150.025, and 150.620.

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 for the first year? No revenue will be generated for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government for subsequent years? No future revenue will be generated.

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred 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 (+/-): None Expenditures (+/-): None Other Explanation:

### ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amendment)

# 401 KAR 10:030. Antidegradation policy implementation methodology.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 176.430, 224.01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100-224.71-145, 224.73-100-224.73-120, 30 U.S.C. 1201 -1328[, EO 2008-507, 2008-531]

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050,

224.16-060, 224.70-100, 224.70-110, 40 C.F.R. 130, 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1315, 1316, 1341, 1342, 1344

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. KRS 224.70-100 declares that the policy of the commonwealth is to conserve its waters for legitimate uses, safeguard from pollution the uncontaminated waters of the commonwealth, prevent the creation of any new pollution in the waters of the commonwealth, and abate any existing pollution. [EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.] This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy.

Section 1. Categorization and Implementation. These antidegradation procedures shall not preempt the power or authority of a local government to provide by ordinance for a higher level of protection through antidegradation implementation for a discharger located within that local government's jurisdiction to a surface water of the commonwealth. The following procedures shall govern implementation of the antidegradation policy of 401 KAR 10:029, Section 1, for a point source discharge. Surface waters shall be placed into one (1) of four (4) categories listed in this section and each category shall have implementation procedures as follows:

(1) Outstanding national resource water. Surface waters of the commonwealth categorized as outstanding national resource waters are listed in Table 1 of this subsection.

	Table 1		
SURFACE WATE	RS CATEGORIZED AS OUTSTANDING NATIONA	L RESOURCE	WATER
Stream	Segment	River Miles	County
Red River	Upstream to Island off SR 1067 to Downstream	49.2 to	Menifee/Wolfe
	Wild River Boundary at SR 746	68.6	
Underground River Sys-	Within Mammoth Cave National Park Boundary		Edmonson/
tem			Hart/Barren
South Fork of Cumber-	Downstream Wild River Boundary to Tennes-	44.3 to 54.8	McCreary
land River	see State line		
Surface Waters within	Reelfoot Lake National Wildlife Refuge Procla-	2040 Acres	Fulton
Reelfoot Lake National	mation Boundary in Kentucky		
Wildlife Refuge			
War Fork of Station Camp	Basin above South Fork of Station Camp Creek	0.0 to 13.8	Jackson
Creek	to Steer Fork		
Marsh Creek	Mouth to 1.9 miles upstream of Kentucky 478	0.0 to 15.0	McCreary
Rock Creek	State border to White Oak Creek	4.1 to 21.9	McCreary
Rockcastle River	Lower end of Narrows to 0.2 miles downstream	8.95 to 22.4	Laurel/Pulaski
	of Kentucky 80 bridge		

(a) Categorization criteria. A surface water shall be categorized as an outstanding national resource water if:

1. The surface water meets, at a minimum, the requirements for an outstanding state resource water as provided in 401 KAR 10:031, Section 8; and

2. The surface water demonstrates national ecological or recreational significance.

(b) Implementation procedure.

1. Water quality shall be maintained and protected in an outstanding national resource water.

2. A new discharger or expanded discharge that may result in permanent or long-term changes in water quality shall be prohibited.

3. The cabinet may approve temporary or short-term changes in water quality if the changes to the outstanding national resource water do not have a demonstrable impact on the ability of the water to support the designated uses.

(2) Exceptional water. Surface waters of the commonwealth

categorized as an exceptional water are listed in Table 2 of this subsection.

SURFACE WATERS	Table 2 CATEGORIZED	AS EXCEPTIO	ONAL WA-
Stream	Segment	River Miles	County
BI	G SANDY RIVER I	BASIN	
Hobbs Fork of Pigeonroost Fork of Wolf Creek	Mouth to Headwaters	0.0-3.9	Martin
Lower Pigeon Branch of Elkhorn Creek	Left Fork to Headwaters	0.6-1.9	Pike
Russell Fork of Levisa Fork of Big Sandy River	Clinch Field RR Yard off HWY 80 to Virginia State Line	15.0-16.5	Pike

			•
Toms Branch of Elkhorn Creek	Mouth to Headwaters	0.0-1.6	Pike
Unidentified Tribu-	Hobbs Fork of	0.0-0.6	Martin
tary of Hobbs Fork	Pigeonroost Fork to Head-		
	waters	<b>DAGIN</b>	
	LE SANDY RIVER	0.0-5.1	Elliott
Arabs Fork of Big Sinking Creek	Clay Fork to Headwaters	0.0-5.1	Elliott
Big Caney Creek	Grayson Lake to Headwaters	1.8-15.3	Elliott, Rowan
Big Sinking Creek	SR 986 to Clay	6.1-15.8	Carter,
of Little Sandy River	Fork and Arab Fork		Elliott
Meadow Branch of Little Fork of Little Sandy River	Mouth to Headwaters	0.0-1.4	Elliott
Middle Fork of Little	Mouth to	0.0-3.4	Elliott
Sandy River	Sheepskin Branch		
Nichols Fork of	Green Branch	0.0-2.0	Elliott
Little Fork of Little Sandy River	to Headwaters		
Laurel Creek of	Carter School	7.6-14.7	Elliott,
Little Sandy River	Rd Bridge to Headwaters		Rowan
	LICKING RIVER BA	ASIN	1
Blackwater Creek	Eaton Creek to	3.8-11.7	Morgan
of Licking River	Greasy Fork		_
Blanket Creek of Licking River	Mouth to Un- identified Tribu- tary	0.0-1.9	Pendle- ton
Botts Fork of	Mouth to Lan-	0.0-2.1	Menifee
Brushy Fork of Licking River	duse Change		
Bowman Creek of	Mouth to Un-	0.0-6.0	Kenton
Licking River	identified Tribu- tary		
Brushy Fork of Meyers Creek	Cave Run Lake Backwaters to	0.7-5.6	Menifee
-	Headwaters		
Brushy Fork of South Fork of	Mouth to Headwaters	0.0-5.8	Pendle- ton
Grassy Creek*	Tieddwaters		
Bucket Branch of North Fork of Lick-	Mouth to Headwaters	0.0-1.9	Morgan
ing River <sup>*</sup>			
Cedar Creek of	Mouth to North Branch of Ce-	0.0-1.7	Robert- son
Licking River	dar Creek		5011
Craney Creek of	Mouth to	0.0-11.2	Morgan,
Licking River Devils Fork of	Headwaters Mouth to	0.0-8.5	Rowan Elliott,
North Fork of Lick-	Headwaters	0.0 0.0	Morgan
ing River Flour Creek of	Mouth to Un-	0.0-2.2	Pendle-
Licking River	identified Tribu- tary	0.0-2.2	ton
Grovers Creek of	Kincaid Lake	0.5-3.4	Bracken,
Kincaid Creek	Backwaters to Unidentified Tributary		Pendle- ton
Licking River	SR 211 to un-	159.5-	Bath,
	named Rd off Slatey Point Rd	170.6	Rowan
North Fork of Lick-	Cave Run Lake	8.4-13.4	Morgan
ing River	Backwaters to Devils Fork		
Sawyers Fork of	Mouth to	0.0-3.3	Kenton
Cruises Creek Slabcamp Creek of	Headwaters Mouth to	0.0-3.7	Rowan

,			
Craney Creek of Licking River	Headwaters		
Slate Creek of Licking River	Mouth to Mill Creek	0.0-13.6	Bath
South Fork Grassy	Mouth to Grea-	0.0-19.8	Kenton,
Creek of Grassy	sy Creek		Pendle-
Creek of Licking River			ton
Unidentified Tribu-	Mouth to	0.0-2.2	Mason
tary of Shannon	Headwaters		
Creek of North			
Fork of Licking			
River Welch Fork of	Mouth to First	0.0-1.0	Menifee
Brushy Fork of	Road Crossing	0.0-1.0	Werniee
Licking River	6		
West Creek of	Mouth to	0.0-9.8	Harrison,
Licking River <sup>®</sup>	Headwaters		Robert- son
KF	ENTUCKY RIVER E	BASIN	5011
Backbone Creek of	Mouth to	0.0-1.65	Franklin,
Sixmile Creek of	Scrabble Creek	0.0-1.00	Henry,
Kentucky River*			Shelby
Bear Branch of	Above Sedi-	0.3-1.2	Perry
North Fork of Ken-	ment Pond to		
tucky River Big Double Creek	Headwaters Mouth to con-	0.0-4.4	Clay
of Red Bird River	fluence of Left	0.0-4.4	Ciay
	and Right Forks		
	of Big Double		
	Creek		
Bill Branch of Lau-	Mouth to Right Fork and Left	0.0-0.3	Leslie
rel Fork of Greasy Creek	Fork Creek		
Billey Fork of Mil-	Land Use	2.6-8.8	Lee,
lers Creek	Change to		Elliott
	Headwaters		
Boyd Run of North	Mouth to Cher-	0.0-0.9	Scott
Elkhorn Creek Bill Oak Branch of	ry Run Mouth to	0.0-0.6	Owsley
Left Fork of Buffalo	Headwaters	0.0-0.0	Owsicy
Creek			
Buffalo Creek of	Mouth to Right	0.0-1.6	Owsley
South Fork of Ken-	Fork and Left		
tucky River Cavanaugh Creek	Fork South Fork of	0.0-8.3	Jackson
Ouvanaugh Oreek	Station Camp	0.0 0.0	Guorison
	Creek to Fox-		
	town Rd		
Chester Creek of Middle Fork of Red	Mouth to Headwaters	0.0-2.8	Wolfe
River	i itauwale15		
Clear Creek of	Mouth to East	0.0-9.0	Wood-
Kentucky River <sup>*</sup>	Fork Clear		ford
	Creek	0.0.1.5	
Clemons Fork of Buckhorn Creek	Mouth to	0.0-4.8	Breathitt
Coles Fork of	Headwaters Mouth to	0.0-6.2	Breathitt
Buckhorn Creek	Headwaters	0.0 0.2	Dioduniti
Craig Creek of	Mouth to Un-	0.5-2.7	Wood-
Kentucky River*	identified Tribu-		ford
Deep Ford Branch	tary Above Pond to	0.3-1.3	Leslie
of Cutshin Creek	Headwaters	0.5-1.5	LESIIE
Drennon Creek of	Fivemile Creek	8.7-12.2	Henry
Kentucky River <sup>*</sup>	to Town Branch		-
East Fork of Indian	West Fork of	0.0-9.0	Menifee
Creek of Indian	Indian Creek to		
Creek of Red River Elisha Creek of	Headwaters Land Use	0.8-1.8	Leslie
Red Bird River	Change (Resi-	0.01.0	Loono
	dential) to the		
	-		

		n	-
	confluence of Right Fork and		
	Middle Fork		
Emily Run of Dren-	Elisha Creek Mouth to Un-	0.0-4.0	Henry
non Creek	identified Tribu- tary	0.0-4.0	пенту
Evans Fork of Bil-	Mouth to	0.0-3.0	Estill
ley Fork of Millers Creek	Headwaters		
Falling Rock	Mouth to	0.0-0.7	Breathitt
Branch of Clemons Fork of Buckhorn Creek	Headwaters		
Gilberts Creek of	Mouth to Un-	0.0 to 2.6	Ander-
Kentucky River	identified Tribu- tary		son
Gladie Creek of	Land Use	0.35 to 7.3	Menifee
Red River	Change to Long Branch		
Goose Creek of	Mouth to Laurel	0.0-9.1	Clay,
South Fork of Ken- tucky River	Creek		Leslie
Griers Creek of Kentucky River	Kentucky River Backwaters to	0.1 to 3.5	Wood- ford
Reniucky River	Unidentified Tributary		lora
Grindstone Creek	Kentucky River	0.1 to 1.9	Franklin
of Kentucky River <sup>*</sup>	Backwaters to Headwaters		
Hardwick Creek of Red River	Mouth to Little Hardwick Creek	0.0-3.25	Powell
Hell For Certain of	Mouth to Big	0.0-2.1	Leslie
Middle Fork of Red River	Fork		
Hines Creek of	Kentucky River	0.1 to 1.9	Madison
Kentucky River	Backwaters to confluence with		
	Unidentified		
	Tributary		
Honey Branch of Greasy Creek of	Mouth to Headwaters	0.0-1.35	Leslie
Middle Fork of	Tieauwaters		
Kentucky River			
Hopper Cave	Mouth to	0.0-1.8	Jackson
Branch of Cava- naugh Creek	Headwaters		
Indian Creek of	Mouth to	0.0 to 5.4	Carroll
Eagle Creek Indian Fork of Six-	Headwaters Mouth to	0.0-3.3	Shelby
mile Creek of Ken- tucky River	Headwaters	5.0 0.0	Shoby
John Carpenter	Mouth to	0.0-1.2	Breathitt
Fork of Clemons	Headwaters		
Fork of Buckhorn Creek			
Katies Creek of	Mouth to	0.0-4.0	Clay
Red Bird River Laurel Fork of Left	Headwaters Cortland Fork	0.0-3.75	Owsley
Fork Buffalo Creek of Buffalo Creek*	to Big Branch	0.0 0.70	0.000
Left Fork of Big	Mouth to	0.0-1.5	Clay
Double Creek of Kentucky River	Headwaters		-
Line Fork of North	Defeated Creek	12.2-28.6	Letcher
Fork of Kentucky River	to Headwaters		
Little Middle Fork of	Mouth to	0.0-0.75	Clay
Elisha Creek of	Headwaters	-	,
Red Bird River*	Mouth to	0.0-1.2	Breathitt
Branch of Clemons	Headwaters	0.0 1.2	
Fork of Buckhorn			

Crook			
Creek			
Little Sixmile Creek of Sixmile Creek of Kentucky River	Mouth to Headwaters	0.0-5.3	Henry
Lower Howard Creek of Kentucky River	Mouth to West Fork	0.0-2.7	Clark
Lulbegrud Creek of Red River	Mouth to Falls Branch	0.0-7.3	Clark, Powell
Middle Fork of Kentucky River	Mouth to Upper Twin Creek	0.0-12.7	Lee, Owsley
Middle Fork of Kentucky River	Hurts Creek to Greasy Creek	75.6-85.8	Leslie
Middle Fork of Red River	South Fork of Red River to Natural Bridge State Park Lake	1.8-7.2	Powell
Mikes Branch of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters	0.0-0.7	Owsley
Mill Creek of Ken- tucky River	Upstream of Mouth to Headwaters	0.5-8.3	Owen
Millseat Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters	0.0-1.85	Breathitt
Muddy Creek of Kentucky River	Elliston, Ken- tucky to Viney Creek	13.8-20.65	Madison
Musselman Creek	Mouth to Headwaters	0.0-9.0	Grant
Red Bird River of South Fork of Ken- tucky River	Mouth to Big Creek	0.0-15.3	Clay
Right Fork of Buffa- lo Creek of Ken- tucky River	Mouth to Headwaters	0.0-11.75	Owsley
Right Fork of Elisha Creek of Redbird River	Mouth to Headwaters	0.0-3.3	Leslie
Roaring Fork of Lewis Fork of Buckhorn Creek	Mouth to Headwaters	0.0-0.9	Breathitt
Rock Lick Creek of South Fork of Sta- tion Camp Creek	Mouth to Headwaters	0.0-9.6	Jackson
Sand Ripple Creek of Kentucky River	Kentucky River Backwaters to Headwaters	0.1-3.9	Henry
Severn Creek of Kentucky River	Kentucky River Backwaters to North Fork of Severn Creek	1.35-3.0	Owen
Shaker Creek of Kentucky River	Near Mouth to Shawnee Run	0.1-1.4	Mercer
Shelly Rock Fork of Millseat Branch of Clemons Fork	Mouth to Headwaters	0.0-0.6	Breathitt
Sixmile Creek of Kentucky River	Little Sixmile Creek to Dam	7.1-15.3	Henry
South Fork of Ken- tucky River	Mouth to Sex- ton Creek	0.0-27.8	Owsley
South Fork of Red River	Mouth to San- dlick Fork	0.0-4.2	Powell
South Fork of Sta- tion Camp Creek of Kentucky River	Mouth to Rock Lick Creek	0.0-9.7	Jackson
Spruce Branch of Redbird River	Mouth to Headwaters	0.0-1.0	Clay
Station Camp	Landuse	18.0-22.8	Estill

			, -
Creek of Kentucky	Change to		
River	South Fork of		
	Station Camp		
	Creek		
Steeles Run of	Mouth to Un-	0.0-4.2	Fayette
Elkhorn Creek	identified Tribu-		
	tary		
Steer Fork of War	Mouth to	0.0-2.7	Jackson
Fork of Station	Headwaters		
Camp Creek <sup>*</sup>			
Sturgeon Creek of	Duck Fork to	1.3-13.7	Lee,
Kentucky River	Little Sturgeon		Owsley
,	Creek		,
Sugar Creek of	Landuse	0.6-5.4	Leslie
Redbird River	Change to		
	Headwaters		
Sulphur Lick Creek	Mouth to	0.0-5.2	Franklin
of Elkhorn Creek	Headwaters		
Unidentified Tribu-	Mouth to	0.0-2.1	Leslie
tary of Cawood	Headwaters	0.0 2.1	200110
Branch of Beech			
Fork			
Unidentified Tribu-	Mouth to	0.0-1.4	Owen
tary of Cedar Creek	Headwaters		
of Kentucky River			
Unidentified Tribu-	Mouth to	0.0 to 1.9	Wood-
tary of Glenns	Headwaters	0.0 10 1.0	ford
Creek of Kentucky			
River			
Unidentified Tribu-	Mouth to	0.0-1.15	Madison
tary of Jacks Creek	Headwaters	0.0 1.10	Maaloon
of Kentucky River*	r leadwaters		
Unidentified Tribu-	Land Use	0.1-1.4	Franklin
tary of Kentucky	Change to	0.1-1.4	Панкіш
River	Headwaters		
Unidentified Tribu-	Mouth to	0.0-0.6	Letcher
tary of Line Fork of	Headwaters	0.0-0.0	Letchei
	neauwalers		
North Fork of Ken-			
tucky River (LCW) War Fork of Station	Mouth to	0.0-13.8	Jackson
Camp Creek*	Mouth to Headwaters	0.0-13.0	Jackson
Watches Fork of	Mouth to	0.0-1.0	Owsley
Laurel Fork of Left	Headwaters	0.0-1.0	Owsley
Fork of Buffalo	neauwalers		
Creek			
	Mouth to	0.0-3.6	Menifee
Wolfpen Creek of		0.0-3.6	Mennee
Red River			I
	SALT RIVER BAS		
Brashears Creek of	Guist Creek to	13.0-25.9	Shelby,
Salt River	Bullskin and		Spencer
	Clear Creek		
Cedar Creek of	Mouth to	0.0-5.2	Bullitt
Salt River	Greens Branch		
Chaplin River of	Thompson	40.9-54.2	Washing-
Salt River	Creek to Cor-		ton
	nishville, KY		
Doctors Fork of	Mouth to Beg-	0.0-3.8	Boyle
Chaplin River	ley Branch		
Guist Creek of	Mouth to Jep-	0.0-15.7	Spencer
Brashears Creek	tha Creek		
Harts Run of Wil-	Mouth to	0.0-1.8	Bullitt
son Creek of Roll-	Headwaters		
ing Fork of Salt			
River			
Indian Creek of	Mouth to Un-	0.0-0.9	Mercer
Thompson Creek	identified Tribu-		
of Chaplin River of	tary		
Salt River	-		
Lick Creek of Long	Mouth to	0.0-4.1	Washing-
Lick Creek of	0.1miles below		ton
Beech Fork of Salt	Dam		
	Dam		

Otter Creek of	Landuse	1.7-2.9	Loruo
		1.7-2.9	Larue
Rolling Fork of Salt	Change to		
River	confluence of East Fork and		
	Middle Fork		
Overelle Oreals of	Otter Creek	0.0.2.2	Bullitt
Overalls Creek of	Mouth to	0.0-3.2	Builitt
Wilson Creek of	Headwaters of		
Rolling Fork of Salt	Middle Fork of		
River	Overalls Creek	0000	1
Salt Lick Creek of	Mouth to	0.0-8.6	Larue,
Rolling Fork of Salt	Headwaters		Marion
River	<b>M</b> (1) (	0.0.10.0	
Sulphur Creek of	Mouth to con-	0.0-10.0	Ander-
Chaplin River	fluence of		son,
	Cheese Lick		Mercer,
	and Brush		Washing-
	Creek		ton
Unidentified Tribu-	Mouth to	0.0-2.3	Washing-
tary of Glens Creek	Headwaters		ton
of Chaplin River			
West Fork of Otter	Mouth to	0.0-5.1	Larue
Creek of Rolling	Headwaters		
Fork of Salt River	Marcal	0.0.10.1	Dullin
Wilson Creek of	Mouth to	0.0-18.4	Bullitt,
Rolling Fork of Salt	Headwaters		Nelson
River			
	GREEN RIVER BA		
Beaverdam Creek	Mouth to	0.0-14.5	Edmon-
of Green River	Headwaters		son
Big Brush Creek of	Brush Creek to	13.0-17.3	Green
Green River	Poplar Grove		
	Branch		
Cane Run of Nolin	Nolin River	0.8-6.5	Hart
River	Lake Backwa-		
	ters to Headwa-		
	ters		
Caney Fork of	Mouth to	0.0-6.7	Barren
Peter Creek*	Headwaters		
Clifty Creek of	Barton Run to	7.3-17.2	Grayson
Rough River	Western Ken-		
0.16	tucky Parkway		
Clifty Creek of Wolf	Little Clifty	7.6-13.4	Todd
Lick Creek	Creek to Sul-		
	phur Lick		
East Fork of Little	Red Lick Creek	18.9-20.7	Metcalfe
Barren River	to Flat Creek		
Elk Lick Creek	Duck Lick	3.6 to 11.8	Allen
	Creek to Barren		
	Fork Creek and		
	Edger Creek		
Ellis Fork of Da-	Mouth to	0.0-3.2	Adair,
mron Creek	Headwaters	40.0.17.5	Russell
Falling Timber	Landuse	10.8-15.2	Barren,
Creek of Skaggs	Change to		Metcalfe
Creek	Headwaters	0.0.7.5	<u> </u>
Fiddlers Creek of	Mouth to	0.0-5.9	Brecki-
North Fork of	Headwaters		nridge
Rough River	Manufi	0011	
Forbes Creek of	Mouth to Un-	0.0-4.1	Christian
Buck Creek of East	identified Tribu-		
E			
Fork of Pond River	tary		
Gasper River of	Clear Fork to	17.2-35.6	Logan,
	Clear Fork to Wiggington	17.2-35.6	Logan, Warren
Gasper River of Barren River	Clear Fork to Wiggington Creek		Warren
Gasper River of Barren River Goose Creek of	Clear Fork to Wiggington Creek Mouth to Little	17.2-35.6 0.0-8.5	Warren Casey,
Gasper River of Barren River Goose Creek of Green River	Clear Fork to Wiggington Creek Mouth to Little Goose Creek	0.0-8.5	Warren Casey, Russell
Gasper River of Barren River Goose Creek of	Clear Fork to Wiggington Creek Mouth to Little Goose Creek Downstream	0.0-8.5	Warren Casey, Russell Edmon-
Gasper River of Barren River Goose Creek of Green River	Clear Fork to Wiggington Creek Mouth to Little Goose Creek Downstream Mammoth Cave	0.0-8.5	Warren Casey, Russell
Gasper River of Barren River Goose Creek of Green River	Clear Fork to Wiggington Creek Mouth to Little Goose Creek Downstream Mammoth Cave National Park	0.0-8.5	Warren Casey, Russell Edmon-
Gasper River of Barren River Goose Creek of Green River	Clear Fork to Wiggington Creek Mouth to Little Goose Creek Downstream Mammoth Cave	0.0-8.5	Warren Casey, Russell Edmon-

	Creek		
Halls Creek of Rough River	Unidentified Tributary to Headwaters	7.15-9.6	Ohio
Lick Creek of West Fork of Drakes Creek	Mouth to Headwaters	0.0-10.2	Simpson
Linders Creek of Rough River	Mouth to Sutzer Creek	0.0-7.9	Hardin
Little Beaverdam Creek of Green River	Mouth to SR 743	0.0-11.65	Edmon- son, Warren
Little Short Creek of Rough River	Mouth to Headwaters	0.0-3.1	Grayson
Lynn Camp Creek of Green River	Mouth to Lindy Creek	0.0-8.5	Hart
McFarland Creek of West Fork of Pond River	Grays Branch to Unidentified Tributary	1.5-5.0	Christian
Meeting Creek of Rough River	Little Meeting Creek to Petty Branch	5.2-14.0	Grayson, Hardin
Muddy Creek of Caney Creek of Rough River	Landuse Change to Headwaters	13.0-15.5	Ohio
North Fork of Rough River	Buffalo Creek to Reservoir Dam	22.1-26.9	Brecki- nridge
Peter Creek of Barren River	Caney Fork to Dry Fork	11.6-18.5	Barren
Pond Run of Rough River	Landuse Change to Headwaters	1.4-6.8	Brecki- nridge, Ohio
Puncheon Creek	Mouth to Ten- nessee State Line	0.0-3.8	Logan
Rough River	Linders Creek to Vertrees Creek	138.0- 149.4	Hardin
Russell Creek of Green River	Mouth to Co- lumbia WWTP	0.0-40.0	Green, Adair
Russell Creek of Green River	Reynolds Creek to con- fluence with Hudson Creek and Mount Olive Creek	56.9-66.3	Adair, Russell
Sixes Creek of Indian Camp Creek	Wild Branch to Headwaters	2.0-7.5	Ohio
Sulphur Branch of Alexander Creek	Mouth to Headwaters	0.0-3.0	Edmon- son
Thompson Branch of West Fork of Drakes Creek	Webb Branch to Tennessee State Line	0.3-1.5	Simpson
Trammel Creek of Drakes Creek	Mouth to Ten- nessee State Line	0.0-30.6	Allen, Warren
Unidentified Tribu- tary of Green River	Landuse Change to Headwaters	1.7-3.2	Adair
Unidentified Tribu- tary of White Oak Creek	Hovious Rd Crossing to SR 76	0.4-2.9	Adair
West Fork of Pond River	Unidentified Tributary to East Branch of Pond River	12.45-22.5	Christian
LOWER	CUMBERLAND RI	VER BASIN	I
Crooked Creek of Cumberland River	Energy Lake Backwaters to Headwaters	3.0-9.4	Trigg

Elk Fork of Red Tennessee 7.5-23.1 Todd River of Cumber- Sugar Creek of Lick Creek to 2.2-6.9 Livings- ton West Fork of Red Tennessee 16.1-26.5 Christian River of Cumber- Creek Mouth to Vicks 0.0-13.2 Logan of Red River of Cumberland River TENNESSEE RIVER BASIN Blood River of McCullough Kentucky Lake Grindstone Creek Kentucky Lake 0.7-2.9 Calloway de Fork to Ten- nessee State Line Clarks River of Persimmon Slough to Mid- dle Fork Creek 0. Grindstone Creek Kentucky Lake 0.7-2.9 Calloway Kentucky Lake Grindstone Creek Kentucky Lake 0.7-2.9 Calloway de Fork to Soldier Tennessee River) Soldier Creek of Mouth to South Blood River of Creek Grindstone Creek featwaters to Blood River of Tennessee River) Soldier Creek of Kentucky Lake Grindstone Creek featwaters to Blood River of Tennessee River) Soldier Creek of Kentucky Lake Sackwaters to Blood River of Headwaters to Blood River of Headwaters to Blood River of Headwaters to Blood River of Headwaters to Blood River of Creek Sugar Creek of Kentucky Lake Sugar Creek of Kentucky	Donaldson Creek of Cumberland River	Craig Branch to Unidentified Tributary	3.2-7.2	Trigg
Cumberland River         Unidentified Tributary         ton           West Fork of Red River of Cumber- land River         Tennessee State Line to Montgomery Creek         16.1-26.5         Christian           Whippoorwill Creek         Mouth to Vicks         0.0-13.2         Logan           of Red River of Kentucky Lake (Tennessee River)         McCullough Fork to Ten- nessee State Line         15.15-18.7         Calloway           Clarks River of Kentucky Lake (Blood River of Kentucky Lake Backwaters to Blood River of Tennessee River)         Persimmon Slough to Mid- Headwaters         28.7-30.7         Marshall           Grindstone Creek         Kentucky Lake Backwaters to Blood River of Tennessee River)         0.7-2.9         Calloway           Panther Creek of Kentucky Lake (Blood River of Tennessee River)         Kentucky Lake Backwaters to Buzzard Roost Road         0.5-5.7         Marshall           Soldier Creek of Kentucky Lake (Blood River of Tennessee River)         Mouth to South Fork of Soldier Creek         0.0-5.7         Marshall           Sugar Creek of West Fork Clarks River         Mouth to Un- Nouth to Un- Nouth to Nee- Unidentified Tributary of Panth- er Creek of West Fork of Clarks River         Mouth to Nee- Nouth to Nee- Unidentified Tributary of Panth- er Creek of West Fork of Clarks River         Graves           West Fork of Kir         Soldier Creek Nouth to Nee- Nouth to Nee- Creek         Col-1.7         Graves           West Fork of Ripm Fork of	land River	State Line to Dry Branch	7.5-23.1	Todd
River of Cumber- land RiverState Line to Mongomery CreekJob 100Whippoorvill Creek of Red River of Cumberland RiverMouth to Vicks Branch0.0-13.2LoganBlood River of Kentucky Lake (Tennessee River)Fork to Ten- nessee State Line15.15-18.7CallowayClarks River of Fork to Tennessee River)Persimmon Backwaters to (Blood River of Headwaters28.7-30.7MarshallClarks River of (Blood River of Henessee River)Sough to Mid- dle Fork Creek0.7-2.9CallowayPanther Creek of Kentucky Lake (Blood River of Headwaters0.5-5.7CallowayPanther Creek of Kentucky Lake (Blood River of Headwaters0.0-5.7MarshallVest Fork of Clarks RiverMouth to South Creek of Buzzard Roost Roost Road0.0-5.7MarshallSugar Creek of West Fork Clarks rore of RiverMouth to Un- Road0.0-3.9GravesSugar Creek of West Fork of Clarks RiverMouth to Un- Road0.0-3.35GravesWest Fork of Clarks RiverSoldier Creek Lake Road20.1-23.5GravesWest Fork of Clarks RiverSoldier Creek to Duncan Creek20.1-23.5GravesWildcat Creek of Kentucky Lake RoadSoldier Creek Creek20.1-23.5GravesWildcat Creek of RoadSoldier Creek to Duncan Creek2.15-4.6CallowayWest Fork of Clarks RiverCharge to HeadwatersCallowayWildcat Creek of RoadRalph Wright Charge to <b< td=""><td></td><td>Unidentified</td><td>2.2-6.9</td><td></td></b<>		Unidentified	2.2-6.9	
of Red River of Cumberland River       Branch       Image: Comparison of the second stress of the second st	River of Cumber- land River	Tennessee State Line to Montgomery Creek		Christian
BloodRiver of KentuckyMcCullough Fork to Ten- nessee State15.15-18.7CallowayClarksRiver of Tennessee River)Persimmon Slough to Mid- dle Fork Creek28.7-30.7MarshallClarksRiver of Headwaters to (Blood River of Headwaters0.7-2.9CallowayPantherCreek Gloder River of Headwaters0.5-5.7CallowayPantherKentucky Lake Backwaters to Headwaters0.5-5.7CallowayGloderRiver of Headwaters0.0-5.7MarshallVestFork of SoldierSoldier Creek0.0-5.7MarshallWestFork of Fork of Soldier Creek0.0-3.9GravesSugarCreek of Mouth to Un- Newst Fork of Newst Fork of Clarks RiverMouth to Un- Nouth to Nee- Iey Banch0.0-3.9WestFork of Fork of Backwaters0.0-3.35GravesWestFork of Fork of Nouth to Nee- Iey Banch0.0-1.7GravesWestFork of Fork of Larks RiverSoldier Creek Duncan Creek20.1-23.5GravesWestFork of Fork of Larks RiverSoldier Creek Duncan Creek20.1-23.5GravesWest Fork of Clarks RiverSoldier Creek Duncan Creek2.15-4.6CallowayWidcat Creek of Kentucky Lake Road Crossing (Blood River of Tennessee River)Soldier Creek Duncan Creek2.15-4.6CaldwellClarks RiverChange to HeadwatersCaldwell Change to HeadwatersCal	of Red River of Cumberland River	Branch		Logan
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Tennessee RiverSlough to Mid- dle Fork CreekGrindstone Creek of Kentucky Lake (Blood River of Tennessee River)Kentucky Lake Backwaters to Headwaters0.7-2.9CallowayPanther Creek of Kentucky Lake Backwaters to Headwaters0.5-5.7CallowayPanther Creek of Kentucky Lake Backwaters0.5-5.7CallowaySoldier Creek of Clarks RiverMouth to South Fork of Soldier Creek of Buzzard Roost Road0.0-5.7MarshallWest Fork of Kentucky Lake Kentucky Lake Kentucky Lake Mentucky Lake Road0.0-5.7MarshallSugar Creek of West Fork Clarks RiverMouth to Un- named Reser- voir0.0-3.9GravesTrace Creek of West Fork of Soldier Clarks RiverMouth to Un- named Reser- voir0.0-3.35GravesWest Fork of Clarks Clarks RiverMouth to Headwaters0.0-1.7GravesWest Fork of Clarks River erSoldier Creek by Branch20.1-23.5GravesWest Fork of Clarks River erSoldier Creek to Duncan Creek20.1-23.5GravesWildcat Creek of Kentucky Lake (Blood River of Tennessee River)Soldier Creek to Duncan Creek2.15-4.6CallowayWildcat Creek of RiverRalph Wright Headwaters2.8-6.8CallowayWildcat Creek of RiverRalph Wright Change to Headwaters2.8-6.8CallowayFork of Flynn Road Crossing to Duncan CreekLanduse Change to HeadwatersCaldwell ChristianFineweare River<	Kentucky Lake	Fork to Ten- nessee State	15.15-18.7	Calloway
of Kentucky Lake (Blood River of Tennessee River)Backwaters to HeadwatersSoldier 		Slough to Mid-	28.7-30.7	Marshall
Kentucky (Blood River of Tennessee River)Backwaters to HeadwatersSoldier CreekMouth to South Fork of Soldier Creek0.0-5.7MarshallWest Kentucky Lake (Tennessee River)Kentucky Lake Backwaters to Road2.5-3.2CallowaySugar Creek of Kentucky Lake (Tennessee River)Mouth to Un- Road0.0-3.9GravesSugar Creek of West Fork Clarks Nest Fork of Clarks RiverMouth to Nee- ley Branch0.0-3.35GravesWest Fork of Clarks RiverMouth to Nee- ley Branch0.0-1.7GravesUnidentified Tributary of Panth- er Creek of West Fork of Clarks RiverSoldier CreekCreekCallowayWildcat Creek of Wildcat Creek of Road Blood River of Tennessee River)Soldier CreekCreekCallowayWildcat Creek of Road Crossing (Blood River of Tennessee River)Soldier Creek to Duncan Creek2.15-4.6CallowayEast Fork of Flynn Road Crossing (Blood River of Tennessee River)Landuse Change to Headwaters2.15-4.6Caldwell Change to HeadwatersPiney Creek of Road Tradewater RiverLake Beshear Backwaters to Headwaters4.5-10.2Caldwell, ChristianFiney Creek of Road Tradewater RiverDripping Backwaters to Headwaters133.9Christian ChristianSandlick Creek of Danni Lake DanDripping Branch Lake Dan133.9Christian	of Kentucky Lake (Blood River of	Kentucky Lake Backwaters to Headwaters		
West Clarks RiverFork of CreekFork of Soldier CreekSugar Kentucky Lake (Tennessee River)Kentucky Lake Backwaters to Buzzard Roost Road2.5-3.2CallowaySugar 	Kentucky Lake (Blood River of	Backwaters to Headwaters		Calloway
SugarCreek of Kentucky Lake (Tennessee River)Kentucky Lake Backwaters to Buzzard Roost Road2.5-3.2CallowaySugarCreek of 	West Fork of	Fork of Soldier	0.0-5.7	Marshall
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West Clarks RiverFork of Clarks Riverley BranchImage: Clarks RiverUnidentified Tributary of Unidentified Tributary of Panth- erMouth 	West Fork Clarks	named Reser- voir		Graves
tary of Unidentified Tributary of Panth- er Creek of West Fork of Clarks Riv- 	West Fork of			Graves
Clarks RivertoDuncan CreekCallowayWildcat Creek of Kentucky Lake (Blood River of Tennessee River)Ralph Wright Road Crossing to Headwaters2.8-6.8CallowayTRADEWATER RIVER BASINTRADEWATER RIVER BASINCaldwellCaldwellEast Fork of Flynn RiverLanduse Change to Headwaters2.15-4.6CaldwellFork of Tradewater RiverChange to Headwaters4.5-10.2Caldwell, ChristianSandlick Creek of Tradewater RiverCamp Creek to Headwaters4.5-8.6ChristianTradewater RiverDripping Springs Branch to Buntin Lake Dam126.2- 133.9Christian	tary of Unidentified Tributary of Panth- er Creek of West Fork of Clarks Riv-		0.0-1.7	Graves
KentuckyLake (Blood Tennessee River)Road to HeadwatersConsising to HeadwatersTRADEWATER RIVER East Fork of Flynn Fork of Tradewater RiverLanduse Change to 		to Duncan Creek	20.1-23.5	
East Fork of Flynn Fork of TradewaterLanduse Change to Headwaters2.15-4.6CaldwellFiverLake Beshear 	Kentucky Lake (Blood River of Tennessee River)	Road Crossing to Headwaters		Calloway
Fork of Tradewater RiverChange Headwatersto HeadwatersPiney Creek of Tradewater RiverLake Beshear Backwaters to Headwaters4.5-10.2Caldwell, ChristianSandlick Creek of Tradewater RiverCamp Creek to Headwaters4.5-8.6ChristianTradewater RiverDripping 		DEWATER RIVER		
Tradewater RiverBackwaters to HeadwatersChristianSandlick Creek of Tradewater RiverCamp Creek to Headwaters4.5-8.6ChristianTradewater RiverDripping Springs Branch to Buntin Lake Dam126.2- 133.9Christian	Fork of Tradewater River	Change to Headwaters		
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Tradewater River Dripping 126.2- Christian Springs Branch 133.9 to Buntin Lake Dam		•	4.5-8.6	Christian
		Dripping Springs Branch to Buntin Lake		Christian
	Unidentified Tribu-		0.0-2.9	Caldwell

			,
tary of Piney Creek of Tradewater Riv- er	Headwaters		
Unidentified Tribu- tary of Sandlick Creek of Tradewa- ter River	Mouth to Headwaters	0.0-1.4	Christian
	OHIO RIVER BAS (Minor Tributarie		
Crooked Creek	Rush Creek to	3) 18.1-26.4	Critten-
	City Lake Dam		den
Double Lick Creek of Woolper Creek	Mouth to Headwaters	0.0-3.5	Boone
Garrison Creek	Mouth to Headwaters	0.0-4.85	Boone
Kinniconick Creek	McDowell Creek to Headwaters	5.2-50.9	Lewis
Little South Fork of Big South Fork	Land Use Change to Headwaters	1.2-5.8	Boone
Middle Fork of Massac Creek	Hines Road to Headwaters (Pond)	3.1-6.4	McCrack en
Second Creek	Ohio River Backwaters to Headwaters	0.4-2.9	Boone
Unidentified Tribu- tary of Big Sugar Creek	I-71 to Head- waters	1.0-1.8	Gallatin
Unidentified Tribu- tary of Corn Creek	Mouth to Headwaters	0.0-2.3	Trimble
Unidentified Tribu- tary of Massac Creek	Mouth to Headwaters	0.0-1.7	McCrack en
West Fork of Mas- sac Creek	SR 724 to Little Massac Creek	3.6-6.2	McCrack en
Yellowbank Creek	Ohio River Backwaters to Headwaters	2.0-12.0	Brecki- nridge
LAKE		•	•
Metropolis	Entire Lake		McCrack en
	SSISSIPPI RIVER Stem and Minor Ti	-	
Jackson Creek	Mouth to Headwaters	0.0-3.0	Graves
Obion Creek	Hurricane Creek to Little Creek	26.7-37.1	Hickman
Terrapin Creek	Tennessee State Line to Confluence of East and West Forks	2.7-6.0	Graves
LAKES		r	
Murphy's Pond	Entire Pond and Preserve Area		Hickman
Swan	Entire Lake		Ballard
	CUMBERLAND RI		I .
Bad Branch of Poor Fork of Cumber- land River	Mouth to Headwaters	0.0-3.0	Letcher
Bark Camp Creek of Cumberland River	Mouth to Mar- tins Fork	0.0-4.0	Whitley
Beaver Creek of Cumberland River	Lake Cumber- land Backwa- ters to conflu- ence of Free-	2.4-7.1	McCrear y
	-		•

	man Fork and Middle Fork		
Bee Lick Creek of Brushy Creek of Buck Creek	Mouth to War- ren Branch	0.0-5.7	Pulaski
Brownies Creek of Cumberland River	Blacksnake Branch to Headwaters	9.3-16.75	Bell, Harlan
Brush Creek of Roundstone Creek *	Wolf Creek to Reemergence of Sinking Creek	1.1-7.6	Rockcas- tle
Brushy Creek of Buck Creek <sup>*</sup>	Mouth to Headwaters	0.0-16.5	Pulaski
Buck Creek of Cumberland River	0.8 river mile upstream of confluence of Hurricane Creek to Lake Cumberland Backwaters	11.7-55.0	Lincoln, Pulaski
Bunches Creek of Cumberland River	Mouth to con- fluence of Amos Falls Branch and Seminary Branch	0.0-3.3	Whitley
Cane Creek of Rockcastle River*	Mouth to Headwaters	0.0-11.85	Laurel
Clifty Creek of Brushy Creek of Buck Creek	Mouth to Rocky Branch	0.0-2.7	Pulaski
Cogur Fork of In- dian Creek	Mouth to Headwaters	0.0-7.95	McCrear y
Cumberland River	Wild River Boundaries	549.65- 566.1	McCrear y, Whit- ley
Dog Slaughter Creek of Cumber- land River	Mouth to con- fluence of North Fork and South	0.05-1.15	Whitley
land River	Fork of Dog Slaughter		
Eagle Creek of Cumberland River	Fork of Dog	0.05-6.75	McCrear y
Eagle Creek of	Fork of Dog Slaughter Creek Mouth to	0.05-6.75	
Eagle Creek of Cumberland River Fugitt Creek of Clover Fork of	Fork of Dog Slaughter Creek Mouth to Headwaters Landuse Change to		у
Eagle Creek of Cumberland River Fugitt Creek of Clover Fork of Cumberland River Horse Lick Creek of Rockcastle Riv-	Fork of Dog Slaughter Creek Mouth to Headwaters Landuse Change to Headwaters Mouth to Clover	0.5-4.6	y Harlan Jackson, Rockcas-
Eagle Creek of Cumberland River Fugitt Creek of Clover Fork of Cumberland River Horse Lick Creek of Rockcastle Riv- er Howards Creek of Illwill Creek of Wolf	Fork of Dog Slaughter Creek Mouth to Headwaters Landuse Change to Headwaters Mouth to Clover Bottom Dale Hollow Reservoir Backwaters to	0.5-4.6	y Harlan Jackson, Rockcas- tle
Eagle Creek of Cumberland River Fugitt Creek of Clover Fork of Cumberland River Horse Lick Creek of Rockcastle Riv- er Howards Creek of Illwill Creek of Wolf River	Fork of Dog Slaughter Creek Mouth to Headwaters Landuse Change to Headwaters Mouth to Clover Bottom Dale Hollow Reservoir Backwaters to Headwaters Laurel Fork to	0.5-4.6 0.0-12.3 0.6-4.6 2.4-6.8 0.0-1.65	y Harlan Jackson, Rockcas- tle Clinton McCrear
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Little South Fork of			
	Lake Cumber-	4.4-35.5	McCrear
Cumberland River	land Backwa-		y, Wayne
	ters to Lang-		
	ham Branch		
Marsh Creek of	Laurel Creek to	8.8-26.5	McCrear
Cumberland River	Ken-		У
	tucky/Tennesse		
	e State Line		
Martins Fork of	Rough Branch	27.2-32.7	Harlan
Cumberland River	to Headwaters	0.0.0	
McFarland Creek	Little McFar-	0.8-6.2	Monroe
of Cumberland	land Creek to		
River	Spring Branch		
Meshack Creek of	Mouth to Pit-	0.0-2.8	Monroe
Cumberland River	cock Branch		
Middle Fork of	Mouth to con-	0.0-7.9	Jackson
Rockcastle River	fluence of In-		
	dian Creek and		
	Laurel Fork		
Mud Camp Creek	Mouth to Col-	0.0-1.2	Cumber-
of Cumberland	lins Branch		land
River			
Mud Camp Creek	Unidentified	3.8-8.8	Cumber-
of Cumberland	Tributary to		land,
River	Headwaters		Monroe
Otter Creek of	Lake Cumber-	14.0-22.1	Wayne
Cumberland River	land Backwa-		
	ters to Carpen-		
	ter Fork		
Poor Fork of Cum-	Franks Creek	42.1-52.4	Letcher
berland River	to Headwaters		
Presley House	Mouth to	0.0-1.5	Letcher
Branch of Poor	Headwaters		
Fork of Cumber-			
land River			
Puncheoncamp	Mouth to	0.0-1.85	McCrear
Branch of Rock	Headwaters		У
Creek of South			
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land River		4 0 04 5	M. O
Rock Creek of	White Oak	4.0-21.5	McCrear
South Fork of	Creek to Ten- nessee State		У
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ROCKCASHE RIVEL	wild River	0.95-54.7	Laurel,
	Poundariaa		Dulocki
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Shillalah Creek of Clear Fork of Yel-		0.0-5.5	-
Shillalah Creek of Clear Fork of Yel- low Creek	Mouth to Headwaters		Bell
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Shillalah Creek of Clear Fork of Yel- low Creek Sinking Creek of Rockcastle River	Mouth to Headwaters Mouth to White Oak Creek	0.0-9.9	Bell Laurel
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Watts	Branch	of	Mouth	to	0.0-2.6	McCrear
Rock	Creek	of	Headwaters			у
South	Fork	of				·
Cumberland River						
Watts	Creek	of	Camp Blar	nton	2.4-4.4	Harlan
Cumberland River		Reservoir	to			
			Headwaters			

\*Waterbodies in the cabinet's reference reach network

(a) Categorization criteria. A surface water shall be categorized as an exceptional water if any of the following criteria are met:

1. Surface water is designated as a Kentucky Wild River and is not categorized as an outstanding national resource water;

2. Surface water is designated as an outstanding state resource water as established in 401 KAR 10:031, Section 8(1)(a)1, 2, and 3 and Section 8(1)(b);

3. Surface water contains either of the following:

a. A fish community that is rated "excellent" by the use of the Index of Biotic Integrity included in Development and Application of the Kentucky Index of Biotic Integrity (KIBI), 2003; or

b. A macroinvertebrate community that is rated "excellent" by the Macroinvertebrate Bioassessment Index included in "The Kentucky Macroinvertebrate Bioassessment Index," 2003; or

4. Surface water in the cabinet's reference reach network.

(b) Implementation procedure. The implementation procedure for exceptional water shall be as established in subsection (3)(b) of this section.

(3) High quality water.

(a) Categorization criteria.

1. A surface water shall be categorized as high quality water if the surface water is not listed as an outstanding national resource water or an exceptional water in Table 1 or 2 of this section and if the surface water does not meet the criteria for impaired water as provided for in subsection 4(a) of this section.

2. A surface water shall be categorized as a high quality water if the surface water is listed as an outstanding state resource water in 401 KAR 10:026 and is not listed as an outstanding national resource water in Table 1 or an exceptional water in Table 2 of this section.

(b) Implementation procedure. A KPDES permit application for a new or expanded discharge into a high quality or exceptional water shall be subject to the provisions of this paragraph. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

1. The activities identified in this subparagraph shall not be subject to the antidegradation implementation procedures in paragraph (b) of this subsection.

a. The renewal of a KPDES permit that does not authorize pollutant loading to the receiving stream in excess of that previously authorized;

b. An increase in pollutant loading within the limits previously approved by the KPDES permit; or

c. A new or expanded discharge that the applicant demonstrates shall not consume more than ten (10) percent of the available assimilative capacity of the receiving stream outside of a designated mixing zone or zone of initial dilution for each new or increased pollutant in the discharge. <u>The cumulative impact of this</u> <u>category of discharges shall not consume more than ten (10) percent of the available assimilative capacity of the receiving stream</u> <u>outside of a designated mixing zone or zone of initial dilution.</u>

2. The activities identified in clauses a. through d. of this subparagraph shall constitute compliance with the alternatives and socioeconomic analysis requirements if addressed in the manner established in this subparagraph rather than as established in subparagraph 3. of this paragraph, unless the permittee chooses to satisfy applicable antidegradation requirements pursuant to subparagraph 3. of this paragraph.

a. A general permit issued pursuant to 401 KAR 5:050 through 5:080.

(i) The cabinet may, upon receipt of a notice of intent to be covered under a general permit, require additional analyses, control measures, or other conditions if necessary to comply with antidegradation requirements.

(ii) The cabinet shall describe in the Fact Sheet how the general permit complies with the <u>alternatives analysis and socioeco-</u> nomic demonstration [antidegradation] requirements of <u>subpara-</u> <u>graph 3.a. and b. of this paragraph</u> [this subsection] upon each general permit issuance.

(iii) The public shall be notified of an activity granted coverage under a general permit on the cabinet's Web page, which shall include the facility name, location, and receiving water.

b. The approval of a POTW's regional facility plan pursuant to 401 KAR 5:006 shall constitute compliance with the alternatives analysis and socioeconomic demonstration for a regional facility.

c. A new or expanded discharge associated with a project identified in the Kentucky Transportation Cabinet's six (6) year road plan, as established in KRS 176.430.

(i) The alternatives analysis <u>for lowering water quality</u> requirement shall be satisfied if an alternatives analysis for the project has been submitted.

(ii) The socioeconomic demonstration shall be satisfied if the project has been approved by the General Assembly and included in the Kentucky Transportation Cabinet's six (6) year road plan and evaluated pursuant to the provisions of KRS 176.430(4)(i).

(iii) An antidegradation review shall not be required for maintenance of existing highway facilities.

d. An individual MS4 permit issued pursuant to 401 KAR 5:050 through 5:080 shall satisfy the <u>alternatives analysis and socioeco-nomic demonstration</u> [antidegradation] requirements <u>of antidegradation</u> dation implementation if:

(i) The permit incorporates a provision that requires the permit holder to <u>perform an alternatives analysis and socioeconomic</u> <u>demonstration</u> [address antidegradation requirements] for a new or expanded discharge; or

(ii) The <u>cabinet describes in the Fact Sheet how the MS4 per-</u> <u>mit complies with the alternatives analysis and socioeconomic</u> <u>demonstration requirements of subparagraph 3.a. and b. of this</u> <u>paragraph</u> [permit includes practices and procedures to control discharges from new or expanded municipal outfalls that comply with antidegradation requirements].

3. An application for a KPDES permit subject to this paragraph shall contain information demonstrating that the lowering of water quality is necessary to accommodate important economic or social development in the area in which the water is located.

a. The socioeconomic demonstration shall consider the following factors:

(i) The boundaries of the affected community;

(ii) The potential effect on employment, including a comparison of local unemployment rates and state and national unemployment rates;

(iii) The potential effect on median household income levels, including a comparison of the present median household income level, projected median household income level, and number of households affected in the defined community;

(iv) The potential effect on tax revenues, including current tax revenues in the affected community compared to projected increase in tax revenues generated by the permitted project;

(v) The potential effect of the facility on the environment and public health; and

(vi) Other potential economic or social effect to the community that the applicant includes in the application.

b. The alternatives analysis shall consider the following factors:

 (i) Pollution prevention measures, such as changes in plant processes, source reductions, or substitution with less toxic substances;

(ii) The use of best management practices to minimize impacts;

(iii) Recycle or reuse of wastewater, waste by-products, or production materials and fluids;

(iv) Application of water conservation methods;

(v) Alternative or enhanced treatment technology;

(vi) Improved operation and maintenance of existing treatment systems;

(vii) Seasonal or controlled discharge options;

(viii) Land application or infiltration to capture pollutants and reduce surface runoff, on-site treatment, or alternative discharge locations; and

(ix) Discharge to other treatment facilities.

c. Information required pursuant to this subparagraph shall be

submitted on the Socioeconomic Demonstration and Alternatives Analysis form.

4. A permit applicant who has failed to demonstrate the necessity and social or economic development importance for lowering water quality shall not receive a permit unless:

a. The applicant demonstrates, through a revised submission, the necessity for lowering revised water quality in accordance with subparagraph 3. of this paragraph; or

b. The applicant demonstrates that the discharge can meet the requirements established in subparagraph 1.c. of this paragraph.

5. A permit applicant who demonstrates the necessity and social or economic development importance for lowering water quality shall meet the requirements of the KPDES program, 401 KAR 5:050 through 5:080.

6. The cabinet's determination shall be documented in the permit Fact Sheet and included in the administrative record for the permit or action.

(4) Impaired water.

(a) Categorization criteria. A surface water categorized as impaired for applicable designated uses shall be a water identified pursuant to 33 U.S.C. 1315(b).

1. Surface water categorized as impaired shall be assessed by the cabinet as not fully supporting any applicable designated uses.

2. A surface water shall not be categorized as impaired water if the surface water is listed as an outstanding state resource water in 401 KAR 10:026.

3. A surface water shall not be categorized as impaired for the purposes of this administrative regulation if the surface water is listed only as mercury impaired for fish consumption.

(b) Implementation procedure.

1. All existing uses shall be protected and the level of water quality necessary to protect those existing uses shall be assured in impaired water.

2. The process to allow a discharge into an impaired water and to assure protection of the water shall be regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program, 401 KAR 5:050-5:080.

Section 2. Procedure for Recategorizing Water. This section shall apply to the recategorization of surface water to outstanding national resource water and exceptional water. The redesignation of water to outstanding state resource water shall be governed by the procedures in 401 KAR 10:026.

(1) The cabinet may propose to recategorize certain water to outstanding national resource water and exceptional water if the water meets the criteria set forth in Section 1(1)(a) or (2)(a) of this administrative regulation.

(a) If the cabinet proposes to recategorize these waters, it shall provide notice and an opportunity for public hearing.

(b) The cabinet shall provide the documentation requirements of this section for those surface waters it proposes to recategorize.

(2) A person may request recategorization of a surface water to an outstanding national resource water or exceptional water by filing a petition with the cabinet.

(a) The petition shall include the name and address of the petitioner and the information and documentation necessary to recategorize the particular water as required by subsection (4) of this section.

(b) The petitioner shall have the burden of proof that the recategorization is appropriate.

(c) The cabinet shall provide notice of the petition and an opportunity for a public hearing.

(d) The cabinet shall review the petition, supporting documentation, and any comments received from the public to determine if the proposed water qualifies for recategorization.

(e) The cabinet shall document the determination to grant or deny recategorization as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

(3) If a water is to be recategorized, the cabinet shall publish notice of the recategorization.

(a) A permit issued after the date of publication shall be issued with limitations based on the new category.

(b) When the cabinet reviews its water quality standards pursuant to the provisions of Section 303 of the Clean Water Act, 33 U.S.C. 1313, the cabinet shall propose to have all recategorized water promulgated as an amendment to this administrative regulation.

(4) The following information, documentation, and data shall support a petition for recategorization:

(a) A petition for outstanding national resource water shall include:

1. A USGS 7.5 minute topographic map or its equivalent showing those surface waters to be recategorized including a description consisting of a river mile index with any existing and proposed discharge points;

2. Existing uses and water quality data for the surface water for which the recategorization is proposed. If adequate data are unavailable, additional studies shall be required by the cabinet;

3. Descriptions of general land uses and specific land uses adjacent to the surface water for which the recategorization is proposed;

4. The existing and designated uses of the water upstream and downstream of the proposed recategorized water;

5. General physical characteristics of the surface water including width, depth, bottom composition, and slope;

6. The frequency of occasions when there is no natural flow in the surface water and the  $7Q_{10}$  and harmonic mean flow values for the surface water and adjacent surface waters;

7. An assessment of the existing and potential aquatic life habitat in the surface water under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented including the occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota;

8. A documented rationale as to why the water qualify for the recategorization; and

9. The rationale used to support the national significance of the water.

(b) A petition for exceptional water shall include the following:

1. A United States Geological Survey 7.5 minute topographic map or its equivalent showing the surface water to be recategorized including a description consisting of a river mile index with existing and proposed discharge points;

2. Descriptions of general land uses, including:

a. Mining;

b. Agriculture;

c. Recreation;

d. Low, medium, and high density residential, commercial, or industrial uses; and

e. Specific land uses adjacent to the surface water for which the recategorization is proposed;

3. The frequency of occasions when there is no natural flow in the surface water and the  $7Q_{10}$  and annual mean flow values for the surface water; and

4. Fish or benthic macroinvertebrate collection data and an Index of Biotic Integrity or Macroinvertebrate Bioassessment Index calculation from a waterbody if criteria specified in Section 1(2)(a)3 of this administrative regulation are utilized.

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

(a) "Development and Application of the Kentucky Index of Biotic Integrity (KIBI)", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet;

(b) "The Kentucky Macroinvertebrate Bioassessment Index", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet; and

(c) "Socioeconomic Demonstration and Alternative Analysis", KPDES Form SDAA, April 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY:

FILED WITH LRC: January 11, 2011 at 11 a.m. PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2011 at 6 p.m.. Eastern Time, at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 17, 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. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 28, 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 implements the antidegradation policy of 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy. This administrative regulation establishes categorization criteria, lists many surface waters assigned to specific categories, and provides for recategorization of water.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to manage water resources and to provide for the prevention, abatement, and control of water pollution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100, which requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.70-100 declares that the policy of the Commonwealth is to conserve its waters for legitimate uses and to safeguard from pollution the uncontaminated waters of the Commonwealth, prevent the creation of any new pollution in the waters of the Commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus manage water resources and prevent water pollution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by implementing the antidegradation policy for the protection of surface waters of the Commonwealth as required by the authorizing statutes.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment to the administrative regulation considers cumulative impacts when calculating limits for de minimus discharges into high quality waters. De minimus discharges are those that will not consume more than ten percent of the available assimilative capacity of a receiving stream, outside a designated mixing zone or zone of initial dillution. The amendment also clarifies the alternatives analysis and socioeconomic demonstration procedures for general permits, MS4 permits, and road plan projects.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is part of the water quality standards required by the Clean Water Act, 40 C.F.R. 131, and used in the comprehensive management of water resources, as required by KRS 224.10-100. As required by 40 C.F.R. 131.21, the Cabinet submitted this administrative regulation for EPA's approval after the last revision, effective in 2009. EPA approved in part, but

disapproved in part, the most recent revision of this administrative regulation. This proposed amendment is to amend the provisions of the administrative regulation that EPA did not approve, in order to obtain full approval of Kentucky's antidegradation implementation policy methodology.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.10-100, which requires the Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.70-100 declares that the policy of the Commonwealth is to conserve its waters for legitimate uses and to: safeguard from pollution the uncontaminated waters of the Commonwealth, prevent the creation of any new pollution in the waters of the Commonwealth, and abate any existing pollution. This amendment clarifies the procedures to protect the surface waters of the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendments to the administrative regulation will allow the Cabinet to implement federally approved water quality standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The cabinet has not issued any permits that relied on the de minimus exemption to antidegradation review. The cabinet has been implementing the administrative regulation consistent with EPA's recommended revisions. The proposed amendment will not affect any permitted entities.

(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: Because there are not any permits that rely on the de minimus exemption to antidegradation review, no regulated entity will have to take action to comply with this proposed amendment. The other proposed amendments are simply clarifications to the wording of the regulation and will not change the way the requirements are implemented.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are not any permits that rely on the de minimus exemption to antidegradation review, no costs are associated with this proposed amendment. The other proposed amendments are simply clarifications to the wording of the regulation and will not affect the cost of complying with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Because there are not any permits that rely on the de minimus exemption to antidegradation review, no regulated entity will be impacted by this proposed amendment. The other proposed amendments are simply clarifications to the wording of the regulation and will not change the way the requirements are implemented.

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

Initially: There are no initial costs to the agency to implement the (a) amendment to this administrative regulation.

(b) On a continuing basis: There are no additional continuing costs to the agency to implement the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of revenue will be the General Fund, as appropriated by the Kentucky General Assembly, and federal funds.

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

(9) TIERING: Is tiering applied? Yes, tiering is used in this

administrative regulation. This regulation tiers the requirements of the antidegradation policy implementation based on the water quality where the applicant proposes to discharge. There are three tiers of implementation of the antidegradation policy.

The requirements for the most protected waters, Outstanding National Resource Waters, are established in Section 1(1)(b). A discharger may not discharge into an Outstanding National Resource Water if the discharge may result in permanent or long-term changes in water quality.

The majority of waters in the Commonwealth are in the second tier, Exceptional or High Quality Waters. The requirements for discharges to these categories of water are established in Section 1(3)(b). Applicants proposing a new or expanded discharge to these second-tier waters must demonstrate that the discharge will not exceed ten percent of the cumulative assimilative capacity of the receiving stream outside of a mixing zone, or demonstrate that the lowering of water quality is necessary to accommodate important economic or social development in the area in which the water is located.

The final tier of requirements is for Impaired Waters, established in Section 1(4)(b). The process to allow a discharge into an impaired water and to assure protection of the water shall be regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program, 401 KAR 5:050-5:080.

# 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 amendment to this administrative regulation may affect the wastewater treatment divisions of local government if they will have new or expanded discharges into high quality waters that propose to use less than ten percent of a water's cumulative assimilative capacity.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70-110 mandate action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? There will be no cost to state or local agencies to implement the proposed amendment to this regulation. There are costs associated with complying with the antidegradation policy established in this regulation, but those costs are unchanged by this amendment and antidegradation policy is mandated by the federal government in 40 C.F.R. 131.12.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local agencies to administer the proposed amendment to this regulation. There are costs associated with complying with the antidegradation policy established in this regulation, but those costs are unchanged by this amendment and antidegradation policy is mandated by the federal government in 40 C.F.R. 131.12.

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. For Kentucky to maintain its delegation over the National Pollutant Discharge Elimination System permit program, the Clean Water Act requires that Kentucky comply with the programmatic requirements of 40 C.F.R. Part 131, including the requirement for implementing an antidegradation policy. The federal regulations require the adoption of an antidegradation policy for delegated states.

2. State compliance standards. KRS 224.10-100, 224.70-100

3. Minimum or uniform standards contained in the federal mandate. 33 U.S.C. 1313, 40 C.F.R. 131.12

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

### LABOR CABINET Department of Workers' Claims (Amendment)

### 803 KAR 25:010. Procedure for adjustments of claims.

RELATES TO: KRS 342.0011, 342.125, 342.260, 342.265, 342.270, 342.300, 342.310, 342.315, 342.710, 342.715, 342.732, 342.760

STATUTORY AUTHORITY: KRS 342.033, 342.260(1), 342.270(3), 342.285(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the <u>commissioner</u> [executive director] to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.270(3) requires the <u>commissioner</u> [executive director] to promulgate an administrative regulation establishing procedures for the resolution of claims. KRS 342.033 requires the <u>commissioner</u> [executive director] to prescribe the format and content of written medical reports. KRS 342.285(1) requires the <u>commissioner</u> [executive director] to promulgate an administrative regulation governing appeals to the Workers' Compensation Board. This administrative regulation establishes the procedure for the resolution of claims before an administrative rew judge or Workers' Compensation Board.

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(2) "Board" is defined by KRS 342.0011(10).

(3) "Civil rule" means the Kentucky Rules of Civil Procedure.

(4) "Date of filing" means the date that:

(a) A pleading, motion, or other document is received by the <u>Commissioner</u> [Executive Director] at the <u>Department</u> [Office] of Workers' Claims in Frankfort, Kentucky, except:

1. <u>Awards</u>, [Final] orders and opinions of administrative law judges, which shall be deemed "filed" three (3) days after the date set forth on the final order or opinion; and

2. Documents delivered to the offices of the <u>Department</u> [Office] of Workers' Claims after the office is closed at 4:30 p.m. or on the weekend, which shall be deemed filed the following business day; or

(b) A document is transmitted by United States registered (not certified) or express mail, or by other recognized mail carriers, and the date the transmitting agency receives the document from the sender as noted by the transmitting agency on the outside of the container used for transmitting, within the time allowed for filing.

(5) "Employer" means individuals, partnerships, voluntary associations and corporations.

(6) "Employer who has not secured payment of compensation" means any employer who employs an employee as defined by KRS 342.640 but has not complied with KRS 342.340.

(7) "<u>Commissioner[Executive\_director</u>]" is defined by KRS <u>342.0011(9)[342.00111(9)]</u>.

(8) "Latest available edition" means that edition of the "Guides

to the Evaluation of Permanent Impairment" <u>as defined at KRS</u> <u>342.0011(37) and approved and adopted by the General Assembly</u> which the <u>commissioner</u> [executive director] has certified as being generally available to the <u>department</u> [effice], attorneys, and medical practitioners, by posting prominently at the <u>department's</u> [effice's] hearing sites <u>and on the department's Web site</u> the date upon which a particular edition of the "Guides to the Evaluation of Permanent Impairment" is applicable for purposes of KRS Chapter 342.

(9) "Special defenses" means defenses that shall be raised by "special answer" filed in accordance with Section 5(2)(d) of this administrative regulation.

Section 2. Parties. (1) The party making the original application for resolution of claim pursuant to KRS 342.270 or 342.316 shall be designated as "plaintiff". Adverse parties shall be designated as "defendants".

(2) All persons shall be joined as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction and occurrence, is alleged to exist. If a person refuses to join as a plaintiff, that person shall be joined as a defendant, and the fact of refusal to join as a plaintiff shall be pleaded.

(3)(a) All persons shall be joined as defendants against whom the ultimate right to relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. An administrative law judge shall order, upon a proper showing, that a party be joined or dismissed.

(b) The Special Fund/Workers' Compensation Funds may be joined as a defendant in accordance with the appropriate statutory provisions [for claims in which the injury date or date of last exposure occurred before December 12, 1996].

(c) Joinder shall be sought by motion as soon as practicable after legal grounds for joinder are known. Notice of joinder and a copy of the claim file shall be served in the manner ordered by the administrative law judge.

Section 3. Pleadings. (1) An application for resolution of claim and all other pleadings shall be typewritten, signed originally, and submitted in accordance with this administrative regulation.

(a) For an injury claim, an applicant shall submit a completed Form 101, Application for Resolution of Injury Claim. If the accident caused a fatal injury, the applicant shall also submit an Appendix F with the Application. If the applicant alleges a safety violation pursuant to KRS 342.165, the applicant shall submit an Appendix SVC with the Application.

(b) For an occupational disease claim other than coal workers' pneumoconiosis, an applicant shall submit a completed Form 102-0D, Application for Resolution of Occupational Disease Claim.

(c) For a hearing loss claim, an applicant shall submit a completed Form 103, Application for Resolution of Hearing Loss Claim.

(2) An application for resolution of claim shall be filed with sufficient copies for service on all parties. The <u>commissioner</u> [executive director] shall make service by first class mail. [Incomplete applications may be rejected and returned to the application. If the application is refiled in proper form within twenty (20) days of the date it was returned, the filing shall relate back to the date the application was first received by the executive director. Otherwise, the date of second receipt shall be the filing date.]

(3) <u>The original of</u> all pleadings shall be <u>filed with</u> [served upon] the <u>commissioner</u> [executive director] and shall be served upon all other parties by mailing a copy to the other parties or, if represented, to that representative, at the party's or representative's last known address. <u>The parties, by agreement, may serve all</u> <u>pleadings upon each other by electronic means</u>. A certificate of service indicating the method and date of service and signed by the party shall appear on the face of the pleading. <u>The party or its</u> <u>representative shall include his or her name, full address, phone</u> <u>number</u>, e-mail address, and if applicable, Kentucky Bar Association number. Notices of deposition, notices of physical examination, requests for and responses to requests for production of doc-<u>uments</u>, and exchange of reports or records [and physical examination] shall be served upon the parties and shall not be filed with the <u>commissioner</u> [executive director].

(4) After the application for resolution has been assigned to an

administrative law judge, subsequent pleadings shall include, within the style of the claim and immediately before the claim number, "Before Administrative Law Judge (name)". Upon consolidation of claims, the most recent claim number shall be listed first.

(5)(a) All documents involved in an appeal to the Workers' Compensation Board shall include the language "Before Workers' Compensation Board" before the claim number within the style of the claim.

(b) Parties shall insert the language "Appeals Branch" or "Workers' Compensation Board" on the outside of the envelope containing documents involved in an appeal.

Section 4. Motions. (1) The party filing a motion shall tender a proposed order granting the relief requested.

(2) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in reply. Further memoranda (for example, reply to response) shall not be filed.

(3) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating the facts.

(4) Every motion, the grounds of which depend upon the existence of facts which the moving party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

(5) A motion, other than to reopen pursuant to KRS 342.125 or for interlocutory relief, shall be considered ten (10) days after the date of filing. A response shall be considered if filed on or before the tenth day after the filing of the motion.

(6)(a) A motion to reopen shall be accompanied by as many of the following items as may be applicable:

1. A current medical release Form 106 executed by the plaintiff;

2. An affidavit evidencing the grounds to support reopening;

3. A current medical report showing a change in disability established by objective medical findings;

4. A copy of the opinion and award, settlement, voluntary agreed order or agreed resolution sought to be reopened;

5. An affidavit certifying that a previous motion to reopen has not been made by the moving party, or if one (1) has previously been made, the date on which the previous motion was filed;

6. A designation of evidence from the original record specifically identifying the relevant items of proof which are to be considered as part of the record during reopening; or

7. A certification of service that the motion was served on all parties as well as counsel for the parties.

(b)1. A designation of evidence made by a party shall list only those items of evidence from the original record that are relevant to the matters raised on reopening.

2. The burden of completeness of the record shall rest with the parties to include so much of the original record, up to and including the award or order on reopening, as is necessary to permit the administrative law judge to compare the relevant evidence that existed in the original record with all subsequent evidence submitted by the parties.

3. Except for good cause shown at the time of the filing of the designation of evidence, a party shall not designate the entire original record from the claim for which reopening is being sought.

(c)1. A motion to reopen shall not be considered until twentyfive (25) days after the date of filing.

2. Any response shall be filed within twenty (20) days of filing the motion to reopen.

3. A response may contain a designation of evidence specifically identifying evidence from the original record not already listed by the moving party that is relevant to matters raised in a response.

(d) Any party may use the following forms provided by the office for motions to reopen:

1. Form MTR-1, Motion to Reopen by Employee;

2. Form MTR-3, Motion to Reopen by Defendant; and

3. Form MTR-2, Motion to Reopen KRS 342.732 Benefits.

(7) A motion for allowance of a plaintiff's attorney fee shall:

(a) Be made within thirty (30) days following the finality of the award, settlement or agreed resolution upon which the fee request

is based;

(b) Be served upon the adverse parties and the attorney's client;

(c) Set forth the fee requested and mathematical computations establishing that the request is within the limits set forth in KRS 342.320; and

(d) Be accompanied by:

1. An affidavit of counsel detailing the extent of the services rendered and the time expended;

2. A signed and dated Form 109 as required by KRS 342.320(5); and

3. A copy of the signed and dated contingency fee contract, if requesting an attorney fee based upon recovery of income benefits on behalf of the employee.

(8) A motion for allowance of defendant's attorney's fee shall be:

(a) Filed within thirty (30) days following the finality of the decision; and

(b) Accompanied by an affidavit of counsel detailing:

1. The extent of the services rendered and the time expended;

2. The hourly rate and total amount to be charged; and

3. The date upon which agreement was reached for providing the legal services.

(9) The following motions relating to vocational rehabilitation training provided by the <u>department</u> [office] may be used by all parties:

(a) Form VRT, Petition for Vocational Rehabilitation Training; and

(b) Form WVR, Joint Motion and Agreement to Waive Vocational Rehabilitation Evaluation.

(10) If a plaintiff is deceased, a Motion to Substitute Party and Continue Benefits shall be filed on Form 11.

Section 5. Application for Resolution of an Injury Claim and Response. (1) To apply for resolution of an injury claim, the applicant shall file Form 101 with the following completed documents:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of injury;

(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for the same body part claimed to have been injured;

(c) Medical release (Form 106);

(d) One (1) medical report, which may consist of legible, handwritten notes of the treating physician, and which shall include the following:

1. A description of the injury which is the basis of the claim;

2. A medical opinion establishing a causal relationship between the work-related events or the medical condition which is the subject of the claim; and

3. If a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder; (2)(a) Following the filing of an application for resolution of claim, or the sustaining of a motion to reopen, the commissioner shall issue a notice of filing and scheduling order for a benefit review conference, to be conducted by an administrative law judge. Within forty-five (45) days of the date of the notice of filing and scheduling order for a benefit conference, defendant(s) shall file a Notice of Claim Denial or Acceptance on a Form 111 - Injury and Hearing Loss and Occupational Disease other than coal workers' pneumoconiosis. However, no Form 111, Notice of Claim Denial shall be required to be filed by any party in a claim reopened pursuant to KRS 342.125. [(e) Decumentation substantiating the plain-tiff's preinjury and postinjury wages; and

(f) Documentation establishing additional periods for which temporary total disability benefits are sought.

(2)(a) The defendant shall file a Notice of Claim Denial or Acceptance on a Form 111 - Injury and Hearing Locs within forty-five (45) days after the notice of the scheduling order or within forty-five (45) days following an order sustaining a motion to reopen a claim.]
 (b) If a Form 111 is not filed, all allegations of the application

shall be deemed admitted.

(c) The Form 111 shall set forth <u>whether the claim is admitted</u>, or denied in whole or denied in part the following:

1. All pertinent matters which are admitted and those which are denied;

2. If a claim is denied in whole or in part, a detailed summary of the basis for denial:

3. The name of each witness whose testimony may be relevant to that denial; and

4. A description of the physical requirements of the plaintiff's job at the time of the alleged injury and the name, address and telephone number of the individual responsible for gathering this information for the employer and its insurer.

(d) In addition to the Form 111, a defendant shall file a special answer to raise any special defenses in accordance with this paragraph. If the defendant raises the special defense under KRS 342.165, failure to comply with safety laws, the defendant shall also submit with the special answer Appendix SVE.

1. [A defendant may incorporate special defenses that have been timely raised in the Form 111.

2.] A "special answer" shall be filed within:

a. Forty-five (45) days of the <u>date of the notice of filing and</u> scheduling order <u>for a benefit review conference</u>; or

b. Forty-five (45) days of the date of the order making the defendant a party, if joinder occurs after the filing of the application for the resolution of the claim.

<u>c.</u> Ten (10) days <u>of the</u> [<del>after</del>] discovery of facts supporting the defense <u>upon showing that</u> [if] discovery could not have been <u>made</u> [<del>had</del>] earlier in the exercise of due diligence.

2.[3.] A special defense shall be waived if not timely raised.

3.[4.] A special defense shall be <u>pled</u> [pleaded] if the defense arises under:

a. KRS 342.035(3), unreasonable failure to follow medical advice;

b. KRS 342.165, <u>safety violation</u> [failure to comply with safety laws];

c. KRS 342.316(7) or 342.335, false statement on employment application;

d. KRS 342.395, voluntary rejection of KRS Chapter 342;

e. KRS 342.610(3), voluntary intoxication or self-infliction of injury;

f. KRS 342.710(5), refusal to accept rehabilitation services; or

g. Running of periods of limitations or repose under KRS 342.185, 342.270, 342.316, or other applicable statute.

(e) Within forty-five (45) days of the date of the notice of filing and scheduling order for a benefit review conference, parties shall file a notice of disclosure. The notice of disclosure shall contain:

1. A list of all witnesses upon whom the party intends to rely. The list shall include the name of the witness, which contested issue(s) they are expected to address, and the date of any examination they are to conduct or deposition they are to provide. If the witness has provided medical care or treatment, the list shall include the medical condition(s) treated.

2. A statement setting out plaintiff's educational background to include a listing of any diplomas, certificates or degrees obtained, the nature of the diplomas, certificates or degrees and when obtained. Further plaintiff shall provide wage information for the date of injury and all wages earned subsequent to the injury to include any wages earned as of the date of service of the notice of disclosure. If any wages have been earned subsequent to the subject injury while employed by an employer other than the employer where the injury occurred, plaintiff shall provide a listing of the employer(s), addresses, and dates of subsequent employment and the nature of the employment including a description of the physical requirement of such subsequent employment.

3. A list of all known and anticipated contested issues. The list of contested issues shall be completed with specificity. The subsequent addition of contested issues shall only be allowed upon motion to the administrative law judge, upon a showing of good cause as to why the issue could not have been discovered earlier. Alleging an injury or occupational disease or listing a contested issue without reasonable ground shall constitute grounds for the imposition of sanctions under Section 26 of this administrative regulation.

4. If the proof cannot be completed within the time allotted in

the scheduling order, the party shall list the proof, its relevance and necessity to be presented, and the reason the proof cannot be presented within the time allotted in the scheduling order. This statement shall not be considered a motion for extension of time.

5. Plaintiff shall provide with the notice of disclosure copies of known unpaid medical bills and documentation of all out-of-pocket expenses including, but not limited to, travel for medical treatment, co-pays or direct payments by plaintiff for medical expenses for which plaintiff seeks payment or reimbursement.

6. A statement of any other issues of which the party is aware which may impact the claim including, but not limited to, potential contested issues, evidence or scheduling.

7. The defendant(s) shall provide with its notice of disclosure a completed Form AWW-1, average weekly wage certification, and copies of any medical bills and/or medical expenses disputed by defendant(s), any submitted bills being considered but unpaid, and a total for all medical expenses paid as of the date application for resolution of the claim or motion to reopen is filed. If the plaintiff has earned wages for defendant(s) shall provide post-injury wage information records. In a reopened claim, no Form AWW-1 shall be required to be filed if the pre-injury average weekly wage was pre-viously stipulated by the parties unless a party seeks and is relieved from the original stipulation or an administrative law judge made a finding as to average weekly wage.

8. Within forty-five (45) days of the date of the order joining a new party, the newly joined party shall file a notice of disclosure. The notice of disclosure shall contain:

a. A list of all witnesses upon whom the party intends to rely. The list shall include the name of the witness, which contested issue(s) they are expected to address, and the date of any examination they are to conduct or deposition they are to provide. If the witness has provided medical care or treatment, the list shall include the dates of treatment and the medical condition(s) treated.

b. A list of all contested issues known to the party. The list of contested issues shall be completed with specificity. The subsequent addition of contested issues shall only be allowed upon motion to the administrative law judge, upon a showing of good cause as to why the issue could not have been discovered earlier. Alleging an injury or occupational disease or listing a contested issue without reasonable ground shall warrant imposition of sanctions under Section 26 of this administrative regulation.

c. If the proof cannot be completed within the time allotted in the scheduling order or order naming them as a party, the party shall list the proof, its relevance and necessity to be presented, and the reason the proof cannot be presented within the time allotted.

d. If applicable, the newly joined party shall provide with the notice of disclosure a completed Form AWW-1, average weekly wage certification, and copies of any medical bills and/or medical expenses disputed by defendant(s), and any submitted bills being considered but unpaid, and a total for all medical expenses paid. If the plaintiff has earned wages for defendant(s) after the injury which are the subject of the litigation, defendant(s) shall provide post-injury wage information records. In a reopened claim, no Form AWW-1 shall be required to be filed if the pre-injury average week-ly wage was previously stipulated by the parties unless a party seeks and is relieved of the original stipulation or an administrative law judge made a finding as to average weekly wage.

e. If applicable, the newly joined party shall also, within fortyfive (45) days after the date of the order joining the new party, file a Notice of Claim Denial or Acceptance on a Form 111, Injury, Hearing Loss, and Occupational Disease, other than coal workers' pneumoconiosis. However, no Form 111 shall be required to be filed in a claim reopened pursuant to KRS 342.125.

9. All parties shall amend this notice of disclosure within ten (10) days of the identification of any additional witness, receipt of information or documents which would have been disclosed at the time of the original filing had it then been known or available.

Section 6. Application for Resolution of an Occupational Disease Claim and Response. (1) To apply for resolution of an occupational disease claim, the applicant shall file Form 102-0D with the following completed attachments:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of last exposure and all jobs in which plaintiff alleges exposure to the hazards of the occupational disease;

(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for the same body part claimed to have been injured;

(c) Medical release (Form 106);

(d) One (1) medical report supporting the existence of occupational disease; and

(e) Social Security Release Form (Form 115).

(2)(a) The defendant shall file a Notice of Claim Denial or Acceptance on a Form 111-OD:

1. Within forty-five (45) days after the notice of the scheduling order: and

2. In accordance with Section 5(2)(b), (c), and (d) of this administrative regulation.

(b) In addition to the Form 111-OD, a defendant shall file a special answer to raise any special defenses in accordance with Section 5(2)(d) of this administrative regulation.

(c) All parties shall file notice of disclosure in accordance with Section 5(2)(e) of this administrative regulation.

(3) For all occupational disease and hearing loss claims, the <u>commissioner</u> [<del>executive director</del>] shall promptly schedule an examination pursuant to KRS 342.315 and 342.316.

Section 7. Application for Resolution of a Hearing Loss Claim and Response. (1) To apply for resolution of a hearing loss claim, the applicant shall file Form 103 with the following completed documents:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the last date of noise exposure;

(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for hearing loss or ear complaints;

(c) Medical release (Form 106);

(d) One (1) medical report describing the hearing loss which is the basis of the claim and, if a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder. Medical reports required under this paragraph may consist of legible, hand-written notes of a treating physician; and

(e) Social Security Release Form (Form 115).

(2)(a) The defendant shall file a Notice of Claim Denial or Acceptance on a Form 111 - Injury and Hearing Loss:

1. Within forty-five (45) days after the notice of the scheduling order: and

2. In accordance with Section 5(2)(b), (c), and (d) of this administrative regulation.

(b) In addition to the Form 111 - Injury and Hearing Loss, a defendant shall file a special answer to raise any special defenses in accordance with Section 5(2)(d) of this administrative regulation.

(c) All parties shall file notice of disclosure in accordance with Section 5(2)(e) of this administrative regulation.

Section 8. Discovery, Evidence, and Exchange of Records. (1) Proof taking and discovery for all parties shall begin from the date of issuance by the <u>commissioner</u> [executive director] of the <u>notice</u> <u>of filing and the order scheduling the benefit review conference</u> [echeduling order].

(2)(a) Plaintiff and defendants shall take proof for a period of sixty (60) days from the date of the scheduling order;

(b) After the sixty (60) day period, defendants shall take proof for an additional <u>sixty (60)</u> [thirty (30)] days; and

(c) After the defendant's <u>sixty (60)</u> [thirty (30)] day period, the plaintiff shall take rebuttal proof for an additional fifteen (15) days.

(3) During the pendency of a claim, any party obtaining or pos-

sessing a medical or vocational report or records <u>and relevant</u> portions of hospital, educational, Office of Vital Statistics, Armed Forces, Social Security, other public records and surveillance reports and/or videos, and/or recorded statements shall serve a copy of the report or records upon all other parties within ten (10) days following receipt of those reports or records or within ten (10) days of receipt of notice if assigned to an administrative law judge. <u>Fail-</u> ure to comply with this section may constitute grounds for exclusion of the reports or records as evidence and shall constitute grounds for the imposition of sanctions pursuant to Section 26 of this administrative regulation.

(4) All medical reports filed with Forms 101, 102-0D, or 103 shall be admitted into evidence without further order if:

(a) An objection is not filed prior to or with the filing of the Form 111; and

(b) The medical reports comply with Section 10 of this administrative regulation.

Section 9. Vocational Reports. (1) A vocational report may be filed by notice and shall be admitted into evidence without further order and without the necessity of a deposition, if an objection is not filed.

(2) Vocational reports shall be signed by the individual making the report.

(3) Vocational reports shall include, within the body of the report or as an attachment, a statement of the qualifications of the person making the report.

(4) An objection to the filing of a vocational report shall:

(a) Be filed within ten (10) days of the filing of the notice or motion for admission; and

(b) State the grounds for the objection with particularity.

(5) The administrative law judge shall rule on the objection within fifteen (15) days.

(6) If a vocational report is admitted as direct testimony, an adverse party may depose the reporting vocational witness in a timely manner as if on cross-examination at its own expense. Notice of time, date, and place for cross-examination shall be given within fifteen (15) days of the date the evidence to be crossexamined is served on the cross-examining party.

Section 10. Medical Reports. (1) A party shall not introduce direct testimony from more than two (2) physicians by medical report except upon a showing of good cause and prior approval by an administrative law judge.

(2) Medical reports shall be submitted on Form 107-I (injury), Form 107-P (psychological), Form 108-OD (occupational disease), Form 108-CWP (coal workers' pneumoconiosis), or Form 108-HL (hearing loss), as appropriate, except that an administrative law judge may permit the introduction of other reports.

(3) Medical reports shall be signed by the physician making the report, or be accompanied by an affidavit from the physician or submitting party or representative verifying the authenticity of the report.

(4) Medical reports shall include, within the body of the report or as an attachment, a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have been filed with the <u>commis-</u> <u>sioner</u> [executive director] and the physician has been assigned a medical qualifications index number, reference may be made to the physicians index number in lieu of attaching qualifications.

(5) Narratives in medical reports shall be typewritten. Other portions, including spirometric tracings, shall be clearly legible.

(6)(a) Upon notice, a party may file the testimony of two (2) physicians, either by deposition or medical report, which shall be admitted into evidence without further order if an objection is not filed.

(b) Objection to the filing of a medical report shall be filed within ten (10) days of the filing of the notice or the motion for admission.

(c) Grounds for the objection shall be stated with particularity.

(d) The administrative law judge shall rule on the objection within fifteen (15) days of filing.

(7) Medical records or reports that are not submitted on a Form 107-I (injury), Form 107-P (psychological), Form 108-OD (occupa-

tional disease). Form 108-HL (hearing loss) may be submitted by notice which identifies the records, the person or medical facility which produced the records and the relevance of such records to the claim. If the records or reports submitted exceed ten (10) pages, the records must be paginated or Bates stamped consecutively and indexed with a table of contents generally identifying the contents of each page. Failure to comply with pagination and table of contents shall result in rejection of the records and the same shall not be filed as evidence. Excepted from the requirement are narrative reports of Independent Medical Examiners (IME).

(8) If a medical report is admitted as direct testimony, an adverse party may depose the reporting physician in a timely manner as if on cross-examination at its own expense. Notice of the time, date, and place for cross-examination must be given within fifteen (15) days of the date the evidence to be cross-examined is served on the cross-examining party.

Section 11. Medical Evaluations Pursuant to KRS 342.315. (1) All persons claiming benefits for hearing loss or occupational disease other than coal workers' pneumoconiosis shall be referred by the commissioner for a medical evaluation in accordance with contracts entered into between the <u>commissioner</u> [executive director] and the University of Kentucky and University of Louisville medical schools.

(2) Upon all other claims except coal workers' pneumoconiosis claims, the <u>commissioner</u> [executive director] or an administrative law judge may direct appointment by the <u>commissioner</u> [executive director] of a university medical evaluator.

(3) Upon referral for medical evaluation under this section, a party may tender additional relevant medical information to the university medical school to whom the evaluation is assigned. This additional information shall not be filed of record. The additional medical information shall be:

(a) Submitted to the university within fourteen (14) days following an order for medical evaluation pursuant to KRS 342.315;

(b) Submitted by way of medical reports, notes, or depositions;

(c) Clearly legible;

(d) Indexed;

(e) Furnished in chronological order;

(f) Timely furnished to all other parties within ten (10) days following receipt of the medical information; and

(g) Accompanied by a summary that is filed of record and served upon all parties. The summary shall:

1. Identify the medical provider;

2. Include the date of medical services; and

3. Include the nature of medical services provided.

(4) Upon the scheduling of an evaluation, the <u>commissioner</u> [executive director] shall provide notice to all parties and the employer shall forward to the plaintiff necessary travel expenses as required by KRS 342.315(4). Upon completion of the evaluation, the <u>commissioner</u> [executive director] shall provide copies of the report to all parties and shall file the original report in the claim record to be considered as evidence.

(5) The administrative law judge shall allow timely crossexamination of a medical evaluator appointed by the <u>commissioner</u> [executive director] at the expense of the moving party.

(6) [Unjustified] Failure by the plaintiff to attend the scheduled medical evaluation may be grounds for dismissal, payment of a no-show fee, sanctions, or all of the above.

(7) Failure by the employer or its insurance carrier to pay travel expenses within seven (7) days of notification of a scheduled medical evaluation or to pay the cost of the examination within thirty (30) days of the receipt of a statement for the evaluation may be grounds for imposition of sanctions.

Section 12. Interlocutory Relief. (1) [During a claim,] A party may seek interlocutory relief by using Form 101IR, or by motion requesting [through]:

(a) Interim payment of income benefits for total disability pursuant to KRS 342.730(1)(a);

(b) Medical benefits pursuant to KRS 342.020; or

(c) Rehabilitation services pursuant to KRS 342.710.

(2) Upon receipt of a party's request for interlocutory relief in the application or by motion, the commissioner or administrative law judge (if the claim has already been assigned to an administrative law judge) shall within ten (10) days issue an order:

(a) Requiring a response to the request for interlocutory relief be served within twenty (20) days from the date of the order; and

(b) Setting a hearing before an administrative law judge on the request for interlocutory relief within thirty-five (35) days of the order.

(3) A hearing before an administrative law judge may be held to review the party's entitlement to interlocutory relief. The hearing may be held electronically if the parties agree or a party demonstrates good cause as to why the party cannot appear at the hearing in person. The hearing may be waived by agreement.

(4) Upon completion of the hearing, an administrative law judge shall issue a decision within fifteen (15) days. If the hearing is waived, an administrative law judge shall issue a decision within fifteen (15) days after the date of agreed waiver is signed by the administrative law judge.

(5)(a) Entitlement to interlocutory relief shall be established by means of affidavit, deposition, hearing testimony, or other means of record demonstrating the requesting party:

1. Is eligible under KRS Chapter 342;

2. Will suffer irreparable injury, loss or damage pending a final decision on the application; and

3. Is likely to succeed on the merits based upon the evidence introduced by the parties.

(b) Rehabilitation services may be ordered while the claim is pending upon a showing that immediate provision of services will substantially increase the probability that the plaintiff will return to work.

(6) If interlocutory relief is awarded in the form of income benefits, the claim shall be placed into abeyance unless a party shows irreparable harm will result. Plaintiff shall file reports every ninety (90) days or sooner, if circumstances warrant, or upon order by the administrative law judge, updating his current status. Upon motion and a showing of cause, or upon the administrative law judge's own motion, interlocutory relief shall be terminated and the claim removed from abeyance. Failure to file a timely status report shall constitute cause to terminate interlocutory relief.

(7) Benefits awarded pursuant to an interlocutory order shall not be terminated except upon entry of an order issued by an administrative law judge. Failure to pay benefits under an interlocutory order or termination of benefits ordered pursuant to an interlocutory order, shall constitute grounds for a violation of the Unfair Claims Settlement Practices Act.

(8) If a claimant is successful in his or her request for interlocutory relief and, if payment of benefits pursuant to the interlocutory relief order results in an overpayment of benefits, the party making the overpayment shall be entitled to a dollar-for-dollar credit for such overpayment against past due or future awarded income benefits.

(9) If interlocutory relief is requested, no assignment to an administrative law judge shall be made on other issues and no scheduling order issued until a ruling has been made on the interlocutory relief request, unless the requesting party shows that delay will result in irreparable harm.

(10) [Upon motion of any party, an informal conference:

(a) Shall be held to review the plaintiff's entitlement to interlocutory relief; and

(b) May be held telephonically.

(3) Any response to a request for interlocutory relief shall be served within twenty (20) days from the date of the request and thereafter, the request shall be ripe for a decision.

(4)(a) Entitlement to interlocutory relief shall be shown by means of affidavit, deposition, or other evidence of record demonstrating the requesting party:

1. Is eligible under KRS Chapter 342; and

2. Will suffer irreparable injury, loss or damage pending a final decision on the application.

(b) Rehabilitation services may be ordered while the claim is pending upon showing that immediate provision of services will substantially increase the probability that the plaintiff will return to work.

(5) If interlocutory relief is awarded in the form of income benefits, the application shall be placed in abeyance unless a party

shows irreparable harm will result. The administrative law judge may require periodic reports as to the physical condition of the plaintiff. Upon motion and a showing of cause, or upon the administrative law judge's own motion, interlocutory relief shall be terminated and the claim removed from abeyance.

(6)] An attorney's fee in the amounts authorized by KRS 342.320 that does not exceed twenty (20) percent of the weekly income benefits awarded pursuant to a request for interlocutory relief may be granted. The approved fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney.

(11)[(7)] A party seeking interlocutory relief may use the following forms:

(a) Motion for Interlocutory Relief, Form MIR-1;

(b) Affidavit for Payment of Medical Expenses, Form MIR-2;

(c) Affidavit for Payment of Temporary Total Disability, Form MIR-3: and

(d) Affidavit Regarding Rehabilitation Services, Form MIR-4.

Section 13. Benefit Review Conferences. (1) The purpose of the benefit review conference shall be to expedite the processing of the claim and to avoid if possible the need for a hearing.

(2) The benefit review conference shall be an informal proceeding

(3) The date, time, and place for the benefit review conference shall be stated on the scheduling order issued by the commissioner [executive director].

(4) The plaintiff and his or her representative, the defendant or its representative, and the representatives of all other parties shall attend the benefit review conference.

(5) If the defendant is insured or a qualified self-insured, a representative of the carrier with settlement authority shall be present or available by telephone during the benefit review conference

(6) The administrative law judge may upon motion waive the plaintiff's attendance at the benefit review conference for good cause shown.

(7) A transcript of the benefit review conference shall not be made.

(8) Representatives of all parties shall have authority to resolve disputed issues and settle the claim at the benefit review conference.

(9)(a) [The defendant shall provide a completed Form AWW-1, Average Weekly Wage Certification.

(b)] The plaintiff shall bring copies of known unpaid medical bills and documentation of out-of-pocket expenses including travel for medical treatments. Failure to do so may constitute a waiver to claim payment for those bills or expenses absent a showing of good cause as to why the bills or out-of-pocket expenses could not be produced at or before the benefit review conference.

(b)[(c)] Each defendant shall bring copies of [disputed] medical bills presented to them, their insurer or their representative known to be unpaid by them and any other disputed medical expenses including travel expenses. Failure to do so may constitute a waiver of their right to challenge those bills or expenses.

(10) At [Ten (10) days before] the benefit review conference: (a)[,] The parties shall exchange final stipulations and lists of known witnesses and exhibits that:

1.[(a)] Name each proposed witness;

2.[(b) Summarize the anticipated testimony of each witness;

(c)] For medical witnesses, include in the summary:

a.[1. The diagnosis reached;

2. Clinical findings and results of diagnostic studies upon which the diagnosis is based;

3.] The functional impairment rating, if any, assessed by the witness; and

b.[4.] A description of any work-related restrictions imposed; and

3.[(d)] Identify any exhibits.

(b) File a certification that settlement offers have been conveyed to opposing party(ies) or counsel, and if none made, the reason.

(c) Failure to file a witness and exhibit list or to include a witness or exhibit may constitute grounds for the administrative law

judge to refuse to consider the witness or exhibit in evidence.

- (11) At the benefit review conference, the parties shall:
- (a) Attempt to resolve controversies and disputed issues;
- (b) Narrow and define disputed issues; and
- (c) Facilitate a prompt settlement.

(12) A party seeking postponement of a benefit review conference shall file a motion at least fifteen (15) days prior to the date of the conference and shall demonstrate good cause for the postponement.

(13) If at the conclusion of the benefit review conference the parties have not reached agreement on all the issues, the administrative law judge shall:

(a) Prepare a final BRC memorandum and order including stipulations and identification [summary stipulation] of all contested [and uncontested] issues which shall be signed by the parties or if represented their counsel [representatives of the parties] and [by] the administrative law judge; and

(b) Schedule a final hearing.

(14) Only contested issues shall be the subject of further proceedinas.

(15) Upon motion with good cause shown, the administrative law judge may order that additional discovery or proof be taken between the benefit review conference and the date of the hearing and may limit the number of witnesses to be presented at the hearing.

(16) The defendant(s) or its representative(s) shall bring to the benefit review conference a completed settlement agreement excepting the terms of settlement on the appropriate settlement form. If an addendum or addenda are anticipated to be required as part of any settlement, defendant(s) or its representative(s) shall bring a predrafted addendum or addenda that can be used for completion of settlement.

Section 14. Evidence - Rules Applicable. (1) The Rules of Evidence prescribed by the Kentucky Supreme Court shall apply in all proceedings before an administrative law judge except as varied by specific statute and this administrative regulation.

(2) Any party may file as evidence before the administrative law judge pertinent material and relevant portions of hospital, educational, Office of Vital Statistics, Armed Forces, Social Security, and other public records. An opinion of a physician which is expressed in these records shall not be considered by an administrative law judge in violation of the limitation on the number of physician's opinions established in KRS 342.033. If the records or reports submitted exceed ten (10) pages, the records or reports must be paginated or Bates stamped consecutively and indexed with a table of contents generally identifying the contents of each page.

Section 15. Extensions of Proof Time. (1) An extension of time for producing evidence may be granted upon showing of circumstances that prevent timely introduction, reasonable effort having been made by the party to obtain the evidence in a timely manner, and the significance of the evidence to the issues in the claim.

(2) A motion for extension of time shall be filed no less [later] than fifteen (15) [five (5)] days unless good cause is shown prior to the expiration of proof time [before the deadline sought] to be extended, except for extensions of rebuttal time which shall be filed no less than five (5) days prior to the expiration of proof time.

(3) The motion or affidavit [supporting affidavits] shall set forth:

(a) The efforts to produce the evidence in a timely manner;

(b) Facts which prevented timely production; and

(c) With specificity and detail the date of availability of the evidence, the probability of its production, and the materiality of the evidence.

(d) Failure to strictly comply with (a)(c), above, shall result in the motion for extension of time being overruled.

(4) [In the absence of compelling circumstances, only one (1) extension of thirty (30) days shall be granted to each side for completion of discovery or proof by deposition.

(5)] The granting of an extension of time for completion of discovery or proof shall:

(a) Enlarge the time to all:

1. Plaintiffs if the extension is granted to a plaintiff; and

2. Defendants if an extension is granted to a defendant; and

3.[(b)] Extend the time of the adverse party automatically except if the extension is for rebuttal proof.

(b) Be limited to the introduction of the evidence cited as the basis for the requested extension of time.

Section 16. Stipulation of Facts. (1) Refusal to stipulate facts which are not genuinely in issue shall warrant imposition of sanctions as established in Section <u>26</u> [24] of this administrative regulation. An assertion that a party has not had sufficient opportunity to ascertain relevant facts shall not be considered "good cause" in the absence of due diligence.

(2) Upon cause shown, a party may be relieved of a stipulation if the motion for relief is filed at least ten (10) days prior to the date of the hearing, or as soon as practicable after discovery that the stipulation was erroneous.

(3) Upon granting relief from a stipulation, the administrative law judge may grant a continuance of the hearing and additional proof time.

Section 17. Discovery and Depositions. (1) Discovery and the taking of depositions shall be in accordance with the provisions of Civil Rules 26 to 37, inclusive, except for Civil Rules 27, 33, and 36 which shall not apply to practice before the administrative law judges or the board.

(2) Depositions may be taken by telephone if the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given. Notice of a telephonic deposition shall relate the following information:

(a) That the deposition is to be taken by telephone;

(b) The address and telephone number from which the call will be placed to the witness;

(c) The address and telephone number of the place where the witness will answer the deposition call; and

(d) Opposing parties may participate in the deposition either at the place where the deposition is being given, at the place the telephone call is placed to the witness, or by conference call. If a party elects to participate by conference call, that party shall contribute proportionate costs of the conference call.

(3) <u>A party seeking a subpoena from an Administrative Law</u> Judge shall use the Subpoena Form SUB or Subpoena Duces Tecum Form SUB-DT, and provide it to the Administrative Law Judge to whom the case is assigned, or if no assignment has been made then it shall be sent to the Chief Administrative Law Judge. This shall be done a minimum of ten (10) days prior to the date of the appearance being requested, no motion shall be filed. A subpoena shall be served in accordance with Civil Rules 5.02, 45.03 or 45.05, whichever is applicable.

(4) The <u>commissioner</u> [executive director] shall establish a medical qualifications index.

(a) An index number shall be assigned to a physician upon the filing of the physician's qualifications.

(b) Any physician who has been assigned an index number may offer the assigned number in lieu of stating qualifications.

(c) Qualifications shall be revised or updated by submitting revisions to the <u>commissioner</u> [executive director].

(d) A party may inquire further into the qualifications of a physician.

Section 18. Hearings. (1) At the hearing, the parties shall present proof concerning contested issues. If the plaintiff or plaintiff's counsel fails to appear, the administrative law judge may dismiss the case for want of prosecution, or if good cause is shown, the hearing may be continued.

(2) At the conclusion of the hearing, the claim shall be <u>considered submitted</u> [taken under submission] immediately <u>and</u> [or] briefs may be ordered.

(3) Briefs shall not exceed fifteen (15) pages in length. Reply briefs shall be limited to five (5) pages. Permission to increase the length of a brief shall be sought by motion.

(4) The administrative law judge may announce his decision at the conclusion of the hearing or <u>may</u> [shall] defer decision until rendering a written opinion.

(5) A decision shall be rendered no later than sixty (60) days

following the hearing.

(6) The time of filing a petition for reconsideration or notice of appeal shall not begin to run until after the "date of filing" of the written opinion.

(7) An opinion or other final order of an administrative law judge shall not be deemed <u>filed</u> [final] until the administrative law judge has certified that a certification of mailing was sent to:

(a) An attorney who has entered an appearance for a party; or

(b) The party if an attorney has not entered an appearance.

(8) The parties with approval of the administrative law judge may waive a final hearing. Waiver of a final hearing shall require agreement of all parties and the administrative law judge. The claim shall be taken under submission as of the date of the order allowing the waiver of hearing. A decision shall be rendered no later than sixty (60) days following the date of the order allowing the waiver of hearing.

(9) Upon written agreement by the parties and upon approval by the administrative law judge, the parties may utilize mediation to attempt resolution of the claim. The parties shall agree upon the time, place, mediator, and terms of mediation, and report the same in writing to the administrative law judge. Any costs for mediation, unless agreed otherwise, shall be born proportionately by the parties.

(10) If a hearing has been scheduled and the parties settle the claim, the administrative law judge shall be notified as soon as practicable. If the parties fail to notify the administrative law judge of the need to cancel a hearing for settlement or any other reason less than two (2) full business days before the date of the scheduled hearing, the parties shall pay their proportionate share of a seventy-five (75) dollar court reporter appearance fee, and, if applicable, the appearance fee for an interpreter obtained for the hearing by the department.

Section 19. Petitions for Reconsideration. (1) If applicable, a party shall file a petition for reconsideration within fourteen (14) days of the <u>date of</u> filing of a final order or award of an administrative law judge, clearly stating the patent error which the petitioner seeks to have corrected and setting forth the authorities upon which petitioner relies. The party filing the petition for reconsideration shall tender a proposed order granting the relief requested.

(2) A response shall be served within ten (10) days after the date of filing of the petition.

(3) The administrative law judge shall act upon the petition within ten (10) days after the response is due.

Section 20. Benefit Calculations for Settlements. (1) For computing lump sum settlements, the employer shall utilize the prescribed discount rate for its weeks of liability only, not for the entire award period. A discount shall not be taken on past due benefits by the employer or Special Fund/<u>Workers' Compensation Funds</u>. Lump sum settlements shall be calculated as follows:

(a) Determine the entire lump sum liability:

1. Compute the remaining weeks of liability in the award by subtracting the number of weeks past due from the entire number of weeks in the award;

2. Discount the number of weeks remaining in the award at the prescribed discount rate;

3. Multiply the weekly benefit rate by the discounted number of weeks remaining (subparagraph 2 of this paragraph) in the award. This product shall equal the entire future lump sum liability for the award; and

4. Add the amount of past due benefits to the future lump sum liability award (subparagraph 3 of this paragraph). The sum shall represent the entire lump sum value of the award.

(b) Determine the employer's lump sum liability as follows:

1. The employer's future liability shall be computed by determining its total weeks of liability less the number of weeks of liability past due.

2. The number of weeks remaining shall be discounted at the prescribed discount rate and multiplied by the amount of the week-ly benefit.

3. Multiply the number of past due weeks by the amount of the weekly benefit.

4. The employer's entire liability for a lump sum payment shall

be determined by adding the results of subparagraphs 2 and 3 of this paragraph.

(c) Determine the Special <u>Fund/Workers' Compensation</u> Fund's portion of the lump sum liability by subtracting the value of the employer's liability in lump sum (paragraph (b) of this subsection) from the entire value of the lump sum settlement (paragraph (a) of this subsection). The remainder shall be the Special <u>Fund/Workers' Compensation</u> Fund's lump sum liability.

(2) If the employer settles its liability for income benefits with the employee for a lump sum payment and a determination is made of the Special <u>Fund/Workers' Compensation</u> Fund's liability, the Special <u>Fund/Workers' Compensation</u> Fund's portion of income benefits shall be paid commencing with the date of approval of the employer's settlement and continuing for the balance of the compensable period.

(3) In computing settlements involving periodic payments, the employer shall pay its liability over the initial portion of the award, based on the number of weeks its liability bears to the entire liability for the claim. The Special Fund/Workers' Compensation Funds shall make all remaining payments for the balance of the compensable period.

(4) Pursuant to KRS 342.265, election by the Special Fund/Workers' Compensation Funds to settle on the same terms as the employer shall mean the Special Fund/Workers' Compensation Funds agrees to settle in the same manner as the employer in either a discounted lump sum or in periodic payments based upon its proportionate share of the permanent disability percentage paid by the employer. "Same terms" shall not include any additional payments the employer included for buy out of medical expenses, temporary total disability, rehabilitation, or other benefits for which the Special Fund/Workers' Compensation Funds is not liable.

(5) Parties involved in a lump-sum settlement of future periodic payments shall use the discount factor computed in accordance with KRS 342.265(3).

(6) Parties who reach an agreement pursuant to KRS 342.265 shall file the agreement on the applicable form as listed below which form shall reflect the original signature of the parties:

(a) Form 110-F, Agreement as to Compensation and Order Approving Settlement- Fatality;

(b) Form 110-I, Agreement as to Compensation and Order Approving Settlement- Injury;

(c) Form 110-O, Agreement as to Compensation and Order Approving Settlement - Occupational Disease; or

(d) Form 110-CWP, Agreement as to Compensation and Order Approving Settlement - Coal Workers' Pneumoconiosis.

(7) Except for an Agreement containing a Medicare set aside agreement, a settlement agreement submitted for approval that contains information or agreements that are outside the provisions and purview of KRS Chapter 342 of the [Kentucky Revised Statutes] shall not be approved and shall be returned to the parties.

Section 21. Agreements. (1) Unless the settlement agreement is completed and tendered to the administrative law judge for immediate approval at the benefit review conference or hearing, the defendant employer or its representative shall draft the settlement agreement and provide the signed original to the adverse party no later than fourteen (14) days after the date the parties agree to settle. The agreement shall be signed by all parties and tendered to the administrative law judge for approval no more than thirty (30) days after the date the parties agreed to settle.

(2) Once an order has been approved by the administrative law judge, payment must be made within twenty-one (21) days after the date of the order approving settlement.

(3) Any settlement agreement that contains provisions that purport to settle matters outside the scope of the Workers' Compensation Act, except for provisions relating to Medicare Set Aside Agreement (MSA), shall not be approved and will be returned to the parties.

(4) Failure to satisfy the time requirements above unless solely the fault of the claimant or claimant's counsel shall result in the addition of eighteen (18) per cent interest per annum on all benefits agreed upon in the settlement for any period of delay beyond the time proscribed in subsection (2) of this section. Section <u>22.</u> [<del>21.</del>] Review of Administrative Law Judge Decisions. (1) General.

(a) Pursuant to KRS 342.285(1), decisions of administrative law judges shall be subject to review by the Workers' Compensation Board in accordance with the procedures set out in this administrative regulation.

(b) Parties shall insert the language "Appeals Branch" or "Workers' Compensation Board" on the outside of an envelope containing documents filed in an appeal to the board.

(2) Time and format of notice of appeal.

(a) Within thirty (30) days of the date a final award, order, or decision rendered by an administrative law judge pursuant to KRS 342.275(2) is filed, any party aggrieved by that award, order, or decision may file a notice of appeal to the Workers' Compensation Board.

(b) As used in this section, a final award, order or decision shall be determined in accordance with Civil Rule 54.02(1) and (2).

(c) The notice of appeal shall:

1. Denote the appealing party as the petitioner;

2. Denote all parties against whom the appeal is taken as respondents;

3. Name the administrative law judge who rendered the award, order, or decision appealed from as a respondent;

4. If appropriate pursuant to KRS 342.120 or 342.1242, name the director of the Division of Workers' Compensation Funds as a respondent; [and]

5. Include the claim number; and

6. The date of the final award, order, or decision appealed.

(d) Cross-appeal.

1. Any party may file a cross-appeal through notice of crossappeal filed within ten (10) days after the notice of appeal is served.

2. A cross-appeal shall designate the parties as stated in the notice of appeal.

(e) Failure to file the notice within the time allowed shall require dismissal of the appeal.

(f) The <u>commissioner</u> [executive director] shall issue an acknowledgement to all parties of the filing of a notice of appeal or cross-appeal.

(3) Number of copies and format of petitioner's brief.

(a) The petitioner's brief shall be filed within thirty (30) days of the filing of the notice of appeal.

(b) An original and two (2) copies of the petitioner's brief shall be filed with the <u>Commissioner</u> [Executive Director] of the <u>Department</u> [Office] of Workers' Claims.

(c) The petitioner's brief shall conform in all respects to Civil Rule 7.02(4).

(4) Petitioner's brief. The petitioner's brief shall designate the parties as petitioner (or petitioners) and respondent (or respondents) and shall be drafted in the following manner:

(a)1. The name of each petitioner and each respondent shall be included in the brief.

2. The petitioner shall specifically designate as respondents all adverse parties.

3. The administrative law judge who rendered the award, order, or decision appealed from shall be named as a respondent.

(b) The workers' compensation claim number, or numbers, shall be set forth in all pleadings before the Workers' Compensation Board.

(c) The petitioner's brief shall state the date of entry of the final award, order, or decision by the administrative law judge.

(d) The petitioner's brief shall state whether any matters remain in litigation between the parties in any forum or court other than those for which an appeal is being sought.

(e) The petitioner's brief shall include a <u>statement of the</u> "Need for Oral Argument" designating whether the party requests an argument to be heard orally before the board and, if so, a brief statement setting out the reason or reasons for the request.

(f) The petitioner's brief shall include a "Statement of Benefits Pending Review" which shall set forth whether the benefits designated to be paid by the award, order, or decision for which review is being sought have been instituted pursuant to KRS 342.300.

(g) The organization and contents of the petitioner's brief for review shall be as follows:

1. A brief "Introduction" shall indicate the nature of the case.

2. A "Statement of Points and Authorities" shall set forth, succinctly and in the order in which they are discussed in the body of the argument, the petitioner's contentions with respect to each issue of law on which he relies for a reversal, listing under each the authority cited on that point and the respective pages of the brief on which the argument appears and on which the authorities are cited. This requirement may be eliminated for briefs of five (5) or less pages.

3. Ā "Statement of the Case" shall consist of a chronological summary of the facts and procedural events necessary to an understanding of the issues presented by the appeal, with ample reference to the specific pages of the record supporting each of the statements narrated in the summary.

4. An "Argument" shall:

a. Conform with the statement of points and authorities, with ample supportive references to the record and citations of authority pertinent to each issue of law; and

b. Contain, at the beginning of the argument, a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.

5. A "Conclusion" shall set forth the specific relief sought from the board.

6. An "Appendix" shall contain:

a. [Copies of the final award, order, or decision of the administrative law judge from which review is being sought;

b. Any petitions for reconsideration filed by the parties pursuant to KRS 342.281;

c. The administrative law judge's order addressing any petitions for reconsideration;

d-] Copies of cases cited from federal courts and foreign jurisdictions, if any, upon which reliance is made; and

<u>b.[e.]</u> Copies of prior board opinions in accordance with subsection (9) of this section.

7. Civil Rule 76.28(4)(c) shall govern the use of unpublished opinions of the Court of Appeals or Supreme Court.

(5) Respondent's brief, combined brief, or cross-petitioner's brief.

(a) Each respondent shall file an original and two (2) copies of a brief, combined brief if cross-petition or cross-petitioner's brief, within thirty (30) days of the date on which the petitioner's brief was filed with the <u>Commissioner</u> [Executive Director] of the <u>Department</u> [Office] of Workers' Claims.

(b) The respondent's brief shall include a <u>statement of the</u> "Need for Oral Argument" similar to the statement required of the petitioner by subsection (4)(e) of this section.

(c) The respondent's brief shall include a "Statement of Benefits Pending Review" similar to the statement required of the petitioner by subsection (4)(f) of this section.

(d) Respondent's counter-argument shall follow the organization and content of the petitioner's brief as set forth in subsection (4)(g) of this section.

(6) Reply brief.

(a) If applicable, the petitioner may file a reply brief within ten (10) days after the date on which the respondent's brief was served or due, whichever is earlier.

(b) The organization and contents of the reply brief shall be as provided in Civil Rule 76.12(4)(e), except that an index, or contents page shall not be required.

(c) If a cross-appeal has been filed, the cross-petitioner's reply brief may be served within ten (10) days after the date on which the last cross-respondent's brief was served or due, whichever is earlier.

(7) Certification. The petitioner's brief, respondent's brief, and reply brief shall be signed by each party or his counsel and that signature shall constitute a certification that the statements contained in the document are true and made in good faith.

(8) Service of notice of appeal, cross-appeal, petitioner's brief, respondent's brief, and reply briefs on adverse parties.

(a) Before filing a notice of appeal, cross-appeal, or any brief with the <u>Commissioner</u> [Executive Director] of the <u>Department</u> [Office] of Workers' Claims, a party shall serve, in the manner provided by Civil Rule 5.02, a copy of the document on each adverse party. (b) Every brief filed in an appeal to the Workers' Compensation Board shall bear, on the front cover, a signed statement, in accordance with Civil Rule 5.03 by the attorney or party that service has been made as required by paragraph (a) of this subsection. The statement shall identify by name each person served.

(c) The name of each attorney submitting a document to the Workers' Compensation Board with a current address. [and] telephone number, and email address shall appear following its "conclusion".

(d) If the respondent is also a cross-petitioner, the respondent may file a combined brief or separate cross-petitioner's brief which shall address issues raised by the cross-appeal.

(e) If a separate cross-petitioner's brief is filed, the format shall be the same as a respondent's brief.

(9) Form of citations.

(a) All citations of Kentucky statutes and reported decisions of the Court of Appeals and Supreme Court shall conform to the requirements of Civil Rule 76.12(4)(g).

(b) All citations of Kentucky unpublished decisions shall conform to the requirements of Civil Rule 76.28(4)(c).

(c) Citations for prior decisions of the board shall include the style of the case, the appropriate claim or case number, and the date the decision was rendered.

(10) Number of pages.

(a) The petitioner's brief and the respondent's brief shall be limited to twenty (20) pages each.

(b) Reply briefs shall be limited to five (5) pages.

(c) Combined briefs shall be limited to twenty-five (25) pages.

(d) [The parties shall make every effort to comply with the above page limitations.

(e)] Permission to increase the length of a brief shall be sought by motion, but shall only be granted upon a showing of good cause. Failure to obtain prior permission shall be grounds for the assessment of sanctions as set forth in paragraph (11) of this subsection

(11) Sanctions. Failure of a party to file a brief conforming to the requirements of this administrative regulation or failure of a party to timely file a response may be grounds for the imposition of one (1) or more of the following sanctions:

(a) Affirmation or reversal of the final order;

(b) Rejection of a brief that does not conform as to organization or content, with leave to refile in proper form within ten (10) days of the date returned. If timely refiling occurs, the filing shall date back to the date of the original filing:

- (c) Striking of an untimely response;
- (d) A fine of not more than \$500; or

(e) Dismissal.

(12) Motions.

(a) [Except for a brief, a motion or pleading shall require] The original <u>of a motion or pleading shall</u> [te] be filed with the <u>Commissioner</u> [Executive Director] of the <u>Department</u> [Office] of Workers' Claims.

(b) The style of the case, including the claim number and title of the motion or pleading, shall appear on the first page of the motion or pleading.

(c) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in response. To be considered, a response shall be filed within ten (10) days of the motion. Further responses shall not be filed.

(d) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating those facts.

(e) Every motion and response, the grounds of which depend upon the existence of facts which the moving or responding party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

(f) Before filing a motion or pleading with the <u>Commissioner</u> [Executive Director] of the <u>Department</u> [Office] of Workers' Claims, a party shall serve, in the manner provided by Civil Rule 5.02, a copy of the document on each adverse party.

(g) <u>A motion to extend the time in which to file a brief or other</u> pleading in an appeal shall be filed at least five (5) days prior to the date sought to be extended. (h) The filing of a motion to dismiss an appeal shall stay the remaining time for the filing of a responsive pleading. If the petitioner's brief has been previously filed and a motion to dismiss has been overruled, the respondent shall have fifteen (15) days from the order to file a respondent's brief.

(h) Except for motions that call for final disposition of an appeal, any board member designated by the chairman may dispose of a motion. An intermediate order may be issued on the signature of any board member.

(13) Oral arguments.

(a) Upon motion of a party or upon the board's own motion, the board may order an oral argument on the merits in a case appealed from a decision, award or order of an administrative law judge.

(b) Oral arguments shall occur on a date and at a time and location specified by the board.

(c) Appeals designated for oral argument shall be held in abeyance and all subsequent appeal time in the case shall be calculated from the date of the oral argument.

(14) Continuation of benefits pending appeal.

(a) Benefits awarded by an administrative law judge which are not contested shall be paid during the pendency of an appeal. A motion requesting the payment of these benefits shall not be required. Uncontested benefits shall include income benefits at an amount lesser than what was awarded if the issue on appeal addresses the amount of benefits to be awarded as opposed to the entitlement to income benefits.

(b) Upon the motion of a party pursuant to KRS 342.300, the board may order payment of benefits pending appeal in conformity with the award, decision, or order appealed from.

(c) Entitlement to relief pursuant to KRS 342.300 shall be granted upon motion establishing that:

1. The probability of the existence in fact of:

a. Financial loss;

b. Privation, suffering, or adversity resulting from insufficient income; or

c. Detriment to the moving party's property or health if payment of benefits is not instituted; and

2. There exists a reasonable likelihood that the moving party will prevail on appeal.

(d) Any response to a motion for continuation of an award pending appeal shall be served within ten (10) days from the date of the request and, thereafter, the request shall be ripe for a decision.

(e) Entitlement to relief by the moving party and responses shall be shown by:

1. Affidavit if the grounds for the motion or response depend upon the existence of facts not in evidence; or

2. Supporting memorandum citing to evidence existing within the record and making reference to the place in the record where that evidence is found.

(15) Decisions.

(a) The board shall:

1. Enter its decision affirming, modifying, or setting aside the order appealed from; or

2. Remand the claim to an administrative law judge for further proceedings.

(b) Motions for reconsideration shall not be permitted.

(c) The decision of the administrative law judge shall be affirmed if:

1. A board member is unable to sit on a decision; and

2. The remaining two (2) board members cannot reach an agreement on a final disposition.

(16) Appeal from board decisions. If applicable, pursuant to KRS 342.290, the decision of the board shall be appealed to the Kentucky Court of Appeals as provided in Civil Rule 76.25.

Section <u>23.[22.]</u> Coverage - Insured Status. Upon the filing of an application for resolution of claim, the <u>commissioner</u> [executive director] shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.650 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. If an employer does not have insurance coverage or qualify as a self-insurer, the <u>commissioner</u> [executive director] shall notify the administrative law judge and all parties by service of a certification of no coverage.

Section <u>24.[23.]</u> Withdrawal of Records. (1) A portion of any original record of the <u>department</u> [office] shall not be withdrawn except upon an order of the <u>commissioner</u> [executive director], an administrative law judge, or a member of the board.

(2)(a) All physical exhibits, including x-rays, shall be disposed of sixty (60) days after the order resolving the claim has become final except x-rays filed in coal workers' pneumoconiosis claims which shall be returned to the party who filed the x-ray.

(b) A party filing an exhibit may make arrangements to claim an exhibit prior to that time.

(c)1. If an unclaimed exhibit has no money value, it shall be destroyed.

2. If an unclaimed exhibit has a value of more than \$100, it shall be sold as surplus property.

3. If an unclaimed exhibit has a value of less than \$100, it shall be donated to the appropriate state agency.

4. If an unclaimed exhibit has historic value, it shall be sent to the state archives.

Section 25. Time for Payment of Benefits in Litigated Claims. (1) If a disputed claim is litigated and an Opinion, Order or Award is entered awarding benefits to a claimant and no appeal is taken that prevents finality of the Opinion, Order or Award:

(a) All past benefits due under the award shall be paid no later than twenty-one (21) days after expiration of the last appeal date.

(b) Any attorney fee shall be paid no later than thirty (30) days after the date of the administrative law judge's order approving fee.

(2) If an appeal(s) is taken from an Opinion, Order or Award awarding benefits to a claimant, any benefits shall be paid no later than fifteen (15) days after the decision becomes final and no further appeal can be taken. Any attorney fee shall be paid no later than thirty (30) days after the decision becomes final, or the date of the administrative law judge's order approving fee, whichever is later.

Section <u>26.[24.]</u> Sanctions. (1) Pursuant to KRS 342.310, an administrative law judge or the board may assess costs upon a determination that the proceedings have been brought, prosecuted, or defended without reasonable grounds.

(2) A sanction may be assessed against an offending attorney or representative rather than against the party.

(3) If a party is a governmental agency and attorney's fees are assessed, the fees shall include fees for the services of an attorney in public employment, measured by the reasonable cost of similar services had a private attorney been retained.

(4) Failure of a party to timely file a pleading or document or failure to comply with the procedures required by this administrative regulation may be treated by an administrative law judge or the board as prosecuting or defending without reasonable grounds.

Section <u>27.[25.]</u> Payment of Compensation from Uninsured Employers' Fund. (1) Payment from the Uninsured Employers' Fund of compensation shall be made upon the determination by an administrative law judge that the responsible employer failed to secure payment of compensation as provided by KRS 342.340; and

(a) Thirty (30) days have expired since the finality of an award or issuance of an interlocutory relief order and a party in interest certifies the responsible employer has failed to initiate payments in accordance with that award;

(b) Upon showing that the responsible employer has filed a petition under any section of the Federal Bankruptcy Code; or

(c) The plaintiff or any other party in interest has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the uninsured employer, and there has been default in payment of the judgment by the employer.

(2) The plaintiff may by motion and affidavit demonstrate compliance with this section and request an administrative law judge to order payment from the Uninsured Employers' Fund in accordance with KRS 342.760.

(3) This section shall not be construed to prohibit the voluntary payment of compensation by an employer, or any other person liable for the payment, who has failed to secure payment of compensation as provided by KRS Chapter 342, the compromise and settlement of a claim, or the payment of benefits by the Special Fund/Workers' Compensation Funds or Coal Workers' Pneumoconiosis Fund.

(4) Form UEF-P, Motion for Payment from Uninsured Employers' Fund, provided by the <u>department</u> [office] may be used by the employee.

Section <u>28.[26.]</u> Forms. The <u>Department</u> [Office] of Workers' Claims shall not accept applications or forms in use prior to the forms required by and incorporated by reference in this administrative regulation. Outdated applications or forms submitted shall <u>not</u> <u>be filed</u> [<del>be rejected</del>] and <u>shall be</u> returned to the applicant or person submitting the form. [<del>If the application or form is resubmitted</del> on the proper form within twenty (20) days of the date it was returned, the filing shall date back to the date the application or form was first received by the executive director. Otherwise, the date of the second receipt shall be the filing date.]

Section <u>29.[27.]</u> Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 101, "Application for Resolution of Injury Claim", (revised April 2006), <u>Department [Office]</u> of Workers' Claims;

(b) Form 102-0D, "Application for Resolution of Occupational Disease Claim", (revised June, 2005), <u>Department</u> [Office] of Workers' Claims;

(c) Form 103, "Application for Resolution of Hearing Loss Claim", (June 2005 Edition), <u>Department</u> [Office] of Workers' Claims;

(d) Form 104, "Plaintiff's Employment History", (January 1, 1997 Edition), <u>Department</u> [Office] of Workers' Claims;

(e) Form 105, "Plaintiff's Chronological Medical History", (January 1, 1997 Edition), <u>Department [Office]</u> of Workers' Claims;

(f) Form 106, "Medical Waiver and Consent", (July 2003 Edition), <u>Department [Office]</u> of Workers' Claims;

(g) Form 107-1, "Medical Report - Injury", (revised April 2005), Department [Office] of Workers' Claims;

(h) Form 107-P, "Medical Report - Psychological", (revised April 2005), <u>Department [Office]</u> of Workers' Claims;

(i) Form 108-OD, "Medical Report - Occupational Disease, (April 2005 Edition), <u>Department [Office]</u> of Workers' Claims;

(j) Form 108-CWP, "Medical Report - Coal Workers' Pneumoconiosis", (April 2005 Edition), <u>Department</u> [Office] of Workers' Claims;

(k) Form 108-HL, "Medical Report - Hearing Loss", (revised April 2005), Department [Office] of Workers' Claims;

(I) Form 109, "Attorney Fee Election", (March 15, 1995 Edition), <u>Department [Office]</u>of Workers' Claims;

(m) Form 110-F, "Agreement as to Compensation and Order Approving Settlement -Fatality", (revised January 2005);

(n) Form 110-I, "Agreement as to Compensation and Order Approving Settlement - Injury", (revised July 2006), <u>Department</u> [Office] of Workers' Claims;

(o) Form 110-O, "Agreement as to Compensation and Order Approving Settlement - Occupational Disease", (revised July 2006), <u>Department</u> [Office] of Workers' Claims;

(p) Form 110-CWP, "Agreement as to Compensation and Order Approving Settlement - Coal Workers' Pneumoconiosis", (July 2002 Edition), <u>Department</u> [Office] of Workers' Claims;

(q) Form 111- Injury and Hearing Loss, "Notice of Claim Denial or Acceptance", (January 1, 1997 Edition), <u>Department</u> [Office] of Workers' Claims;

(r) Form 111-OD, "Notice of Claim Denial or Acceptance", (January 1, 1997 Edition), <u>Department [Office]</u> of Workers' Claims;

(s) Form 115, "Social Security Release Form", (January 1, 1997 Edition); and <u>Department [Office]</u> of Workers' Claims;

(t) Form AWW - 1, "Average Weekly Wage Certification ", (January 1, 1997 Edition), <u>Department</u> [Office] of Workers' Claims;

(u) Form MIR-1, Motion for Interlocutory Relief (May 29, 1997 Edition); (v) Form MIR-2, Affidavit for Payment of Medical Expenses (May 29, 1997 Edition);

(w) Form MIR-3, Affidavit for Payment of Temporary Total Disability (May 29, 1997 Edition);

(x) Form MIR-4, Affidavit Regarding Rehabilitation Services (May 29, 1997 Edition);

(y) Form VRT, Petition for Vocational Rehabilitation Training (April 2005 Edition);

(z) Form MTR-1, Motion to Reopen by Employee (May 29, 1997 Edition);

(aa) Form MTR-2, Motion to Reopen KRS 342.732 Benefits (May 29, 1997 Edition);

(bb) Form MTR-3, Motion to Reopen by Defendant (May 29, 1997 Edition);

(cc) Form WVR, Joint Motion and Agreement to Waive Vocational Rehabilitation Evaluation (April 2005 Edition);

(dd) Form UEF-P, Motion for Payment from Uninsured Employers' Fund (April 2005 Edition); and

(ee) Form 11, Motion to Substitute Party and Continue Benefits (January 31, 2005):

(ff) Appendix F, Fatality (January 14, 2011);

(qq) Appendix SVC, Safety Violation, Claimant (January 14, 2011);

(hh) Appendix SVE, Safety Violation, Employer (January 14, 2011);

(ii) Form SUB, Subpoena (January 14, 2011); and

(jj) Form SUB-DT, Subpoena Duces Tecum (January 14, 2011).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the <u>Department</u> [Office] of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DWIGHT T. LOVAN, Commissioner

APPROVED BY AGENCY: January 14, 2011

FILED WITH LRC: January 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2011, at 1 p.m. (EST) at the offices of the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on February 28, 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: Charles E. Lowther, General Counsel, Department of Worker's Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 782-4464, fax (502) 564-0681.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles E. Lowther

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for the adjustment and practice of claims for workers' compensation.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.260(1) and KRS 342.285(1), the Commissioner is required to promulgate administrative regulations necessary to carry on the work of the administrative law judges and the Workers' Compensation Board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes an orderly procedure for the Department of Workers' Claims' administrative law judges and the Workers' Compensation Board to carry on the adjudication of workers' compensation claims and appeals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation is necessary for the orderly and prompt resolution and adjudication of workers' compensation claims and appeals. All parties to a workers' compensation claim should be afforded a process and procedure for prompt, orderly and fair resolution and adjudication.

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

(a) How the amendment will change this existing administrative regulation: The amendment revises the timelines and filing procedures for a workers' compensation claim so as to expedite and streamline the presentation of proof and to minimize unnecessary delay and costs in workers' compensation claims. The amendment also uses advances in technology to simplify and expedite the processing of claims.

(b) The necessity of the amendment to this administrative regulation: The current practice regulation was implemented in 2006. The amended regulation simplifies and expedites the process and allows the use and introduction of advances in technology for revision of the claims process and forms used in that process.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment will expedite and simplify the resolution and adjudication of claims and allow the Department of Workers' Claims to carry out its work more efficiently.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will expedite processing of workers' compensation claims.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amended regulation affects all injured workers and employers, including governmental entities subject to the Workers' Compensation Act, all physicians and medical providers providing services to injured workers, insurance carriers, selfinsured employers, self-insured groups, third-party administrators, and their attorneys.

(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: Those regulated entities identified in question (3) will have to familiarize themselves with the amended procedure and resolve or adjudicate workers' compensation claims in accordance with the amended regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amended regulation will be available for no additional cost through the web site of the Legislative Research Commission. Thus, there should be no additional cost for access to the regulation. It is anticipated that increased adjudicatory efficiencies will reduce overall litigation costs for the identified entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The identified entities will receive prompt, fair and orderly resolution and adjudication of workers' compensation claims and disputes.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal operating budget is the source of funding.

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

(8) State whether or not this administrative regulation estab-

lished any fees or directly or indirectly increased any fees: This amended regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the amended procedure applies equally to all 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? All parts of government with employees subject to KRS Chapter 342 are impacted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.260(1) and 342.285(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. As an employer, there may be some minimal initial increased costs for implementation; however, it is anticipated that costs subsequently will be lowered.

(a) How much 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 is expected to be generated.

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

(c) How much will it cost to administer this program for the first year? No new administration costs are expected.

(d) How much will it cost to administer this program for subsequent years? No new administration costs are expected.

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

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

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

#### 922 KAR 1:420. Child fatality or near fatality investigations.

RELATES TO: KRS <u>61.870-61.884</u>, 211.680-211.686, 600.020(6), (37), (41), (42), 620.030(3), 620.040(1), (2), 620.050[ $\frac{1}{7}$  <u>42 U.S.C. 5106a(b)(2)(A) (viii), (ix), (x), (b)(4)(A), (c)(4)(A)(iii)(II), (d)(5), (6), (11)</u>]

STATUTORY AUTHORITY: KRS 194A.050(1), 620.180(1), <u>42</u> U.S.C. 5106a [<del>EO 2004-726</del>]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 5106a requires the cabinet to operate a statewide program related to child abuse and neglect for funding eligibility under the Child Abuse Prevention and Treatment Act as amended. [EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Community Based Services under the Cabinet for Health and Family Services. KRS 620.180(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 620 - Dependency, Neglect, and Abuse. This administrative regulation establishes the procedures for child

#### protection investigations by the Cabinet for Health and Family Services in a case of child fatality or near fatality.]

Section 1. Definitions. (1) "Abused or neglected child" is defined by KRS 600.020(1).

(2) "Cabinet" is defined by KRS 600.020(6).

(3)[(2)] "Child fatality" is defined by KRS 211.684.

(4)[(3)] "Near fatality" is defined by KRS 600.020(37) and 42 U.S.C. 5106a(b)(4)(A).

(5)[(4)] "Parent" is defined by KRS 600.020(42)[(41)].

(6)[(5)] "Person exercising custodial control or supervision" is defined by KRS 600.020(43)[(42)].

(7)[(6)] "Prior involvement" means any family-in-need-of-services assessment or investigation conducted pursuant to 922 KAR 1:330, of which the cabinet has record, [with a child or family in the area of protection and permanency] prior to the child's fatality or near fatality investigation.

Section 2. Child Fatality or Near Fatality Investigations. (1) The cabinet shall investigate a report of child fatality or near fatality alleged to be the result of abuse or neglect, in accordance with KRS 620 040

(2) If there is a surviving child in the care of the alleged perpetrator, the cabinet shall determine the safety of the surviving child through immediate assessment in accordance with 922 KAR 1:330.

(3) If a child fatality or near fatality allegedly due to abuse or neglect occurs, cabinet staff shall immediately notify the Office of the Director of the Division of Protection and Permanency.

(4) If a fatality or near fatality occurs to a child in the custody of the cabinet in an out-of-home placement, the cabinet shall make an immediate effort to notify:

(a) The biological or legal parents; and

(b) The Office of the Director of the Division of Protection and Permanency.

(5) If parental rights have been terminated and there are special circumstances including on-going contact with the child, the cabinet may notify the biological or legal parents if a fatality or near fatality occurs with the child.

(6) The cabinet shall notify the Department of Public Advocacy, Protection and Advocacy Division, in the Justice and Public Safety Cabinet if:

(a)1. A child identified as a protection and advocacy client dies as a result of alleged abuse or neglect; and

2. The alleged perpetrator is a person exercising custodial control or supervision; or

(b) A child fatality has occurred as a result of:

1. Placement in a seclusion room pursuant to 922 KAR 1:390; or

2. Therapeutic hold applied pursuant to 922 KAR 1:300.

(7) The cabinet shall notify the following persons, in writing, of a fatality of a child in the custody of the cabinet:

(a) Judge of the committing court; and

(b) Guardian ad litem for the deceased child.

(8) [The cabinet may make public disclosure of a fatality or near fatality in accordance with:

(a) KRS 620.050(5) and (12); and

(b) 42 U.S.C. 5106a(b)(2)(A)(x).

(9)] The biological or legal parent of a child deceased while in temporary custody or committed to the cabinet, shall be responsible for funeral arrangements, unless:

(a) Parental rights have been terminated;

(b) Parent cannot be located; or

(c) Parent is unable to make funeral arrangements.

(9)[(10)] If the alleged perpetrator was not a parent, guardian, or person exercising custodial control or supervision, notification of the child fatality or near fatality shall be in accordance with KRS 620.030(1).

(10)[(11)] The cabinet shall:

(a) Be in compliance with KRS 620.050(12) in cases where the cabinet has had prior involvement; and

(b) Provide annual reporting in accordance with 42 U.S.C. 5106a(d)(4), (5), (6), and (11).

(11)[(12)] If a child fatality or near fatality occurs in a licensed

facility, the cabinet shall notify the licensing authority in accordance with 42 U.S.C. 5106a(b)(2)(A)(ix).

Section 3. Notice of Initial Findings of Investigation. The cabinet shall provide notice in accordance with KRS 620.040(1) and (2), and with 922 KAR 1:330.

Section 4. Public Disclosure. (1) The cabinet may make public disclosure in accordance with:

(a) KRS 620.050(12);

(b) 42 U.S.C. 5106a(b)(2)(A)(x); and

(c) KRS 61.870-61.884.

(2) Upon written request in accordance with KRS 61.870-61.884 filed with the cabinet, the cabinet shall provide the following related to a case of a child fatality involving an abused or neglected child:

(a) The child's date of birth and sex;

(b) A summary of the cabinet's:

1. Investigation conducted pursuant to Section 2 of this administrative regulation to include the:

a. Date that the child fatality was reported to the cabinet; and

b. Child's date of death and county of death; and

2. Finding resulting from the investigation conducted pursuant to Section 2 of this administrative regulation; and

(c) A summary of any prior involvement within the five (5) calendar years preceding the child fatality, limited to:

1. The allegation reported to the cabinet and its basis for acceptance;

2. The investigation or the family-in-need-of-services assessment;

3. The cabinet's finding resulting from the investigation or the family-in-need-of-services assessment;

4. Any recommendation made by the cabinet to a court; and 5. Any referral for services and the services provided.

Section 5. Prohibition from Public Disclosure. The cabinet shall not disclose information pursuant to Section 4 of this administrative regulation if a court of competent jurisdiction has prohibited the cabinet from disclosing information.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 21, 2010

FILED WITH LRC: January 3, 2011 at 3 p.m. PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 21, 2011, at 9 a.m. in Meeting Room B located on the Third Floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621. 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: Justin Dearinger, DCBS Regulation Coordinator (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for child protective investigations and public disclosure by the Cabinet for Health and Family Services in a case of a child fatality or near fatality.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for child protective investigations and public disclosure by the cabinet in a child fatality or near fatality case.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of child protective investigative and public disclosure procedures used by the cabinet in a case of a child fatality or near fatality.

(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 procedures for a child protective investigation and public disclosure by the cabinet in a case of a child fatality or near fatality.

(2) If 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 specifies procedures for the public disclosure of a child fatality or near fatality by the cabinet in accordance with state statutes and 42 U.S.C. 5106a and 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 specify the procedures for public disclosure by the cabinet of a case of a child fatality or near-fatality in accordance with state statutes and 42 U.S.C. 5106a. These procedures are necessary to maintain Kentucky's eligibility for federal funding under the Child Abuse Prevention and Treatment Act as amended and to preserve the health and welfare of children.

(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 specification of public disclosure procedures used by the cabinet for a case of a child fatality or near fatality.

(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 specification of public disclosure procedures used by the cabinet for a case of a child fatality or near fatality and its enhanced conformity with state statutes and federal funding eligibility requirements in 42 U.S.C. 5106a.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In the past five years, 155 Kentucky children were subject to child fatalities resulting from child abuse and neglect substantiated by the cabinet, and 214 children were subject to near fatalities resulting from child abuse and neglect substantiated by the cabinet. This administrative regulation will affect individuals, business, organizations, or governmental entities that are subject to a child fatality or near fatality investigation or that request public disclosure by the cabinet of a case of a child fatality or near fatality.

(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 new actions will be required by those subject to a child fatality or near fatality investigation; however, procedures have been specified for those who seek public disclosure by the cabinet of a case of a child fatality or near fatality.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will not be subject to any costs associated with this amendment.

(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 public and those identified in question (3) through its specification of procedures for public disclosure by the cabinet of a case of a child fatality or near fatality in accordance with state statutes and 42 U.S.C. 5106a. The public disclosure

sure specified in this amendment will support the health and welfare of children through the enhanced public oversight.

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

(a) Initially: This administrative regulation is technical and conforming in nature and does not present a new cost to the administrative body to implement.

(b) On a continuing basis: This administrative regulation is technical and conforming in nature and does not present a new cost to the administrative body to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation is a combination of state and federal funding, including the Temporary Assistance for Needy Families and Social Services Block Grants, Titles IV-B and IV-E of the Social Security Act, and grants made available under the Child Abuse Prevention and Treatment Act as amended.

(7) Provide an assessment of whether an 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 established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be implemented in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 5106a

2. State compliance standards. KRS 194A.050(1), 620.180(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 5106a

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 question is not applicable.

#### 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), 620.180(1), and 42 U.S.C. 5106a.

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 governs procedures that do not generate revenue. It will generate no revenue for the state or local government in its first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for the state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation is technical and conforming in nature and will create no new cost for the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will create no new 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:

#### VOLUME 37, NUMBER 8 – FEBRUARY 1, 2011

#### **NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JANUARY 14, 2011**

#### JUSTICE AND PUBLIC SAFETY CABINET Office of Drug Control Policy (Repealer)

#### 10 KAR 7:011. Repeal of 10 KAR 7:010 and 7:020.

RELATES TO: KRS 15A.340, 15A.342, 15A.344, 222.211, 248.723

STATUTORY AUTHORITY: KRS 15A.342(19)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.344 requires KY-ASAP to establish local advisory and coordination boards for tobacco addiction and alcohol and substance abuse prevention, cessation, and treatment. KRS 15A.342 requires the Office of Drug Control Policy and KY-ASAP to promulgate administrative regulations necessary to carry out KRS 15A.340 and 15A.344. The Office of Drug Control Policy seeks to repeal two (2) regulations that are being replaced by new regulations being promulgated in 500 KAR Chapter 20 to reflect statutory changes reorganizing responsibilities within the Executive Branch.

Section 1. The following administrative regulations are hereby repealed:

(1) 10 KAR 7:010, Kentucky Agency for Substance Abuse Policy (KY-ASAP) Program and start-up funding; and

(2) 10 KAR 7:020, Kentucky Agency for Substance Abuse Policy (KY-ASAP) on-going funding.

VAN INGRAM, Director

J. MICHAEL BROWN, Secretary

APPROVED BY AGENCY: January 13, 2011

FILED WITH LRC: January 14, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2011 at 9 a.m. at the Justice & 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 February 28, 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: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

#### Contact Person: Amy Barker (502) 564-3279

Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals the two regulations that governed the Kentucky Agency for Substance Abuse Policy (KY-ASAP) Program. These regulations are being replaced by two regulations being promulgated in 500 KAR Chapter 20.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.340, 15A.342, and 15A.344.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute authorizing them was repealed and reenacted to reflect a reorganization within the Executive Branch.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prevents duplication in the regulations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) How the amendment will change this existing administrative regulation: This 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: This regulation affects all 120 Kentucky county governments through their local KY-ASAP Boards. Additionally, the regulation indirectly affects health departments, local school boards, fiscal courts, regional prevention centers, and other entities serving as fiscal agents for the local KY-ASAP Boards. The regulation indirectly affects local community businesses, school systems, health departments, and other community entities by allowing local KY-ASAP Boards to provide funding to these entities to carry out alcohol, tobacco and other drug prevention, treatment and enforcement programs in the community.

(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: KY-ASAP local boards and their fiscal agents will be required to follow the regulations in 500 KAR Chapter 20.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The repealer prevents conflicting regulations in the KAR.

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

(a) Initially: There should not be any costs to implement this administrative regulation.

(b)On a continuing basis: There should not be any costs to implement this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: No source of funding is required for the repealer 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: The repealer does not increase fees or require additional funding.

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

(9) TIERING: Is tiering applied? No, 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? State Government: Office of Drug Control Policy. Local Government: KY-ASAP boards and local government entities serving as the fiscal agent for each local ASAP board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.340, 15A.342, 15A.344

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? The repealer regulation does not establish a program.

(d) How much will it cost to administer this program for subsequent years? The repealer regulation does not establish a program.

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

#### FINANCE AND ADMINISTRATION CABINET Kentucky Department of Revenue Office of Income Taxation (New Administrative Regulation)

#### 103 KAR 15:190. Endow Kentucky Tax Credit.

RELATES TO: KRS 141.438

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.438 establishes a nonrefundable tax credit for a taxpayer making an endowment gift to a permanent endowment fund of a qualified community foundation, or county-specific component fund, or affiliate community foundation, which has been certified under KRS 147A.325. KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation establishes guidelines for the department's allocation of the \$500,000 tax credit that may be awarded each fiscal year under the provisions of KRS 141.438(6) and establishes the filing requirements of a taxpayer to obtain preliminary authorization and final approval of the tax credit from the department.

Section 1. Definitions. (1) "Affiliate community foundation" is defined by KRS 147A.310(1).

(2) "Applicant" means a taxpayer that files an application with the department to obtain preliminary authorization for the Endow Kentucky tax credit as required by KRS141.438(7).

(3) "Application" means Revenue Form 41A720-S85, Application for Preliminary Authorization of the Endow Kentucky Tax Credit.

(4) "County-specific component fund" is defined by KRS 147A.310(3).

(5) "Endowment gift" is defined by KRS 147A.310(4).

(6) "Department" means the Kentucky Department of Revenue.(7) "Final approval" means the applicant has received written

notice from the department that proof of the endowment gift has been verified.

(8) "Identification number" means:

(a) A Social Security number for individuals; or

(b) A Federal Employer Identification Number for general partnerships, estates, and trusts; or

(c) A Kentucky Corporation/LLET Account Number for corporations and limited liability pass-through entities.

(9) "Preliminary Authorization" means the applicant has received written notice, from the department, that the application is in compliance with KRS 141.438 and may be eligible for an Endow Kentucky Tax Credit.

(10) "Qualified community foundation" is defined by KRS 147A.310(6).

(11) "Received" means the application has been time stamped and delivered in accordance with Section 2(2) of this administrative regulation.

(12) "Tax credit" is defined by KRS 141.438(3).

(13) "Tax credit cap" is the amount provided by KRS 141.438(6).

Section 2.Application to Obtain Preliminary Authorization of the Endow Kentucky Tax Credit. (1) An applicant that seeks to obtain preliminary authorization of a tax credit shall file an application with the department on Revenue Form 41A720-S85, Application for Preliminary Authorization of the Endow Kentucky Tax Credit, January 2011 as incorporated by reference in Section 7 of this Administrative Regulation.

(2) The application shall be delivered to the department by one of the following methods:

(a) By fax only to (502) 564-0058;

(b) By electronic mail sent only to the department's mailbox at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov; or

(c) Hand-delivered only to the Department of Revenue, 1st floor security desk at 501 High Street, Frankfort, Kentucky 40601.

(3) The department shall review the applications received via the methods prescribed in subsection (2) of this section as follows:

(a) Applications for the fiscal year ending June 30, 2011, received by the department beginning at 12 a.m. Eastern Time on April 1, 2011, through 11:59 p.m. Eastern Time on April 7, 2011, shall be considered for approval and shall be treated as having been filed at the same time until the tax credit cap is met. If the tax credit cap is exceeded for applications received by the department within the time prescribed by this paragraph, then the amounts receiving preliminary authorization shall be protected by the percentage prescribed by paragraph (b) of this subsection.

(b) Amounts receiving preliminary authorization that are required to be pro-rated under the provisions of paragraph (a) of this subsection shall be multiplied by a percentage of the tax credit cap divided by the total amount receiving preliminary authorization for applications delivered during the time frame prescribed in paragraph (a) of this subsection.

(c) A fiscal year 2011 application filed prior to April 1, 2011 shall be considered as received at 12 a.m. Eastern Time on April 1, 2011, if the application is on the form incorporated by reference in Section 2(2) of this Administrative Regulation.

(d) If any tax credit cap is not allocated for the fiscal year ending June 30, 2011 for applications filed during the period described in paragraph (a) of this subsection, then a second period for accepting applications will commence on April 8, 2011 and end on April 14, 2011.All applications filed during this time frame shall be treated as having been filed at the same time. If, after April 14, 2011, any tax credit has yet to be allocated, then, commencing April 15, 2011 all applications shall be considered on a first-come, first-serve basis pursuant to the delivery mechanisms set out in Section 7(2) of this administrative regulation. If the tax credit cap is exceeded for applications received by the department within the time prescribed by this paragraph, then the amounts receiving preliminary authorization shall be pro-rated by the percentage prescribed by paragraph (e) of this subsection.

(e) Amounts receiving preliminary authorization that are required to be pro-rated under the provisions of paragraph (d) of this subsection shall be multiplied by a percentage of the tax credit cap not allocated under paragraph (b) of this subsection divided by the total amount receiving preliminary authorization for applications received during the time frame prescribed in paragraph (d) of this subsection.

(f) For fiscal years beginning on or after July 1, 2011, applications received by the department beginning at 12 a.m. Eastern Time on July 1 through 11:59 p.m. Eastern Time on July 7 shall be treated as having been filed at the same time until the tax credit cap is met. If the tax credit cap is exceeded for applications received by the department within the time prescribed by this paragraph, then the amounts receiving preliminary authorization shall be prorated by the percentage prescribed by paragraph (g) of this subsection.

(g) Amounts receiving preliminary authorization that are required to be pro-rated under the provisions of paragraph (f) of this subsection shall be multiplied by a percentage of the tax credit cap divided by the total amount receiving preliminary authorization for applications filed during the time frame prescribed in paragraph (f) of this subsection.

(h) Any application for fiscal year 2012, as prescribed in KRS 141.438(6), shall not be filed prior to July 1, 2011.

(i) If any tax credit cap is not allocated for a fiscal year that begins on or after July 1, 2011 for applications filed during the period described in paragraph (f) of this subsection, then a second period for accepting applications will commence on the eighth calendar day of the fiscal year and end on the 15th calendar day of the fiscal year. All applications filed during this time frame shall be treated as having been filed at the same time. If, beginning on the sixteenth (16th) calendar day of the fiscal year, any tax credit has yet to be allocated, then, commencing on the sixteenth 16th calendar day of the fiscal year, all applications shall be considered on a first-come, first-serve basis pursuant to the delivery mechanisms set out in Section 7(2) of this administrative regulation. If the tax credit cap is exceeded for applications received by the department within the time prescribed by this paragraph, then the amounts receiving preliminary authorization shall be prorated by the percentage prescribed by paragraph (j) of this subsection.

(j) Amounts receiving preliminary authorization that are required to be pro-rated under the provisions of paragraph (i) of this subsection shall be multiplied by a percentage of the tax credit cap not allocated under paragraph (f) of this subsection divided by the total amount receiving preliminary authorization for applications filed during the time frame prescribed in paragraph (i) of this subsection.

(k) If the tax credit cap for any fiscal year is not allocated under the rules promulgated in this subsection, then the unallocated amount shall not be awarded.

(4) An application shall not be submitted prior to July 1st for each fiscal year beginning on or after July 1, 2011. If July 1st falls on a Saturday, Sunday or state holiday, then the first day an application may be filed shall be the first business day after July 1st.

(5) The department shall notify the applicant within thirty (30) calendar days after receipt of the application whether preliminary authorization of the tax credit is denied or approved.

(a) If the department denies preliminary authorization of the tax credit, the applicant shall be notified in writing by the department of the reason for the denial.

(b) If the department approves the tax credit application, a copy of the application shall be returned to the applicant with written notice of the department's preliminary authorization.

(6) Any restored tax credit cap described in KRS 141.438(8)(d) shall be re-allocated to the pool of applications received after the 15th calendar day of the award period and be considered on a first-come, first-serve basis.

(7) The percentage of proration for the pool of applicants described in subsection (6) of this section shall not exceed the proration percentage in subsection (3)(b) of this section.

(8) The percentage of proration for the pool of applicants described in subsection 2(3)(d) of this section shall not exceed the proration percentage in subsection 2(3)(b) of this section.

Section 3. Information Required on or Attached to the Application. The following information shall be required on or attached to the application:

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

(2) The type of entity of the applicant for Kentucky income tax purposes;

(3) The submission date of the application;

(4) The amount of endowment gift;

(5) The amount of tax credit;

(6) The qualified community foundation's or affiliate community foundation's name, mailing address, identification number, telephone number, and fax number. If a county-specific component fund, its name; and

(7) The application shall be executed by the applicant or authorized representative, declaring under the penalty of perjury that the application, including all accompanying documents and statements, is true, correct and complete.

Section 4. Proof of Endowment Gift.(1) Within thirty (30) calen-

dar days after receiving the notice of preliminary authorization of the tax credit from the department, the taxpayer shall make the endowment gift to the permanent endowment fund held by the approved qualified community foundation, or county-specific component fund, or affiliate community foundation.

(2) The applicant shall provide the department with proof of the endowment gift within ten (10) calendar days of making the gift by filing with the department Revenue Form 41A720-S86, Notice of Endow Kentucky Tax Credit and Certification (Schedule ENDOW).

(3) If the department has verified that the endowment gift specified on the application was made to the approved qualified community foundation, or county-specific component fund, or affiliate community foundation, Schedule ENDOW shall be returned to the applicant with the department's final approval of the tax credit.

(4) If the applicant fails to make an endowment gift or provide proof of the endowment gift to the department within the time frames established in KRS 141.438(7), the department shall deny the preliminary authorization of the tax credit by written notification to the applicant. The department shall restore the denied amount to the tax credit cap and re-allocate the restored amount under the guidelines established in Section 2(6), (7), and (8) of this administrative regulation.

Section 5. If an applicant approved for preliminary authorization makes an endowment gift that is less than the amount indicated on the application and all the other applicable requirements of KRS 141.438 and this administrative regulation are met by the applicant, the department shall issue final approval based on the amount proven and shall restore to the tax credit cap the difference between the amount of tax credit that received preliminary authorization and the amount receiving final approval. The amount restored to the tax credit cap shall be re-allocated as provided in Section 2(6), (7), and (8) of this administrative regulation

Section 6. Information Required on or Attached to the Schedule ENDOW. The following information shall be required on or attached to the Schedule ENDOW:

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

(2) The type of entity of the applicant for Kentucky income tax purposes;

(3) The date the endowment gift was made to the approved qualified community foundation, or county-specific component fund, or affiliate community foundation;

(4) The amount of endowment gift;

(5) The date of the department's preliminary authorization of the tax credit;

(6) The qualified community foundation's or affiliate community foundation's name, mailing address, identification number, telephone number, and fax number. If a county-specific component fund, its name;

(7) The Schedule ENDOW shall be executed by a foundation officer or designee, declaring under the penalty of perjury:

(a) That the Foundation is a qualified community foundation as provided by KRS 147A.310(6);

(b) That the endowment gift is held in a permanent endowment fund as provided by KRS 147A.310(4); and

(c) That the Schedule ENDOW, including all accompanying documents and statements, is true, correct and complete.

Section 7. Return Filing Requirement. An applicant claiming the tax credit shall attach each tax year a copy of the approved Schedule ENDOW to the tax return on which the credit is claimed.

An applicant claiming the tax credit shall not claim more than \$10,000 in credit on a single return.

(3) A partner, member, or shareholder of an applicant claiming the tax credit shall attach each taxable year a copy of 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.

(4) A beneficiary of an applicant that is an estate or trust shall attach each taxable year a copy of Schedule K-1, Form 741 (Rev-

enue Form 42A741(K-1)), incorporated by reference in 103 KAR 3:040, to the beneficiary's tax return on which the credit is claimed.

Section 8. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) Revenue Form 41A720-S85, Application for Preliminary Authorization of the Endow Kentucky Tax Credit, January 2011; and

(b) Revenue Form 41A720-S86, Notice of Endow Kentucky Tax Credit and Certification (Schedule ENDOW), January 2011.

(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, 8:00 a.m. to 4:30 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: December 28, 2010 FILED WITH LRC: January 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2011, from 2 p.m. to 4 p.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 28, 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: 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.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DeVon Hankins, Policy Advisor

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for the department's allocation of the five hundred thousand dollar (\$500,000) tax credit that may be awarded each fiscal year under the provisions of KRS 141.438(6) and establishes the filing requirements of a taxpayer to obtain preliminary authorization and final approval of the tax credit from the department.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to provide taxpayers the guidelines and filing requirements with the department when seeking approval for the Endow Kentucky tax credit as provided by KRS 141.438.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) provides that the department shall promulgate administrative regulations necessary to implement and administer Kentucky's tax laws.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the department in the administration of the Endow Kentucky tax credit as authorized by KRS 141.438(2) by requiring a taxpayer to file specified forms with the department in order to obtain preliminary authorization and final approval of an Endow Kentucky tax credit.

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

(a) How the amendment will change this existing administrative regulation:  $\ensuremath{\text{N/A}}$ 

(b) The necessity of the amendment to this administrative regulation:  $\ensuremath{\text{N/A}}$ 

(c) How the amendment conforms to the content of the authorizing statutes:  $\ensuremath{\mathsf{N/A}}$ 

(d) How the amendment will assist in the effective administration of the statutes:  $\ensuremath{\text{N/A}}$ 

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All taxpayers filing applications with the department seeking the department's approval of their Endow Kentucky tax credits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will follow the guidance provided in this administrative regulation when filing: (i) an application (Kentucky Form 41A720-S85) for preliminary authorization of an Endow Kentucky tax credit; and (ii) Schedule ENDOW (Kentucky Form 41A720-S86) to provide proof to the department that the endowment gift was made to the approved foundation for purposes of receiving final approval of the Endow Kentucky tax credit.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities in question (3) will have specific guidance which will expedite the process of obtaining from the department approval of an Endow Kentucky tax credit as provided by KRS 141.438.

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

(a) Initially: There will be a minimal cost initially in the administrative regulation process for the department. Also, a small amount of costs associated with notifying taxpayers of this administrative regulation will be incurred.

(b) On a continuing basis: There will be no additional cost for the department on a continuing basis as a result of 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 needed for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation as it applies to all taxpayers seeking the department's approval of their Endow Kentucky tax credit application.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue (department), will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1) authorizes the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the

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expenditures and revenues of a state or 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 not generate any revenue, but will increase the department's expenditures slightly in the administrative process, including the notification of taxpayers of the administrative 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? This administrative regulation will not generate any tax revenue for the Commonwealth in the first year.

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

(c) How much will it cost to administer this program for the first year? The cost to administer the program is expected to be small; however, personnel will be diverted from current assignments which may increase administrative cost to the department.

(d) How much will it cost to administer this program for subsequent years? The department will incur additional minimal cost each year to administer the 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:

#### GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (New Administrative Regulation)

#### 201 KAR 30:125. Continuing education for appraisers.

RELATES TO: KRS 324A.035(3), 324A.045(2), 12 U.S.C. 3331-3351

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3) requires the board to establish by administrative regulation requirements for continuing education for appraisers. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes requirements for the renewal of certification or licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the continuing education requirements for appraisers.

Section 1. Continuing Education: Number of Hours Required. Certified general real property appraisers, certified residential real property appraisers, licensed real property appraisers, and associate real property appraisers shall:

(1) Complete fourteen (14) hours of approved continuing education each license year; and

(2) Furnish the board with proof of compliance.

Section 2. Continuing Education. (1) Continuing education credit may be granted for:

(a) Approved continuing education courses; or

(b) Participation, other than as a student, in appraisal educational programs and processes not to exceed seven (7) hours of the required fourteen (14) hours of continuing education for each licensure year.

(2) Appraisal educational programs and processes shall include:

(a) Teaching a course, however credit for instructing any given course shall only be awarded one time during a continuing education cycle;

(b) Program development;

(c) Authorship of textbooks; or

(d) Similar activities that are determined by the board to be equivalent to obtaining continuing education.

(3) Continuing education credit shall be granted if a course:

(a) Is at least two (2) hours in duration;

(b) Subject ensures that an appraiser's skill, knowledge, and competency in real estate appraisal will be maintained or increased; and

(c) Has been approved by the board.

(4) Application for continuing education credit shall be submitted to the board in writing and documented by the approved provider of instruction.

(5) To be approved for continuing education credit, a course shall be consistent with the purpose of continuing education and cover those real property related appraisal topics, including:

(a) Ad valorem taxation;

(b) Arbitration, dispute resolution;

(c) Courses related to the practice of real estate appraisal or consulting;

(d) Development cost estimating;

(e) Ethics and standards of professional practice, USPAP;

(f) Land use planning, zoning;

(g) Management, leasing, timesharing;

(h) Property development, partial interests,

(i) Real estate law, easements, and legal

(j) Real estate litigation, damages, condemnation;(k) Real estate financing and investment;

(k) Real estate infancing and investment,

(I) Real estate appraisal related computer applications; or

(m) Real estate securities and syndication.

(6) Real estate appraisal related field trips may be acceptable for credit toward the continuing education requirements. However, transit time to or from the field trip shall not be included when awarding credit unless instruction occurs during the transit time.

(7)(a) All credential holders shall successfully complete the seven (7) hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent, between January 1 and June 30 of each even numbered year.

(b) Equivalency shall be determined through the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board.

(c) USPAP continuing education credit shall only be awarded when the class is instructed by an AQB Certified Instructor who is also a State Certified General Real Property Appraiser or a State Certified Residential Real Property Appraiser.

(8) The board shall defer continuing education requirements for up to 180 days for credential holders returning from active military duty.

(9) Credit for repeating the same course title and content within a twenty-four month (24) period shall not be granted.

#### DORSEY HALL, Chair

APPROVED BY AGENCY: January 13, 2011

FILED WITH LRC: January 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 25, 2011 at 1 p.m., at 135 West Irvine Street, Suite 301, Richmond, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2008, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 28, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 West Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes continuing education requirements for certified and licensed appraisers.

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

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

(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 setting forth continuing education requirements for certificate holders.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation to separate the continuing education requirements that previously were included in 201 KAR 30:050.

(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: There are approximately one thousand five hundred persons certified 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: A licensee will be required to obtain continuing education for renewal.

(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 additional costs for complying with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensees will be up to date in the profession.

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

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

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

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

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65. State compliance standards.

(2) This administrative regulation requires compliance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the educational requirements promulgated by the Appraisal Qualification Board of the Appraisal Foundation.

(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351.

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:

#### PUBLIC PROTECTION CABINET KENTUCKY HORSE RACING COMMISSION (New Administrative Regulation)

 $810\ {\rm KAR}\ 1:140.$  Calculation of Payouts and Distribution of Pools.

RELATES TO: KRS 230.210, 230.215, 230.260, 230.361, 230.990

STATUTORY AUTHORITY: KRS 230.260, 230.361

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the Kentucky Horse Racing Commission the authority to regulate conditions under which horse racing and parimutuel wagering thereon shall be conducted in the Commonwealth. KRS 230.361(1) requires the commission to promulgate administrative regulations governing wagering under the parimutuel system of wagering. This administrative regulation establishes the calculation of payouts and the distribution of pools for pari-mutuel wagering on live horse races.

Section 1. Definitions. (1) "Betting interest" is defined by 810 KAR 1:001.

(2) "Breakage" is defined by 810 KAR 1:001.

(3) "Broken consolation price" means the profit per dollar, plus one (1) dollar, rounded down to the break point.

(4) "Carryover" is defined by 810 KAR 1:001.

(5) "Consolation payout" means a payout to individuals who do not correctly choose all of the selections in a multiple-pick wager, or a payout to individuals who wager on a horse in a multi-pick wager that is subsequently scratched.

(6) "Covered betting interest" means a betting interest or combination of betting interests that has been wagered upon.

(7) "Dead heat" is defined by 810 KAR 1:001.

(8) "Gross pool" means the sum of all wagers less refunds.

(9) "Individual" is defined by 810 KAR 1:145.

(10) "Multi-commission pool" means a pari-mutuel pool where entities accepting wagers use different takeout rates.

(11) "Net pool" is defined by 810 KAR 1:001.

(12) "Payout" is defined by 810 KAR 1:001.

(13) "Performance" means a specified number of races on a given race day that constitutes a full card of racing.

(14) "Profit" means the net pool less the gross amount wagered when using the standard price calculation procedure and the net pool less the net amount wagered when using the net price calculation procedure.

(15) "Profit split" means to calculate a payout by splitting a parimutuel pool equally between each winning combination and dividing each portion by the number of winning tickets.

(16) "Scratch" is defined by 810 KAR 1:001.

(17) "Single commission pool" means a pari-mutuel pool where all entities accepting wagers use the same takeout rate.

(18) "Single price pool" means a pari-mutuel pool in which the entire profit is paid to holders of winning tickets after the deduction of the takeout.

(19) "Takeout" is defined by 810 KAR 1:001.

(20) "Unbroken consolation price" means the profit per dollar plus one (1) dollar.

Section 2. General requirements. (1) All pari-mutuel pools shall be separately and independently calculated and distributed. The takeout shall be deducted from each gross pool as stipulated by KRS 230.3615. The remainder of the pool shall be the net pool for distribution as payoff on winning pari-mutuel wagers.

(2)(a) Single commission pari-mutuel pools may be calculated using either the standard price calculation procedure or the net price calculation procedure.

(b) Multi-commission pari-mutuel pools shall be calculated using the net price calculation procedure.

 $\ensuremath{(3)}$  The standard price calculation procedure shall be as follows:

(a) Single price pools - Win pool

Gross Pool = Sum of Wagers on all Betting Interests - Refunds

Takeout = Gross Pool x Percent Takeout

Net Pool = Gross Pool - Takeout

Profit = Net Pool - Gross Amount Bet on Winner

Profit Per Dollar = Profit / Gross Amount Bet on Winner

\$1 Unbroken Price = Profit Per Dollar + \$1

\$1 Broken Price = \$1 Unbroken Price Rounded Down to the Break Point

Total Payout = \$1 Broken Price x Gross Amount Bet on Winner

Total Breakage = Net Pool - Total Payout

(b) Profit split – Place pool. Profit is net pool less gross amount bet on all place finishers. Finishers split profit 1/2 and 1/2 (place profit), then divide by gross amount bet on each place finisher for two unique prices.

(c) Profit split – show pool. Profit is net pool less gross amount bet on all show finishers. Finishers split profit 1/3 and 1/3 and 1/3 (show profit), then divide by gross amount bet on each show finisher for three unique prices.

(4) The net price calculation procedure shall be as follows:

(a) Single price pool – Win pool

Gross Pool = Sum of Wagers on all Betting Interests – Refunds Takeout = Gross Pool x Percent Takeout for Each Source Net Pool = Gross Pool - Takeout

Net Bet on Winner = Gross Amount Bet on Winner x (1 – Percent Takeout) Total Net Pool = Sum of All Sources Net pools

Total Net Bet on Winner = Sum of All Sources Net Bet on Winner Total Profit = Total Net Pool - Total Net Bet on Winner

Profit Per Dollar = Total Profit / Total Net Bet on Winner

\$1 Unbroken Base Price = Profit Per Dollar + \$1 for each source:

\$1 unbroken price = \$1 Unbroken Base Price x (1 - Percent Takeout)

\$1 Broken Price = \$1 Unbroken Price Rounded Down to the Break Point

Total Payout = \$1 Broken Price x Gross Amount Bet on Winner

Total Breakage = Net Pool - Total Payout

(b) Profit split – Place pool. Total profit is the total net pool less the total net amount bet on all place finishers. Finishers split total profit 1/2 and 1/2 (place profit), then divide by total net amount bet on each place finisher for two unique unbroken base prices.

(c) Profit split – Show pool. Total profit is the total net pool less the total net amount bet on all show finishers. Finishers split total profit 1/3 and 1/3 and 1/3 (show profit), then divide by total net amount bet on each show finisher for three unique unbroken base prices.

(5) Each association shall disclose the following in its license application:

(a) Which price calculation method it will use for single commission pari-mutuel pools;

(b) The ticket denominations for each type of pari-mutuel wager;

(c) The procedures for refunds of pari-mutuel wagers;

(d) The takeout for each type of pari-mutuel wager;

(e) Which pari-mutuel wagers will include carryover and consolation pools and the percentages of the net pool assigned to each; and

(f) For each type of pari-mutuel wagering involving more than one (1) live horse race, the procedures to be used if a race is cancelled.

(6) All minimum amounts for pari-mutuel wagers shall be approved by the commission.

(7) The individual pools described in this administrative regulation may be given alternative names by each association if prior approval is obtained from the commission.

(8) A mutuel entry or a mutuel field in any race shall be a single betting interest for the purpose of each of the wagers described in this administrative regulation and the corresponding pool calculations and payouts. If either horse in a mutuel entry, or any horse in a mutuel field, is a starter in a race, the entry or the field selection shall remain as the designated selection for any of the wagers described in this administrative regulation and the selection shall not be deemed scratched.

Section 3. Pools dependent upon entries for live horse races. (1) Unless the commission provides otherwise, at the time pools are opened for wagering all associations shall:

(a) Offer win wagering on all races with four (4) or more betting interests;

(b) Offer place wagering on all races with five (5) or more betting interests; and

(c) Offer show wagering on all races with six (6) or more betting interests.

(2) Unless the commission provides otherwise, at the time pools are opened for wagering, associations may:

(a) Offer Quinella wagering on all races with four (4) or more betting interests;

(b) Offer Exacta wagering on all races with four (4) or more betting interests;

(c) Offer Trifecta wagering on all races with five (5) or more betting interests;

(d) Offer Superfecta wagering on all races with six (6) or more betting interests;

(e) Offer Big Q wagering on all races with three (3) or more betting interests; and

(f) Offer Super High 5 wagering on all races with seven (7) or more betting interests.

(3) Unless the commission provides otherwise, at the time pools are opened for wagering, associations shall not offer Twin

Trifecta wagering on any races with six (6) or fewer betting interests.

Section 4. Win Pools. (1) The amount wagered on the betting interest which finishes first is deducted from the net win pool and the balance remaining is the profit. The profit is divided by the amount wagered on the betting interest finishing first and the result is the profit per dollar wagered to win on that betting interest.

(2) The net win pool shall be distributed as a single price pool in the following precedence based upon the official order of finish:

(a) To individuals whose selection finishes first, but if there are no such wagers, then;

(b) To individuals whose selection finishes second, but if there are no such wagers, then;

(c) To individuals whose selection finishes third, but if there are no such wagers, then;

(d) The entire pool shall be refunded on win wagers for that race.

(3)(a) If there is a dead heat for first involving horses representing the same betting interest, the win pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first involving horses representing two or more betting interests, the win pool shall be distributed as a profit split.

Section 5. Place pools. (1) The amounts wagered to place on the first two betting interests to finish are deducted from the net pool and the balance remaining is the profit. The profit is divided into two equal portions, with each portion assigned to each winning betting interest and divided by the dollar amount wagered to place on that betting interest. The result is the profit per dollar wagered to place on that betting interest.

(2) The net place pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses in a mutuel entry or mutuel field finish in the first two places, as a single price pool to individuals who selected the mutuel entry or mutuel field, otherwise;

(b) As a profit split to individuals whose selection is included within the first two finishers, but if there are no such wagers on one of those two finishers, then;

(c) As a single price pool to individuals who selected the one covered betting interest included within the first two finishers, but if there are no such wagers, then;

(d) As a single price pool to individuals who selected the thirdplace finisher, but if there are no such wagers, then;

(e) The entire pool shall be refunded on place wagers for that race.

(3)(a) If there is a dead heat for first involving horses representing the same betting interest, the place pool shall be distributed as a single price pool.

(b) If there is a dead heat for first involving horses representing two or more betting interests, the place pool shall be distributed as a profit split.

(4)(a) If there is a dead heat for second involving horses representing the same betting interest, the place pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for second involving horses representing two or more betting interests, the place pool is divided, with one-half (1/2) of the profit distributed to place wagers on the betting interest finishing first and the remainder of the profit distributed equally among place wagers on the betting interests involved in the dead heat for second.

Section 6. Show Pools. (1) The amounts wagered to show on the first three betting interests are deducted from the net pool and the balance remaining is the profit. The profit is divided into three equal portions, with each portion assigned to each winning betting interest and divided by the amount wagered to show on that betting interest. The result is the profit per dollar wagered to show on that betting interest.

(2) The net show pool shall be distributed in the following precedence based on the official order of finish:

(a) If horses in a mutuel entry or mutuel field finish in the first three places, as a single price pool to individuals who selected the mutuel entry or mutuel field, otherwise;

(b) If horses of a mutuel entry or mutuel field finish as two of the first three finishers, the profit is divided with two-thirds (2/3) distributed to individuals who selected the mutuel entry or mutuel field and one-third (1/3) distributed to individuals who selected the other betting interest included within the first three finishers, otherwise;

(c) As a profit split to individuals whose selection is included within the first three finishers, but if there are no such wagers on one of those three finishers, then;

(d) As a profit split to individuals who selected one of the two covered betting interests included within the first three finishers, but if there are no such wagers on two of those three finishers, then:

(e) As a single price pool to individuals who selected the one covered betting interest included within the first three finishers, but if there are no such wagers, then;

(f) As a single price pool to individuals who selected the fourthplace finisher, but if there are no such wagers, then;

(g) The entire pool shall be refunded on show wagers for that race.

(3)(a) If there is a dead heat for first involving two horses representing the same betting interest, the profit is divided with two-thirds (2/3) to individuals who selected the first-place finishers and one-third (1/3) distributed to individuals who selected the betting interest finishing third.

(b) If there is a dead heat for first involving three horses representing a single betting interest, the show pool shall be distributed as a single price pool.

(c) If there is a dead heat for first involving horses representing two or more betting interests, the show pool shall be distributed as a profit split.

(4)(a) If there is a dead heat for second involving horses representing the same betting interest, the profit is divided with one-third (1/3) distributed to individuals who selected the betting interest finishing first and two-thirds (2/3) distributed to individuals who selected the second-place finishers.

(b) If there is a dead heat for second involving horses representing two betting interests, the show pool shall be distributed as a profit split.

(c) If there is a dead heat for second involving horses representing three betting interests, the show pool is divided with one-third (1/3) of the profit distributed to show wagers on the betting interest finishing first and the remainder is distributed equally among show wagers on those betting interests involved in the dead heat for second.

(5)(a) If there is a dead heat for third involving horses representing the same betting interest, the show pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for third involving horses representing two or more betting interests, the show pool is divided with two-thirds (2/3) of the profit distributed to show wagers on the betting interests finishing first and second and the remainder is distributed equally among show wagers on those betting interests involved in the dead heat for third.

Section 7. Double Pools. (1) The double requires the selection of the first-place finisher in each of two specified races.

(2) The net double pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose selections finished first in each of the two races, but if there are no such wagers, then;

(b) As a profit split to individuals who selected the first-place finisher in either of the two races, but if there are no such wagers, then;

(c) As a single price pool to individuals who selected the one covered betting interest that finished first in either race, but if there are no such wagers, then;

(d) As a single price pool to individuals whose selection finished second in each of the two races, but if there are no such wagers, then;

(e) The entire pool shall be refunded on the double wagers for those races.

(3)(a) If there is a dead heat for first in either of the races involving horses representing the same betting interest, the double pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first in either of the races involving horses representing two or more betting interests, the double pool shall be distributed as a profit split if there is more than one covered winning combination.

(4) If a betting interest in the first half of the double is scratched prior to the close of wagering on the first double contest, all money wagered on combinations including the scratched betting interest shall be deducted from the double pool and refunded.

(5) If a betting interest in the second half of the double is scratched prior to the close of wagering on the first double race, all money wagered on the combinations including the scratched betting interest shall be deducted from the double pool and refunded.

(6) If a betting interest in the second half of the double is scratched after the close of wagering on the first double race, all wagers combining the winner of the first race with the scratched betting interest in the second race shall be allocated a consolation payout.

(a) In calculating the consolation payout, the net double pool shall be divided by the total amount wagered on the winner of the first race and an unbroken consolation price obtained.

(b) The broken consolation price shall be multiplied by the dollar value of wagers on the winner of the first race combined with the scratched betting interest to obtain the consolation payout.

(c) Breakage is not included in this calculation.

(d) The consolation payout shall be deducted from the net double pool before calculation and distribution of the winning double payout.

(e) Dead heats including separate betting interests in the first race shall result in a consolation payout calculated as a profit split.

(7) If either of the double races is cancelled prior to the first double race, or the first double race is declared "no contest," the entire double pool shall be refunded on double wagers for those races.

(8)(a) If the second double race is cancelled or declared a "no contest" after the conclusion of the first double race, the net double pool shall be distributed as a single price pool to individuals who selected the winner of the first double race.

(b) In the event of a dead heat involving separate betting interests, the net double pool shall be distributed as a profit split.

Section 8. Exacta Pools. (1) The Exacta requires the selection of the first two finishers, in their exact order, for a single race.

(2) The net Exacta pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses of a mutuel entry or mutuel field finish as the first two finishers, as a single price pool to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished in the correct sequence as the first two betting interests, but if there are no such wagers, then;

(c) As a single price pool to individuals whose combination included the betting interest that finishes first, but if there are no such wagers, then;

(d) As a single price pool to individuals whose combination included the betting interest that finished second, but if there are no such wagers, then;

(e) The entire pool shall be refunded on Exacta wagers for that race.

(3)(a) If there is a dead heat for first involving horses representing the same betting interest, the Exacta pool shall be distributed as a single price pool to individuals who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish.

(b) If there is a dead heat for first involving horses representing two or more betting interests, the Exacta pool shall be distributed as a profit split.

(4) If there is a dead heat for second involving horses representing the same betting interest, the Exacta shall be distributed as if no dead heat occurred.

(5) If there is a dead heat for second involving horses

representing two or more betting interests, the Exacta pool shall be distributed to ticket holders in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the first-place betting interest with any of the betting interests involved in the dead heat for second, but if there is only one covered combination, then;

(b) As a single price pool to individuals combining the firstplace betting interest with the one covered betting interest involved in the dead heat for second, but if there are no such wagers, then;

(c) As a profit split to individuals whose wagers correctly selected the winner for first-place and any of the betting interests which finished in a dead-heat for second-place, but if there are no such wagers, then;

(d) The entire pool shall be refunded on Exacta wagers for that race.

Section 9. Quinella Pools. (1) The Quinella requires the selection of the first two finishers, irrespective of order, for a single race.

(2) The net Quinella pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses of a mutuel entry or mutuel field finish as the first two finishers, as a single price pool to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished as the first two betting interests, but if there are no such wagers, then;

(c) As a profit split to individuals whose combination included either the first- or second-place finisher, but if there are no such wagers on one of those two finishers, then;

(d) As a single price pool to individuals whose combination included the one covered betting interest included within the first two finishers, but if there are no such wagers, then;

(e) The entire pool shall be refunded on Quinella wagers for that race.

(2)(a) If there is a dead heat for first involving horses representing the same betting interest, the Quinella pool shall be distributed to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish.

(b) If there is a dead heat for first involving horses representing two betting interests, the Quinella pool shall be distributed as if no dead heat occurred.

(c) If there is a dead heat for first involving horses representing three or more betting interests, the Quinella pool shall be distributed as a profit split.

(3) If there is a dead heat for second involving horses representing the same betting interest, the Quinella pool shall be distributed as if no dead heat occurred.

(4) If there is a dead heat for second involving horses representing two or more betting interests, the Quinella pool shall be distributed to individuals in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the winner with any of the betting interests involved in the dead heat for second, but if there is only one covered combination, then;

(b) As a single price pool to individuals combining the winner with the one covered betting interest involved in the dead heat for second, but if there are no such wagers, then;

(c) As a profit split to individuals combining the betting interests involved in the dead heat for second, but if there are no such wagers, then;

(d) As a profit split to individuals whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second, but if there are no such wagers, then;

(e) The entire pool shall be refunded on Quinella wagers for that race.

Section 10. Pick-3. (1) The Pick-3 requires the selection of the first place finisher in each of three specified races designated by the association and approved by the commission. Any changes to the Pick-3 format shall be approved by the commission before implementation

(2) The net Pick-3 pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose selection finished first in each of the three races, but if there are no such wagers, then;

(b) As a single price pool to individuals who selected the firstplace finisher in any two of the three races, but if there are no such wagers, then;

(c) As a single price pool to individuals who selected the firstplace finisher in any one of the three races, but if there are no such wagers, then;

(d) The entire pool shall be refunded on Pick-3 wagers for those races.

(3)(a) If there is a dead heat for first in any of the three races involving horses representing the same betting interest, the Pick-3 shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first in any of the three races involving horses representing two or more betting interests, the Pick-3 pool shall be distributed as follows:

1. As a profit split to individuals whose selections finished first in each of the three races, but if there are no such wagers, then;

2. As a single price pool to individuals who selected the firstplace finisher in any two of the three races, but if there are no such wagers, then;

3. As a single price pool to individuals who selected the firstplace finisher in any one of the three races, but if there are no such wagers, then;

4. The entire Pick-3 pool shall be refunded.

(4) Should a betting interest be scratched from a leg of the Pick-3, all wagers with the scratched betting interest will be handled as follows:

(a) If the scratch was made prior to the start of the first leg, all wagers containing such scratched betting interest shall be refunded to determine the gross pool and removed from further consideration in the pool.

(b) If the scratch was made in the second leg after the start of the first leg, a consolation payoff shall be computed for those wagers combining the winners of the first and third leg with the scratched betting interest as follows:

1. The takeout and the amount of wagers on combinations involving betting interests scratched from the second leg shall be deducted from the gross pool.

2. The resulting remainder shall be divided by the amounts bet on the combination of such first and third leg winners with all betting interests in the second leg, less breakage, to determine the consolation price per dollar payable to those wagers combining winners from the first and third legs with the betting interest scratched in the second leg.

3. Breakage shall not be deducted from the pool.

(c) If a betting interest is scratched in the third leg after the start of the first leg, a consolation payoff shall be computed for those wagers combining the winners of the first and second legs with the scratched betting interest as follows:

1. The takeout and the amount of wagers on combinations involving betting interests scratched from the third leg shall be deducted from the gross pool.

2. The resulting remainder shall be divided by the amount bet on the combination of such first and second leg winners with all betting interests in the third leg, less breakage, to determine the consolation price per dollar payable to those wagers combining winners in the first and second legs with a betting interest scratched in the third leg.

3. Breakage shall not be deducted from the pool.

(d) If betting interests are scratched in both the second and third legs after the start of the first leg, a consolation payoff shall be computed for those wagers combining the winner of the first leg with the betting interests scratched in both the second and third legs as follows:

1. The takeout shall be deducted from the gross pool.

2. The remainder shall be divided by the amount bet on the winner of the first leg combined with all other betting interests, less breakage, to determine the consolation price per dollar payable to those individuals with wagers combining the winner of the first leg with the scratched betting interests from both the second and third

legs.

(5) If the first race of the Pick-3 is cancelled or declared "no contest", the entire pool shall be refunded on Pick-3 wagers.

(6) If the second or third races of the Pick-3 are cancelled or declared "no contest', the Pick-3 pool will remain valid and shall be distributed in accordance with subsection (2) of this section.

(7) Individuals shall be notified immediately by immediate public announcement and immediate posting on the association's video monitors and website to hold all Pick-3 tickets if:

(a) After the first race of the Pick-3, there are no wagers with the winner of the first leg; or

(b) After the second race of the Pick-3, there are no wagers with the winners of the first two races; or

(c) After the third race of the Pick-3, there are no wagers with the winners of the first three races.

(8) When the condition of the turf course warrants a change of racing surface in any races of the Pick-3, and such change has not been disclosed to the public prior to "off time" of the first race of the Pick-3, the stewards shall declare the changed races an "all win" race for Pick-3 wagering purposes only. An "all win" race will assign the winner of that race to each Pick-3 ticket holder as their selection for that race.

Section 11. Pick-4 Pools. (1) The Pick-4 requires the selection of the first place finisher in each of four specified races designated by the association and approved by the commission. Any changes to the Pick-4 format shall be approved by the commission before implementation.

(2) The Pick-4 pari-mutuel pool consists of amounts contributed for a win only selection in each of four (4) races designated by the association. Each individual placing a Pick-4 wager shall designate the winning horse in each of four (4) races comprising the Pick-4.

(3) The net Pick-4 pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose selection finished first in each of the four races, but if there are no such wagers, then;

(b) As a single price pool to individuals who selected the firstplace finisher in any three of the four races, but if there are no such wagers, then;

(c) As a single price pool to individuals who selected the firstplace finisher in any two of the four races, but if there are no such wagers, then;

(d) As a single price pool to individuals who selected the firstplace finisher in any one of the four races, but if there are no such wagers, then;

(e) The entire pool shall be refunded on Pick-4 wagers for those races.

(4) If for any reason one or two of the races comprising the Pick-4 is cancelled, the net amount of the pari-mutuel pool shall be distributed as provided above in subsections (3)(b), (c), (d), and (e) of this section.

(5) f for any reason three or more races comprising the Pick-4 are cancelled, the entire pool shall be refunded on Pick-4 wagers for those races.

(6) When the condition of the turf course warrants a change of racing surface in any races of the Pick-4, and such change has not been disclosed to the public prior to "off time" of the first race of the Pick-4, the stewards shall declare the changed races an "all win" race for Pick-4 wagering purposes only. An "all win" race will assign the winner of that race to each Pick-4 ticket holder as their selection for that race.

(7)(a) If there is a dead heat for first in any Pick-4 race involving horses representing the same betting interest, the Pick-4 pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first in any Pick-4 race involving horses representing two or more betting interests, the Pick-4 pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

(8) Should a betting interest in any of the Pick-4 races be scratched, excused, or determined by the stewards to be a non-starter in a race, the actual favorite, as evidenced by total amounts wagered in the win pool at the host association for the race at the

close of wagering on that race, shall be substituted for the scratched betting interest for all purposes, including pool calculations.

(a) In the event that the win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number.

(b) The totalizator shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.

(9) The Pick-4 pool shall be cancelled and all Pick-4 wagers for the individual performance shall be refunded if at least three races included as part of a Pick-4 are cancelled or declared "no contest."

(10)(a) Each association shall disclose in its license application whether it intends to schedule Pick-4 races and, if so, shall disclose:

1. The percentage of the pool to be retained for the winning wagers, and

2. The designated amount of any cap to be set on the pool to be retained for the winning wagers.

(b) Any changes to the Pick-4 scheduling require prior approval from the commission or its designee.

(11)(a) The Pick-4 carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the Pick-4 carryover equals or exceeds the designated cap, the Pick-4 carryover will be frozen until it is won or distributed under the provisions of this administrative regulation.

(b) After the Pick-4 carryover is frozen, one hundred percent (100%) of the net pool, part of which ordinarily would be added to the Pick-4 carryover, shall be distributed to individuals whose selections finished first in the greatest number of Pick-4 races for that performance.

(12) An association may request permission from the commission to distribute the Pick-4 carryover on a specific performance. The request shall contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(13) If the Pick-4 carryover is designated for distribution on a specified date and performance, and no wagers correctly select the first-place finisher in each of the Pick-4 races, the entire pool shall be distributed as a single price pool to individuals whose selection finished first in the greatest number of Pick-4 races.

(14) The Pick-4 carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(a) Upon written approval from the commission as provided in subsection (7) of this section; or

(b) Upon written approval from the commission when there is a change in the carryover cap; or

(c) A change from Pick-4 wagering to another type of Pick-(N) wagering; or

(d) When the Pick-4 is discontinued; or

(e) On the closing performance of the meeting or split meeting.

(14) If, for any reason, the Pick-4 carryover shall be held over to the corresponding Pick-4 pool of a subsequent meeting, the carryover shall be deposited in an interest-bearing account approved by the commission. The Pick-4 carryover plus accrued interest shall then be added to the net Pick-4 pool of the following meeting on a date and performance approved by the commission.

(15) Upon written approval of the commission, a sum of money up to the amount of any designated cap may be contributed to the Pick-4 carryover by an association.

(16) The association may supply information to the general public regarding the winning dollars in the Pick-4 pool. Such information shall not be selectively distributed. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.

Section 12. Pick-6. (1) The Pick-6 requires selection of the first-place finisher in each of six (6) races designated by an association.

(2)(a) The major share of the net Pick-6 pool and the carryover, if any, shall be distributed to those who selected the first-place finisher in each of the Pick-6 contests, based upon the official order of finish.

(b) The minor share of the net Pick-6 pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick-6 contests, based upon the official order of finish.

(c) If there are no wagers selecting the first place finisher of all Pick-6 contests, the minor share of the net Pick-6 pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick-6 contests. The major share shall be added to the carryover.

(3)(a) If there is a dead heat for first in any of the Pick-6 races involving horses representing the same betting interest, the Pick-6 shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first in any of the Pick-6 races involving horses representing two or more betting interests, the Pick-6 pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

(4) At any time after wagering has begun on the Pick-6 and a betting interest is scratched, or declared a non-starter, the actual favorite, as evidenced by total amounts wagered in the win pool at the host association for the race at the close of wagering on that race, shall be substituted for the scratched betting interest for all purposes, including pool calculations.

(a) In the event that the win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number.

(b) The totalizator shall produce reports showing each of the winning combinations with substituted betting interests that became winners as a result of the substitution, in addition to the normal winning combination.

(c) Pick-6 wagers on a mutuel entry or mutuel field from which a starter or starters may have been scratched shall be wagers upon the horse or horses remaining in such entry or field.

(d) If no starter remains representing any mutuel entry or mutuel field, wagers upon such entry or field shall be deemed wagers upon the favorite as described in subsection (4) of this section.

(e) If a betting interest is scratched or declared a non-starter prior to the close of wagering of the first race of the Pick-6, individuals may:

1. Select another betting interest if the affected ticket can be cancelled and re-issued prior to the start of the first race of the Pick-6; or

2. Obtain a refund on the affected ticket if it can be processed prior to the start of the first race of the Pick-6.

(5) When the condition of the turf course warrants a change of racing surface in any of the Pick-6 races, and such change has not been disclosed to the public prior to the close of wagering for the Pick-6 pool, the stewards shall declare the changed race(s) an "all win" race for Pick-6 wagering purposes only. An "all win" race will assign the winner of that race to each Pick-6 ticketholder as their selection for that race.

(6) If at least one race included as part of a Pick-6 is cancelled or declared "no contest", but not more than the number specified in subsection (7) of this section, the net pool shall be distributed as a single price pool to individuals whose selection finished first in the greatest number of Pick-6 races for that performance. Such distribution shall include the portion ordinarily retained for the Pick-6 carryover, but not the carryover from previous performances.

(7) The Pick-6 pool shall be cancelled and all Pick-6 wagers for the individual performance shall be refunded if at least three races included as part of the Pick-6 are cancelled or declared "no contest."

(8)(a) Each association shall disclose in its license application whether it intends to schedule Pick-6 races and, if so, shall disclose:

1. The percentage of the pool to be retained for the winning wagers; and

2. The designated amount of any cap to be set on the pool to be retained for the winning wagers.

(b) Any subsequent changes to the Pick-6 scheduling require prior approval from the commission or its designee.

(9)(a) The Pick-6 carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the Pick-6 carryover equals or ex-

ceeds the designated cap, the Pick-6 carryover will be frozen until it is won or distributed under the provisions of this administrative regulation.

(b) After the Pick-6 carryover is frozen, one hundred percent (100%) of the net pool, part of which ordinarily would be added to the Pick-6 carryover, shall be distributed to those whose selection finished first in the greatest number of Pick-6 races for that performance.

(10) An association may request permission from the commission to distribute the Pick-6 carryover on a specific performance. The request shall contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(11)(a) On the final day of a meeting, an association shall make a final distribution of all accumulated carryovers along with seventy-five percent (75%) of the net pool of the Pick-6 pool conducted on the final day of the meeting to:

1. Individuals with tickets selecting the winners of all Pick-6 races, or, if no such wagers exist, to;

2. Individuals with tickets selecting five winners and no more than one "all win" selection.

(b) Twenty-five percent (25%) of the net pool shall be distributed to the holders of the remaining tickets selecting the most winners.

(c) If there is no distribution in accordance with subsection 11(a) of this section on the last day of the meeting, the entire distributable pool and all monies accumulated therein shall be distributed to the holders of tickets correctly designating the most winning selections of the six races comprising the Pick-6 for that day.

(d) If the Pick-6 is canceled on the final day of a meeting, all money wagered into the Pick-6 pool that day shall be refunded and any carryover shall be retained and added to the Pick-6 pool on the first racing day of the next meeting.

(12) The Pick-6 carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(a) Upon written approval from the commission as provided in subsection (8) of this section; or

(b) Upon written approval from the commission when there is a change in the carryover cap; or

(c) A change from Pick-6 wagering to another type of Pick-(N) wagering; or

(d) When the Pick-6 is discontinued; or

(e) On the closing performance of the meeting or split meeting.

(13) If, for any reason, the Pick-6 carryover shall be held over to the corresponding Pick-6 pool of a subsequent meeting, the carryover shall be deposited in an interest-bearing account approved by the commission. The Pick-6 carryover plus accrued interest shall then be added to the net Pick-6 pool of the following meeting on a date and performance approved by the commission.

(14) Upon written approval of the commission, a sum of money up to the amount of any designated cap may be contributed by to the Pick-6 carryover by an association.

(15) Advertised added money or minimum distributions shall not apply to intermediate or final distributions, unless a wager correctly selects winners of all six designated races, or five winners and no more than one "all win" race of the Pick-6 pool.

(16) The association may supply information to the general public regarding the winning dollars in the Pick-6 pool. Such information shall not be selectively distributed. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.

(17) Pick-6 tickets shall be nontransferable.

(18) Any violation of subsection (17) of this section may lead to confiscation and cancellation of such tickets in addition to other disciplinary action.

Section 13. Trifecta Pools. (1) The Trifecta requires selection of the first three finishers, in their exact order, for a single race.

(2) For Trifecta price calculations only, the highest placed finisher of any part of a mutuel entry or mutuel field is used, eliminating all other parts of that mutuel entry or mutuel field from consideration regardless of finishing order.

(3) The Trifecta pool shall be distributed in the following prece-

dence based upon the official order of finish:

(a) As a single price pool to individuals whose combination finished in correct sequence as the first three betting interests, but if there are no such wagers, then;

(b) As a single price pool to individuals whose combination included, in correct sequence, the first two betting interests, but if there are no such wagers, then;

(c) As a single price pool to individuals whose combination correctly selected the first-place betting interest only, but if there are no such wagers, then;

(d) The entire pool shall be refunded on Trifecta wagers for that race.

(4)(a) If less than three betting interests finish and the race is declared official, payouts will be made based upon the order of finish of those betting interests that finish the race.

(b) The balance of any selection beyond the number of betting interests completing the race shall be ignored.

(5)(a) If there is a dead heat for first involving horses representing three or more betting interests, all of the wagering combinations selecting three betting interests that correspond with any of the betting interests involved in the dead heat shall share in a profit split.

(b) If there is a dead heat for first involving horses representing two betting interests, both of the wagering combinations selecting the two betting interests that finish in a dead heat, irrespective of order, along with the third-place betting interest shall share in a profit split.

(6) If there is a dead heat for second, all of the combinations correctly selecting the winner combined with any of the betting interests involved in the dead heat for second shall share in a profit split.

(7) If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence, along with any of the betting interests involved in the dead heat for third shall share in a profit split.

(8)(a) No Trifecta wagering shall be conducted on any race having fewer than five (5) separate betting interests.

(b) If fewer than five horses start due to a late scratch or malfunction of the starting gate, the Trifecta shall be cancelled and the gross pool shall be refunded.

Section 14. Superfecta Pools. (1) The Superfecta requires selection of the first four finishers, in their exact order, for a single race.

(2) The net Superfecta pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose combination finished in correct sequence as the first four betting interests, but if there are no such wagers, then;

(b) As a single price pool to individuals whose combination included in correct sequence, the first three betting interests, but if there are no such wagers, then;

(c) As a single price pool to individuals whose combination included, in correct sequence, the first two betting interests, but if there are no such wagers, then;

(d) As a single price pool to individuals whose combination correctly selected the first-place betting interest only, but if there are no such wagers, then;

(e) The entire pool shall be refunded on Superfecta wagers for that race.

(3)(a) If less than four (4) betting interests finish and the race is declared official, payouts shall be made based upon the order of finish of those betting interests completing the race.

(b) The balance of any selection beyond the number of betting interests completing the race shall be ignored.

(4)(a) If there is a dead heat for first involving horses representing four or more betting interests, all of the wagering combinations selecting betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split.

(b) If there is a dead heat for first involving horses representing three betting interests, all of the wagering combinations selecting the three betting interests that finish in a dead heat, irrespective of order, along with the fourth-place betting interest shall share in a profit split.

(c) If there is a dead heat for first involving horses representing two betting interests, both of the wagering combinations selecting the two dead-heated betting interests, irrespective of order, along with the third-place and fourth-place betting interests shall share in a profit split.

(5)(a) If there is a dead heat for second involving horses representing three or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three betting interests involved in the dead heat for second shall share in a profit split

(b) If there is a dead heat for second involving horses representing two betting interests, all of the wagering combinations correctly selecting the winner, the two dead-heated betting interests, irrespective of order, and the fourth-place betting interest shall share in a profit split.

(6) If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence, along with any two of the betting interests involved in the dead heat for third shall share in a profit split.

(7) If there is a dead heat for fourth, all wagering combinations correctly selecting the first three finishers, in correct sequence, along with any interest involved in the dead heat for fourth, shall share in a profit split.

(8) No Superfecta wagering shall be conducted on any race having fewer than six (6) separate betting interests. If fewer than six (6) horses start due to a late scratch or malfunction of the starting gate, Superfecta wagering shall be cancelled and the gross pool shall be refunded.

Section 15. Super High-Five Pools. (1) The Super High-Five requires selection of the first five (5) finishers, in their exact order, for a single race.

(2) Unless otherwise stated, the net Super High-Five pool shall be distributed as a single-priced pool to those who have selected all five (5) finishers, in exact order, based upon the official order of finish.

(3)(a) Each association shall disclose in its license application whether it intends to schedule Super High-Five wagering and, if so, shall disclose:

1. The percentage of the pool to be retained for the winning wagers; and

2. The designated amount of any cap to be set on the pool to be retained for the winning wagers.

(b) Any subsequent changes to the Super High-Five scheduling require prior approval from the commission or its designee.

(4) If there are no winning wagers selecting all five (5) finishers, in exact order, the entire Super High-Five pool shall be added to the carryover.

(5) If due to a late scratch the number of betting interests in the Super High-Five pool is reduced to fewer than seven (7), the Super High-Five pool shall be cancelled and shall be refunded, but not the Super High-Five carryover pool.

(6) If a betting interest in the Super High-Five pool is scratched from the race, no more wagers shall be accepted selecting that scratched runner and all tickets previously sold designating such horse shall be refunded and that money shall be deducted from the gross pool.

(7) If any dead-heat occurs in any finishing position, all wagers selecting either of the runners finishing in a dead heat with the correct runners not finishing in a dead heat shall be winners and share the Super High-Five pool. Payouts shall be calculated by splitting the pool equally between each winning combination, then dividing each portion by the number of winning tickets.

(8)(a) On the final day of a meeting, an association shall make a final distribution of all accumulated carryovers along with the net pool of the Super High-Five pool conducted on the final day of the meeting as a single price pool to:

1. Individuals with tickets selecting the first five (5) finishers, in exact order, for the designated race, or, if no such wagers exist, to;

2. Individuals with tickets selecting the first four  $(\overline{4})$  finishers, in exact order, for the designated race, or, if no such wagers exist, to;

3. Individuals with tickets selecting the first three (3) finishers, in exact order, for the designated race, or, if no such wagers exist,

to;

4. Individuals with tickets selecting the first two (2) finishers, in exact order, for the designated race, or, if no such wagers exist, to;

5. Individuals with tickets selecting the winner for the designated race, or, if no such wagers exist;

6. All money wagered into the Super High-Five pool that day shall be refunded and any carryover shall be retained and added to the Super High –Five pool on the first racing day of the next meeting.

(9) If, for any reason, the Super High-Five carryover shall be held over to the corresponding Super High-Five pool of a subsequent meeting, the carryover shall be deposited in an interestbearing account approved by the commission. The Super High-Five carryover plus accrued interest shall then be added to the net Super High-Five pool of the following meeting on a date and performance approved by the commission.

Section 16. Big Q Pools. (1) The Big Q requires selection of the first two finishers, irrespective of order, in each of two designated races.

(a) Each winning ticket for the first Big Q race shall be exchanged for a free ticket on the second Big Q race in order to remain eligible for the second half Big Q pool.

(b) Exchange tickets shall be exchanged at attended ticket windows prior to the second race comprising the Big Q.

(c) There shall be no monetary reward for winning the first Big Q race.

(d) Each of the designated Big Q races shall be included in only one Big Q pool.

(2) In the first Big Q race only, winning wagers shall be determined using the following precedence based on the official order of finish for the first Big Q race:

(a) If a mutuel entry or mutuel field finishes as the first two finishers, those who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish shall be winners, otherwise:

(b) Individuals whose combination finished as the first two betting interests shall be winners, but if there are no such wagers, then;

(c) Individuals whose combination included either the first- or second-place finisher shall be winners, but if there are no such wagers on one of the two finishers, then;

(d) Individuals whose combination included the one covered betting interest included within the first two finishers shall be winners, but if there are no such wagers, then;

(e) The entire pool shall be refunded on Big  ${\sf Q}$  wagers for that race.

(3)(a) In the first Big Q race only, if there is a dead heat for first involving horses representing the same betting interest, individuals who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish shall be winners.

(b) In the first Big Q race only, if there is a dead heat for first involving horses representing two betting interests, the winning Big Q wagers shall be determined as if no dead heat occurred.

(c) In the first Big Q race only, if there is a dead heat for first involving horses representing three or more betting interests, individuals whose combination included any two of the betting interests finishing in the dead heat shall be winners.

(4) Except as set forth in subsection (16) of this section, in the first Big Q race only, if there is a dead heat for second, the winners shall be those who combined the first place finisher with any of the runners involved in the dead heat for second.

(5) In the second Big Q race only, the entire net Big Q pool shall be distributed to individuals in the following precedence based upon the official order of finish for the second Big Q race:

(a) If a mutuel entry or mutuel field finishes as the first two finishers, as a single price pool to individuals who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished as the first two betting interests, but if there are no such wagers, then;

(c) As a profit split to individuals whose combination included

either the first- or second-place finisher, but if there are no such wagers on one of those two finishers, then;

(d) As a single price pool to individuals whose combination included one of the covered betting interests included within the first two finishers, but if there are no such wagers, then;

(e) As a single price pool to all exchange ticket holders for that race, but if there are no such wagers, then;

(f) In accordance with subsection (2) of this section.

(6)(a) In the second Big Q race only, if there is a dead heat for first involving horses representing the same betting interest, the net Big Q pool shall be distributed to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish.

(b) In the second Big Q race only, if there is a dead heat for first involving horses representing two betting interests, the net Big Q pool shall be distributed as if no dead heat occurred.

(c) In the second Big Q race only, if there is a dead heat for first involving horses representing three or more betting interests, the net Big Q pool shall be distributed as a profit split to individuals whose combination included any two of the betting interests finishing in the dead heat.

(7) In the second Big Q race only, if there is a dead heat for second involving horses representing two or more betting interests, the Big Q pool shall be distributed to individuals in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the winner with any of the betting interests involved in the dead heat for second, but if there is only one covered combination, then;

(b) As a single price pool to individuals combining the winner with the one covered betting interest involved in the dead heat for second, but if there are no such wagers, then;

(c) As a profit split to individuals combining the betting interests involved in the dead heat for second, but if there are no such wagers, then;

(d) As a profit split to individuals whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second, then;

(e) As a single price pool to all exchange ticket holders for that race, but if there are no such tickets, then;

(f) In accordance with subsection (2) of this section.

(8) If a winning ticket for the first half of the Big Q is not presented for exchange prior to the close of betting on the second half Big Q race, the ticket holder shall forfeit all rights to any distribution of the Big Q pool resulting from the outcome of the second race.

(9) If a betting interest in the first half of the Big Q is scratched, the Big Q wagers including the scratched betting interest shall be refunded.

(10)(a) Should a betting interest in the second half of the Big Q be scratched, an immediate public announcement and immediate posting on the association's video monitors and website concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest.

(b) If tickets have not been exchanged prior to the close of betting for the second Big Q race, the ticket holder shall forfeit all rights to the Big Q pool.

(11) If either of the Big Q races is cancelled prior to the first Big Q race, or the first Big Q race is declared "no contest," the entire Big Q pool shall be refunded on Big Q wagers for that race.

(12) If the second Big Q race is cancelled or declared "no contest" after the conclusion of the first Big Q race, the net Big Q pool shall be distributed as a single price pool to wagers selecting the winning combination in the first Big Q race and all valid exchange tickets. If there are no such wagers, the net Big Q pool shall be distributed as described in subsection (2) of this section.

Section 17. Twin Trifecta Pools. (1) The Twin Trifecta requires the selection of the first three finishers, in their exact order, in each of two designated races.

(a) Each winning ticket for the first Twin Trifecta race shall be exchanged for a free ticket on the second Twin Trifecta race in order to remain eligible for the second half Twin Trifecta pool.

(b) Such tickets may only be exchanged at attended ticket windows prior to the second Twin Trifecta race.

(c) Winning first half Twin Trifecta wagers shall receive both an exchange and a monetary payout.

(d) Both of the designated Twin Trifecta races shall be included in only one Twin Trifecta pool.

(2) After wagering closes for the first half of the Twin Trifecta, and the takeout has been deducted from the pool, the net pool shall then be divided into two separate pools: the first half Twin Trifecta pool and the second half Twin Trifecta pool.

(3) In the first Twin Trifecta race only, winning wagers shall be determined using the following precedence based upon the official order of finish for the first Twin Trifecta race:

(a) As a single price pool to individuals whose combination finished in the correct sequence as the first three betting interests, but if there are no such wagers, then;

(b) As a single price pool to individuals whose combination included, in correct sequence, the first two betting interests, but if there are no such wagers, then;

(c) As a single price pool to individuals whose combination correctly selected the first-place betting interest only, but if there are no such wagers, then;

(d) The entire Twin Trifecta pool shall be refunded on Twin Trifecta wagers for that race and Twin Trifecta wagering on the second half shall be cancelled.

(4) Except as set forth in subsection (16) of this section, if no first half Twin Trifecta ticket selects the first three finishers of that race in exact order, exchange tickets for the second half Twin Trifecta pool shall not be distributed. In such case, the second half Twin Trifecta pool shall be retained and added to any existing Twin Trifecta carryover pool.

(5)(a) Tickets from the first half of the Twin Trifecta that correctly select the first three finishers shall be exchanged for tickets selecting the first three finishers of the second half of the Twin Trifecta.

(b) The second half Twin Trifecta pool shall be distributed to individuals in the following precedence based upon the official order of finish for the second Twin Trifecta race:

1. As a single price pool, including any existing carryover monies, to individuals whose combination finished in correct sequence as the first three betting interests but if there are no such wagers, then;

2. The entire second half Twin Trifecta pool for that race shall be added to any existing carryover monies and retained for the corresponding second half Twin Trifecta pool of the next consecutive performance.

(c) If a winning first half Twin Trifecta ticket is not presented for cashing and exchange prior to the second half Twin Trifecta race, the ticket holder may still collect the monetary value associated with the first half Twin Trifecta pool but shall forfeit all rights to any distribution of the second half Twin Trifecta pool.

(6) Mutuel entries and mutuel fields shall be prohibited in Twin Trifecta races.

(7) If a betting entry in the first half of the Twin Trifecta is scratched, Twin Trifecta wagers including the scratched betting interest shall be refunded.

(8)(a) If a betting interest in the second half of the Twin Trifecta is scratched, an immediate public announcement and immediate posting on the association's video monitors and website concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest.

(b) If tickets have not been exchanged prior to the close of betting for the second Twin Trifecta race, the ticket holder shall forfeit all rights to the second half Twin Trifecta pool.

(9) If, due to a late scratch, the number of betting interests in the second half of the Twin Trifecta is reduced to fewer than the minimum, all exchange tickets and outstanding first half winning tickets shall be entitled to the second half pool for that race, but shall not be entitled to the Twin Trifecta carryover.

(10)(a) If there is a dead heat or multiple dead heats in either the first or second half of the Twin Trifecta, all Twin Trifecta wagers selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be winning wagers.

(b) If the dead heat occurs in the first half of the Twin Trifecta,

the payout shall be calculated as a profit split.

(c) If the dead heat occurs in the second half of the Twin Trifecta, the payout shall be calculated as a single price pool.

(11) If the first Twin Trifecta race is canceled or declared "no contest", the entire Twin Trifecta pool shall be refunded on Twin Trifecta wagers for that race and the second half shall be cancelled.

(12)(a) If the second half Twin Trifecta race is cancelled or declared "no contest", all exchange tickets and outstanding first half winning Twin Trifecta tickets shall be entitled to the net Twin Trifecta pool for that race as a single price pool, but shall not be entitled to the Twin Trifecta carryover.

(b) If there are no outstanding first half winning Twin Trifecta tickets, the net Twin Trifecta pool shall be distributed as described in subsection (3) of this section.

(13)(a) The Twin Trifecta carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the Twin Trifecta carryover equals or exceeds the designated cap, the Twin Trifecta carryover will be frozen until it is won or distributed under the provisions of this administrative regulation.

(b) After the Twin Trifecta carryover is frozen, one hundred percent (100%) of the net Twin Trifecta pool for each individual race shall be distributed to winners of the first half of the twin Trifecta pool.

(14) A written request for permission to distribute the Twin Trifecta carryover on a specific performance may be submitted to the commission. The request shall contain:

(a) Justification for the distribution;

(b) An explanation of the benefit to be derived; and

(c) The intended date and performance for the distribution.

(15) If the Twin Trifecta carryover is designated for distribution on a specified date and performance, the following precedence will be followed in determining winning tickets for the second half of the Twin Trifecta after completion of the first half of the Twin Trifecta:

(a) As a single price pool to individuals whose combination finished in correct sequence as the first three betting interests, but if there are no such wagers, then;

(b) As a single price pool to individuals whose combination included, in correct sequence, the first two betting interests, but if there are no such wagers, then;

(c) As a single price pool to individuals whose combination correctly selected the first-place betting interest only, but if there are no such wagers, then;

(d) As a single price pool to holders of valid exchange tickets, but if there are no such wagers, then;

(e) As a single price pool to holders of outstanding first half winning tickets.

(16) For a performance designated to distribute the Twin Trifecta carryover, exchange tickets shall be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first half of the twin Trifecta.

(a) If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first- and second-place finishers.

(b) If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, exchange tickets shall be issued for combinations correctly selecting only the first-place finisher.

(c) If there are no wagers selecting the first-place finisher only in the first half of the Twin Trifecta, all first half tickets shall be winning tickets and shall be entitled to one hundred percent (100%) of that performance's net Twin Trifecta pool, and any existing Twin Trifecta carrvover.

(17) The Twin Trifecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(a) Upon written approval from the commission as provided in subsection (14) of this section; or

(b) Upon written approval from the commission when there is a change in the carryover cap or when the Twin Trifecta is discontinued; or

(c) On the closing performance of the meeting or split meeting.

(18) If, for any reason, the Twin Trifecta carryover shall be held over to the corresponding Twin Trifecta pool of a subsequent meeting, the carryover shall be deposited in an interest-bearing account approved by the commission. The Twin Trifecta carryover plus accrued interest shall then be added to the second half Twin Trifecta pool of the following meeting on a date and performance so approved by the commission.

(19) Associations shall not provide information to any individual regarding covered combinations, the number of tickets sold, or the number of valid exchange tickets. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees from processing of pool data.

(20)(a) Each association shall disclose in its license application whether it intends to schedule Twin-Trifecta wagering and, if so, shall disclose:

1. The percentages of the net pool added to the first half pool and the second half pool; and

2. The amount of any cap to be set on the carryover.

(b) Any subsequent changes to the Twin Trifecta scheduling require prior approval from the commission or its designee.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 20, 2010

FILED WITH LRC: January 11, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, February 24, 2011 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Ironworks Parkway, Building B, Lexington, Kentucky 405011. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by Thursday, February 17, 2011, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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, February 28, 2011. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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 regulation provides the rules regarding the calculation of payouts and distribution of pari-mutuel pools for pari-mutuel wagering on thoroughbred horse racing.

(b) The necessity of this administrative regulation: This regulation is necessary to provide the wagering public with notice of the rules governing pari-mutuel wagering on thoroughbred horse racing in the Commonwealth. Specifically, this regulation sets forth the rules regarding the pari-mutuel wagers offered on thoroughbred horse racing; the circumstances under which they are offered; how the payouts are calculated; and how the pari-mutuel pools are distributed on winning wagers.

(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

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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 230.361(1) requires the commission to promulgate administrative regulations governing wagering under the parimutuel system of wagering. This administrative regulation establishes the calculation of pools and the distribution of payouts for pari-mutuel wagering on live horse races.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specific rules to be applied to the calculation of parimutuel pools and distribution of pari-mutuel wagers on thoroughbred horse racing in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation:  $\ensuremath{\mathsf{N}}\xspace{\mathsf{A}}$ 

(b) The necessity of the amendment to this administrative regulation:  $\ensuremath{\mathsf{N/A}}$ 

(c) How the amendment conforms to the content of the authorizing statutes:  $\ensuremath{\mathsf{N/A}}$ 

(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 administrative regulation will affect the five currently-licensed racing associations in the Commonwealth that offer thoroughbred racing and the patrons who wager on thoroughbred racing through those racing associations.

(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 racing associations will have to abide by the rules established by the regulation when calculating pari-mutuel pools.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The racing associations, and the patrons placing pari-mutuel wagers on thoroughbred racing, will benefit from uniformity in the rules governing the calculation of pools and distribution of payouts.

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

(a) Initially: The regulation will not result in additional costs.

(b) On a continuing basis: The regulation will not result in additional costs.

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

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

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

(9) TIERING: Is tiering applied? (Explain why or why not) 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? Yes

2. What units, parts or divisions of state or local government

will be impacted by this administrative regulation? N/A

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.  $N\!/\!A$ 

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency 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 for the first year? N/A  $\,$ 

(b) How much revenue will this administrative regulation generate for the state or local government for subsequent years? N/A

(c) How much will it cost to administer this program for the first year?  $\ensuremath{\mathsf{N/A}}$ 

(d) How much will it cost to administer this program for subsequent years?  $\ensuremath{\mathsf{N/A}}$ 

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Information Systems (New Administrative Regulation)

907 KAR 6:005. Electronic health record incentive payments.

RELATES TO: KRS 205.520(3)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396b(a)(3)(F), and 42 U.S.C. 1396b(t)

NÈĆESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes Medicaid electronic health record incentive payment requirements and policies.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "EHR" means electronic health record.

(3) "Eligible hospital" is defined in 42 C.F.R. 495.100.

(4) "Eligible professional" is defined in 42 C.F.R. 495.100.

(5) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(6) "Meaningful EHR user" is defined in 42 C.F.R. 495.4.

(7) "Program year" means a:

(a) A calendar year for eligible professionals; and

(b) A federal fiscal year for eligible hospitals.

(8) "Provider" is defined by KRS 205.8451(7).

(9) "Qualified electronic health record" or "qualified EHR" is defined in 45 C.F.R. 170.102.

(10) "Qualifying critical access hospital" or "qualifying CAH" is defined in 42 C.F.R. 495.100.

(11) "Qualifying eligible professional" is defined by 42 C.F.R. 495.100.

(12) "Qualifying hospital" is defined by 42 C.F.R. 495.100.

Section 2. General Requirements of EHR Incentive Payment Eligibility. To be eligible for an EHR incentive payment:

(1) An individual shall be an eligible professional who:

(a) Has an office of practice that is physically located in the Commonwealth of Kentucky;

(b) Is currently enrolled in the Kentucky Medicaid Program pursuant to 907 KAR 1:672;

(c) Is currently participating in the Kentucky Medicaid Program pursuant to 907 KAR 1:671;

(d) Is not on the:

1. United States Department of Health and Human Services, Office of Inspector General's List of Excluded Individuals and Entities; or

2. Department's List of Excluded Providers; and

(e) Has not have already received an electronic health record

incentive payment from:

1. Another state within the current program year; or

2. Kentucky within the current program year; or

(2) An entity shall be an eligible hospital that:

(a) Is physically located in the commonwealth of Kentucky; and
 (b) Is currently enrolled in the Kentucky Medicaid Program pursuant to 907 KAR 1:672; and

(c) Is currently participating in the Kentucky Medicaid Program pursuant to 907 KAR 1:671.

(d) Is not on the:

1. United States Department of Health and Human Services, Office of Inspector General's List of Excluded Individuals and Entities; or

2. Department's List of Excluded Providers; and

(e) Has not have already received an electronic health record incentive payment from:

1. Another state within the current program year; or

2. Kentucky within the current program year.

Section 3. EHR Incentive Payment Provider Scope and Eligibility. To qualify for an EHR incentive payment:

(1) An eligible professional shall meet the:

(a) Requirement established in 42 C.F.R. 495.304(c) unless exempt pursuant to 42 C.F.R. 495.304(d); and

(b) Requirements established in Section 2(1) of this administrative regulation;

(2) An eligible hospital shall meet the:

(a) Requirement established in 42 C.F.R. 495.304(e); and

(b) Requirements established in Section 2(2) of this administrative regulation.

Section 4. Establishing Patient Volume. (1) An eligible:

(a) Professional shall establish his or her patient volume in accordance with 42 C.F.R. 495.306(a)(1); or

(b) Hospital shall establish its patient volume in accordance with 42 C.F.R. 495.306(a)(2).

(2)(a) The establishment of the patient volume of an eligible professional who practices predominantly in a federally-qualified health center (FQHC) or a rural health clinic (RHC) shall comply with 42 C.F.R. 495.306(c).

(b) An eligible professional shall be determined to practice predominantly in an FQHC or RHC if over fifty (50) percent of his or her total patient encounters over a six (6) month period in the most recent calendar year occurred in an FQHC or an RHC.

Section 5. Basis for Determining an EHR Incentive Payment. (1) The department's basis for determining an incentive payment shall be in accordance with 42 C.F.R. 495.308.

Section 6. EHR Incentive Payment Amounts and Limits. (1) EHR incentive payments to an eligible professional shall be limited pursuant to 42 C.F.R. 495.310(a) through (e).

(2) EHR incentive payments to an eligible hospital shall be limited pursuant to 42 C.F.R. 495.310(e) and (f).

(3)(a) An aggregate EHR hospital incentive payment amount shall be in accordance with 42 C.F.R. 495.310(g).

(b) If the department determines that an eligible hospital's data on charity care necessary to calculate the aggregate EHR hospital incentive payment referenced in paragraph (a) of this subsection is unavailable, the department shall determine an approximate proxy for charity care in accordance with 42 C.F.R. 495.310(h).

(c) If data, other than data referenced in paragraph (b) of this subsection, does not exist, the department shall deem in accordance with 42 C.F.R. 495.310(i).

(4) An eligible hospital may receive EHR incentive payments from Medicare and Medicaid in accordance with 42 C.F.R. 495.310(j).

(5) EHR incentive payments to state-designated entities shall be in accordance with 42 C.F.R. 495.310(k).

Section 7. Payment Process. (1) To receive an EHR incentive payment, a provider shall, in addition to satisfying the EHR incentive payment eligibility requirements established in this administrative regulation, comply with 42 C.F.R. 495.312(b).

(2) The department's EHR incentive payment process shall comply with 42 C.F.R. 495.312(a) and (c).

(3) An EHR incentive payment to an eligible professional or eligible hospital shall be disbursed based on the criteria established in 42 C.F.R. 495.2 through 10.

(4) An EHR incentive payment to an eligible:

(a) Professional shall be disbursed in accordance with the timeframe established in 42 C.F.R. 495.312(e)(1); or

(b) Hospital shall be disbursed in accordance with the time-frame established in 42 C.F.R. 495.312(e)(2).

Section 8. Activities Required to Receive an Incentive Payment. (1) To receive an EHR incentive payment in the first payment year, an eligible professional or eligible hospital shall comply with the requirements established in 42 C.F.R. 495.314(a).

(2) To receive an EHR incentive payment in the second, third, fourth, fifth, or sixth payment year, an eligible professional or eligible hospital shall:

(a) Meet the requirements established in 42 C.F.R. 495.314(b).

Section 9. Meaningful Use Objectives and Measures. (1) An eligible professional shall meet the meaningful use criteria established in 42 C.F.R. 495.6(a), (c), and (d).

(2) An eligible hospital shall meet the meaningful use requirements established in 42 C.F.R. 495.6(b), (c), and (e).

Section 10. Demonstration of Meaningful Use. (1) An eligible professional shall demonstrate, in accordance with 42 C.F.R. 495.8(a), that he or she meets the meaningful use criteria established in 42 C.F.R. 495.6(a), (c), and (d).

(2) An eligible hospital shall demonstrate, in accordance with 42 C.F.R. 495.8(b), that it meets the meaningful use requirements established in 42 C.F.R. 495.6(b), (c), and (e).

(3) An eligible professional's or eligible hospital's demonstration of meaningful use shall be subject to review by:

(a) The department; or

(b) The Centers for Medicare and Medicaid Services.

Section 11. Meaningful Use Documentation. An eligible professional, eligible hospital or critical access hospital shall maintain documentation supporting their demonstration of meaningful use in accordance with 42 C.F.R. 495.8(c)(2).

Section 12. Combating Fraud and Abuse. (1) On any form on which a provider submits information to the department that is necessary to determine the provider's eligibility to receive EHR payments, the provider must include a statement that meets the requirements established in 42 C.F.R. 495.368(b).

(2) If an overpayment is due from an eligible professional or eligible hospital to the department, the eligible professional or eligible hospital shall repay the entire overpayment within the time-frame established in 42 C.F.R. 495.368(c).

Section 13. Overpayment Dispute Resolution Process Prior to Administrative Hearing. (1)(a) An eligible professional or eligible hospital may appeal the following by first requesting a dispute resolution meeting:

1. An incentive payment;

2. An incentive payment amount;

3. A determination regarding the demonstration of adopting, implementing, or upgrading meaningful use of electronic health record technology;

4. An overpayment amount determined by the department to be due from the eligible professional or eligible hospital.

(b) A provider may appeal a determination regarding the provider's eligibility for electronic health record incentive payments by first requesting a dispute resolution meeting.

(2) A request for a dispute resolution meeting shall:

(a) Be in writing and mailed to and received by the department within thirty (30) calendar days of the date the notice was received by the provider;

(b) Clearly identify each specific issue and dispute;

(c) Clearly state the:

1. Basis on which the department's decision on each issue is

believed to be

erroneous; and

2. Name, mailing address, and telephone number of individuals who are expected to attend the dispute resolution meeting on the provider's behalf.

(3) The department shall not accept or honor a request for administrative appeals process that is filed prior to receipt of the department's written determination that creates an administrative appeal right.

(4)(a) The department or the party requesting a dispute resolution meeting may request the presence of a court reporter at the dispute resolution meeting.

(b) If requested, a court reporter shall be secured in advance of a dispute resolution meeting, and a dispute resolution meeting shall not be postponed solely due to the failure to timely secure a court reporter.

(5)(a) Except if a court reporter was requested solely by a provider, the department shall bear the cost of a court reporter.

(b) Each party shall at all times bear the costs of requested transcribed copies.

(6) A dispute resolution meeting involving a court reporter shall:

(a) Be conducted face to face; and

(b) Not be conducted via telephone.

(7) If an administrative hearing is requested at the dispute resolution meeting, the dispute resolution meeting transcript shall become part of the official record of the hearing pursuant to KRS 13B.130.

(8)(a) The department shall, within ten (10) calendar days of receipt of the request for

a dispute resolution meeting, send a written response to the eligible professional or hospital:

1. Identifying the time and place in which the meeting shall be held within thirty (30) days of receipt of the request; and

2. Identifying the department's representative who is expected to attend the meeting.

(b) A dispute resolution meeting shall be held within forty (40) calendar days of receipt of the request, unless a postponement is requested.

(c) A dispute resolution meeting may be postponed for a maximum additional period of sixty (60) calendar days, at the request of either party.

(9)(a) A dispute resolution meeting shall be conducted in an informal manner as directed by the department's representative.

(b) An eligible professional or hospital may present evidence or testimony at a dispute resolution meeting to support the case.

(c) Each party at a dispute resolution meeting shall be given an opportunity to ask questions to clarify the disputed issue or issues.

(10)(a) An eligible professional, eligible hospital, or provider may, within the same deadline specified in subsection (2) of this section, submit information they wish to be considered in relation to the department's determination without requesting a dispute resolution meeting.

(b) A submission of additional documentation shall not extend the thirty (30) day time period for requesting a resolution meeting.

(11) The department, after the dispute resolution meeting or the date the information

to be considered was presented to the department as established in subsection (10) of this section, shall within thirty (30) calendar days:

(a) Uphold, rescind, or modify the original decision with regard to the disputed issue; and

(b) Provide written notice to the eligible professional or hospital of:

1. The department's decision; and

2. The facts upon which the decision was based with reference to applicable statutes or administrative regulations.

(12) Information submitted for the purpose of informally resolving a provider dispute shall not be considered a request for an administrative hearing.

(13) The department may waive a dispute resolution meeting, at its sole discretion, and issue a decision in lieu of the meeting, with the decision subject to administrative hearing policies established in 907 KAR 1:671. (14)(a) The department may postpone issuing its findings of a dispute resolution meeting, or its review of the materials submitted in lieu of a dispute resolution meeting, by mailing a written notice to the eligible professional, eligible hospital, or provider stating the:

1. Reason for the delay; and

2. Anticipated completion date of the review.

(b) A postponement referenced in paragraph (a) of this subsection shall not extend beyond 180 days.

Section 14. Administrative Hearing. (1) An administrative hearing shall be conducted in accordance with KRS Chapter 13B by a hearing officer who is knowledgeable of Medicaid policy, as established in federal and state laws.

(2) The secretary of the cabinet, pursuant to KRS 13B.030(1), shall delegate by administrative order conferred powers to conduct administrative hearings under 907 KAR 1:671.

(3) The department shall not accept or honor a request for administrative appeals process by an eligible professional or hospital that is:

(a) Filed at the state level for a federal-mandated exclusion subsequent to a federal notice of the exclusion containing the federal appeal rights; or

(b) Filed at the state level for program exclusion resulting from a criminal conviction by the court of competent jurisdiction, upon exhaustion or failure to timely pursue the judicial appeal process.

(4) The administrative hearing process shall be used to appeal:

(a) An incentive payment;

(b)An incentive payment amount;

(c) A determination regarding a provider's demonstration of adopting, implementing, or upgrading meaningful use of electronic health record technology;

(d) An overpayment amount determined by the department to be due from the eligible provider;

(e) A determination regarding a provider's eligibility for electronic health record incentive payments by first requesting a dispute resolution meeting;

(f) A department's requirement of a provider to repay an electronic health record incentive payment overpayment; or

(g) A department's withholding of a provider's payments in accordance with 907 KAR 1:671.

(5)(a) For a written request for an administrative hearing to be timely, the written request for an administrative hearing shall be received by the department within thirty (30) calendar days of the date of receipt of the department's notice of a determination or a dispute resolution decision.

(b) A written request for an administrative hearing shall be sent to the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, 6th Floor, Frankfort, Kentucky 40621-0002.

(6) The department shall forward to the hearing officer an administrative record which shall include:

(a)The notice of action taken;

(b) The statutory or regulatory basis for the action taken;

(c) The department's decision following the dispute resolution meeting process; and

(d) All documentary evidence provided by the:

1. Eligible professional, eligible hospital, or provider; or

2. The eligible professional's, eligible hospital's, or provider's billing agent, subcontractor, fiscal agent, or another individual authorized by the eligible professional, eligible hospital, or provider to provide information regarding the matter to the department.

(7) A notice of an administrative hearing shall comply with KRS 13B.050.

(a) An administrative hearing shall be held in Frankfort, Kentucky no later than sixty (60) calendar days from the date the request for the administrative hearing is received by the department.

(b) An administrative hearing date may be extended beyond the sixty (60) calendar days by:

1. A mutual agreement between the:

a. Eligible profession, eligible hospital, or provider; and

b. The department; or

2. A continuance granted by the hearing officer.

(8) If a prehearing conference is requested, it shall be held at least seven (7) calendar days in advance of the hearing date.

(9) Conduct of a prehearing conference shall comply with KRS 13B.070.

(10) If an eligible professional, eligible hospital, or provider does not appear at a hearing on the scheduled date and the hearing has not been previously rescheduled, the hearing officer may find the eligible professional, eligible hospital, or provider in default pursuant to KRS 13B.050(3)(h).

(11) A hearing request shall be withdrawn only under the following circumstances:

(a) The hearing officer receives a written statement from an eligible professional, eligible hospital, or provider stating that the request is withdrawn; or

(b) An eligible professional, eligible hospital, or provider makes a statement on the record at the hearing that the eligible professional, eligible hospital, or provider is withdrawing the request for the hearing.

(12) Documentary evidence to be used at a hearing shall be made available in accordance with KRS 13B.090.

(13) Information relating to the selection of an eligible professional, eligible hospital, or provider for audit, investigation notes or other materials which may disclose auditor investigative techniques, methodologies, material prepared for submission to a law enforcement or prosecutorial agency, information concerning law enforcement investigations, judicial proceedings, confidential sources or confidential information shall not be revealed, unless exculpatory in nature as required pursuant to KRS 13B.090(3).

(14) A hearing officer shall preside over a hearing and shall conduct the hearing in accordance with KRS 13B.080 and 13B.090.

(15) The issues considered at a hearing shall be limited to:

(a) Issues directly raised in the initial request for a dispute resolution meeting;

(b) Issues directly raised during the disputed resolution meeting; or

(c) Materials submitted in lieu of a dispute resolution meeting.

(16) KRS 13B.090(7) shall govern the burdens of proof.

(a) The department shall have the initial burden of showing the existence of the administrative regulations or statutes upon which a determination was based.

(b) If a determination is based upon an alleged failure of a provider to comply with applicable generally accepted business, accounting, professional, medical practices or standards of health care, the department shall establish the existence of the practice or standard.

(c) The department shall be responsible for notifying the hearing officer of previous relevant violations by the eligible professional, eligible hospital, or provider under Medicare, Medicaid, or other program administered by the Cabinet for Health and Family Services, or relevant prior actions under 907 KAR 1:671, which the department wishes the hearing officer to consider in his or her deliberations.

(17) A hearing officer shall issue a recommended order in accordance with KRS 13B.110.

(18)(a) Except for the requirement that a request for an administrative appeal process be filed in a timely manner, a hearing officer may grant an extension of time specified in this section, if:

1. Determined necessary for the efficient administration of the hearing process; or

2. To prevent an obvious miscarriage of justice with regard to the provider.

(b) An extension of time for completion of a recommended order shall comply with the requirements of KRS 13B.110(2) and (3).

(19) A final order shall be entered in accordance with KRS 13B.120.

(20) The Cabinet for Health and Family Services shall maintain an official record of the hearing in compliance with KRS 13B.130.

(21) In a correspondence transmitting a final order, clear reference shall be made to the availability of judicial review pursuant to KRS 13B.140 and 13B.150.

(22) The department's appeal process for an eligible professional, eligible hospital, or provider regarding electronic health record incentive payments.

(22) The department's appeal process for an eligible profes-

sional, eligible hospital, or provider regarding electronic health record incentive payments shall be in accordance with 42 C.F.R. 495.370.

Section 15. Actions Taken at the Conclusion of the Administrative Appeal Process. (1) A stay on recoupment granted under 907 KAR 1:671 shall not extend to judicial review, unless a stay is granted pursuant to KRS 13B.140(4).

(2) If during an administrative appeal process, circumstances require a new or modified determination letter, new appeal rights shall be provided in accordance with this administrative regulation.

(3) Thirty (30) calendar days after the issuance of the final order pursuant to KRS 13B.120, the department:

(a) Shall initiate collection activities and take all lawful actions to collect the debt; and

(b) May enact:

1. An exclusion or fiscal penalty pursuant to 42 U.S.C. 1320a-7; or

2. Other action that was held in abeyance pending the decision of the administrative appeal process.

(4) A department's decision to subject an eligible professional's, eligible hospital's or provider's claims to prepayment review shall not be subject to appeal.

Section 17. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the policy; or

(2) Disapproves the policy.

NEVILLE WISE, Acting Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 20, 2010

FILED WITH LRC: January 3, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 21, 2011, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by 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: Stuart Owen, (502) 564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This is a new administrative regulation which establishes Medicaid electronic health record (EHR) incentive payment policies in accordance with federal law and regulation. EHR incentive payments are payments, authorized by the American Recovery and Reinvestment Act (AR-RA), to eligible professionals and eligible hospitals that adopt, implement, upgrade, or demonstrate "meaningful use" of certified EHR technology in the first year of participation or then demonstrate meaningful use for up to five more years of EHR incentive payment program participation. The program is not mandated upon states, but Kentucky's Medicaid program has elected to implement the program and in the first possible year of implementation - 2011 (specifically January 3, 2011 is the first day Medicaid programs are

allowed to launch the initiative.) Eligible professionals may receive up to \$63,750 in aggregate in incentive payments if they participate in the program for 6 years. Eligible professionals include physicians, dentists, nurse practitioners, certified nurse midwives, and physician assistants (if the physician assistant practices in a rural health clinic or federally-qualified health center under the supervision of a physician assistant.) There is no limit to how much eligible hospitals may receive. Eligible hospitals include acute care hospitals, children's hospitals (but Kentucky currently has none), and critical access hospitals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to enable the Department for Medicaid Services (DMS) to make EHR incentive payments to eligible hospitals and professionals as authorized by the American Recovery and Reinvestment Act (ARRA.)

(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 EHR incentive payment policies in accordance with federal law and regulation.

(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 EHR incentive payment policies in accordance with federal law and regulation.

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

(a) How the amendment will change this existing administrative regulation: This 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 government affected by this administrative regulation: The Department for Medicaid Services (DMS) examined past claims data and estimates that of 22,741 Medicaid (nonhospital) providers (for example, physicians, nurse practitioners, etc.) who are in the umbrella of provider types eligible for electronic health record (EHR) incentive payments (or "eligible professionals"), that 2,450 could feasibly meet the Medicaid patient volume threshold to qualify for EHR incentive payments. DMS estimates that only 85% (2,162) of those will actually acquire the certified EHR technology necessary to qualify for the incentive payments. The eligible professional provider types include physicians, dentists, nurse practitioners, certified nurse midwives, and physician assistants (if the physician assistant practices in a rural health clinic or federally-qualified health center under the supervision of a physician assistant. Medicaid recipients will also benefit from this administrative regulation.

DMS anticipates that of the 65 acute care hospitals participating in the Kentucky Medicaid program, that 61 will meet the Medicaid patient volume threshold (10%) necessary to qualify for EHR incentive payments.

DMS anticipates that of the 29 critical access hospitals participating in the Kentucky Medicaid Program, that 17 will meet the Medicaid patient volume threshold necessary (10%) to qualify for EHR incentive payments.

(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: In order to qualify for electronic health record incentive payments, eligible professionals and eligible hospitals will have to adopt, implement, upgrade, or demonstrate "meaningful use" of certified EHR technology in the first year of participation or then demonstrate meaningful use for up to five more years of EHR incentive payment program participation. An eligible professional cannot begin receiving an EHR incentive payment any later than calendar year 2016 and an eligible hospital cannot begin receiving incentive payments any time after federal fiscal year 2016 (October 1, 2016 through September 30, 2017); thus, individuals and entities must act prior to those respective deadlines in order to qualify for incentive payments.

An eligible professional's or eligible hospital's EHR technology must be tested and certified by an "Authorized Testing and Certification Body (ATCB) endorsed by the national federal entity – Office of National Coordinator – in order to qualify for incentive payments. The technologies which have been approved by the ONC ATCB are listed on the ONC Web site.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Individuals or entities will have to purchase the requisite certified EHR technology in order to qualify for EHR incentive payments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Eligible professionals (individuals) and eligible hospitals who choose to pursue (and meet all requirements) electronic health record (EHR) incentive payments will receive incentive payments. The maximum amount of incentive payments an eligible professional may receive is \$63,500 and there is no maximum amount for eligible hospitals. The Kentucky Hospital Association (KHA) provided DMS with estimates which indicate that the lowest amount of incentive payments in aggregate that a participating acute care hospital will receive will be over \$596,000 and the highest amount a participating acute care hospital will receive will be over \$5.7 million. Medicaid recipients will benefit from the adoption and meaningful use of electronic health record technology by receiving enhanced care and across diverse settings including reduced deaths and complications in hospitals. Uses of electronic health records include enabling patient data to be quickly shared, electronic note taking, electronic treatment records, electronic test results, electronic drugs orders, and the use of decision-support systems which can inform clinical staff regarding treatment options and drug interactions. The use of EHR can also improve preventive medicine by enhancing screening - as reminders (for screenings) can be generated by electronic medical date and sent to patients. A Harvard Medical School study showed that such reminders sent to patients resulted in the patients being more likely to get screened in contrast to when reminders were only sent to physicians.

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

(a) Initially: DMS estimates that 127 eligible professionals (i.e. non-hospital) will qualify for EHR incentive payments in calendar year (CY) 2011 and that DMS will make \$2,638,987 (100% federal) in incentive payments to those eligible professionals in CY 2011. DMS estimates that sixty-one (61) of sixty-five (65) acute care hospitals will qualify for EHR incentive payments in CY 2011 and that it will make \$52,979,461 (100% federal) in incentive payments to those hospitals in CY 2011. DMS estimates that seventeen (17) of twenty-nine (29) critical access hospitals will qualify for EHR incentive payments in CY 2011 and that it will make \$6,872,308 (100% federal) in incentive payments to those hospitals in CY 2011.

(b) On a continuing basis:

DMS estimates that in CY 2012 it will make:

\$6,317,991 (100% federal) in incentive payments to eligible professionals;

\$42,383,569 (100% federal) in incentive payments to 61 acute care hospitals; and

\$3,436,154 (100% federal) in incentive payments to 17 critical access hospitals.

DMS estimates that in CY 2013 it will make:

\$11,045,507 (100% federal) in incentive payments to eligible professionals;

\$10,595,892 (100% federal) in incentive payments to sixty-one (61) acute care hospitals; and

\$2,061,692 (100% federal) in incentive payments to seventeen (17) critical access hospitals.

DMS estimates that in CY 2014 it will make:

\$16,828,621 (100% federal) in incentive payments to eligible professionals;

\$0 in incentive payments to acute care hospitals as DMS antic-

ipates the hospitals will have met the maximum incentive payment amount by the end of CY 2013; and

\$1,374,462 (100% federal) in incentive payments to 17 critical access hospitals

DMS estimates that in CY 2015 it will make:

\$21,053,841 (100% federal) in incentive payments to eligible professionals;

\$0 in incentive payments to acute care hospitals as DMS anticipates the hospitals will have met the maximum incentive payment amount by the end of CY 2013; and

\$0 in incentive payments to critical access hospitals as DMS anticipates the hospitals will have met the maximum incentive payment amount by the end of CY 2014; and

DMS estimates that in CY 2016 it will make:

22,665,571 (100% federal) in incentive payments to eligible professionals.

DMS estimates that in CY 2017 it will make:

\$17,025,532 (100% federal) in incentive payments to eligible professionals.

DMS estimates that in CY 2018 it will make:

\$14,863,345 (100% federal) in incentive payments to eligible professionals.

DMS estimates that in CY 2019 it will make:

 $11,719,218\ (100\%\ federal)$  in incentive payments to eligible professionals.

DMS estimates that in CY 2020 it will make:

\$7,493,999 (100% federal) in incentive payments to eligible professionals.

DMS estimates that in CY 2021 it will make:

\$3,243,281 (100% federal) in incentive payments to eligible professionals.

As DMS anticipates that new eligible professionals will gradually participate in the EHR incentive payment program and that participating eligible professionals will hit the maximum payment threshold along the way, DMS is not indicating the projected number of eligible professionals beyond the first year (calendar year 2011) in this estimate.

DMS estimates that it will make a total amount of incentive payments by category as follows:

\$134,895,894 to eligible professionals;

\$105,958,922 to acute care hospitals; and

\$13,744,615 to critical access hospitals.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are 100% federal funds authorized under the American Recovery and Reinvestment Act (ARRA.)

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

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

(9) Tiering: Is tiering applied? Tiering is applied as incentive payment requirements and amounts vary according to provider category. For example, the requirements and amounts for "eligible professionals" differs from those of acute care hospitals and critical access hospitals.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Electronic health record (HER) incentive payments are not mandated; however, they are authorized by federal laws 42 U.S.C. 1396b(a)(3)(F) and 42 U.S.C. 1396b(t) and federal regulations 42 C.F.R. 495.2 through 10 and 42 C.F.R. 495.300 through 370.

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. EHR incentive payments are not mandated.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation and eligible hospitals which are owned by local government will be affected. The following eligible hospitals which are expected to participate in the electronic health record incentive (EHR) payments are owned by local government: Crittenden Health System, Fleming County Hospital, Hardin Memorial Hospital, Murray-Calloway County Hospital, Taylor Regional Hospital and Westlake Regional Hospital.

Two state-owned hospitals, UK Healthcare and University of Louisville Hospital, plan to participate in the EHR incentive payment program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 495.2 through 10 and 42 C.F.R. 495.300 through 370.

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? Projected revenues by hospital by calendar year (CY) are as follows:

Hospital	CY 2011	CY 2012	CY 2013		
University of Louisville	\$2,272,151	\$1,817,720	\$454,430		
Hospital					
UK Healthcare	\$2,851,921	\$2,281,537	\$570,384		
Crittenden Health Sys-	\$332,429	\$265,943	\$66,486		
tem					
Fleming County Hospital	\$321,688	\$257,350	\$64,338		
Hardin Memorial Hospit-	\$957,429	\$765,943	\$191,486		
al					
Murray-Calloway Co.	\$522,320	\$417,856	\$104,464		
Hospital					
Taylor Regional Hospital	\$522,320	\$417,856	\$104,464		
Westlake Regional Hos-	\$561,077	\$448,862	\$112,215		
pital					

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Projected revenues by hospital by calendar year (CY) are as follows:

Hospital	CY 2011	CY 2012	CY 2013
University of Louisville	\$2,272,151	\$1,817,720	\$454,430
Hospital			
UK Healthcare	\$2,851,921	\$2,281,537	\$570,384
Crittenden Health Sys-	\$332,429	\$265,943	\$66,486
tem			
Fleming County Hospital	\$321,688	\$257,350	\$64,338
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Murray-Calloway Co.	\$522,320	\$417,856	\$104,464
Hospital			

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Taylor Regional Hospital	\$522,320	\$417,856	\$104,464
Westlake Regional Hos-	\$561,077	\$448,862	\$112,215
pital			

(c) How much will it cost to administer this program for the first year? DMS estimates that 127 eligible professionals (i.e. non-hospital) will qualify for EHR incentive payments in calendar year (CY) 2011 and that DMS will make \$2,638,987 (100% federal) in incentive payments to those eligible professionals in CY 2011. DMS estimates that sixty-one (61) of sixty-five (65) acute care hospitals will qualify for EHR incentive payments in CY 2011 and that it will make \$52,979,461 (100% federal) in incentive payments to those hospitals in CY 2011. DMS estimates that seventeen (17) of twenty-nine (29) critical access hospitals will qualify for EHR incentive payments to those hospitals in CY 2011 and that it will make \$6,872,308 (100% federal) in incentive payments to those hospitals in CY 2011.

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

DMS estimates that in CY 2012 it will make:

\$6,317,991 (100% federal) in incentive payments to eligible professionals;

\$42,383,569 (100% federal) in incentive payments to 61 acute care hospitals; and

3,436,154 (100% federal) in incentive payments to 17 critical access hospitals.

DMS estimates that in CY 2013 it will make:

11,045,507 (100% federal) in incentive payments to eligible professionals;

\$10,595,892 (100% federal) in incentive payments to 61 acute care hospitals; and

\$2,061,692 (100% federal) in incentive payments to 17 critical access hospitals.

DMS estimates that in CY 2014 it will make:

\$16,828,621 (100% federal) in incentive payments to eligible professionals;

\$0 in incentive payments to acute care hospitals as DMS anticipates the hospitals will have met the maximum incentive payment amount by the end of CY 2013; and

\$1,374,462 (100% federal) in incentive payments to 17 critical access hospitals

DMS estimates that in CY 2015 it will make:

\$21,053,841 (100% federal) in incentive payments to eligible professionals;

\$0 in incentive payments to acute care hospitals as DMS anticipates the hospitals will have met the maximum incentive payment amount by the end of CY 2013; and

\$0 in incentive payments to critical access hospitals as DMS anticipates the hospitals will have met the maximum incentive payment amount by the end of CY 2014; and

DMS estimates that in CY 2016 it will make:

\$22,665,571 (100% federal) in incentive payments to eligible professionals.

DMS estimates that in CY 2017 it will make:

\$17,025,532 (100% federal) in incentive payments to eligible professionals.

DMS estimates that in CY 2018 it will make:

\$14,863,345 (100% federal) in incentive payments to eligible professionals.

DMS estimates that in CY 2019 it will make:

\$11,719,218 (100% federal) in incentive payments to eligible professionals.

DMS estimates that in CY 2020 it will make:

\$7,493,999 (100% federal) in incentive payments to eligible professionals.

DMS estimates that in CY 2021 it will make:

\$3,243,281 (100% federal) in incentive payments to eligible professionals.

As DMS anticipates that new eligible professionals will gradually participate in the EHR incentive payment program and that participating eligible professionals will hit the maximum payment threshold along the way, DMS is not indicating the projected number of eligible professionals beyond the first year (calendar year 2011) in this estimate.

DMS estimates that it will make a total amount of incentive

\$134,895,894 to eligible professionals; \$105,958,922 to acute care hospitals; and \$13,744,615 to critical access hospitals.

### ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE Minutes of January 11, 2011

#### Call to Order and Roll Call

The January meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, January 11, 2011 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 December 2010 meeting were approved.

#### Present were:

<u>Members:</u> Senators Joe Bowen, David Givens, Alice Forgy Kerr, and Joey Pendleton, and Representatives Leslie Combs Robert Damron, and Danny Ford.

<u>LRC Staff:</u> Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, and Laura Napier.

Guests: Representive Johnny Bell; Robert Brown, Alicia Sneed, Education Professional Standards Board; Emily Dennis, Ellen Gotshall, Registry of Election Finance; Beau Barnes, Kentucky Teachers' Retirement System; Jim Grawe, Board of Accountancy; Tom Nieman, Billy Van Pelt, State Board of Examiners and Registration of Landscape Architects; Jay Davidson, Margaret Hazlette, Board of Social Work; Mark Brengelman, David Garr, Board of Examiners of Psychology; Angela Evans, Board of Private Investigators; Denise Logsdon, Michael West, Board of Licensure for Massage Therapy; Mary Dickey, Chris Fitzpatrick, Anthony Hatton, Cassandra Jobe, Division of Waste Management; Charles Jevin, Marylee Underwood, Heather Wagers, Kentucky State Police; Ann D'Angelo, Judy Taylor, Rick Taylor, Tom Zawacki, Transportation Cabinet; Clay Lamb, James Maxson, Education and Workforce Development Cabinet; Lucretia Johnson, Dwight Lovan, Charles Lowthers, Kelly Tharpe, Department of Workers' Claims; Sandy Chapman, Bill Nold, Robin Coombs, Frank Goins, Michael Staley, DJ Wasson, Department of Insurance; Patricia Cooksey, Marc A. Guilfoil, Mary Scollay, Timothy West, Kentucky Horse Racing Commission; Dawn Bellis, George Mann, Timothy House, Housing, Buildings and Construction; Mary Begley, Stephanie Brammer Barnes, Glenn Bryant, Ray Peters, Cabinet for Health and Family Services.

The Administrative Regulation Review Subcommittee met on Tuesday, January 11, 2011 and submits this report:

#### Administrative Regulations Reviewed by the Subcommittee:

#### EDUCATION PROFESSIONAL STANDARDS BOARD: Administrative Certificates

16 KAR 3:050. Professional certificate for instructional leadership - school principal, all grades. Robert Brown, director, Division of Professional Learning and Assessment, and Alicia Sneed, director, Division of Legal Services, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 5 to comply with the drafting requirements of KRS 13A.222. Without objection, and with agreement of the agency, the amendments were approved.

# 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. Emily Dennis, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Section 1 to make a technical correction. Without objection, and with agreement of the agency, the amendments were approved.

32 KAR 1:190 & E. Forms for gubernatorial slates of candidates and related filers.

# FINANCE AND ADMINISTRATION CABINET: Kentucky Teachers' Retirement System: General Rules

102 KAR 1:225. General compliance with federal tax laws. Beau Barnes, deputy executive secretary and general counsel, represented the system.

#### 102 KAR 1:230. Limitations on benefits.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 1 to make technical corrections; (2) to amend Section 1(6) to delete an unnecessary term; and (3) to amend Section 2(6)(a)2.b. to state that limitation years after December 31, 2008, rather than December 31, 2009, shall apply the mortality tables described in 26 C.F.R. 417(e)(3)(B). Without objection, and with agreement of the agency, the amendments were approved.

102 KAR 1:245. Rollovers and transfers of contributions to other plans.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

# GENERAL GOVERNMENT CABINET: State Board of Accountancy: Board

201 KAR 1:065. Individual license renewal and fee. James Grawe, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to amend the forms incorporated by reference to align with the requirements of the administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 1:140. Procedures for the reinstatement and reissuance of a license.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the TITLE, the NE-CESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend the form incorporated by reference to align with the requirements of the administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

# Board of Examiners and Registration of Landscape Architects: Board

201 KAR 10:050. Fees. Tom Nieman, president, and Billy Van Pelt, member, represented the board.

In response to questions by Representative Lee, Mr. Van Pelt stated that the board had support from the membership and from trade associations. The budget resources decreased significantly over the past few years, and the fee was last increased in 2002. 250 members would be affected to generate \$7,500.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a punctuation error; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### Board of Social Work: Board

201 KAR 23:020. Fees. Jay Davidson, vice chair; James Grawe, assistant attorney general; and Margaret Hazelett, executive director, represented the board.

In response to questions by Representative Lee, Ms. Hazelett stated that the board had notified each licensee and association that fees were being increased. Fees had not been increased since 1997.

In response to a question by Senator Givens, Ms. Hazelett stated that only initial applicants for licensure were required to take a licensure examination. Applicants for renewal did not take the licensure examination.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to: (1) require examination fees to be paid to the board as required by statute; and (2) establish that the examination fee shall be the amount charged by the examining entity, the Association of Social Work Boards. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 23:070. Qualifying education and qualifying experience under supervision.

A motion was made and seconded to approve the following amendments: (1) to amend Section 7(2) to clarify the supervision requirements; and (2) to amend Sections 1, 2, 3, 4, 9, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 23:075. Continuing education.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 3, 4, 5, 7, 9, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### Board of Examiners of Psychologists: Board

201 KAR 26:115. Definition of psychological testing. David Garr, acting executive director, Division of Occupations and Professions, and Mark Brengelman, assistant attorney general, represented the board.

In response to a question by Senator Givens, Mr. Brengelman stated that these administrative regulations were being amended for consistency with the governing statutes, which had also been revised.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:121. Scope of practice and dual credentialing.

#### 201 KAR 26:125. Health service provider designation.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add 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 Section 3 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### 201 KAR 26:130. Complaint procedure.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to make a technical correction; and (2) to amend Section 2 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved. 201 KAR 26:155. Licensed psychologist: application procedures and temporary license.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### 201 KAR 26:171. Requirements for supervision.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 5 to make a technical correction. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CON-FORMITY paragraph and Sections 1 and 3 to make technical corrections and to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:190. Requirements for supervised professional experience.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add 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 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add 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 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:215. Nonresident status.

#### 201 KAR 26:230. Examinations.

A motion was made and seconded to approve the following amendment: to amend Section 3 to clarify board options. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 26:270. Change of license status.

201 KAR 26:290. Licensed psychological practitioner: application procedures.

#### 201 KAR 26:310. Telehealth and telepsychology.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; (2) to amend the NECESSITY, FUNCTION, AND CON-FORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### Board of Licensure for Private Investigators: Board

201 KAR 41:100. Verification of 240 hour employees. Angela Evans, assistant attorney general, and David Garr, acting executive director, Division of Occupations and Professions, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to correct a punctuation error; (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 6 to: (a) clearly establish the requirements for employee registration, quarterly reports, notification of maximum hours, and renewal; and (b) comply with the drafting and formatting requirements of KRS Chapter 13A; (4) to amend Section 6 to incorporate by reference a revised form; and (5) to amend the form incorporated by reference to conform to the administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

#### Board of Licensure for Massage Therapy: Board

201 KAR 42:010. Goals for massage therapy sessions. David Garr, acting executive director, Division of Occupations and Professions; Denise Logsdon, secretary; and Michael West, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### 201 KAR 42:020. Fees.

In response to questions by Representative Damron, Mr. West stated that there was not a fee increase, but that he was unsure if the fee would be refundable for an applicant who did not obtain a license. There had been three (3) applicants who did not obtain licensure after application.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:030. Licensee's change of name, home address, or place of business.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Section 2 to make a technical correction. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:035. Application process, exam, and curriculum requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### 201 KAR 42:040. Renewal.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### 201 KAR 42:050. Complaint procedure and disciplinary action.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to 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 and 7 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:060. Code of ethics, and standards of practice for massage therapists.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend the NECESSITY, FUNCTION, AND CON-FORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:070. Endorsement.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 2, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) revises material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:080. Programs of massage therapy instruction.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 through 4 and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

#### 201 KAR 42:110. Continuing education requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3 through 8, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

# 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. Chris Fitzpatrick, branch manager, Recycling Branch, and Tony Hatton, director, Division of Waste Management, represented the division.

In response to questions by Senator Bowen, Mr. Hatton stated that funding was allotted prior to a dump cleanup because sometimes local governments did not have existing funds to begin the clean up. Mr. Fitzpatrick stated that inspections were performed and receipts required to ensure that funding was spent for the original purpose. Repayment was required for inappropriate expenditures, and all clean up had to comply with the administrative regulation.

# JUSTICE AND PUBLIC SAFETY CABINET: Department of State Police: Medical Examiner Protocols

502 KAR 12:010. Sexual assault forensic-medical examination protocol. Charles Geveden, deputy secretary, and Heather Wagers, staff attorney, represented the department. Mary Lee Underwood, staff attorney, Kentucky Association of Sexual Assault Programs, Inc., appeared in support of this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 2, 4, and 5 to comply with the drafting and formatting 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: Division

601 KAR 1:018 & E. Special overweight or overdimensional permits. Ann D'Angelo, assistant general counsel; Rick Taylor, deputy commissioner; and Tom Zawacki, commissioner, represented the division. Judy Taylor, Lexington-fayette Urban County Government and Commerce Lexington, appeared in support of this administrative regulation.

In response to a question by Co-Chair Combs, Ms. D'Angelo stated that this administrative regulation made technical changes, reorganized requirements, and exempted Fayette County from certain rush-hour prohibitions because the Fayette County section of the interstate system involved bypassed city activity.

Senator Pendleton thanked the division for further amending this administrative regulation.

In response to a question by Representative Damron, Ms. D'Angelo stated that Fayette County had petitioned the division to establish the rush-hour prohibition exemption. Ms. Taylor affirmed that Fayette County had petitioned the division to establish the rush-hour prohibition exemption.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and the RELATES TO paragraph and Sections 1, 2, 4, 5, 7, 8, and 11 through 22 to make technical corrections; (2) to amend Section 3 to delete steering axle requirements for 20,000 pounds; (3) to amend Section 10 to delete requirements pertaining to bulldozers and front end loaders; (4) to revert pilot and escort requirements to the previous version of this administrative regulation before the emergency amendment; (5) to amend Sections 1 and 13 to delete requirements pertaining to sealed, containerized, ocean-going cargo units; and (6) to amend Section 19 to revert inclement weather provisions to those in the previous version of this administrative regulation before this emergency amendment. Without objection, and with agreement of the agency, the amendments were approved.

#### 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. Clay Lamb, staff attorney, and James Maxson, policy advisor and attorney, represented the office.

In response to a question by Senator Givens, Mr. Maxson stated that H-2A and H-2B records were subject to open records requests and were not confidential unless the subject matter was specifically exempted in accordance with open records law.

In response to questions by Representative Bell, Mr. Maxson stated that various requests had been made from different parties for H-2A and H-2B records, including employer and employee records. Legal Aid Services frequently requested these records.

#### LABOR CABINET: Department of Workers' Claims: Department

803 KAR 25:089. Workers' compensation medical fee schedule for physicians. Thomas Dockter, staff attorney; Dwight Lovan, commissioner; and Charles E. Lowther, general counsel, represented the department.

 $803\ {\rm KAR}\ 25:091\ {\rm \&}\ {\rm E}.$  Workers' compensation hospital fee schedule.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 4, 5, 9, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### PUBLIC PROTECTION CABINET: Department of Insurance: Division of Agent Licensing: Agents, Consultants, Solicitors and Adjusters

806 KAR 9:220. Continuing education. Sandy Chapman, acting director, represented the division.

#### Health and Life Division: Trade Practices and Frauds

 $806\ {\rm KAR}\ 12{:}150.$  Annuity disclosures. William Nold, director, represented the division.

806 KAR 12:170. Life insurance disclosures.

#### Property and Casualty Division: Rates and Rating Organizations

806 KAR 13:120. Workers' Compensation deductible policies. Robin Coombs, assistant director; Frank Goins, director; and Michael Staley, policy specialist, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### Mine Subsidence Insurance

806 KAR 44:010. Notification of qualified locations.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### Kentucky Horse Racing Commission: Thoroughbred Racing

810 KAR 1:110 & E. Out-of-competition testing. Patricia Cooksey, director of public relations; Mary Scollay, DVM, Equine Medical Director; and Timothy West, assistant general counsel, represented the commission.

In response to a question by Senator Pendleton, Ms. Cooksey stated that she supported these administrative regulations.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3(2) to clarify that a horse can only be designated for testing if it meets the specified criteria; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, 4, and 6 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### Harness Racing

811 KAR 1:240 & E. Out-of-competition testing.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3(2) to clarify that a horse can only be designated for testing if it meets the specified criteria; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, 4, and 6 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### Quarter Horse, Appaloosa and Arabian Racing

#### 811 KAR 2:150 & E. Out-of-competition testing.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3(2) to clarify that a horse can only be designated for testing if it meets the specified criteria; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, 4, and 6 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

# Department of Housing, Buildings and Construction: Division of Building Code Enforcement: Kentucky Building Code

815 KAR 7:120. Kentucky building code. Dawn M. Bellis, general counsel; Timothy R. House, director of plumbing and acting director of HVAC; and George Mann, deputy commissioner, represented the division.

In response to a question by Representative Damron, Ms. Bellis stated that public comments were received from stakeholders during the public comment period. The comments concerned the original provision that a permit holder would bear the responsibility of notifying the owner of carbon monoxide requirements. The division amended that requirement in response to comments so that the permitting authority

would bear the responsibility of notifying the owner.

In response to a question by Representative Lee, Mr. Mann stated that the carbon monoxide detectors were only required for new construction if the construction was to contain fuel-fired equipment or if there was to be an attached garage. A new construction that used only electricity would not be required to have the carbon monoxide detectors.

815 KAR 7:125. Kentucky residential code.

#### **Division of Plumbing: Plumbing**

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

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 4, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Health Care: Health Services and Facilities

902 KAR 20:410 & E. Specialty intermediate care clinics. Mary Begley, inspector general, represented the division.

Representative Bell stated that, the average cost for a patient at Oakwood was approximately \$370,000 per year. An administrative regulation that provided for the transfer of some patients to community living should result in cost savings, but the division had stated in the REGULATORY IMPACT ANALYSIS AND TIERING STATE-MENT that it did not. Caregivers who assisted those transferred to community living were not reimbursed by the state at the same \$370,000 per year as those at Oakwood. Representative Bell requested that the division consider ways to save the state money and to help home-care providers.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 2 to correct statutory citations; and (2) to amend Section 5 to correct numbering; and (4) to amend Sections 4, 5, 6, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### Department for Mental Health and Mental Retardation Services: Division of Administration and Financial Management: Institutional Care

908 KAR 3:050. Per diem rates. Glenn Bryant, assistant director, and Ray Peters, program administrator, represented the division.

At the December 14, 2010, meeting of the Administrative Regulation Review Subcommittee 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 and formatting 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 1(1)(b) to decrease the per diem rates for four (4) facilities, including: (1) Central State Hospital, from \$685 to \$660; (2) Western State Hospital, from \$720 to \$710; (3) Western State Nursing Facility, from \$350 to \$345; and (4) Eastern State Hospital, from \$445 to \$440. Without objection, and with agreement of the agency, the amendments were approved.

#### Other Business:

Co-Chair Combs introduced Senator Joe Bowen who was appointed to the Subcommittee to fill the Senate vacancy. Senator Pendleton made a motion, seconded by Senator Kerr, that Senator Bowen be nominated for Senate Co-Chair. Senator Bowen accepted the nomination. Senator Pendleton made a motion, seconded by Senator Kerr, to end nominations and to elect Senator Bowen by acclimation. The motion passed and Senator Bowen was elected as Senate Co-Chair of the Subcommittee.

Co-Chair Combs stated that she was resigning as Co-Chair and as a member of the Subcommittee after the meeting. She introduced Rep. Johnny Bell who was in attendance for today's meeting. A motion was made and seconded to approve a resolution honoring Co-Chair Combs for the outstanding work she did while serving on the Administrative Regulation Review Subcommittee. The resolution was unanimously approved.

The following administrative regulations were deferred to the February 14, 2011, meeting of the Subcommittee:

### FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Office of Sales and Excise Taxes: Forms

103 KAR 3:050. Miscellaneous taxes forms manual.

#### PUBLIC PROTECTION CABINET: Crime Victims Compensation Board: Sexual Assault Examinations Program

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

#### **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.

# JUSTICE AND PUBLIC SAFETY CABINET: Office of Drug Policy: Office

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.

#### TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Carriers: Division

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

#### PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Thoroughbred Racing 810 KAR 1:001. Definitions.

TO RAIL 1.001. Deminions.

810 KAR 1:011. Pari-mutuel wagering.

810 KAR 1:120. Exotic wagering.

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#### 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: Office of Health Policy: Certificate of Need

900 KAR 6:060 & E. Timetable for submission of certificate of need applications.

The Subcommittee adjourned at 2 p.m. until February 14, 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.

NONE

# **CUMULATIVE SUPPLEMENT**

### **Locator Index - Effective Dates**

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

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**

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

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.

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		der VOLUME 36 are those a Register but had not yet go			
SYMBOL KEY:			As Amended	1434	
* Statement of Con			31 KAR 6:010		
** Withdrawn, not in			Amended	2110 <i>-M</i>	
*** Withdrawn befo			As Amended	2176	6-4-10
		310-on the effective	101 KAR 2:066		
		that repeals anoth-	Amended	1963	
		delete the repealed	Withdrawn		7-19-10
0	lation and the re	pealing administra-	102 KAR 1:160	1000	
tive regulation.			Amended	1966	0.4.40
		REGULATIONS:	As Amended 102 KAR 1:225	2177	6-4-10
	-			1067	
		80 days from the date lus number of days of	Amended Amended	1967 2056-A	
		ement or repeal, whi-	As Amended	2050-A	
chever occurs first.)		ement of repeat, whi-	Amended	2061-A	
			As Amended	2302	6-4-10
01 KAR 2:066E			200 KAR 5:314	2002	0 4 10
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03 KAR 1:140E	1871	<u> </u>	As Amended	2047 <i>-M</i>	
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05 KAR 1:160E			201 KAR 16:030		
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10 KAR 1:100E	0400	0.47.40	As Amended	2312	6-16-10
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11 KAR 1:037E Replaced	2169	3-17-10	Amended	2208	6 15 1
11 KAR 1:070E		(See 37 Ky.R.)	Withdrawn 201 KAR 22:045		6-15-10 (See 37 Ky.R.
Resubmitted	2023 <i>-M</i>	1-15-10	Amended	2209	(See 57 Ky.K.
11 KAR 1:230	2023-111	1-15-10	201 KAR 22:135	2209	(See 37 Ky.R.
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11 KAR 2:130			Amended	152	
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06 KAR 1:180E			Amended	2215	
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3 KAR 1:020	oo /=		Amended	2114 <i>-M</i>	8-5-10
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1 KAR 3:010			Amended	2119 <i>-M</i>	
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filed; or 180 days from			900 KAR 5:020E	1384	10-18-10
requested extension, chever occurs first.)	or upon replace	ment of repeat, whi-	900 KAR 6:060E 902 KAR 20:320E	1385 1387	10-18-10 10-18-10
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815 KAR 1:025E		(See 36 Ky.R.)	11 KAR 3:100 )		
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810 KAR 1:026E	18	6-15-10	Amended	1736	
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102 KAR 1:175 Amendment	2039		201 KAR 8:135 Repealed	224	7-15-10
102 KAR 1:225	2039		201 KAR 8:140	224	7-15-10
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102 KAR 1:230			Repealed	224	7-15-10
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SYMBOL KEY:					

\*\* Withdrawn, not in effect within 1 year of publication \*\*\* 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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304.44-20       806 KAR 46.040       201 KAR 20.226         304.45-20       806 KAR 46.050       201 KAR 20.370         304.45-200       806 KAR 46.040       314.051       201 KAR 20.370         304.45-200       806 KAR 46.040       314.051       201 KAR 20.370         304.45-200       806 KAR 46.040       314.071       201 KAR 20.370         304.45-200       806 KAR 46.040       314.071       201 KAR 20.370         304.45-200       103 KAR 30.505       201 KAR 20.370       201 KAR 20.370         304.45-200       806 KAR 46.040       314.071       201 KAR 20.370         304.45-200       806 KAR 46.040       314.071       201 KAR 20.370         304.45-200       201 KAR 20.370       201 KAR 20.225       201 KAR 20.230         309.333       201 KAR 30.500       314.073       201 KAR 20.200         309.334       201 KAR 30.500       314.075       201 KAR 20.200         309.335       201 KAR 42.020       314.075       201 KAR 20.200         309.336       201 KAR 42.000       314.075       201 KAR 20.200         309.337       201 KAR 42.000       314.051       201 KAR 20.200         309.336       201 KAR 42.000       314.051       201 KAR 20.200         309.337				
304.49.020       806 KAR 46.040       201 KAR 20.370         304.49.050       806 KAR 46.040       201 KAR 20.070         304.49.70       806 KAR 46.040       201 KAR 20.070         304.49.70       806 KAR 46.040       201 KAR 20.225         304.49.70       806 KAR 46.040       201 KAR 20.230         304.49.70       806 KAR 12.170       201 KAR 20.201         304.49.20       806 KAR 12.170       201 KAR 20.201         304.49.20       806 KAR 12.170       201 KAR 20.201         304.49.20       806 KAR 12.170       201 KAR 20.201         309.133       201 KAR 340.02       201 KAR 20.161         309.134       201 KAR 39.050       314.073       201 KAR 20.202         309.334       201 KAR 39.050       314.073       201 KAR 20.202         309.335       201 KAR 42.010       201 KAR 20.202       201 KAR 20.202         309.335       201 KAR 42.000       314.075       201 KAR 20.202         309.335       201 KAR 42.000       314.075       201 KAR 20.202         309.355       201 KAR 42.000       201 KAR 20.202       201 KAR 20.202         309.356       201 KAR 42.000       201 KAR 20.202       201 KAR 20.202         309.357       201 KAR 42.000       314.013       201				
304.49-00       806 KAR 46-040       314.051       201 KAR 20:070         304.48-070       806 KAR 46-040       201 KAR 20:225         304.48-170       806 KAR 45:040       201 KAR 20:230         304.48-170       806 KAR 45:050       201 KAR 20:230         304.48-230       806 KAR 46:040       314.071       201 KAR 20:240         304.48-230       806 KAR 46:040       314.071       201 KAR 20:162         309 133       201 KAR 20:162       201 KAR 20:162       201 KAR 20:162         309 133       201 KAR 30:00       201 KAR 20:230       201 KAR 20:230         309 335       201 KAR 30:00       314.073       201 KAR 20:230         309 336       201 KAR 20:00       314.075       201 KAR 20:225         309 337       201 KAR 42:010       314.075       201 KAR 20:226         309 335       201 KAR 42:010       314.075       201 KAR 20:226         309 335       201 KAR 42:010       314.075       201 KAR 20:226         309 335       201 KAR 42:010       314.075       201 KAR 20:226         309 335       201 KAR 42:020       201 KAR 20:226       201 KAR 20:226         309 336       201 KAR 42:020       314.075       201 KAR 20:226         309 336       201 KAR 42:020				
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304.48-170       806 KAR 46:040       201 KAR 20:28         304.48-180       806 KAR 46:050       201 KAR 20:230         304.48-230       806 KAR 46:040       314.071       201 KAR 20:181         306.133       201 KAR 34:020       201 KAR 20:182       201 KAR 20:182         306.333       201 KAR 34:020       201 KAR 20:230       201 KAR 20:230         308.343       201 KAR 34:020       201 KAR 20:230       201 KAR 20:230         308.341       201 KAR 34:020       201 KAR 20:230       201 KAR 20:230         308.314       201 KAR 30:50       201 KAR 20:225       201 KAR 20:225         309.300       201 KAR 42:030       314.073       201 KAR 20:225         309.355       201 KAR 42:030       314.075       201 KAR 20:225         201 KAR 42:030       314.085       201 KAR 20:255       201 KAR 42:030       314.085       201 KAR 20:255         201 KAR 42:030       314.091       201 KAR 20:256       201 KAR 20:161       309.395       201 KAR 42:030       314.091       201 KAR 20:256         201 KAR 42:030       314.091       201 KAR 20:256       201 KAR 20:260       201 KAR 20:260       201 KAR 20:260	304.48-050	806 KAR 46:040	314.051	201 KAR 20:070
806 KAR 12:70         201 KAR 20:20           304.49-20         103 KAR 3050         201 KAR 20:370           304.49-20         103 KAR 3050         201 KAR 20:161           304.49-20         103 KAR 3050         201 KAR 20:161           304.49-20         201 KAR 30:00         201 KAR 20:162           309.133         201 KAR 34:020         201 KAR 20:25           309.133         201 KAR 34:020         201 KAR 20:25           309.314         201 KAR 39:050         314.073         201 KAR 20:23           309.304         201 KAR 42:010         201 KAR 20:230         201 KAR 20:230           309.305         201 KAR 42:010         201 KAR 20:230         201 KAR 20:230           309.305         201 KAR 42:010         201 KAR 20:230         201 KAR 20:230           309.305         201 KAR 42:010         314.075         201 KAR 20:225           309.356         201 KAR 42:030         314.085         201 KAR 20:255           309.357         201 KAR 42:030         314.091         201 KAR 20:301           309.358         201 KAR 42:030         201 KAR 20:370         201 KAR 20:370           309.358         201 KAR 42:030         201 KAR 20:370         201 KAR 20:370           309.358         201 KAR 42:030         201 KAR				
304.48-20       103 KAR 46:050       201 KAR 20:370         304.48-203       806 KAR 46:040       314.071       201 KAR 20:370         304.48-203       806 KAR 46:040       314.071       201 KAR 20:161         309.133       201 KAR 34:020       201 KAR 20:225       201 KAR 20:230         309.343       201 KAR 34:020       201 KAR 20:230       201 KAR 20:230         309.344       201 KAR 34:020       201 KAR 20:230       201 KAR 20:230         309.341       201 KAR 34:020       201 KAR 20:230       201 KAR 20:230         309.350       201 KAR 42:010       201 KAR 20:225       201 KAR 20:225         309.350       201 KAR 42:020       201 KAR 20:225       201 KAR 20:225         309.350       201 KAR 42:030       314.075       201 KAR 20:225         309.350       201 KAR 42:030       314.095       201 KAR 20:216         309.357       201 KAR 42:030       314.091       201 KAR 20:161         309.358       201 KAR 42:030       314.091       201 KAR 20:161         309.359       201 KAR 42:030       314.103       201 KAR 20:275         309.359       201 KAR 42:030       314.103       201 KAR 20:161         309.362       201 KAR 42:030       314.103       201 KAR 20:020 <tr< td=""><td>304.48-170</td><td></td><td></td><td></td></tr<>	304.48-170			
304.48-220         103 KAR 3:050         201 KAR 2:0:70         201 KAR 2:0:161           306,48-230         806 KAR 12:170         201 KAR 2:0:162         201 KAR 2:0:25           309,133         201 KAR 3:0:20         201 KAR 2:0:25         201 KAR 2:0:25           309,133         201 KAR 3:0:20         201 KAR 2:0:25         201 KAR 2:0:25           309,314         201 KAR 3:9:50         201 KAR 2:0:25         201 KAR 2:0:27         201 KAR 2:0:20           309,336         201 KAR 4:2:01         314.075         201 KAR 2:0:23         201 KAR 2:0:25           309,355         201 KAR 4:2:03         314.085         201 KAR 2:0:25         201 KAR 2:0:25           309,356         201 KAR 4:2:03         314.095         201 KAR 2:0:25         201 KAR 2:0:25           309,357         201 KAR 4:2:03         314.095         201 KAR 2:0:30         201 KAR 2:0:30           309,358         201 KAR 4:2:03         314.091         201 KAR 2:0:30         201 KAR 2:0:30           309,358         201 KAR 4:2:03         314.091         201 KAR 2:0:30         201 KAR 2:0:30           309,359         201 KAR 4:2:03         201 KAR 2:0:30         201 KAR 2:0:30         201 KAR 2:0:30           309,359         201 KAR 4:2:03         314.101         201 KAR 2:0:10         201 KAR				
304.48-230       806 KAR 40:040       314.071       201 KAR 20:161         309.133       201 KAR 34:020       201 KAR 20:25         309.133       201 KAR 34:020       201 KAR 20:230         309.133       201 KAR 30:050       201 KAR 20:240         309.304       201 KAR 30:050       201 KAR 20:240         309.314       201 KAR 30:050       201 KAR 20:225         309.350       201 KAR 42:020       201 KAR 20:230         309.352       201 KAR 42:030       314.075       201 KAR 20:240         309.355       201 KAR 42:030       314.065       201 KAR 20:240         309.356       201 KAR 42:030       314.075       201 KAR 20:240         309.357       201 KAR 42:030       314.091       201 KAR 20:420         309.358       201 KAR 42:030       201 KAR 20:420       201 KAR 20:420         309.359       201 KAR 42:040       314.091       201 KAR 20:420         309.369       201 KAR 42:040       314.103       201 KAR 20:420         309.361       201 KAR 42:040       314.103       201 KAR 20:420         309.362       201 KAR 42:040       314.103       201 KAR 20:420         309.363       201 KAR 42:040       314.113       201 KAR 20:420         309.364				
800 KAR 12:170         201 KAR 20:162           300 1333         201 KAR 34:020         201 KAR 20:236           309 1335         201 KAR 34:020         201 KAR 20:230           309 314         201 KAR 39:050         314.073         201 KAR 20:230           309 314         201 KAR 39:050         314.073         201 KAR 20:225           309 352         201 KAR 42:010         201 KAR 20:230         201 KAR 20:230           309 355         201 KAR 42:030         314.075         201 KAR 20:240           309 356         201 KAR 42:030         314.075         201 KAR 20:240           309 357         201 KAR 42:030         314.095         201 KAR 20:240           309 357         201 KAR 42:030         314.091         201 KAR 20:25           201 KAR 42:040         314.091         201 KAR 20:056         201 KAR 20:056           201 KAR 42:050         201 KAR 20:056         201 KAR 20:056         201 KAR 20:056           201 KAR 42:050         201 KAR 20:05         201 KAR 20:05         201 KAR 20:05           309 359         201 KAR 42:050         314.103         201 KAR 20:05           309 363         201 KAR 42:050         314.131         201 KAR 20:05           309 363         201 KAR 42:050         314.141         201 KAR			044.074	
309.133       201 KAR 34-020       201 KAR 20.230         309.138       201 KAR 34-020       201 KAR 20.240         309.312       201 KAR 30-050       201 KAR 20.275         309.314       201 KAR 30-050       201 KAR 20.275         309.314       201 KAR 30-050       201 KAR 20.275         309.314       201 KAR 42.020       201 KAR 20.225         309.350       201 KAR 42.020       201 KAR 20.230         309.352       201 KAR 42.030       314.075       201 KAR 20.240         309.355       201 KAR 42.030       314.075       201 KAR 20.240         201 KAR 42.030       314.091       201 KAR 20.240         201 KAR 42.030       314.091       201 KAR 20.240         201 KAR 42.030       314.091       201 KAR 20.450         201 KAR 42.030       314.091       201 KAR 20.450         201 KAR 42.040       314.091       201 KAR 20.450         309.356       201 KAR 42.040       314.103       201 KAR 20.470         309.369       201 KAR 42.040       314.103       201 KAR 20.470         309.361       201 KAR 42.040       314.103       201 KAR 20.470         309.362       201 KAR 42.040       314.113       201 KAR 20.470         309.363       201 KAR 42.040 <td>304.48-230</td> <td></td> <td>314.071</td> <td></td>	304.48-230		314.071	
309.1336         201 KAR 34.020         201 KAR 20.230           309.138         201 KAR 34.020         201 KAR 20.370           309.304         201 KAR 39.050         314.073         201 KAR 20.230           309.314         201 KAR 39.050         314.073         201 KAR 20.225           309.352         201 KAR 42.020         201 KAR 20.230         201 KAR 20.230           309.355         201 KAR 42.030         314.075         201 KAR 20.240           309.355         201 KAR 42.030         314.085         201 KAR 20.240           309.357         201 KAR 42.030         314.095         201 KAR 20.255           201 KAR 42.040         314.091         201 KAR 20.056         201 KAR 20.056           201 KAR 42.040         314.091         201 KAR 20.056         201 KAR 20.056           201 KAR 42.040         314.091         201 KAR 20.056         201 KAR 20.056           201 KAR 42.040         314.107         201 KAR 20.016         201 KAR 20.016           309.359         201 KAR 42.035         201 KAR 20.016         201 KAR 20.016           309.362         201 KAR 42.016         314.107         201 KAR 20.016           309.363         201 KAR 42.050         314.131         201 KAR 20.016           309.363         201 KAR 42	200 122			
309.138         201 KAR 30.050         201 KAR 20.370           309.304         201 KAR 30.050         314.073         201 KAR 20.370           309.312         201 KAR 30.050         314.073         201 KAR 20.20           309.314         201 KAR 30.050         314.073         201 KAR 20.20           309.350         201 KAR 42.010         201 KAR 20.20         201 KAR 20.20           309.352         201 KAR 42.080         201 KAR 20.20         201 KAR 20.225           309.355         201 KAR 42.010         314.075         201 KAR 20.025           201 KAR 42.080         201 KAR 20.056         201 KAR 20.056           201 KAR 42.080         314.091         201 KAR 20.056           201 KAR 42.080         201 KAR 20.056         201 KAR 20.056           201 KAR 42.080         201 KAR 20.076         201 KAR 20.076           309.359         201 KAR 42.070         201 KAR 20.070           309.361         201 KAR 42.070         201 KAR 20.070           309.362         201 KAR 42.070         201 KAR 20.070           309.363         201 KAR 42.080         314.103         201 KAR 20.076           309.363         201 KAR 42.070         201 KAR 20.076         201 KAR 20.076           309.363         201 KAR 42.080         3				
309.304       201 KAR 39:050       201 KAR 20:370         309.312       201 KAR 39:050       314.073       201 KAR 20:226         309.352       201 KAR 42:020       201 KAR 20:230         309.355       201 KAR 42:030       314.075       201 KAR 20:240         309.355       201 KAR 42:050       201 KAR 20:05       201 KAR 20:05         201 KAR 42:050       201 KAR 20:05       201 KAR 20:05       201 KAR 20:05         201 KAR 42:050       201 KAR 20:05       201 KAR 20:05       201 KAR 20:05         201 KAR 42:050       201 KAR 20:05       201 KAR 20:05       201 KAR 20:05         201 KAR 42:060       201 KAR 20:05       201 KAR 20:05       201 KAR 20:05         309.357       201 KAR 42:060       201 KAR 20:06       201 KAR 20:07         309.359       201 KAR 42:070       201 KAR 20:00       304 KAR 20:07         309.351       201 KAR 42:050       314.103       201 KAR 20:10         309.352       201 KAR 42:050       314.131       201 KAR 20:10         309.353       201 KAR 42:050       314.131       201 KAR 20:10         309.354       201 KAR 42:050       314.137       201 KAR 20:10         309.355       201 KAR 20:050       314.131       201 KAR 20:110         309.36				
309.312         201 KAR 39:050         314.073         201 KAR 20:20           309.314         201 KAR 39:050         201 KAR 20:20         201 KAR 20:20           309.350         201 KAR 42:010         201 KAR 20:230         201 KAR 20:230           309.352         201 KAR 42:080         201 KAR 20:255           201 KAR 42:030         314.075         201 KAR 20:255           201 KAR 42:050         201 KAR 20:056         201 KAR 20:056           201 KAR 42:060         314.091         201 KAR 20:056           201 KAR 42:060         201 KAR 20:056         201 KAR 20:056           201 KAR 42:060         201 KAR 20:056         201 KAR 20:056           201 KAR 42:070         201 KAR 20:07         201 KAR 20:07           309.359         201 KAR 42:070         201 KAR 20:07         201 KAR 20:07           309.361         201 KAR 42:020         314.107         201 KAR 20:10           309.362         201 KAR 42:020         314.131         201 KAR 20:10           309.363         201 KAR 42:030         314.141         201 KAR 20:10           309.363         201 KAR 42:030         314.141         201 KAR 20:10           309.363         201 KAR 42:030         314.141         201 KAR 20:10           309.363         201 KAR				
309.314       201 KAR 30:050       201 KAR 20:0225         309.350       201 KAR 42:020       201 KAR 20:230         309.355       201 KAR 42:030       314.075       201 KAR 20:240         309.355       201 KAR 42:030       314.075       201 KAR 20:265         201 KAR 42:080       314.085       201 KAR 20:056       201 KAR 20:056         201 KAR 42:080       314.091       201 KAR 20:056       201 KAR 20:056         201 KAR 42:080       314.091       201 KAR 20:056       201 KAR 20:056         201 KAR 42:080       314.091       201 KAR 20:056       201 KAR 20:056         309.357       201 KAR 42:035       201 KAR 20:056       201 KAR 20:056         309.359       201 KAR 42:040       314.103       201 KAR 20:370         309.359       201 KAR 42:040       314.103       201 KAR 20:400         309.361       201 KAR 42:050       314.131       201 KAR 20:400         309.362       201 KAR 42:050       314.137       201 KAR 20:400         309.363       201 KAR 42:050       314.137       201 KAR 20:400         313.030       201 KAR 42:050       314.131       201 KAR 20:400         313.300       201 KAR 82:051       201 KAR 20:400       314.121       201 KAR 20:400			314 073	
309.350       201 KAR 42:010       201 KAR 20:225         309.352       201 KAR 42:020       201 KAR 20:230         309.355       201 KAR 42:010       314.075       201 KAR 20:225         201 KAR 42:030       314.085       201 KAR 20:225         201 KAR 42:060       201 KAR 20:0163       201 KAR 20:025         201 KAR 42:060       201 KAR 20:0166       201 KAR 20:0166         201 KAR 42:000       201 KAR 20:110       201 KAR 20:1161         309.357       201 KAR 42:000       201 KAR 20:161         309.359       201 KAR 42:035       201 KAR 20:370         201 KAR 42:000       201 KAR 20:370       201 KAR 20:370         309.359       201 KAR 42:000       314.103       201 KAR 20:370         309.361       201 KAR 42:000       314.131       201 KAR 20:161         309.362       201 KAR 42:000       314.131       201 KAR 20:470         309.363       201 KAR 20:00       314.131       201 KAR 20:161         309.363       201 KAR 20:00       314.131       201 KAR 20:020         314.170       201 KAR 20:060       314.131       201 KAR 20:010         313.300       201 KAR 20:060       314.142       107 KAR 20:010         313.300       201 KAR 20:060       314.161			0111010	
201 KAR 2020         201 KAR 20230           309.352         201 KAR 20240         201 KAR 20240           309.355         201 KAR 42:030         314.075         201 KAR 20:245           201 KAR 42:030         314.085         201 KAR 20:245           201 KAR 42:060         201 KAR 20:450         201 KAR 20:450           201 KAR 42:060         201 KAR 20:161         201 KAR 20:161           309.357         201 KAR 42:040         201 KAR 20:161           309.358         201 KAR 42:040         201 KAR 20:161           309.359         201 KAR 42:055         201 KAR 20:370           201 KAR 42:070         201 KAR 20:450           309.361         201 KAR 42:070         201 KAR 20:225           309.362         201 KAR 42:020         314.131         201 KAR 20:220           201 KAR 42:020         314.131         201 KAR 20:220         201 KAR 20:220           309.362         201 KAR 42:020         314.131         201 KAR 20:470           201 KAR 42:060         314.131         201 KAR 20:470         201 KAR 20:470           313.050         201 KAR 8571         314.122         107 KAR 20:470           313.050         201 KAR 8571         314.171         201 KAR 20:056           313.050         201 KAR 8571				
309.355       201 KAR 42:010       314.075       201 KAR 20:225         201 KAR 42:030       314.085       201 KAR 20:235         201 KAR 42:060       201 KAR 20:056       201 KAR 20:056         201 KAR 42:080       314.091       201 KAR 20:056         309.357       201 KAR 42:030       201 KAR 20:056         309.357       201 KAR 42:035       201 KAR 20:161         309.358       201 KAR 42:035       201 KAR 20:370         201 KAR 42:035       201 KAR 20:370       201 KAR 20:370         309.361       201 KAR 42:035       201 KAR 20:101         309.362       201 KAR 42:035       201 KAR 20:101         309.363       201 KAR 42:035       201 KAR 20:101         309.362       201 KAR 42:035       201 KAR 20:101         309.363       201 KAR 42:050       314.103       201 KAR 20:101         309.363       201 KAR 42:060       314.107       201 KAR 20:101         311.597       201 KAR 42:060       314.103       201 KAR 20:102         313.030       201 KAR 8:571       314.103       201 KAR 20:162         313.04       201 KAR 8:571       314.171       201 KAR 20:162         313.050       201 KAR 8:571       314.171       201 KAR 20:162         313.050<				
201 KAR 42:030         314.085         201 KAR 20:163           201 KAR 42:050         201 KAR 20:450         201 KAR 20:450           201 KAR 42:060         314.091         201 KAR 20:450           201 KAR 42:040         201 KAR 20:101         201 KAR 20:101           309.357         201 KAR 42:040         201 KAR 20:110           309.358         201 KAR 42:035         201 KAR 20:162           201 KAR 42:070         201 KAR 20:300         201 KAR 20:370           309.359         201 KAR 42:035         201 KAR 20:450           309.361         201 KAR 42:030         201 KAR 20:110           309.362         201 KAR 42:040         314.103         201 KAR 20:101           309.363         201 KAR 42:040         314.131         201 KAR 20:101           309.363         201 KAR 42:050         314.137         201 KAR 20:101           309.363         201 KAR 42:060         314.131         201 KAR 20:20           3114.170         201 KAR 42:050         314.131         201 KAR 20:400           3114.170         201 KAR 20:060         314.142         107 KAR 20:101           313.045         201 KAR 8:571         314.171         201 KAR 20:400           313.045         201 KAR 8:571         314.171         201 KAR 20:162 <td>309.352</td> <td>201 KAR 42:080</td> <td></td> <td>201 KAR 20:240</td>	309.352	201 KAR 42:080		201 KAR 20:240
201 KAR 42:050         201 KAR 20:225           201 KAR 42:080         314.091         201 KAR 20:056           201 KAR 42:080         314.091         201 KAR 20:056           201 KAR 42:040         201 KAR 20:161           309.357         201 KAR 42:035         201 KAR 20:370           201 KAR 42:070         201 KAR 20:370         201 KAR 20:370           309.359         201 KAR 42:070         201 KAR 20:370           309.361         201 KAR 42:070         201 KAR 20:400           309.361         201 KAR 42:070         201 KAR 20:400           309.361         201 KAR 42:070         201 KAR 20:400           309.362         201 KAR 42:020         314.103         201 KAR 20:400           309.362         201 KAR 42:020         314.131         201 KAR 20:200           309.363         201 KAR 42:080         201 KAR 20:010         314.132           309.363         201 KAR 42:080         201 KAR 20:016         313.130           313.030         201 KAR 82:040         314.103         201 KAR 20:016           313.04         201 KAR 82:06         314.137         201 KAR 20:016           313.05         201 KAR 82:06         314.142         107 KAR 20:016           313.05         201 KAR 8:571         314.	309.355	201 KAR 42:010	314.075	201 KAR 20:225
201 KAR 42:060         201 KAR 20:056           201 KAR 42:00         201 KAR 20:110           309.357         201 KAR 42:040         201 KAR 20:161           309.358         201 KAR 42:035         201 KAR 20:162           201 KAR 42:036         201 KAR 20:370           201 KAR 42:030         201 KAR 20:370           309.359         201 KAR 42:030         201 KAR 20:307           309.359         201 KAR 42:030         201 KAR 20:400           309.361         201 KAR 42:020         314.103         201 KAR 20:400           309.362         201 KAR 42:020         314.131         201 KAR 20:400           309.363         201 KAR 42:020         314.131         201 KAR 20:470           201 KAR 42:020         314.131         201 KAR 20:470         201 KAR 20:470           201 KAR 42:020         314.131         201 KAR 20:470         201 KAR 20:470           201 KAR 42:020         314.131         201 KAR 20:470         201 KAR 20:470           309.363         201 KAR 42:080         201 KAR 20:470         201 KAR 20:470           313.03         201 KAR 8571         314.161         201 KAR 20:470           313.045         201 KAR 8:571         314.470         201 KAR 20:450           313.050         201 KAR 8:571<		201 KAR 42:030	314.085	201 KAR 20:163
201 KAR 42:080         314.091         201 KAR 20:066           309.357         201 KAR 42:040         201 KAR 20:161           309.356         201 KAR 42:035         201 KAR 20:255           201 KAR 42:035         201 KAR 20:070         201 KAR 20:161           309.359         201 KAR 42:035         201 KAR 20:400           309.359         201 KAR 42:070         201 KAR 20:400           309.361         201 KAR 42:070         201 KAR 20:400           309.362         201 KAR 42:070         201 KAR 20:400           309.361         201 KAR 42:020         314.103         201 KAR 20:410           309.362         201 KAR 42:020         314.137         201 KAR 20:161           309.363         201 KAR 42:050         314.137         201 KAR 20:201           309.363         201 KAR 42:060         314.137         201 KAR 20:201           311.597         201 KAR 82:040         314.161         201 KAR 20:040           313.030         201 KAR 8:571         314.171         201 KAR 20:046           313.045         201 KAR 8:571         314.171         201 KAR 20:056           313.300         201 KAR 8:571         314.470         201 KAR 20:056           313.300         201 KAR 8:571         314.470         201 KAR 20		201 KAR 42:050		201 KAR 20:225
201 KAR 42:100         201 KAR 20:110           309.357         201 KAR 42:035         201 KAR 20:162           201 KAR 42:035         201 KAR 20:25           201 KAR 42:030         201 KAR 20:370           309.359         201 KAR 42:035         201 KAR 20:370           309.361         201 KAR 42:040         314.103         201 KAR 20:400           309.361         201 KAR 42:040         314.103         201 KAR 20:400           309.362         201 KAR 42:020         314.131         201 KAR 20:200           309.363         201 KAR 42:060         314.131         201 KAR 20:470           309.363         201 KAR 42:060         314.131         201 KAR 20:470           313.045         201 KAR 82:040         201 KAR 20:470         201 KAR 20:470           313.045         201 KAR 8:571         314.161         201 KAR 20:420           313.045         201 KAR 8:571         314.171         201 KAR 20:450           313.050         201 KAR 8:571         314.171         201 KAR 20:450           313.04         201 KAR 8:571         314.470         201 KAR 20:056           313.050         201 KAR 8:571         314.470         201 KAR 20:056           313.04         201 KAR 20:056         201 KAR 20:056				
309.357       201 KAR 42:040       201 KAR 20:161         309.358       201 KAR 42:035       201 KAR 20:225         201 KAR 42:030       201 KAR 20:370         309.359       201 KAR 42:036       201 KAR 20:400         309.359       201 KAR 42:040       314.103       201 KAR 20:400         309.361       201 KAR 42:040       314.103       201 KAR 20:20         309.362       201 KAR 42:020       314.131       201 KAR 20:20         201 KAR 42:050       314.137       201 KAR 20:20         309.363       201 KAR 42:060       314.142       107 KAR 2:040         309.363       201 KAR 42:060       314.161       201 KAR 2:020         309.363       201 KAR 42:060       314.161       201 KAR 2:040         313.030       201 KAR 8:571       201 KAR 20:056       201 KAR 20:056         313.045       201 KAR 8:571       314.171       201 KAR 20:050         313.050       201 KAR 8:571       314.171       201 KAR 20:056         313.30       201 KAR 20:056       201 KAR 20:056       201 KAR 20:056         313.254       201 KAR 20:057       201 KAR 20:056       201 KAR 20:056         313.254       201 KAR 20:056       201 KAR 20:051       201 KAR 20:051         201 KAR 20			314.091	
309.358         201 KAR 42:035         201 KAR 20:162           201 KAR 42:080         201 KAR 20:370           309.359         201 KAR 42:035         201 KAR 20:400           309.361         201 KAR 42:070         201 KAR 20:110           309.361         201 KAR 42:020         314.103         201 KAR 20:161           309.362         201 KAR 42:020         314.131         201 KAR 20:210           309.362         201 KAR 42:020         314.131         201 KAR 20:20           309.363         201 KAR 42:020         314.131         201 KAR 20:20           309.363         201 KAR 42:020         314.131         201 KAR 20:20           303.63         201 KAR 42:020         314.132         107 KAR 20:20           303.63         201 KAR 42:080         314.142         107 KAR 20:20           313.415         201 KAR 8:571         201 KAR 20:161         201 KAR 20:161           313.040         201 KAR 8:571         314.171         201 KAR 20:056           313.300         201 KAR 8:571         314.470         201 KAR 20:056           313.300         201 KAR 8:571         314.470         201 KAR 20:056           313.300         201 KAR 8:571         314.470         201 KAR 20:056           313.254				
201 KAR 42:070         201 KAR 20:370           309.359         201 KAR 42:035         201 KAR 20:370           309.351         201 KAR 42:040         314.103         201 KAR 20:400           309.361         201 KAR 42:040         314.103         201 KAR 20:100           309.362         201 KAR 42:020         314.131         201 KAR 20:161           309.362         201 KAR 42:020         314.131         201 KAR 20:220           201 KAR 42:050         314.132         107 KAR 20:470           201 KAR 42:060         314.132         107 KAR 20:470           309.363         201 KAR 42:080         201 KAR 20:400           311A.170         201 KAR 8:066         314.161         201 KAR 20:401           313.030         201 KAR 8:571         314.161         201 KAR 20:402           313.045         201 KAR 8:571         314.171         201 KAR 20:056           313.050         201 KAR 8:571         314.171         201 KAR 20:056           313.080         201 KAR 8:571         314.470         201 KAR 20:056           313.254         201 KAR 8:571         314.470         201 KAR 20:056           313.254         201 KAR 20:056         201 KAR 20:161         201 KAR 20:161           201 KAR 20:057         201 KAR 20:				
201 KAR 42:080         201 KAR 20:370           309.359         201 KAR 42:035         201 KAR 20:400           309.361         201 KAR 42:040         314.103         201 KAR 20:450           309.362         201 KAR 42:020         314.103         201 KAR 20:201           309.362         201 KAR 42:020         314.131         201 KAR 20:201           201 KAR 42:050         314.137         201 KAR 20:201           201 KAR 42:060         314.137         201 KAR 20:201           309.363         201 KAR 42:060         314.137         201 KAR 20:470           311A.170         201 KAR 20:060         314.161         201 KAR 20:401           311.597         201 KAR 8:006         314.161         201 KAR 20:400           313.045         201 KAR 8:571         314.171         201 KAR 20:400           313.050         201 KAR 8:571         314.171         201 KAR 20:400           313.050         201 KAR 8:571         314.171         201 KAR 20:400           313.305         201 KAR 8:571         314.171         201 KAR 20:400           313.305         201 KAR 8:571         314.470         201 KAR 20:400           313.305         201 KAR 20:057         201 KAR 20:100         201 KAR 20:100           313.254	309.358			
309.359         201 KAR 42:035         201 KAR 20:400           309.361         201 KAR 42:040         314.103         201 KAR 20:450           309.361         201 KAR 42:040         314.107         201 KAR 20:161           309.362         201 KAR 42:050         314.137         201 KAR 20:470           201 KAR 42:050         314.137         201 KAR 20:470           201 KAR 42:060         314.137         201 KAR 20:470           309.363         201 KAR 42:080         201 KAR 20:470           311.597         201 KAR 8:066         314.137         201 KAR 20:411           313.050         201 KAR 8:571         201 KAR 20:420         201 KAR 20:420           313.045         201 KAR 8:571         314.171         201 KAR 20:420           313.050         201 KAR 8:571         314.171         201 KAR 20:056           313.130         201 KAR 8:571         314.470         201 KAR 20:056           313.254         201 KAR 8:571         314.470         201 KAR 20:056           313.254         201 KAR 20:056         201 KAR 20:070         314.011           201 KAR 20:056         201 KAR 20:057         201 KAR 20:070           314.011         201 KAR 20:056         201 KAR 20:0161         201 KAR 20:0161           201				
201 KAR 42:070         201 KAR 20:450           309.361         201 KAR 42:040         314.103         201 KAR 20:110           309.362         201 KAR 42:100         314.131         201 KAR 20:220           201 KAR 42:050         314.131         201 KAR 20:270           201 KAR 42:060         314.137         201 KAR 20:240           309.363         201 KAR 42:080         201 KAR 20:240           311A.170         201 KAR 20:040         201 KAR 20:056           313.045         201 KAR 8:571         201 KAR 20:056           313.045         201 KAR 8:571         201 KAR 20:066           313.050         201 KAR 8:571         201 KAR 20:056           313.045         201 KAR 8:571         314.171         201 KAR 20:056           313.303         201 KAR 8:571         314.173         201 KAR 20:056           313.303         201 KAR 8:571         314.171         201 KAR 20:056           313.303         201 KAR 8:571         314.470         201 KAR 20:056           313.304         201 KAR 8:571         314.470         201 KAR 20:056           313.254         201 KAR 8:571         314.470         201 KAR 20:056           201 KAR 20:057         201 KAR 20:010         201 KAR 20:010         201 KAR 20:010	200.250			
309.361         201 KAR 42:040         314.103         201 KAR 20:110           309.362         201 KAR 42:020         314.137         201 KAR 20:220           309.362         201 KAR 42:060         314.137         201 KAR 20:070           309.363         201 KAR 42:060         314.137         201 KAR 20:101           309.363         201 KAR 42:060         314.137         201 KAR 20:200           311.597         201 KAR 20:400         201 KAR 20:240           313.030         201 KAR 8:571         201 KAR 20:240           313.045         201 KAR 8:571         201 KAR 20:240           313.050         201 KAR 8:571         314.171         201 KAR 20:240           313.050         201 KAR 8:571         314.171         201 KAR 20:056           313.050         201 KAR 8:571         314.171         201 KAR 20:056           313.254         201 KAR 8:571         314.470         201 KAR 20:056           314.011         201 KAR 20:056         201 KAR 20:056         201 KAR 20:056           314.401         201 KAR 20:057         201 KAR 20:161         201 KAR 20:161           201 KAR 20:061         201 KAR 20:161         201 KAR 20:161         201 KAR 20:161           201 KAR 20:162         314.991         201 KAR 20:161	309.339			
201 KAR 42:110         314.107         201 KAR 20:161           309.362         201 KAR 42:020         314.131         201 KAR 20:20           201 KAR 42:060         314.137         201 KAR 2:040           309.363         201 KAR 42:060         314.142         107 KAR 2:040           309.363         201 KAR 42:060         314.142         107 KAR 2:040           311A.170         201 KAR 20:400         201 KAR 2:0:400         201 KAR 2:0:400           313.030         201 KAR 8:571         201 KAR 2:0:400         201 KAR 2:0:400           313.045         201 KAR 8:571         314.171         201 KAR 2:0:400           313.050         201 KAR 8:571         314.171         201 KAR 2:0:400           313.080         201 KAR 8:571         314.171         201 KAR 2:0:56           313.130         201 KAR 2:0:056         201 KAR 2:0:056         201 KAR 2:0:56           313.254         201 KAR 2:0:057         201 KAR 2:0:10         201 KAR 2:0:10           201 KAR 2:0:059         201 KAR 2:0:161         201 KAR 2:0:161         201 KAR 2:0:161           201 KAR 2:0:161         201 KAR 2:0:161         201 KAR 2:0:161         201 KAR 2:0:15           201 KAR 2:0:161         201 KAR 2:0:161         201 KAR 2:0:161         201 KAR 2:0:15	309 361		314 103	
309.362         201 KAR 42:020         314.131         201 KAR 20:220           201 KAR 42:050         314.137         201 KAR 20:470           309.363         201 KAR 42:060         314.137         201 KAR 20:240           311A.170         201 KAR 20:400         201 KAR 20:240         201 KAR 20:056           313.030         201 KAR 9:006         314.161         201 KAR 20:056           313.030         201 KAR 8:571         201 KAR 20:056           313.045         201 KAR 8:571         314.171         201 KAR 20:056           313.050         201 KAR 8:571         314.171         201 KAR 20:056           313.080         201 KAR 8:571         314.470         201 KAR 20:056           313.254         201 KAR 8:571         314.470         201 KAR 20:056           313.254         201 KAR 20:056         201 KAR 20:0161         201 KAR 20:0161           201 KAR 20:057         201 KAR 20:161         201 KAR 20:161         201 KAR 20:161           201 KAR 20:062         314.991         201 KAR 20:161         201 KAR 20:161           201 KAR 20:162         201 KAR 20:161         201 KAR 20:161         201 KAR 20:15           201 KAR 20:162         201 KAR 20:161         201 KAR 20:15         201 KAR 20:15           201 KAR 20:162	000.001			
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201 KAR 42:060         314.142         107 KAR 2:010           309.363         201 KAR 20:080         201 KAR 20:240           311A.170         201 KAR 20:040         201 KAR 20:056           313.030         201 KAR 8:571         201 KAR 20:240           313.045         201 KAR 8:571         201 KAR 20:450           313.050         201 KAR 8:571         314.171         201 KAR 20:450           313.080         201 KAR 8:571         314.193         201 KAR 20:056           313.080         201 KAR 8:571         314.470         201 KAR 20:056           313.254         201 KAR 8:581         201 KAR 20:070         314.011           201 KAR 20:056         201 KAR 20:061         201 KAR 20:071           201 KAR 20:057         201 KAR 20:061         201 KAR 20:161           201 KAR 20:061         201 KAR 20:161         201 KAR 20:161           201 KAR 20:162         314.991         201 KAR 20:161           201 KAR 20:162         315.065         201 KAR 20:161           201 KAR 20:162         315.065         201 KAR 20:161           201 KAR 20:162         315.065         201 KAR 20:15           201 KAR 20:162         315.106         201 KAR 20:15           201 KAR 20:162         315.101         201 KAR 20:15 <td></td> <td></td> <td></td> <td></td>				
311A.170       201 KAR 20:400       201 KAR 20:411         311.597       201 KAR 9:006       314.161       201 KAR 20:056         313.030       201 KAR 8:571       201 KAR 20:162         313.045       201 KAR 8:571       314.171       201 KAR 20:240         313.050       201 KAR 8:571       314.171       201 KAR 20:240         313.050       201 KAR 8:571       314.171       201 KAR 20:260         313.080       201 KAR 8:571       314.470       201 KAR 20:056         313.130       201 KAR 8:581       201 KAR 20:070       201 KAR 20:016         314.011       201 KAR 20:056       201 KAR 20:110       201 KAR 20:161         201 KAR 20:059       201 KAR 20:411       201 KAR 20:450       201 KAR 20:450         201 KAR 20:059       201 KAR 20:411       201 KAR 20:411       201 KAR 20:411         201 KAR 20:059       201 KAR 20:411       201 KAR 20:450       201 KAR 20:450         201 KAR 20:051       201 KAR 20:411       201 KAR 20:411       201 KAR 20:411         201 KAR 20:052       314.991       201 KAR 20:450       201 KAR 20:450         201 KAR 20:052       201 KAR 20:162       201 KAR 20:161       201 KAR 20:151         201 KAR 20:215       201 KAR 20:162       201 KAR 20:151       201 KAR 20:		201 KAR 42:060		107 KAR 2:010
311.597       201 KAR 9:006       314.161       201 KAR 20:056         313.030       201 KAR 8:571       201 KAR 20:162         313.045       201 KAR 8:571       314.171       201 KAR 20:240         313.050       201 KAR 8:571       314.171       201 KAR 20:056         313.030       201 KAR 8:571       314.193       201 KAR 20:056         313.030       201 KAR 8:571       314.470       201 KAR 20:056         313.254       201 KAR 8:581       201 KAR 20:101         201 KAR 20:056       201 KAR 20:161       201 KAR 20:161         201 KAR 20:057       201 KAR 20:161       201 KAR 20:161         201 KAR 20:061       201 KAR 20:161       201 KAR 20:161         201 KAR 20:162       201 KAR 20:161       201 KAR 20:161         201 KAR 20:162       201 KAR 20:162       201 KAR 20:161         201 KAR 20:215       201 KAR 20:162       201 KAR 20:15         201 KAR 20:20       315.065       201 KAR 20:15         201 KAR 20:20       315.106       201 KAR 20:15         201 KAR 20:20       315.005       201 KAR 20:15         201 KAR 20:400       315.116       201 KAR 20:15         201 KAR 20:400       315.505       201 KAR 20:15         201 KAR 20:10       315.505 </td <td>309.363</td> <td>201 KAR 42:080</td> <td></td> <td>201 KAR 20:240</td>	309.363	201 KAR 42:080		201 KAR 20:240
313.030       201 KAR 8:571       201 KAR 20:162         313.045       201 KAR 8:571       314.171       201 KAR 20:240         313.050       201 KAR 8:571       314.171       201 KAR 20:056         313.080       201 KAR 8:571       314.193       201 KAR 20:056         313.130       201 KAR 8:571       314.470       201 KAR 20:056         313.254       201 KAR 20:056       201 KAR 20:070         314.011       201 KAR 20:057       201 KAR 20:161         201 KAR 20:059       201 KAR 20:411         201 KAR 20:061       201 KAR 20:411         201 KAR 20:062       314.991       201 KAR 20:411         201 KAR 20:161       201 KAR 20:161       201 KAR 20:161         201 KAR 20:162       201 KAR 20:161       201 KAR 20:161         201 KAR 20:162       201 KAR 20:162       201 KAR 20:161         201 KAR 20:215       201 KAR 20:162       201 KAR 20:162         201 KAR 20:400       315.1065       201 KAR 20:15         201 KAR 20:400       315.1065       201 KAR 2:015         201 KAR 20:400       315.100       201 KAR 2:015         314.021       201 KAR 20:10       315.505       201 KAR 2:30         314.031       201 KAR 20:10       315.505       201 KAR 2:30 <td>311A.170</td> <td>201 KAR 20:400</td> <td></td> <td>201 KAR 20:411</td>	311A.170	201 KAR 20:400		201 KAR 20:411
313.045       201 KAR 8:571       314.171       201 KAR 20:240         313.050       201 KAR 8:571       314.171       201 KAR 20:450         313.080       201 KAR 8:571       314.193       201 KAR 20:056         313.130       201 KAR 8:571       314.470       201 KAR 20:056         313.254       201 KAR 20:056       201 KAR 20:070         314.011       201 KAR 20:056       201 KAR 20:110         201 KAR 20:057       201 KAR 20:161         201 KAR 20:061       201 KAR 20:411         201 KAR 20:062       314.991       201 KAR 20:110         201 KAR 20:161       201 KAR 20:161       201 KAR 20:110         201 KAR 20:162       201 KAR 20:110       201 KAR 20:110         201 KAR 20:162       201 KAR 20:162       201 KAR 20:162         201 KAR 20:215       201 KAR 20:15       201 KAR 20:15         201 KAR 20:20       315.065       201 KAR 20:15         201 KAR 20:20       315.116       201 KAR 20:15         201 KAR 20:400       315.116       201 KAR 20:15         201 KAR 20:400       315.191       201 KAR 2:015         314.021       201 KAR 20:10       315.505       201 KAR 2:330         314.031       201 KAR 20:10       315.505       201 KAR 2:330			314.161	
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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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