

# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 37, NUMBER 9  
TUESDAY, MARCH 1, 2011

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#### MEETING NOTICE: ARRS

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet March 8, 2011 at 1:00 p.m. in room 149 Capitol Annex. See tentative agenda on pages 2125-2126 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2010 Edition of **KENTUCKY ADMINISTRATIVE 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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**VOLUME 37, NUMBER 8 – MARCH 1, 2011**

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA, MARCH 8, 2011, at 1:00 p.m., Room 149 Capitol Annex**

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**Kentucky Agency for Substance Abuse Policy**  
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201 KAR 20:056. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization.  
201 KAR 20:059 & E. Advanced practice registered nurse controlled substances prescriptions. ("E" expires 7/12/2011)

**Kentucky Real Estate Appraisers Board**

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

**ENERGY AND ENVIRONMENT CABINET  
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**Water Quality Standards**  
401 KAR 10:030. Antidegradation policy implementation methodology.

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

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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)

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

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission**

**Thoroughbred Racing**  
810 KAR 1:001. Definitions. (Not Amended After Comments)(Deferred from November)  
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- 810 KAR 1:027. Entries, subscriptions, and declarations. (Amended After Comments)
- 810 KAR 1:120. Exotic wagering. (Not Amended After Comments) (Deferred from November)
- 810 KAR 1:140. Calculation of payouts and distribution of pools.

### **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)
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### **Quarter Horse, Appaloosa and Arabian Racing**

- 811 KAR 2:010. Definitions. (Not Amended After Comments) (Deferred from November)
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- 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. (Amended After Comments)

## **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 5/19/2011, ext) (Amended After Comments)
- 902 KAR 20:330 & E. Psychiatric residential treatment facilities. ("E" expires 5/19/2011, ext) (Amended After Comments)

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### **Radiology**

- 902 KAR 100:010. Definitions for 902 KAR Chapter 100. (Deferred from February)
- 902 KAR 100:021. Disposal of radioactive material. (Deferred from February)
- 902 KAR 100:058. Specific licenses to manufacture, assemble, repair, or distribute products. (Deferred from February)
- 902 KAR 100:070. Transportation of radioactive material. (Deferred from February)
- 902 KAR 100:072. Use of radionuclides in the health arts. (Deferred from February)
- 902 KAR 100:165. Notices, reports and instructions to employees. (Deferred from February)

## **Department for Medicaid Services Division of Information Systems**

### **Electronic Health Record Incentive Payments**

- 907 KAR 6:005 & E. Electronic health record incentive payments. ("E" expires 7/2/2011)

## **Department for Community Based Services Division of Family Support**

### **Food Stamps**

- 921 KAR 3:035. Certification process. (Deferred from February)

## **Division of Protection and Permanency**

### **Child Welfare**

- 922 KAR 1:420 & E. Child fatality or near fatality investigations. ("E" expires 2/21/2010)

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

### **Fish**

- 301 KAR 1:155. Commercial fishing requirements. (Comments Received)

### **Game**

- 301 KAR 2:178. Deer hunting on wildlife managements areas, state parks, and other public lands. (Comments Received)

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

### **Division**

- 401 KAR 5:006. Wastewater planning requirements for regional planning agencies. (Comments Received, SOC ext)

## **PUBLIC PROTECTION CABINET Department of Insurance Consumer Protection Division**

### **Administration**

- 806 KAR 2:150. Collection fee. (Comments Received, SOC ext.)

## **Department of Housing, Buildings and Construction Board of Home Inspectors**

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- 815 KAR 6:040. Home inspector prelicensing providers. (Comments Received, SOC ext.)
- 815 KAR 6:050. Continuing education approval. (Comments Received, SOC ext.)
- 815 KAR 6:060. Complaint procedure. (Comments Received, SOC ext.)



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

**Filing and Publication**

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

**Public Hearing and Public Comment Period**

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

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

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

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

**Review Procedure**

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

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, FEBRUARY 15, 2011

STATEMENT OF EMERGENCY  
31 KAR 5:010E

Nature of the emergency: The emergency amendment to this administrative regulation is being promulgated in response to the enactment of the Military and Overseas Voter Empowerment Act of 2009 (MOVE), codified at 42 U.S.C. 1973ff-2, and the provisions requiring the states to provide for the expanded use of the Federal Write-in Absentee Ballot for all primary, regular, and special elections for federal office for use by all deployed members of the military, their dependents, and overseas citizens. This emergency amendment is being promulgated to ensure that the new procedures established by MOVE are effective prior to the next federal election. Considering that Kentucky has no scheduled federal elections for 2011, Kentucky must be compliant with the requirements of MOVE in the event of a special election for federal office which may occur at anytime. This emergency amendment must be effective immediately so as to require Kentucky's election officials to count any validly voted Federal Write-in Absentee Ballots that may be received to cast a ballot in a special election for federal office. This emergency amendment is also necessary to ensure that all 120 counties are uniformly accepting and processing the Federal Write-in Absentee Ballot.

The reasons why an ordinary administrative regulation is not sufficient: An ordinary amendment is not sufficient because it will potentially not be effective in the event a special election for federal office occurs prior to an ordinary administrative regulation becoming effective. A delay in the enactment of this amendment may interfere with the constitutional right to vote of deployed members of the military, their dependents, and overseas citizens who wish to vote in a special election for federal office.

This emergency amendment shall be replaced by an ordinary amendment to the administrative regulation filed with the Regulations Compiler.

The ordinary amendment to the administrative regulation is identical to this emergency amendment to the administrative regulation.

HON. STEVE BESHEAR, Governor  
HON. TREY GRAYSON, Chairman

KENTUCKY STATE BOARD OF ELECTIONS  
(Emergency Amendment)

**31 KAR 5:010E. Use of the federal write-in absentee ballot in elections for federal office.**~~[Absentee voting for military and overseas citizens for runoff primary elections.]~~

RELATES TO: KRS 116.055, 117.079, 117.085, 118.025, 118.245, 42 U.S.C. 1973ff-2

EFFECTIVE DATE: February 1, 2011

STATUTORY AUTHORITY: KRS 117.079, 42 U.S.C. 1973ff-2

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

Section 1. Definitions. (1) "Absent overseas voter" means a resident of Kentucky who is eligible and registered to vote and is a:

(2) "FWAB" means the Federal Write-in Absentee Ballot developed by the Federal Voting Assistance Program. (a) Military personnel serving on active duty outside the United States; or

(b) Other resident of Kentucky residing outside the United States.

Section 2. Any absent overseas voter may cast a ballot by use of the FWAB in any primary, regular, or special election for federal office as long as the voter has made or attempts to make timely application for, and does not receive the state absentee ballot in time to cast a ballot for the election. Any county board of elections that receives a voted FWAB shall assume that the absent overseas voter has made or attempted to make timely application for a state absentee ballot.

Section 3. A FWAB received by the county board of elections shall not be counted if the ballot is submitted from any location in the United States.

Section 4. Completing the FWAB. (1) In completing the FWAB:

(a) The absent overseas voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party, in which case the ballot shall be counted for the candidate of that political party.

(b) In the case of the offices of President and Vice President, a vote for a named candidate or a vote by writing in the name of a political party shall be counted as a vote for the electors supporting the candidate named.

(c) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of the ballot if the intention of the voter can be ascertained.

(d) The requirements of 31 KAR 6:030 are suspended for the purposes of this administrative regulation.~~[Military personnel serving on active duty outside of the United States and other residents of Kentucky residing outside of the United States who were eligible to vote in the primary election, pursuant to KRS 116.055, may vote in a runoff primary election held pursuant to KRS 118.025, by means of the Federal Write-In Absentee Ballot.~~

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

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

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

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

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

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

~~(2) The voter shall:~~

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

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

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

~~(d) Return the Federal Write-In Absentee Ballot by mailing it to the county clerk in either of the following:~~

~~1. A Federal Write-In Absentee Ballot security envelope, which contains an inner envelope; or~~

~~2. If security envelopes are not available, two (2) plain envelopes which contain all of the information on the Federal Write-In Absentee Ballot security envelope may be substituted.~~

~~(3) The Federal Write-In Absentee Ballot shall be received by the appropriate county clerk by 6 p.m. local time on runoff primary~~

election day to be counted.

~~Section 3. The county clerk shall send by mail or facsimile machine, not later than the close of business hours seven (7) days before the election, the "Notice and Instructions for Voting in Primary Runoff Election for Military and Kentucky Residents Residing Outside of the United States", SBE 48E, to each voter who has timely submitted an absentee ballot application prior to the primary election in order to provide notice and instructions to voters who are military personnel and Kentucky residents residing outside of the United States of the procedures to follow for voting in a runoff primary election.~~

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

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

Section 5. Receipt Of State Ballot Overrides FWAB. (1) An absent overseas voter who submits a FWAB and subsequently receives a state absentee ballot may submit the state absentee ballot.

(2) The county board of elections shall not unseal or count the FWAB if the county clerk receives a valid and voted state ballot by 6:00 p.m., prevailing time, on election day.

(3) The county clerk shall mark on the outer envelope of the sealed FWAB the words, Cancelled because state ballot received.

Section 6. Prohibiting Refusal To Accept Ballot For Failure To Meet Certain Requirements. (1) A county board of elections shall not refuse to accept and process any otherwise valid FWAB submitted in any manner by an absent overseas voter solely on the basis of the following:

(a) Notarization requirements;

(b) Restrictions on paper type, including weight and size; and

(c) Restrictions on envelope type, including weight and size.

Section 7. [5.] Incorporation by Reference. (1)[The following material is incorporated by reference:

(a)] "Federal Write-In Absentee Ballot", Standard Form 186A, October 2005 edition, is incorporated by reference.[40-2005; and

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

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

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

HON. TREY GRAYSON, Chair

HON. JACK CONWAY, Attorney General

APPROVED BY AGENCY: January 18, 2011

FILED WITH LRC: February 1, 2011 at 3 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT  
Contact Person: Kathryn H. Gabhart

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. The Military and Overseas Voter Empowerment Act of 2009 (MOVE), P.L. 111-84, codified at 42 U.S.C.

1973ff-2(a-f), requires that states permit military and overseas voters to use the Federal Write-in Absentee Ballot in all special, primary, and run-off elections, as well as general elections, for federal office. This administrative regulation establishes procedures for the county clerk to receive and the county board of elections to count Federal Write-in Absentee Ballots submitted by absent military and overseas voters.

(b) The necessity of this administrative regulation: This regulation is necessary to further the aims of the UOCAVA, MOVE, KRS 117.079, and 117.085, to preserve the absentee voting rights of military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.079 authorizes the Board to promulgate administrative regulations governing the absentee voting process for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States and this administrative regulation provides an alternative method for the named voters to vote by the Federal Write-in Absentee Ballot in accordance with MOVE.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides an alternate method for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States to vote. Such persons may have little notice of their location on election day or during the days of absentee voting and the regular delays in the mail service make it impractical to follow the normal methods for absentee voting or to receive a state absentee ballot. The Federal Write-in Absentee Ballot gives these voters another method by which to timely cast a ballot.

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

(a) How the amendment will change the existing administrative regulation: The prior administrative regulation provided a method for military and overseas voters to vote in a potential run-off primary election for Governor. The 2008 General Assembly repealed the run-off primary election laws. This amendment removes the language referring to a run-off primary election and provides an alternate method for absentee military and overseas voters to cast a ballot required by MOVE.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove any references to a run-off primary election and to meet the requirements of the MOVE Act.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by removing references to the run-off primary election for Governor and provides a process by which military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States may vote by use of the Federal Write-in Absentee Ballot as required by MOVE.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide a viable alternative by which military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States can vote by absentee ballot.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All eligible voters who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States and all county clerks and county boards of elections.

(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 county clerks will have to accept the Federal Write-in Absentee Ballot from voters. Voters will need to get access to the Federal Write-in Absentee Ballot, which they may do on the internet, from a U.S. Embassy, or from a military voting

assistance officer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not costs associated with the implementation of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The voters will have an alternate method to cast an absentee ballot when the state absentee ballot is delayed or not received by the voter. The county clerks and county boards of elections will have a process by which to accept and count the Federal Write-in Absentee Ballot.

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

(a) Initially: There are not costs associated with this administrative regulation. The Federal Voting Assistance Program develops and prints the Federal Write-in Absentee Ballot and the voters may freely access this form online. The counties will bear no costs associated with accepting these ballots.

(b) On a continuing basis: There are not costs associated with this administrative regulation. The Federal Voting Assistance Program will continue to be responsible for developing and printing the Federal Write-in Absentee Ballot and the voters may freely access this form online. The counties will bear no costs associated with accepting these ballots.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: There are no costs associated with this administrative regulation on the state or local level.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are or will be established by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all citizens.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All county clerks and county boards of elections.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: 42 U.S.C. 1973ff-2 and KRS 117.079.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no costs associated with this administrative regulation. The Federal Voting Assistance Program develops and prints the Federal Write-in Absentee Ballot and the voters may freely access this form online, at a U.S. Embassy, or through a voting assistance officer. The counties will bear no costs associated with accepting these ballots.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this administrative

regulation. The Federal Voting Assistance Program develops and prints the Federal Write-in Absentee Ballot and the voters may freely access this form online, at a U.S. Embassy, or through a voting assistance officer. The counties will bear no costs associated with accepting these ballots.

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

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other: none Explanation: none

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 1973ff-2, the Military and Overseas Voter Empowerment Act.

(2) State compliance standards: KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General.

(3) Minimum or uniform standards contained in the federal mandate: This administrative regulation implements procedures for Kentucky counties to follow when accepting the Federal Write-in Absentee Ballot submitted by absent military and overseas voters and provides an alternate method by which absent uniformed services voters and overseas voters may cast a ballot.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

#### STATEMENT OF EMERGENCY 32 KAR 2:130E

This emergency administrative regulation is being promulgated to establish the criteria under which candidates, slates of candidates, and committees may accept contributions in formats other than cash, including contributions made by credit or debit card, and to establish a standard for the refund of a contribution in lieu of acceptance. The Kentucky Registry of Election Finance ("Registry") is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under KRS 121.120(1)(g). This administrative regulation is necessary to carry out the provisions of KRS 121.150, due to technological advances that have resulted in new formats for contributors to securely transfer funds to campaign accounts, for which due diligence review of the contribution prior to deposit in the campaign account by the candidate, slate of candidates, or committee, as applicable, is not practical or available.

Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety or welfare of Kentucky. An ordinary administrative regulation would not be sufficient because the filing deadline for all candidates or slates of candidates running for statewide office is January 25, 2011. Pursuant to KRS 121.120(4)(k), the Registry is required to conduct audits of receipts and expenditures of all candidates or slates of candidates running for statewide office. Statewide candidates, slates of candidates, or committees acting on behalf of these regulated persons are likely to accept contributions in formats other than by cash, and require immediate guidance on what information is required to accept a contribution made in other formats. In addition, the establishment of a uniform standard for refunding contributions in lieu of acceptance shall be established at the beginning of the election year to ensure consistency in Registry

audits of statewide candidates, slates of candidates, and committees during the 2011 primary and general election cycles.

This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor  
CRAIG C. DILGER, Chairman

**KENTUCKY REGISTRY OF ELECTION FINANCE  
(Emergency Amendment)**

**32 KAR 2:130E. Monetary contributions made in a format other than cash, and refunds.~~[Cash contributions, cashier's checks, and money orders.]~~**

RELATES TO: KRS 121.150 ~~[KRS 121.150(4)]~~

STATUTORY AUTHORITY: KRS 121.120(1)(g)

EFFECTIVE: February 7, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) authorizes the Registry to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. This administrative regulation establishes requirements for monetary contributions made in a format other than by cash, and ~~refunds of contributions.~~~~[KRS 121.150(4) prohibits a candidate, committee, or contributing organization, or anyone on their behalf, from accepting a cash contribution in excess of \$100. However, that statute does not clearly indicate whether the limitation applies per election, per candidate, or per contribution. Also, KRS Chapter 121 contains no definition of "cashier's check" which creates the potential for a cashier's check which bears no identification of the payor to be utilized as a means of circumventing campaign contribution limits. It is therefore necessary to promulgate this administrative regulation to clarify the application of KRS 121.150(4).]~~

Section 1. (1) If a candidate, slate of candidates, committee, or anyone on their behalf receives a contribution prohibited by the provisions of KRS 121.150, the candidate, slate of candidates, or committee shall have thirty (30) days from the date the contribution is deposited in the campaign account to refund the contribution. A refund made in compliance with subsection (1) of this section shall constitute compliance with the provisions of KRS 121.150. All contributions not otherwise refunded in accordance with subsection (1) of this section shall be considered accepted by the candidate, slate of candidates, or committee, as applicable.~~[The limitation on cash contributions contained in KRS 121.150(4) shall be applied per contributor for each candidate in each primary, special, and regular election.]~~

Section 2. A candidate, slates of candidates, campaign committee,~~[or contributing organization,]~~ or a person acting on their behalf, shall not accept a monetary contribution in any format~~[a cashier's check or money order]~~ in excess of the maximum cash contribution limit contained in KRS 121.150(4) unless the contribution generates a paper or electronic record that~~[instrument]~~ clearly identifies both the payor and payee.~~[A contribution made by cashier's check or money order which identifies the payor and payee shall be treated as a contribution made by check for purposes of the contribution limits contained in KRS 121.150.]~~

CRAIG C. DILGER, Chairman

APPROVED BY AGENCY: January 31, 2011

FILED WITH LRC: February 7, 2011 at noon

CONTACT PERSON: Emily Dennis, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Emily Dennis, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 32 KAR 2:130 to bring it in conformity with

current law and to provide candidates, slates of candidates, and committees with guidelines for compliance with KRS 121.150.

(b) The necessity of this administrative regulation: KRS 121.120(1)(g) requires the Registry to promulgate administrative regulations to carry out the provisions of KRS Chapter 121. Amendment to 32 KAR 2:130 is necessary due to changes in KRS 121.150 and technological advances that have resulted in new formats for contributors to securely transfer funds to campaign accounts, for which due diligence review of the contribution prior to deposit in the campaign account by the candidate, slate of candidates, or committee, as applicable, is not available.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g), as it promulgates an administrative regulation to carry out the provisions of Chapter 121 by providing guidelines for compliance with KRS 121.150 to the regulated community.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the contribution limits set forth in KRS 121.150 by the Registry by providing the regulated community with guidelines for compliance.

(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 substantially updates the existing administrative regulation to conform with KRS 121.150 in its current form. The amendment provides useful compliance guidelines for the regulated community. The amendment clarifies that all contributions in any format exceeding fifty (50) dollars must be accompanied with a record, in either electronic or paper format, identifying the payor and payee. The amendment further clarifies that any contribution received may be refunded within thirty (30) days of deposit in the campaign account. This standard for refund of a contribution in lieu of acceptance is necessary because the term "accept" is not defined in existing law.

(b) The necessity of the amendment to this administrative regulation: Amendment to the administrative regulation is necessary to bring the regulation into conformity with KRS 121.150 in its present form and to provide a uniform standard for refund of a prohibited contribution that may have been deposited in a campaign account but the campaign does not wish to accept.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121.

(d) How the amendment will assist in the effective administration of the statutes: Statewide candidates, slates of candidates, committees, or anyone working on behalf of these regulated entities who accept monetary contributions in any format other than cash will have notice of what information is required for contributions exceeding fifty (50) dollars. Statewide candidates, slates of candidates, committees and anyone working on behalf of these regulated entities will also have a uniform standard for refunding a contribution in lieu of acceptance. These amendments will greatly assist the regulated community as the formats in which campaign contributions may be made have evolved with technology, making it practically impossible for campaign staff to review every contribution prior to deposit in a campaign account.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All candidates, slates of candidates, and committees required to file reports with the Registry will be affected by this administrative regulation. However, this regulation does not create new requirements.

(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 will be required of the regulated entities. This amendment sets forth compliance and due diligence guidelines that will assist candidates, slates of candidates,

and committees in the effective administration of campaign accounts.

(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 regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will greatly benefit due to the establishment of these uniform rules for acceptance of contributions exceeding fifty (50) dollars and the thirty (30) day time period for refund of contributions received in lieu of acceptance.

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

(a) Initially: No additional costs are anticipated to implement this administrative regulation.

(b) On a continuing basis: No costs are anticipated 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: Registry budget funding will be used for implementation and enforcement.

(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 establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all candidates, slates of candidates, and committee.

#### 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? Commonwealth of Kentucky - General Government - Registry of Election Finance

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.120(1)(g), 121.120(4)(k), and 121.150

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated in the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated in subsequent years.

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

Revenues (+/-): None  
Expenditures (+/-): None  
Other Explanation: N/A

#### STATEMENT OF EMERGENCY 102 KAR 1:178E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed new administrative regulation should be enacted on an emergency basis. This emergency new administrative regulation establishes the policies and procedures for the management of the system's insurance trust fund qualified under 26 U.S.C. sec. 115 (Section 115 insurance trust fund) as required by the enactment of KRS 161.677, effective 1 July 2010.

A new emergency administrative regulation is necessary for the Board of Trustees of the Kentucky Teachers' Retirement System to administer the enactment of KRS 161.677 effective 1 July 2010. An ordinary administrative regulation is not sufficient because Kentucky Teachers' Retirement System needs to have policies and procedures in place to permit the Board of Trustees to oversee and manage the system's Section 115 insurance trust fund that will receive OPEB bond proceeds as early as February of 2011.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to the emergency administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on January 14, 2011.

STEVEN L. BESHEAR, Governor  
BARBARA STERRETT, Chair

#### FINANCE AND ADMINISTRATION CABINET Kentucky Teachers' Retirement System (New Emergency Administrative Regulation)

#### 102 KAR 1:178E. Investment policies for insurance trust fund.

RELATES TO: KRS 161.430

STATUTORY AUTHORITY: KRS 161.310(1), 161.430(1), 161.677

EFFECTIVE: January 24, 2011

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. KRS 161.677(3) provides that the board of trustees shall manage the Kentucky Teachers' Retirement System insurance trust fund in the same general manner in which it administers retirement funds. The administrative regulation establishes investment policies and procedures to carry out these responsibilities for the Kentucky Teachers' Retirement System insurance trust fund.

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 em-

ployed 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 the 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 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 long-term 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.

MS. BARBARA STERRETT, Chair

APPROVED BY AGENCY: December 20, 2010

FILED WITH LRC: January 24, 2011 at 2 p.m.

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, in regulatory format, investment policies and procedures for investment of the system's insurance trust fund.

(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 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: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: 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 Kentucky Teachers' Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: Kentucky Teachers' Retirement System will 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): Kentucky Teachers' Retirement System will 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 cost to implement this administrative regulation will 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, 161.677.

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 will be 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:

# STATEMENT OF EMERGENCY 103 KAR 3:040E

This emergency administrative regulation is being promulgated in order to provide Kentucky taxpayers the forms and information necessary to comply with Kentucky tax laws. This administrative regulation must be filed as soon as possible in order to incorporate by reference such tax forms and instructions as may be needed by taxpayers and their representative to comply with Kentucky tax laws. An ordinary administrative regulation is not sufficient, because the public relies on these forms and instructions in order to make timely and accurate filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor

THOMAS B. MILLER, Commissioner

## FINANCE AND ADMINISTRATION CABINET Department of Revenue Office of Income Taxation (Emergency Administrative Regulation)

### 103 KAR 3:040E. Income tax forms manual.

RELATES TO: KRS 131.041, 131.051, 131.061, 131.071, 131.081, 131.110, 131.130, 131.155, 131.170, 131.180, 131.190, 131.340, 131.500, 131.510(1), (2)(a), 131.540, 141.010, 141.0101, 141.011, 141.016, 141.020, 141.0202, 141.030, 141.040, 141.0401, 141.0405, 141.041, 141.042, 141.044, 141.062, 141.065, 141.066, 141.067, 141.068, 141.069, 141.070, 141.071, 141.120, 141.121, 141.160, 141.170, 141.180, 141.200, 141.205, 141.206, 141.208, 141.300, 141.310, 141.325, 141.330, 141.335, 141.347, 141.370, 141.381, 141.382, 141.383, 141.385, 141.386, 141.390, 141.395, 141.400, 141.401, 141.402, 141.403, 141.405, 141.407, 141.412, 141.415, 141.418, 141.420, 141.421, 141.423, 141.424, 141.4242, 141.4244, 141.428, 141.430, 141.434, 141.436, 141.437, 141.990, 151B.127, 154.12-2086, 154.20-050, 154.22-060, 154.23-035, 154.24-110, 154.25-030, 154.26-090, 154.28-090, 154.32-010, 154.34-080, 154.45-090, 154.48-025, 155.170

STATUTORY AUTHORITY: KRS 131.130(3)

EFFECTIVE: January 27, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the administration of income taxes by the Department of Revenue.

Section 1. Corporation Income Taxes. (1) Revenue Form 41A720, "Form 720, 2010[2009] Kentucky Corporation Income Tax

and LLET Return", shall be used by a C corporation to determine its corporation income tax due in accordance with KRS 141.040 and its limited liability entity tax due in accordance with KRS 141.0401 for tax years beginning in 2010[2009].

(2) Revenue Form 41A720A, "Schedule A, Apportionment and Allocation (For corporations and pass-through entities taxable both within and without Kentucky)", shall be used by a corporation or a pass-through entity taxable both within and without Kentucky to apportion and allocate its net income to Kentucky in accordance with KRS 141.120 or 141.206.

(3) Revenue Form 41A720A-C, "Schedule A-C, Apportionment and Allocation - Continuation Sheet (For a corporation or pass-through entity taxable both within and without Kentucky that is also a partner or member of a limited liability pass-through entity or general partnership)", shall be used by a corporation or a pass-through entity taxable both within and without Kentucky that is also a partner or member of a pass-through entity to determine the sales, property and payroll amounts to be entered on Revenue Form 41A720A.

(4) Revenue Form 41A720BIO, "Schedule BIO, Application and Credit Certificate of Income Tax/LLET Credit Biodiesel", shall be used by a taxpayer who is a biodiesel producer, biodiesel blender, or renewable diesel producer to report the biodiesel gallons produced or used by the blender and request approval from the Kentucky Department of Revenue of the tax credit amount allowed by KRS 141.423.

(5) Revenue Form 41A720CC, "Schedule CC, Coal Conversion Tax Credit", shall be used by a corporation to compute the tax credit allowed by KRS 141.041 for coal used or substituted for other fuels in an eligible heating facility as described by KRS 141.041(1).

(6) Revenue Form 41A720-CCI, "Schedule CCI, Application and Credit Certificate of Clean Coal Incentive Tax Credit", shall be used by a taxpayer to request approval from the Department of Revenue of the tax credit amount allowed by KRS 141.428 for the purchase of Kentucky coal used by the taxpayer to generate electricity.

(7) Revenue Form 41A720CELL, "Schedule CELL, Application and Credit Certificate of Income Tax/LLET Credit Cellulosic Ethanol", shall be used by a taxpayer who is a producer of cellulosic ethanol to report the number of cellulosic ethanol gallons and request approval from the Department of Revenue of the tax credit amount allowed by KRS 141.4244.

(8) Revenue Form 41A720-CI, "Schedule CI, Application for Coal Incentive Tax Credit", shall be used by a taxpayer to request approval for the amount of tax credit allowed by KRS 141.0405 for the purchase of Kentucky coal used by the taxpayer to generate electricity.

(9) Revenue Form 41A720CR, "Schedule CR, Pro Forma Federal Consolidated Return Schedule", shall be used by a C corporation filing a consolidated return to show its federal pro forma consolidated return.

(10) Revenue Form 41A720CR-C, "Schedule CR-C, Pro Forma Federal Consolidated Return Schedule Continuation Sheet", shall be used by a C corporation filing a consolidated return as a continuation of Revenue Form 41A720CR.

(11) Revenue Form 41A720ES, "Form 720-ES Kentucky, 2011[2010] Corporation Income/Limited Liability Entity Tax Estimated Tax Voucher", shall be used by a corporation or a limited liability pass-through entity to submit payments of estimated corporation income or limited liability entity tax as required by KRS 141.044.

(12) Revenue Form 41A720ETH, "Schedule ETH, Application and Credit Certificate of Income Tax/LLET Credit Ethanol", shall be used by a taxpayer who is a producer of ethanol to report ethanol gallons produced and request approval from the Kentucky Department of Revenue of the tax credit amount allowed by KRS 141.4242.

(13) Revenue Form 41A720EZC, "Schedule EZC, Enterprise Zone Tax Credit", shall be used by a qualified taxpayer to determine the tax credit allowed by KRS 154.45-090.

(14) Revenue Form 41A720HH, "Schedule HH, Kentucky Housing for Homeless Families Deduction", shall be used by an individual, corporation, fiduciary, or pass-through entity to deter-



mine the deduction allowed by KRS 141.0202.

(15) Revenue Form 41A720(I), "Instructions, ~~2010~~~~[2009]~~ Kentucky Corporation Income Tax and LLET Return", shall be used by a corporation to file its ~~2010~~~~[2009]~~ Kentucky Corporation Income Tax and LLET Return and related schedules.

(16) Revenue Form 41A720KCR, "Schedule KCR, Kentucky Consolidated Return Schedule", shall be used by a C corporation filing a nexus consolidated return showing the income or loss of each entity included in the nexus consolidated tax return.

(17) Revenue Form 41A720KCR-C, "Schedule KCR-C, Kentucky Consolidated Return Schedule - Continuation Sheet", shall be used by a C corporation filing a nexus consolidated return as a continuation of Revenue Form 41A720KCR.

(18) Revenue Form 41A720LLET, "Schedule LLET, Limited Liability Entity Tax", shall be used by a corporation or a limited liability pass-through entity to determine the limited liability entity tax in accordance with KRS 141.0401.

(19) Revenue Form 41A720LLET-C, "Schedule LLET-C, Limited Liability Entity Tax - Continuation Sheet (For a corporation or limited liability pass-through entity subject to the limited liability entity tax that is also a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006)", shall be used by a corporation or a limited liability pass-through entity that is a partner in a general partnership organized or formed as a general partnership after January 1, 2006, or a corporation or limited liability pass-through entity that is a member or partner in another limited liability pass-through entity to determine its Kentucky gross receipts and Kentucky gross profits and its gross receipts and gross profits from all sources to be entered on Revenue Form 41A720LLET.

(20) Revenue Form 41A720LLET(K), "Schedule LLET(K), Limited Liability Entity Tax (For a Limited Liability Pass-through Entity with Economic Development Project(s))", shall be used by limited liability pass-through entities with economic development projects to determine the limited liability entity tax.

(21) Revenue Form 41A720LLET(K)-C, "Schedule LLET(K)-C, Limited Liability Entity Tax - Continuation Sheet (For a limited liability pass-through entity with economic development project(s) subject to the limited liability entity tax that is a partner or member of a limited liability pass-through entity or a general partnership organized or formed as a general partnership after January 1, 2006)", shall be used by a limited liability pass-through entity with an economic development project that is a partner or member of a limited liability pass-through entity or a general partnership organized or formed as a general partnership after January 1, 2006, to determine its Kentucky gross receipts and Kentucky gross profits and its gross receipts and gross profits from all sources to be entered on Revenue Form 41A720LLET(K).

(22) Revenue Form 41A720NOL, "Schedule NOL, Net Operating Loss Schedule", shall be used by a C corporation with a current year net operating loss or net operating loss carry-forward.

(23) Revenue Form 41A720NOL-CF, "Schedule NOL-CF, Kentucky ~~NOL~~~~[KNOL]~~ Carry Forward Schedule", shall be used by a corporation filing a nexus consolidated income tax return as provided by KRS 141.200, in addition to Revenue Form 41A720NOL, to show the Kentucky net operating loss (KNOL) carry forward balance for each new member of the affiliated group.

(24) Revenue Form 41A720-O, "Schedule O-720, Other Additions and Subtractions To/From Federal Taxable Income", shall be used by a corporation filing Kentucky Form 720 to show other additions to and subtractions from federal taxable income on Revenue Form 41A720, Part ~~III~~~~[IV]~~, Lines 9 and ~~16~~~~[45]~~, respectively.

(25) Revenue Form 41A720QR, "Schedule QR, Qualified Research Facility Tax Credit", shall be used by a corporation, individual, or pass-through entity to determine the credit against the income tax liability or LLET liability allowed by KRS 141.395.

(26) Revenue Form 41A720RC, "Schedule RC, Application for Income Tax/LLET Credit for Recycling and/or Composting Equipment or Major Recycling Project", shall be used by a taxpayer to request approval for the amount of credit allowed by KRS 141.390 for the purchase and installation of recycling or composting equipment or a major recycling project. This form shall also be used by an individual, corporation, fiduciary, or pass-through entity to substantiate and keep a record of the amount of approved credit

claimed on their tax return.

(27) Revenue Form 41A720RC-C, "Schedule RC-C, Schedule RC - Part I Continuation", shall be used by an individual, corporation, fiduciary, or pass-through entity, in addition to Revenue Form 41A720RC, to list additional equipment for which approval of the credit allowed by KRS 141.390 is being requested.

(28) Revenue Form 41A720RC(I), "Instructions for Schedule RC", shall be used by taxpayers filing Revenue Form 41A720RC and Revenue Form 41A720RC-C requesting approval of a tax credit for recycling equipment, composting equipment, or a major recycling project.

(29) Revenue Form 41A720RC-R, "Schedule RC-R, ~~Kentucky Disposition of~~ Recycling or Composting Equipment Tax Credit Recapture ~~[Schedule]~~", shall be used by a taxpayer disposing of recycling or composting equipment before the end of the recapture period to compute the tax credit recaptured to be reported on the applicable tax return.

(30) Revenue Form 41A720RR-E, "Schedule RR-E, Application and Credit Certificate of Income Tax/LLET Credit Railroad Expansion", shall be used by a corporation or pass-through entity requesting approval of a railroad expansion tax credit allowed by KRS 141.386.

(31) Revenue Form 41A720RR-I, "Schedule RR-I, Railroad Maintenance and Improvement Tax Credit", shall be used by a corporation, individual, or pass-through entity to determine the credit against the income tax liability or LLET liability allowed by KRS 141.385.

(32) Revenue Form 41A720S, "Form 720S, ~~2010~~~~[2009]~~ Kentucky S Corporation Income Tax and LLET Return", shall be used by an S corporation to determine the amount of tax due in accordance with KRS 141.040 and 141.0401 and to report the shareholders' share of income, loss, credits, deductions, etc. for tax years beginning in ~~2010~~~~[2009]~~.

(33)~~(34)~~ Revenue Form 41A720S(I), "Instructions, ~~2010~~~~[2009]~~ Kentucky S Corporation Income Tax and LLET Return", shall be used by an S corporation to file its ~~2010~~~~[2009]~~ Kentucky S Corporation Income Tax and LLET Return and related schedules.

(34)~~(32)~~ Revenue Form 41A720S(K), "Form 720S(K), Kentucky Schedule K for S Corporations With Economic Development Project(s)", shall be used by S Corporations with economic development projects to determine the shareholders' shares of income, credit, deductions, etc., excluding the economic development projects.

(35)~~(33)~~ Revenue Form 41A720S(K-1), "Schedule K-1 (Form 720S), ~~2010~~~~[2009]~~ Shareholder's Share of Income, Credits, Deductions, Etc.", shall be used by an S corporation to report to each of its shareholders the amount of income, credit, deduction, etc., that the shareholder shall report for Kentucky income tax purposes.

(36)~~(34)~~ Revenue Form 41A720S-O, "Schedule O-PTE, Other Additions and Subtractions To/From Federal Ordinary Income", shall be used by a pass-through entity filing Revenue Form 41A720S, Form 41A765, or Form 42A765-GP to show other additions to and subtractions from federal ordinary income on Revenue Form 41A720S, 41A765, or 42A765-GP Part I, Lines 5 and 9, respectively.

(37)~~(35)~~ Revenue Form 41A720SL, "Application for Six-Month Extension of Time to File Kentucky Corporation or Limited Liability Pass-Through Entity Return", shall be used by a corporation or a limited liability pass-through entity to request a six (6) month extension of time to file a ~~corporation income~~ tax return or an LLET return or to submit payment of unpaid tax.

(38)~~(36)~~ Revenue Form 41A720TCS, "Schedule TCS, Tax Credit Summary Schedule", shall be used by a corporation or a limited liability pass-through entity to summarize tax credits claimed and shall be attached to the tax return.

(39)~~(37)~~ Revenue Form 41A720VERB, "Schedule VERB, Voluntary Environmental Remediation Tax Credit", shall be used by an entity claiming a tax credit provided by KRS 141.418.

(40)~~(38)~~ Revenue Form 41A720-S1, "Form 720X, Amended Kentucky Corporation Income Tax and Corporation License Tax Return", shall be used by a C corporation to amend its Kentucky Corporation Income and License Tax Return for tax periods beginning prior to January 1, 2005, as previously filed.

(41)~~(39)~~ Revenue Form 41A720-S2, "Form 720-AMENDED,

Amended Kentucky Corporation Income Tax Return", shall be used by a C corporation to amend its Kentucky Corporation Income Tax Return for periods beginning on or after January 1, 2005 and before January 1, 2007, as previously filed.

~~(42)~~~~(40)~~ Revenue Form 41A720-S3, "Form 720-AMENDED (2007-2008), Amended Kentucky Corporation Income Tax and LLET Return", shall be used by a C corporation to amend its Kentucky Corporation Income Tax and LLET Return for periods beginning on or after January 1, 2007 and before January 1, 2009, as previously filed.

~~(43)~~~~(44)~~ Revenue Form 41A720-S4, "Form 851-K, Kentucky Affiliations and Payment Schedule", shall be used by a corporation filing a consolidated Kentucky income tax return on Revenue Form 41A720 to identify the members of the affiliated group which are subject to the Kentucky corporation tax and to list the amount of tax paid.

~~(44)~~~~(42)~~ Revenue Form 41A720-S6, "Form 2220-K, Underpayment and Late Payment of Estimated Income Tax and LLET", shall be used by a corporation or limited liability pass-through entity required by KRS 141.042 and 141.044 to file a declaration of estimated tax, to compute the underpayment penalty as provided by KRS 131.180(3) and 141.990, and to compute the interest on any late payment or underpayment of an estimated tax installment as provided by KRS 131.183(2).

~~(45)~~~~(43)~~ Revenue Form 41A720-S7, "Form 5695-K, Kentucky Energy Efficiency Products Tax Credit", shall be used by a taxpayer to claim a tax credit for installation of energy efficiency products for residential and commercial property as provided by KRS 141.436.

~~(46)~~~~(44)~~ Revenue Form 41A720-S9, "Form 8903-K, Kentucky Domestic Production Activities Deduction", shall be used by a corporation to determine the Domestic Production Activities Deduction amount for Kentucky corporation income tax purposes and shall be attached to the corporation income tax return.

~~(47)~~~~(45)~~ Revenue Form 41A720-S11, "Form 8908-K, Kentucky ENERGY STAR (Homes and Manufactured Homes) Tax Credit", shall be used by a taxpayer to claim a tax credit for the construction of an ENERGY STAR home or the sale of an ENERGY STAR manufactured home as provided by KRS 141.437.

~~(48)~~~~(46)~~ Revenue Form 41A720-S16, "Schedule KREDA, Tax Credit Computation Schedule (For a KREDA Project of a Corporation ~~(Corporations)~~)", shall be used by a corporation which has a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.347.

~~(49)~~~~(47)~~ Revenue Form 41A720-S17, "Schedule KREDA-T, Tracking Schedule for a KREDA Project", shall be used by a company which has a Kentucky Rural Economic Development Act (KREDA) project to maintain a record of the debt service payments, wage assessment fees and tax credits for the duration of the project.

~~(50)~~~~(48)~~ Revenue Form 41A720-S18, "Schedule KREDA-SP, Tax Computation Schedule (For a KREDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.347.

~~(51)~~~~(49)~~ Revenue Form 41A720-S20, "Schedule KIDA, Tax Credit Computation Schedule (For a KIDA Project of a Corporation ~~(Corporations)~~)", shall be used by a corporation which has a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.400.

~~(52)~~~~(50)~~ Revenue Form 41A720-S21, "Schedule KIDA-T, Tracking Schedule for a KIDA Project", shall be used by a company which has a Kentucky Industrial Development Act (KIDA) project to maintain a record of the debt service payments and tax credits for the duration of the project.

~~(53)~~~~(54)~~ Revenue Form 41A720-S22, "Schedule KIDA-SP, Tax Computation Schedule (For a KIDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Ken-

tucky Industrial Development Act (KIDA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.400.

~~(54)~~~~(52)~~ Revenue Form 41A720-S24, "Schedule KIRA, Tax Credit Computation Schedule (For a KIRA Project of a Corporation ~~(Corporations)~~)", shall be used by a corporation which has a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.403.

~~(55)~~~~(53)~~ Revenue Form 41A720-S25, "Schedule KIRA-T, Tracking Schedule for a KIRA Project", shall be used by a company which has a Kentucky Industrial Revitalization Act (KIRA) project to maintain a record of the approved costs, wage assessment fees and tax credits for the duration of the project.

~~(56)~~~~(54)~~ Revenue Form 41A720-S26, "Schedule KIRA-SP, Tax Computation Schedule (For a KIRA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.403.

~~(57)~~~~(55)~~ Revenue Form 41A720-S27, "Schedule KJDA, Tax Credit Computation Schedule (For a KJDA Project of a Corporation ~~(Corporations)~~)", shall be used by a corporation which has a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.407.

~~(58)~~~~(56)~~ Revenue Form 41A720-S28, "Schedule KJDA-T, Tracking Schedule for a KJDA Project", shall be used by a company which has a Kentucky Jobs Development Act (KJDA) project to maintain a record of the approved costs, wage assessment fees, in-lieu-of credits and tax credits for the duration of the project.

~~(59)~~~~(57)~~ Revenue Form 41A720-S29, "Schedule KJDA-SP, Tax Computation Schedule (For a KJDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.407.

~~(60)~~~~(58)~~ Revenue Form 41A720-S35, "Schedule KRA, Tax Credit Computation Schedule (For a KRA Project of a Corporation ~~(Corporations)~~)", shall be used by a corporation which has entered into a Kentucky Reinvestment Act (KRA) project to compute the allowable KRA credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.415.

~~(61)~~ Revenue Form 41A720-S36, "Schedule KRA-SP, Tax Computation Schedule (For a KRA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Reinvestment Act (KRA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.415.

~~(62)~~~~(59)~~ Revenue Form 41A720-S37, "Schedule KRA-T, Tracking Schedule For a KRA Project", shall be used by a company which has entered into a Kentucky Reinvestment Act (KRA) project to maintain a record of the balance of approved costs and tax credits for the duration of the agreement.

~~(63)~~~~(60)~~ Revenue Form 41A720-S40, "Schedule KEOZ, Tax Credit Computation Schedule (For a KEOZ Project of a Corporation ~~(Corporations)~~)", shall be used by a corporation which has entered into a Kentucky Economic Opportunity Zone (KEOZ) Act project to compute the allowable KEOZ credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.401.

~~(64)~~~~(64)~~ Revenue Form 41A720-S41, "Schedule KEOZ-SP, Tax Computation Schedule (For a KEOZ Project of a Pass-Through Entity)", shall be used by a pass-through entity which has entered into a Kentucky Economic Opportunity Zone (KEOZ) Act project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.401.

~~(65)~~~~(62)~~ Revenue Form 41A720-S42, "Schedule KEOZ-T, Tracking Schedule for a KEOZ Project", shall be used by a company which has entered into an agreement for a Kentucky Economic

Opportunity Zone (KEOZ) Act project to maintain a record of the debt service payments, wage assessment fees, approved costs and tax credits for the duration of the agreement.

~~(66)(63)~~ Revenue Form 41A720-S43, "Schedule KESA, Tax Credit Computation Schedule (For a KESA Project of a Corporation ~~Corporations~~)", shall be used by a corporation which has entered into a Kentucky Environmental Stewardship Act (KESA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.430.

~~(67)(64)~~ Revenue Form 41A720-S44, "Schedule KESA-T, Tracking Schedule for a KESA Project", shall be used by a company which has entered into an agreement for a Kentucky Environmental Stewardship Act (KESA) project to maintain a record of the approved costs and tax credits for the duration of the agreement.

~~(68)(65)~~ Revenue Form 41A720-S45, "Schedule KJRA, Tax Credit Computation Schedule (For a KJRA Project of a Corporation ~~Corporations~~)", shall be used by a company which has entered into a Kentucky Jobs Retention Act (KJRA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.402.

~~(69)(66)~~ Revenue Form 41A720-S46, "Schedule KJRA-T, Tracking Schedule For a KJRA Project", shall be used by a company which has entered into an agreement for a Kentucky Jobs Retention Act (KJRA) project to maintain a record of the debt service payments, wage assessment fees, approved costs, and tax credits for the duration of the agreement.

~~(70)(67)~~ Revenue Form 41A720-S50, "Schedule IEIA, Tax Credit Computation Schedule (For an IEIA Project of a Corporation ~~Corporations~~)", shall be used by a company which has entered into an Incentives for Energy Independence Act (IEIA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.421.

~~(71)(68)~~ Revenue Form 41A720-S51, "Schedule IEIA-T, Tracking Schedule For an IEIA Project", shall be used by a company which has entered into an Incentives for Energy Independence Act (IEIA) project to maintain a record of the balance of approved costs, wage assessments, and tax credits ~~balance of credit for income tax and limited liability entity tax~~ for the duration of the agreement.

~~(72)~~ Revenue Form 41A720-S53, "Schedule KBI, Tax Credit Computation Schedule (For a KBI Project of a Corporation)", shall be used by a corporation which has entered into a Kentucky Business Investment (KBI) project to compute the allowable KBI credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.415.

~~(73)~~ Revenue Form 41A720-S54, "Schedule KBI-SP, Tax Computation Schedule (For a KBI Project of a Pass-through Entity)", shall be used by a pass-through entity which has entered into a Kentucky Business Investment (KBI) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.415.

~~(74)~~ Revenue Form 41A720-S55, "Schedule KBI-T, Tracking Schedule for a KBI Project", shall be used by a company which has entered into an agreement for a Kentucky Business Investment (KBI) project to maintain a record of approved costs, wage assessments, and tax credits for the duration of the agreement.

~~(75)~~ Revenue Form 41A720-S80, "Form 8874(K), Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit", shall be used by a qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment eligible for the tax credit provided by KRS 141.434.

~~(76)~~ Revenue Form 41A720-S81, "Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification", shall be used by a qualified community development entity to provide proof to the Kentucky Department of Revenue of the receipt of cash for a taxpayer's qualified equity investment.

~~(77)~~ Revenue Form 41A720-S82, "Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture", shall be used by the Kentucky Department of Revenue to notify a taxpayer of a recapture of the New Markets Development

Program tax credit.

~~(78)(69)~~ Revenue Form 41A725, "Form 725, 2010 ~~2009~~ Kentucky Single Member LLC Individually Owned LLET Return", shall be used by a single member individually-owned LLC to file an LLET return in accordance with KRS 141.0401 for tax years beginning in 2010 ~~2009~~.

~~(79)(70)~~ Revenue Form 41A725CP, "Schedule CP, Form 725, 2010 ~~2009~~ Kentucky Single Member LLC Individually Owned Composite Return Schedule", shall be used by a single member individual with multiple LLC entities to file LLET returns in accordance with KRS 141.0401 for tax years beginning in 2010 ~~2009~~.

~~(80)(74)~~ Revenue Form 41A725(I), "Instructions, 2010 ~~2009~~ Kentucky Single Member LLC Individually Owned LLET Return", shall be used by a single member LLC individually owned to file its 2010 ~~2009~~ Kentucky LLET return and related schedules.

~~(81)(72)~~ Revenue Form 41A750, "Form 750, Business Development Corporation Tax Return", shall be used by a corporation organized under the provisions of KRS Chapter 155 to determine its excise tax due in accordance with KRS 155.170 for tax years beginning in 2010 ~~2009~~.

~~(82)(73)~~ Revenue Form 41A765, "Form 765, 2010 ~~2009~~ Kentucky Partnership Income and LLET Return", shall be used by an entity taxed as a partnership and organized as a LLC, LLP or LP to file its Kentucky income and LLET return in accordance with KRS 141.0401 and 141.206 for tax years beginning in 2010 ~~2009~~.

~~(83)(74)~~ Revenue Form 41A765(I), "Instructions, 2010 ~~2009~~ Kentucky Partnership Income and LLET Return", shall be used by an entity taxed as a partnership and organized as a LLC, LLP, or LP to file its 2010 ~~2009~~ Kentucky income and LLET return and related schedules.

~~(84)(75)~~ Revenue Form 41A765(K), "Form 765(K), Kentucky Schedule K For Partnerships With Economic Development Project(s)", shall be used by partnerships with economic development projects to determine the partners' share of income, credits, deductions, etc., excluding the economic development projects.

~~(85)(76)~~ Revenue Form 41A765 (K-1), "Schedule K-1 (Form 765), 2010 ~~2009~~ Partner's Share of Income, Credits, Deductions, Etc.", shall be used by an entity taxed as a partnership and organized as a LLC, LLP, or LP to report to its partners the amount of income, credit, deduction, etc., that the partners shall report for Kentucky income tax purposes.

~~(86)(77)~~ Revenue Form 41A800, "Corporation and Pass-through Entity Nexus Questionnaire", shall be used by a corporation or pass-through entity to determine if the entity has nexus with the Commonwealth of Kentucky.

Section 2. Individual Income and Withholding Taxes. (1) Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request", shall be submitted to the Department of Revenue to request an installment agreement to pay tax due.

(2) Revenue Form 40A100, "Application for Refund of Income Taxes", shall be presented to the Department of Revenue to request a refund of income taxes paid.

(3) Revenue Form 40A102, "2010 ~~2009~~ Application for Extension of Time to File Individual, General Partnership and Fiduciary Income Tax Returns for Kentucky", shall be submitted to the Department of Revenue by individuals, partnerships, and fiduciaries prior to the date prescribed by law for filing a return to request a six (6) month extension to file the return or to remit payment of tax prior to the date the return is due.

(4) Revenue Form 40A103, "Application for New Home Tax Credit", shall be submitted to the Department of Revenue by individuals to request approval for the new home tax credit.

(5) Revenue Form 40A200, "Form PTE-WH, Kentucky Nonresident Income Tax Withholding on ~~Net~~ Distributive Share Income", shall be used by a pass-through entity doing business in Kentucky to report Kentucky income tax withheld on each nonresident individual or corporate partner doing business in Kentucky only through its ownership interest in the pass-through entity.

(6) Revenue Form 40A201, "Form 740NP-WH, Kentucky Nonresident Income Tax Withholding on ~~Net~~ Distributive Share Income Transmittal Report and Composite Income Tax Return", shall be used by a pass-through entity doing business in Kentucky to report and pay Kentucky income tax withheld on nonresident indi-

vidual and corporate partners.

(7) Revenue Form 40A727, "Kentucky Income Tax Forms Requisition", shall be used by a taxpayer or tax preparer to order individual income tax forms.

(8) Revenue Form 42A003, "Withholding Kentucky Income Tax Instructions for Employers", shall provide instructions for employers and shall contain forms used for withholding and reporting Kentucky income tax withholding.

(9) Revenue Form 42A003(T), "~~2011~~~~[2010]~~ Withholding Tax Tables Computer Formula", shall be used by an employer for computing employees Kentucky income tax withholding each pay period.

(10) Revenue Form 42A740, "Form 740, ~~2010~~~~[2009]~~ Kentucky Individual Income Tax Return, Full-Year Residents Only", shall be completed by a resident individual to report taxable income and income tax liability for taxable years beginning in ~~2010~~~~[2009]~~, and shall be due within three and one-half (3 1/2) months after the close of the taxable year.

(11) Revenue Form 42A740-A, "Schedule A, Form 740, ~~2010~~~~[2009]~~ Kentucky Itemized Deductions", shall be completed by resident individuals and attached to Form 740 to support itemized deductions claimed for ~~2010~~~~[2009]~~.

(12) Revenue Form 42A740ES, "Form 740-ES, ~~2011~~~~[2010]~~ Individual Income Tax Kentucky Estimated Tax Voucher", shall be submitted to the Department of Revenue by individuals with payment of quarterly estimated tax.

(13) Revenue Form 42A740-EZ, "Form 740-EZ, ~~2010~~~~[2009]~~ Kentucky Individual Income Tax Return for Single Persons with No Dependents", shall be completed by resident individuals to report taxable income and income tax liability for taxable years beginning in ~~2010~~~~[2009]~~, and shall be due within three and one-half (3 1/2) months after the close of the taxable year.

(14) Revenue Form 42A740(I), "~~2010~~~~[2009]~~ Kentucky Individual Income Tax Instructions for Forms 740 and 740-EZ", shall be used by resident individuals to file the ~~2010~~~~[2009]~~ Kentucky Individual Tax Return and related schedules.

(15) Revenue Form 42A740-J, "Schedule J, Kentucky Farm Income Averaging", shall be completed by individuals and attached to Form 740 to compute tax liability by averaging farm income for taxable years beginning after December 31, 1997.

(16) Revenue Form 42A740-KNOL, "Schedule KNOL, ~~2010~~~~[2009]~~ Kentucky Net Operating Loss Schedule", shall be used by individuals to compute and carry forward a net operating loss to subsequent years.

(17) Revenue Form 42A740-M, "Schedule M, ~~2010~~~~[2009]~~ Kentucky Federal Adjusted Gross Income Modifications", shall be completed by individuals and attached to Form 740 in support of additions to and subtractions from federal adjusted gross income.

(18) Revenue Form 42A740-NP, "Form 740-NP, ~~2010~~~~[2009]~~ Kentucky Individual Income Tax Return, Nonresident or Part-Year Resident", shall be completed by part-year or full-year nonresident individuals to report taxable income and income tax liability for taxable years beginning in ~~2010~~~~[2009]~~, and shall be filed within three and one-half (3 1/2) months after the close of the taxable year.

(19) Revenue Form 42A740-NP-A, "Schedule A, Form 740-NP, ~~2010~~~~[2009]~~ Kentucky Schedule A Itemized Deductions", shall be completed and attached to Form 42A740-NP by part-year or full-year nonresidents to support the itemized deductions claimed for ~~2010~~~~[2009]~~.

(20) Revenue Form 42A740-NP-ME, "Schedule ME, Form 740-NP, ~~2010~~~~[2009]~~ Moving Expense and Reimbursement", shall be completed and attached to Form 42A740-NP by part-year or full-year nonresidents to support moving expenses and reimbursement by employers for moving expenses for ~~2010~~~~[2009]~~.

(21) Revenue Form 42A740-NP(I), "Instructions for ~~2010~~~~[2009]~~ Kentucky Form 740-NP, Nonresident or Part-Year Resident Income Tax Return", shall be used by nonresident or part-year resident individuals to file the ~~2010~~~~[2009]~~ Kentucky Form 740-NP and related schedules.

(22) Revenue Form 42A740-NP-R, "Form 740-NP-R, ~~2010~~~~[2009]~~ Kentucky Income Tax Return Nonresident - Reciprocal State", shall be completed by resident individuals of reciprocal states to request a refund of Kentucky withholding for ~~2010~~~~[2009]~~.

(23) Revenue Form 42A740-NP(P), "~~2010~~~~[2009]~~ Kentucky Income Tax Return, Nonresident or Part-Year Resident", shall be a packet containing forms and instructions and shall be mailed to nonresident and part-year resident individuals for use in filing a Kentucky individual tax return for ~~2010~~~~[2009]~~.

(24) Revenue Form 42A740(PKT), "~~2010~~~~[2009]~~ Kentucky Individual Income Tax Forms", shall be a packet containing forms and instructions and shall be mailed to resident individuals for use in filing a Kentucky individual tax return for ~~2010~~~~[2009]~~.

(25) Revenue Form 42A740-P, "Schedule P, ~~2010~~~~[2009]~~ Kentucky Pension Income Exclusion", shall be completed by individuals and attached to Form 740 to compute the amount of allowable pension exclusion for ~~2010~~~~[2009]~~.

(26) Revenue Form 42A740-UTC, "Schedule UTC, Form 740, Unemployment Tax Credit", shall be completed by individuals and attached to Form 740 or Form 740-NP to provide the Department for Employment Services Certificate Numbers in support of credit claimed for hiring an unemployed person.

(27) Revenue Form 42A740-X, "Form 740-X, Amended Kentucky Individual Income Tax Return~~[For Tax Year 2005 through 2009]~~", shall be completed by individuals and filed with the Department of Revenue to amend a previously filed tax return ~~for 2005 or future years [with tax years beginning in 2005, 2006, 2007, 2008, or 2009]~~.

(28) Revenue Form 42A740-XP, "Form 740-XP, Amended Kentucky Individual Income Tax Return, 2004 and Prior Years", shall be completed by individuals and filed with the Department of Revenue to amend a previously filed tax return for 2004 or prior years.

(29) Revenue Form 42A740-S1, "Form 2210-K, ~~2010~~~~[2009]~~ Underpayment of Estimated Tax by Individuals", shall be filed by individuals to request a waiver of estimated tax penalty or to compute and self assess an estimated tax penalty for a tax year beginning in ~~2010~~~~[2009]~~.

(30) Revenue Form 42A740-S4, "~~2011~~~~[2010]~~ Instructions for Filing Estimated Tax Vouchers", shall be used to compute the amount of estimated tax due for ~~2011~~~~[2010]~~.

(31) Revenue Form 42A740-S18, "Form 8582-K, ~~2010~~~~[2009]~~ Kentucky Passive Activity Loss Limitations", shall be completed by an individual taxpayer and attached to the individual tax return in support of an allowable passive loss deduction and carryover of a passive activity loss.

(32) Revenue Form 42A740-S21, "Form 4972-K, ~~2010~~~~[2009]~~ Kentucky Tax on Lump-Sum Distributions", shall be completed by an individual taxpayer to compute tax liability on a lump sum distribution and attached to the taxpayer's individual income tax return.

(33) Revenue Form 42A740-S22, "Form 8453-K, ~~2010~~~~[2009]~~ Kentucky Individual Income Tax Declaration for Electronic Filing", shall be completed, signed by the individual taxpayer or taxpayers and maintained by the preparer or taxpayer in support of an electronically filed return.

(34) Revenue Form 42A740-S23, "Form 740-V, ~~2010~~~~[2009]~~ Kentucky Electronic Payment Voucher", shall be used by the individual taxpayer or taxpayers for the payment of additional tax due on an electronically filed return and submitted to the Department of Revenue.

(35) Revenue Form 42A740-S24, "Form 8863-K, ~~2010~~~~[2009]~~ Kentucky Education Tuition Tax Credit", shall be used by an individual taxpayer or taxpayers to claim a tuition tax credit on the taxpayer's individual Kentucky income tax return.

(36) Revenue Form 42A741, "Form 741, ~~2010~~~~[2009]~~ Kentucky Fiduciary Income Tax Return", shall be used by a fiduciary of an estate or trust to report income and tax liability of an estate or trust and filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the taxable year.

(37) Revenue Form 42A741-D, "Schedule D, Form 741, ~~2010~~~~[2009]~~ Kentucky Capital Gains and Losses", shall be completed and attached to Form 741 by a fiduciary to report income from capital gains and losses.

(38) Revenue Form 42A741(I), "Instructions - Form 741, Kentucky Fiduciary Income Tax Return", shall be the instruction guide provided by the Department of Revenue for completing the ~~2010~~~~[2009]~~ Form 741.

(39) Revenue Form 42A741(K-1), "Schedule K-1, Form 741,

2010[2009] Kentucky Beneficiary's Share of Income, Deductions, Credits, etc.", shall be filed by the fiduciary with Form 741 to report each beneficiary's share of income, deductions, and credits.

(40) Revenue Form 42A765-GP, "Form 765-GP, 2010[2009] Kentucky General Partnership Income Return", shall be completed and filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the taxable year by a general partnership to report income, deductions, and credits of a general partnership for 2010[2009].

(41) Revenue Form 42A765-GP(I), "Instructions, 2010[2009] Kentucky General Partnership Income Return", shall be provided to assist the general partnership in completing a general partnership income return.

(42) Revenue Form 765-GP(K-1), "Schedule K-1, Form 765-GP, 2010[2009] Partner's Share of Income, Credits, Deductions, etc.", shall be filed by the general partnership with Form 765-GP to report each general partner's share of income, deductions, and credits.

(43) Revenue Form 42A765-GP(K), "Form 765-GP(K), Kentucky Schedule K for General Partnerships with Economic Development Project(s)", shall be used by a general partnership which has one (1) or more economic development projects to determine the total general partners' share of income, credits, deductions, etc., excluding the amount of each item of income, credit, deduction, etc., attributable to the projects.

(44) Revenue Form 42A801, "Form K-1, Kentucky Employer's Income Tax Withheld Worksheet", shall be used by employers to report wages and taxes withheld for the filing period.

(45) Revenue Form 42A801(D), "Form K-1, Amended Employer's Return of Income Tax Withheld", shall be used by employers to correct wages and taxes reported for the filing period.

(46) Revenue Form 42A801-E, "Form K-1E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", shall be used by employers who remit taxes withheld electronically to report wages and tax withheld for the filing period.

(47) "Form W-2, 2010[2009] Wage and Tax Statement", shall be used by an employer to report each of its employees' wages and Kentucky tax withheld for the calendar year 2010[2009].

(48) Revenue Form 42A803, "Form K-3, Kentucky Employer's Income Tax Withheld Worksheet", shall be used by employers to report wages and tax withheld for the filing period and annually reconcile wages and taxes reported.

(49) Revenue Form 42A803(D), "Form K-3, Amended Employer's Return of Income Tax Withheld", shall be used by employers to amend wages and taxes reported for the filing period and the annual reconciled wages and taxes reported.

(50) Revenue Form 42A803-E, "Form K-3E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", shall be used by employers to report wages and tax withheld for the filing period and to annually reconcile wages and taxes reported.

(51) Revenue Form 42A804, "Form K-4, Kentucky Department of Revenue Employee's Withholding Exemption Certificate", shall be used by an employee to inform the employer of the number of exemptions claimed in order to determine the amount of Kentucky tax to withhold from wages each pay period.

(52) Revenue Form 42A804-A, "Form K-4A, Kentucky Department of Revenue Withholding Exemptions for Excess Itemized Deductions", shall be used by an employee to determine additional withholding exemptions.

(53) Revenue Form 42A804-E, "Form K-4E, Special Withholding Exemption Certificate", shall be used by employees to inform employers of special tax exempt status.

(54) Revenue Form 42A804-M, "Form K-4M, Nonresident Military Spouse Withholding Tax Exemption Certificate", shall be used by employees to inform employers of special tax exempt status as a nonresident military spouse.

(55) Revenue Form 42A806, "Transmitter Report for Filing Kentucky Wage Statements", shall be used by employers annually to submit Form W-2 Wage and Tax Statements.

(56)[(55)] Revenue Form 42A807, "Form K-4FC, Fort Campbell Exemption Certificate", shall be completed by nonresident employees working at Fort Campbell, Kentucky, to inform employers of special tax exempt status.

(57)[(56)] Revenue Form 42A808, "Authorization to Submit Employees Annual Wage and Tax Statements Via Kentucky Department of Revenue Web Site", shall be used by employers to request authorization to annually submit wage and tax statements via the Kentucky Department of Revenue Web site.

(58)[(57)] Revenue Form 42A809, "Certificate of Nonresidence", shall be used by employees to inform employers of special tax exempt status as a result of being a resident of a reciprocal state.

(59)[(58)] Revenue Form 42A810, "Nonresident's Affidavit - Kentucky Individual Income Tax", shall be used by individuals to submit a sworn statement concerning residency status.

(60)[(59)] Revenue Form 42A811, "KREDA Annual Report", shall be completed by employers to report KREDA employee wage assessment fee information to the Department of Revenue.

(61)[(60)] Revenue Form 42A812, "KIDA Annual Report", shall be completed by employers to report KIDA employee wage assessment fee information to the Department of Revenue.

(62)[(61)] Revenue Form 42A813, "KJDA Annual Report", shall be completed by employers to report KJDA employee wage assessment fee information to the Department of Revenue.

(63)[(62)] Revenue Form 42A814, "KIRA Annual Report", shall be completed by employers to report KIRA employee wage assessment fee information to the Department of Revenue.

(64)[(63)] Revenue Form 42A815, "Withholding Tax Refund Application", shall be completed by employers to request a refund of withholding tax paid.

(65)[(64)] Revenue Form 42A816, "KEOZ Annual Report", shall be completed by employers to report KEOZ employee wage assessment fee information to the Department of Revenue.

(66) Revenue Form 42A817, "KJRA Annual Report", shall be completed by employers to report KJRA employee wage assessment fee information to the Department of Revenue.

(67) Revenue Form 42A818, "KBI Annual Report", shall be completed by employers to report KBI employee wage assessment fee information to the Department of Revenue.

(68)[(65)] Revenue Form 42D003, "2010[2009] Kentucky Wage and Tax Statements (W-2/K-2) Order Form", shall be used by employers to order wage and tax statements.

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

(a) Corporation income taxes; referenced material:

1. Revenue Form 41A720, "Form 720, 2010[2009] Kentucky Corporation Income Tax and LLET Return", 2010[2009];

2. Revenue Form 41A720A, "Schedule A, Apportionment and Allocation (For corporations and pass-through entities taxable both within and without Kentucky)", October 2010[2009];

3. Revenue Form 41A720A-C, "Schedule A-C, Apportionment and Allocation - Continuation Sheet (For a corporation or pass-through entity taxable both within and without Kentucky that is also a partner or member of a limited liability pass-through entity or general partnership)", October 2010[2009];

4. Revenue Form 41A720BIO, "Schedule BIO, Application and Credit Certificate of Income Tax/LLET Credit Biodiesel", October 2010[2009];

5. Revenue Form 41A720CC, "Schedule CC, Coal Conversion Tax Credit", October 2010[2009];

6. Revenue Form 41A720-CCI, "Schedule CCI, Application and Credit Certificate of Clean Coal Incentive Tax Credit", October 2010[2009];

7. Revenue Form 41A720CELL, "Schedule CELL, Application and Credit Certificate of Income Tax/LLET Credit Cellulosic Ethanol", October 2010[2009];

8. Revenue Form 41A720-CI, "Schedule CI, Application for Coal Incentive Tax Credit", October 2010[2009];

9. Revenue Form 41A720CR, "Schedule CR, Pro Forma Federal Consolidated Return Schedule", October 2010[2009];

10. Revenue Form 41A720CR-C, "Schedule CR-C, Pro Forma Federal Consolidated Return Schedule Continuation Sheet", October 2010[2009];

11. Revenue Form 41A720ES, "Form 720-ES Kentucky, 2011[2010] Corporation Income/Limited Liability Entity Tax Estimated Tax Voucher", June 2010[2009];

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12. Revenue Form 41A720ETH, "Schedule ETH, Application and Credit Certificate of Income Tax/LLET Credit Ethanol", October 2010[2009];

13. Revenue Form 41A720Ezc, "Schedule EZC, Enterprise Zone Tax Credit", October 2010[2009];

14. Revenue Form 41A720HH, "Schedule HH, Kentucky Housing for Homeless Families Deduction", October 2010[2009];

15. Revenue Form 41A720(I), "Instructions, 2010[2009] Kentucky Corporation Income Tax and LLET Return", October 2010[2009];

16. Revenue Form 41A720KCR, "Schedule KCR, Kentucky Consolidated Return Schedule", October 2010[2009];

17. Revenue Form 41A720KCR-C, "Schedule KCR-C, Kentucky Consolidated Return Schedule - Continuation Sheet", October 2010[2009];

18. Revenue Form 41A720LLET, "Schedule LLET, Limited Liability Entity Tax", October 2010[2009];

19. Revenue Form 41A720LLET-C, "Schedule LLET-C, Limited Liability Entity Tax - Continuation Sheet (For a corporation or limited liability pass-through entity subject to the limited liability entity tax that is also a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006)", October 2010[2009];

20. Revenue Form 41A720LLET(K), "Schedule LLET(K), Limited Liability Entity Tax (For a Limited Liability Pass through Entity with Economic Development Project(s))", October 2010[2009];

21. Revenue Form 41A720LLET(K)-C, "Schedule LLET(K)-C, Limited Liability Entity Tax - Continuation Sheet (For a limited liability pass-through entity with economic development project(s) subject to the limited liability entity tax that is a partner or member of a limited liability pass-through entity or a general partnership organized or formed as a general partnership after January 1, 2006)", October 2010[2009];

22. Revenue Form 41A720NOL, "Schedule NOL, Net Operating Loss Schedule", October 2010[2009];

23. Revenue Form 41A720NOL-CF, "Schedule NOL-CF, Kentucky KNOL Carry forward Schedule", October 2010[2009];

24. Revenue Form 41A720-O, "Schedule O-720, Other Additions and Subtractions To/From Federal Taxable Income", November 2010[2009];

25. Revenue Form 41A720QR, "Schedule QR, Qualified Research Facility Tax Credit", October 2010[2009];

26. Revenue Form 41A720RC, "Schedule RC, Application for Income Tax/LLET Credit for Recycling and/or Composting Equipment or Major Recycling Project", October 2010[2009];

27. Revenue Form 41A720RC-C, "Schedule RC-C, Schedule RC - Part I Continuation", October 2010[2009];

28. Revenue Form 41A720RC(I), "Instructions For Schedule RC", October 2010[2009];

29. Revenue Form 41A720RC-R, "Schedule RC-R, [Kentucky Disposition of] Recycling or Composting Equipment Tax Credit Recapture [Schedule]", October 2010[2009];

30. Revenue Form 41A720RR-E, "Schedule RR-E, Application and Credit Certificate of Income Tax/LLET Credit Railroad Expansion", October 2010;

31. Revenue Form 41A720RR-I, "Schedule RR-I, Railroad Maintenance and Improvement Tax Credit", October 2010;

32. Revenue Form 41A720S, "Form 720S, 2010[2009] Kentucky S Corporation Income Tax and LLET Return", 2010[2009];

33.[34-] Revenue Form 41A720S(I), "Instructions, 2010[2009] Kentucky S Corporation Income Tax and LLET Return", October 2010[2009];

34.[32-] Revenue Form 41A720S(K), "Form 720S(K), Kentucky Schedule K for S Corporations With Economic Development Project(s)", October 2010[2009];

35.[33-] Revenue Form 41A720S(K-1), "Schedule K-1 (Form 720S), 2010[2009] Shareholder's Share of Income, Credits, Deductions, etc.", 2010[2009];

36.[34-] Revenue Form 41A720S-O, "Schedule O-PTE, Other Additions and Subtractions To/From Federal Ordinary Income", November 2010[2009];

37.[35-] Revenue Form 41A720SL, "Application for Six-Month Extension of Time to File Kentucky Corporation or Limited Liability Pass-Through Entity Return", June 2010[2009];

38.[36-] Revenue Form 41A720TCS, "Schedule TCS, Tax Credit Summary Schedule", October 2010[2009];

39.[37-] Revenue Form 41A720VERB, "Schedule VERB, Voluntary Environmental Remediation Tax Credit", October 2010[2009];

40.[38-] Revenue Form 41A720-S1, "Form 720X, Amended Kentucky Corporation Income Tax and Corporation License Tax Return", October 2010[2009];

41.[39-] Revenue Form 41A720-S2, "Form 720-AMENDED, Amended Kentucky Corporation Income Tax Return", October 2010[2009];

42.[40-] Revenue Form 41A720-S3, "Form 720-AMENDED (2007-2008), Amended Kentucky Corporation Income Tax and LLET Return", October 2010[2009];

43.[44-] Revenue Form 41A720-S4, "Form 851-K, Kentucky Affiliations and Payment Schedule", October 2010[2009];

44.[42-] Revenue Form 41A720-S6, "Form 2220-K, Underpayment and Late Payment of Estimated Income Tax and LLET", October 2010[2009];

45.[43-] Revenue Form 41A720-S7, "Form 5695-K, Kentucky Energy Efficiency Products Tax Credit", October 2010[November 2009];

46.[44-] Revenue Form 41A720-S9, "Schedule 8903-K, Kentucky Domestic Production Activities Deduction", October 2010[2009];

47.[45-] Revenue Form 41A720-S11, "Form 8908-K, Kentucky ENERGY STAR (Homes and Manufactured Homes) Tax Credit", October 2010[2009];

48.[46-] Revenue Form 41A720-S16, "Schedule KREDA, Tax Credit Computation Schedule (For a KREDA Project of a Corporation)", October 2010[2009];

49.[47-] Revenue Form 41A720-S17, "Schedule KREDA-T, Tracking Schedule for a KREDA Project", October 2010[2009];

50.[48-] Revenue Form 41A720-S18, "Schedule KREDA-SP, Tax Computation Schedule (For a KREDA Project of a Pass-Through Entity)", October 2010[2009];

51.[49-] Revenue Form 41A720-S20, "Schedule KIDA, Tax Credit Computation Schedule (For a KIDA Project of a Corporation)", October 2010[2009];

52.[50-] Revenue Form 41A720-S21, "Schedule KIDA-T, Tracking Schedule for a KIDA Project" October 2010[2009];

53.[54-] Revenue Form 41A720-S22, "Schedule KIDA-SP, Tax Computation Schedule (For a KIDA Project of a Pass-Through Entity)", October 2010[2009];

54.[52-] Revenue Form 41A720-S24, "Schedule KIRA, Tax Credit Computation Schedule (For a KIRA Project of a Corporation)", October 2010[2009];

55.[53-] Revenue Form 41A720-S25, "Schedule KIRA-T, Tracking Schedule for a KIRA Project", October 2010[2009];

56.[54-] Revenue Form 41A720-S26, "Schedule KIRA-SP, Tax Computation Schedule (For a KIRA Project of a Pass-Through Entity)", October 2010[2009];

57.[55-] Revenue Form 41A720-S27, "Schedule KJDA, Tax Credit Computation Schedule (For a KJDA Project of a Corporation)", October 2010[2009];

58.[56-] Revenue Form 41A720-S28, "Schedule KJDA-T, Tracking Schedule for a KJDA Project", October 2010[2009];

59.[57-] Revenue Form 41A720-S29, "Schedule KJDA-SP, Tax Computation Schedule (For a KJDA Project of a Pass-Through Entity)", October 2010[2009];

60.[58-] Revenue Form 41A720-S35, "Schedule KRA, Tax Credit Computation Schedule (For a KRA Project of a Corporation)", October 2010[2009];

61. Revenue Form 41A720-S36, "Schedule KRA-SP, Tax Computation Schedule (For a KRA project of a Pass-Through Entity)", October 2010;

62.[59-] Revenue Form 41A720-S37, "Schedule KRA-T, Tracking Schedule for a KRA Project", October 2010[2009];

63.[60-] Revenue Form 41A720-S40, "Schedule KEOZ, Tax Credit Computation Schedule (For a KEOZ Project of a Corporation)", October 2010[2009];

64.[64-] Revenue Form 41A720-S41, "Schedule KEOZ-SP, Tax Computation Schedule (For a KEOZ project of a Pass-Through Entity)", October 2010[2009];

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65.[62-] Revenue Form 41A720-S42, "Schedule KEOZ-T, Tracking Schedule for a KEOZ Project", October 2010[2009];

66.[63-] Revenue Form 41A720-S43, "Schedule KESA, Tax Credit Computation Schedule (For a KESA Project of a Corporation)", October 2010[2009];

67.[64-] Revenue Form 41A720-S44, "Schedule KESA-T, Tracking Schedule for a KESA Project", October 2010[2009];

68.[65-] Revenue Form 41A720-S45, "Schedule KJRA, Tax Credit Computation Schedule (For a KJRA Project of a Corporation)", October 2010[2009];

69.[66-] Revenue Form 41A720-S46, "Schedule KJRA-T, Tracking Schedule for a KJRA Project", October 2010[2009];

70.[67-] Revenue Form 41A720-S50, "Schedule IEIA, Tax Credit Computation Schedule (For an IEIA Project of a Corporation)", October 2010[2009];

71.[68-] Revenue Form 41A720-S51, "Schedule IEIA-T, Tracking Schedule for an IEIA Project", October 2010[2009];

72. Revenue Form 41A720-S53, "Schedule KBI, Tax Credit Computation Schedule (For a KBI Project of a Corporation)", October 2010;

73. Revenue Form 41A720-S54, "Schedule KBI-SP, Tax Credit Computation Schedule (For a KBI Project of a Pass-Through Entity)", October 2010;

74. Revenue Form 41A720-S55, "Schedule KBI-T, Tracking Schedule for a KBI Project", October 2010;

75. Revenue Form 41A720-S80, "Form 8874(K), Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit", June 2010;

76. Revenue Form 41A720-S81, "Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification", June 2010;

77. Revenue Form 41A720-S82, "Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture", June 2010;

78.[69-] Revenue Form 41A725, "Form 725, 2010[2009] Kentucky Single Member LLC Individually Owned LLET Return", 2010[2009];

79.[70-] Revenue Form 41A725CP, "Schedule CP, Form 725, 2010[2009] Kentucky Single Member LLC Individually Owned Composite Return Schedule", 2009;

80.[71-] Revenue Form 41A725(I), "Instructions, 2010[2009] Kentucky Single Member LLC Individually Owned LLET Return", October 2010[2009];

81.[72-] Revenue Form 41A750, "Form 750, Business Development Corporation Tax Return", September 2010[2009];

82.[73-] Revenue Form 41A765, "Form 765, 2010[2009] Kentucky Partnership Income and LLET Return", 2010[2009];

83.[74-] Revenue Form 41A765(I), "Instructions, 2010[2009] Kentucky Partnership Income and LLET Return", October 2010[2009];

84.[75-] Revenue Form 41A765(K), "Form 765(K), Kentucky Schedule K For Partnerships With Economic Development Project(s)", October 2010[2009];

85.[76-] Revenue Form 41A765 (K-1), "Schedule K-1 (Form 765), 2010[2009] Partner's Share of Income, Credits, Deductions, Etc.", 2010[2009]; and

86.[77-] Revenue Form 41A800, "Corporation and Pass-through Entity Nexus Questionnaire", December 2009; and

(b) Individual income and withholding taxes - referenced material:

1. Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request", November 2010[2009];
2. Revenue Form 40A100, "Application for Refund of Income Taxes", October 2010[2009];
3. Revenue Form 40A102, "2010[2009] Application for Extension of Time to File Individual, General Partnership and Fiduciary Income Tax Returns for Kentucky", November 2010[2009];
4. Revenue Form 40A103, "Application for New Home Tax Credit", June 2010[July 2009];
5. Revenue Form 40A200, "Form PTE-WH, Kentucky Nonresident Income Tax Withholding on ~~Net~~ Distributive Share Income", October 2010[2009];
6. Revenue Form 40A201, "Form 740NP-WH, Kentucky Nonresident Income Tax Withholding on ~~Net~~ Distributive Share In-

come Transmittal Report and Composite Income Tax Return", October 2010[2009];

7. Revenue Form 40A727, "Kentucky Income Tax Forms Requisition", October 2010[2009];
8. Revenue Form 42A003, "Withholding Kentucky Income Tax Instructions for Employers", April 2010[2009];
9. Revenue Form 42A003(T), "2011[2010] Withholding Tax Tables Computer Formula", October 2010[2009];
10. Revenue Form 42A740, "Form 740, 2010[2009] Kentucky Individual Income Tax Return, Full-Year Residents Only", 2010[2009];
11. Revenue Form 42A740-A, "Schedule A, Form 740, 2010[2009] Kentucky Itemized Deductions", 2010[2009];
12. Revenue Form 42A740-ES, "Form 740-ES, 2011[2010] Individual Income Tax Kentucky Estimated Tax Voucher", July 2010[2009];
13. Revenue Form 42A740-EZ, "Form 740-EZ, 2010[2009] Kentucky Individual Income Tax Return for Single Persons with No Dependents", 2010[2009];
14. Revenue Form 42A740(I), "2010[2009] Kentucky Individual Income Tax Instructions for Forms 740 and 740-EZ", October 2010[2009];
15. Revenue Form 42A740-J, "Schedule J, Kentucky Farm Income Averaging", October 2010[2009];
16. Revenue Form 42A740-KNOL, "Schedule KNOL, 2010[2009] Kentucky Net Operating Loss Schedule", 2010[2009];
17. Revenue Form 42A740-M, "Schedule M, 2010[2009] Kentucky Federal Adjusted Gross Income Modifications", 2010[2009];
18. Revenue Form 42A740-NP, "Form 740-NP, 2010[2009] Kentucky Individual Income Tax Return, Nonresident or Part-Year Resident", 2010[2009];
19. Revenue Form 42A740-NP-A, "Schedule A, Form 740-NP, 2010[2009] Kentucky Schedule A Itemized Deductions", 2010[2009];
20. Revenue Form 42A740-NP-ME, "Schedule ME, Form 740-NP, 2010[2009] Moving Expense and Reimbursement", 2010[2009];
21. Revenue Form 42A740-NP(I), "Instructions for 2010[2009] Kentucky Form 740-NP, Nonresident or Part-Year Resident Income Tax Return", October 2010[2009];
22. Revenue Form 42A740-NP-R, "Form 740-NP-R, 2010[2009] Kentucky Income Tax Return Nonresident - Reciprocal State", 2010[2009];
23. Revenue Form 42A740-NP(P), "2010[2009] Kentucky Income Tax Return Nonresident or Part-Year Resident", October 2010[2009];
24. Revenue Form 42A740(PKT), "2010[2009] Kentucky Individual Income Tax Forms", October 2010[2009];
25. Revenue Form 42A740-P, "Schedule P, 2010[2009] Kentucky Pension Income Exclusion", 2010[2009];
26. Revenue Form 42A740-UTC, "Schedule UTC, Form 740, Unemployment Tax Credit", October 2010[2009];
27. Revenue Form 42A740-X, "Form 740-X, Amended Kentucky Individual Income Tax Return ~~for Tax Year 2005 through 2009~~", November 2010[2009];
28. Revenue Form 42A740-XP, "Form 740-XP, Amended Kentucky Individual Income Tax Return, 2004 and Prior Years", November 2008;
29. Revenue Form 42A740-S1, "Form 2210-K, 2010[2009] Underpayment of Estimated Tax by Individuals", 2010[2009];
30. Revenue Form 42A740-S4, "2011[2010] Instructions for Filing Estimated Tax Vouchers", October 2010[2009];
31. Revenue Form 42A740-S18, "Form 8582-K, 2010[2009] Kentucky Passive Activity Loss Limitations", 2010[2009];
32. Revenue Form 42A740-S21, "Form 4972-K, 2010[2009] Kentucky Tax on Lump-Sum Distributions", 2010[2009];
33. Revenue Form 42A740-S22, "Form 8453-K, 2010[2009] Kentucky Individual Income Tax Declaration for Electronic Filing", 2010[2009];
34. Revenue Form 42A740-S23, "Form 740-V, 2010[2009] Kentucky Electronic Payment Voucher", 2010[2009];
35. Revenue Form 42A740-S24, "Form 8863-K, 2010[2009] Kentucky Education Tuition Tax Credit", 2010[2009];
36. Revenue Form 42A741, "Form 741, 2010[2009] Kentucky



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Fiduciary Income Tax Return", 2010[2009];

37. Revenue Form 42A741-D, "Schedule D, Form 741, 2010[2009] Kentucky Capital Gains and Losses", 2010[2009];

38. Revenue Form 42A741(I), "Instructions - Form 741, Kentucky Fiduciary Income Tax Return", October 2010[2009];

39. Revenue Form 42A741(K-1), "Schedule K-1, Form 741, 2010[2009] Kentucky Beneficiary's Share of Income, Deductions, Credits, etc.", 2010[2009];

40. Revenue Form 42A765-GP, "Form 765-GP, 2010[2009] Kentucky General Partnership Income Return", 2010[2009];

41. Revenue Form 42A765-GP(I), "Instructions, 2010[2009] Kentucky General Partnership Income Return", October 2010[2009];

42. Revenue Form 765-GP(K-1), "Schedule K-1, Form 765-GP, 2010[2009] Partner's Share of Income, Credits, Deductions, etc.", 2010[2009];

43. Revenue Form 42A765-GP(K), "Form 765-GP(K), Kentucky Schedule K for General Partnerships with Economic Development Project(s)", October 2010[2009];

44. Revenue Form 42A801, "Form K-1, Kentucky Employer's Income Tax Withheld Worksheet", March 2007;

45. Revenue Form 42A801(D), "Form K-1, Amended Employer's Return of Income Tax Withheld", April 2008;

46. Revenue Form 42A801-E, "Form K-1E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", March 2007;

47. "Form W-2, 2010[2009] Wage and Tax Statement", 2010[2009];

48. Revenue Form 42A803, "Form K-3, Kentucky Employer's Income Tax Withheld Worksheet", March 2007;

49. Revenue Form 42A803(D), "Form K-3, Amended Employer's Return of Income Tax Withheld", April 2008;

50. Revenue Form 42A803-E, "Form K-3E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", March 2007;

51. Revenue Form 42A804, "Form K-4, Kentucky Department of Revenue Employee's Withholding Exemption Certificate", November 2010[2009];

52. Revenue Form 42A804-A, "Form K-4A, Kentucky Department of Revenue Withholding Exemptions for Excess Itemized Deductions", April 2008;

53. Revenue Form 42A804-E, "Form K-4E, Special Withholding Exemption Certificate", November 2010[February 2009];

54. Revenue Form 42A804-M, "Form K-4M, Nonresident Military Spouse Withholding Tax Exemption Certificate", November 2010;

55. Revenue Form 42A806, "Transmitter Report for Filing Kentucky Wage Statements", November 2010[March 2009];

56.[66-] Revenue Form 42A807, "Form K-4FC, Fort Campbell Exemption Certificate", August 2006;

57.[66-] Revenue Form 42A808, "Authorization to Submit Employees Annual Wage and Tax Statements Via Kentucky Department of Revenue Web Site", March 2006;

58.[67-] Revenue Form 42A809, "Certificate of Nonresidence", March 2007;

59.[68-] Revenue Form 42A810, "Nonresident's Affidavit - Kentucky Individual Income Tax", April 1989;

60.[69-] Revenue Form 42A811, "KREDA Annual Report", December 2007;

61.[69-] Revenue Form 42A812, "KIDA Annual Report", December 2007;

62.[64-] Revenue Form 42A813, "KJDA Annual Report", December 2007;

63.[62-] Revenue Form 42A814, "KIRA Annual Report", December 2007;

64.[63-] Revenue Form 42A815, "Withholding Tax Refund Application", August 2006;

65.[64-] Revenue Form 42A816, "KEOZ Annual Report", December 2007;

66. Revenue Form 42A817, "KJRA Annual Report", October 2010;

67. Revenue Form 42A818, "KBI Annual Report", October 2010; and

68.[65-] Revenue Form 42D003, "2010[2009] Kentucky Wage

and Tax Statements (W-2/K-2) Order Form", July 2010[2009].

(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[40620], Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: January 27, 2011

FILED WITH LRC: January 27, 2011 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 24, 2011, from 10 a.m. to 12 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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, (502) 564-6660

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the forms to be used when reporting or estimating corporation tax, reporting or estimating limited liability entity tax, reporting or estimating individual tax, or withholding individual income tax for tax years beginning in 2010.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to provide taxpayers necessary tax forms for reporting and paying their corporation, limited liability entity, individual, and withholding taxes for tax years beginning in 2010.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of any revenue law by the promulgation of an administrative regulation pursuant to KRS Chapter 13A incorporating forms by reference.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes forms to be used by taxpayers to report and pay corporation taxes, limited liability entity taxes, individual income taxes, and withholding taxes to the Commonwealth of Kentucky pursuant to KRS Chapter 141.

(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 contains tax forms to be used for tax years beginning in 2010.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update tax forms to the current tax laws in effect for years beginning in 2010.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of the tax laws.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide taxpayers with the necessary tax forms to file and pay income taxes, limited liability entity taxes, and individual withholding taxes for tax years beginning in 2010.



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(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individual, pass-through entity and corporate tax filers are affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individual, pass-through entity, and corporate tax filers will use the forms contained in this administrative regulation to report, pay, and withhold taxes due pursuant to KRS Chapter 141 for tax years beginning in 2010.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of filing tax returns contained in this administrative regulation with the Commonwealth of Kentucky should be comparable to filing tax returns with surrounding states.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The forms contained in this administrative regulation should simplify and expedite the reporting and paying of taxes required by KRS Chapter 141.

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

(a) Initially: The cost of printing and designing the forms.

(b) On a continuing basis: Forms are updated each year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds will be provided by the Department of Revenue.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding will be required 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 does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as the forms included in this administrative regulation apply to all taxpayers taxed pursuant to KRS Chapter 141.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Department of Revenue.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(3).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not increase revenues or expenses for the Commonwealth, but will expedite the collection of taxes provided by KRS Chapter 141.

(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 additional revenue will be collected as a result of this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? A very small increase in expenditures will occur in the administrative regulation process.

(d) How much will it cost to administer this program for subsequent years? No costs 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:

### STATEMENT OF EMERGENCY 201 KAR 8:550E

The expiration of 201 KAR 8:390E along, with the complete repeal and reenactment of KRS Chapter 313 during the 2010 regular session of the Kentucky GA, makes necessary the immediate change of regulations concerning the practice of dentistry; this emergency administrative regulation establishes requirements and procedures for sedation or anesthesia. This emergency administrative regulation must be placed into effect immediately in order for the board to regulate the practice of dentistry, which is its statutory charge. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor

DR. C. MARK FORT, DMD, President

### GENERAL GOVERNMENT CABINET Board of Dentistry (New Emergency Administrative Regulation)

#### 201 KAR 8:550E. Anesthesia and sedation.

RELATES TO: KRS 313.035

STATUTORY AUTHORITY: KRS 313.035(1)

EFFECTIVE: February 2, 2011

NECESSITY, FUNCTION AND CONFORMITY: KRS 313.035(1) requires the board to promulgate administrative regulations related to conscious sedation and anesthesia permits. This administrative regulation establishes requirements for permits to perform conscious sedation or anesthesia.

Section 1. Definitions. (1) "Advanced Cardiac Life Support" or "ACLS" means a certification that an individual has successfully completed an advanced cardiac life support course that meets or exceeds the standards established by the American Heart Association and incorporated by reference in 201 KAR 8:530.

(2) "Anesthesia" means an artificially induced insensibility to pain usually achieved by the administration of gases or drugs.

(3) "Anesthesia and sedation" means:

(a) Minimal sedation;

(b) Moderate sedation;

(c) Deep sedation; and

(d) General anesthesia.

(4) "Board" means the Kentucky Board of Dentistry.

(5) "Certified registered nurse anesthetist" means a registered nurse who is currently certified to practice nurse anesthesia in Kentucky.

(6) "Conscious sedation permit" means a permit that was issued by the board before the effective date of this regulation, that authorized the dentist to whom the permit was issued to administer parenteral sedation for the practice of dentistry.

(7) "Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Cardiovascular function is usually maintained.

(8) "Enteral" means a technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (oral, rectal, or sublingual).

(9) "Facility" means a location in which anesthesia or sedation is administered for the practice of dentistry.

(10) "Facility inspection" means an on-site inspection by the

board or its designee to determine if a facility where the applicant proposes to provide anesthesia and sedation is adequately supplied, equipped, staffed, and maintained in a condition to support the provision of anesthesia and sedation services in a manner that meets the requirements of this administrative regulation.

(11) "General anesthesia" means a drug-induced loss of consciousness during which patients are not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation, drug-induced depression, or changes in neuromuscular function. Cardiovascular function may be impaired.

(12) "General anesthesia permit" means a permit that was issued by the board prior to the effective date of this regulation, that authorized the dentist to whom the permit was issued to administer general anesthesia for the practice of dentistry.

(13) "Incident" means dental treatment performed on a patient under minimal sedation, moderate sedation, deep sedation, or general anesthesia with unforeseen complications.

(14) "Incremental dosing" means administration of multiple doses of a drug until a desired effect is reached.

(15) "Minimal sedation" means a drug-induced state, with or without nitrous oxide to decrease anxiety, in which patients respond normally to tactile stimulation and verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are maintained and do not require assistance.

(16) "Moderate enteral sedation" means a drug-induced depression of consciousness through the gastrointestinal tract or oral mucosa during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(17) "Moderate parenteral sedation" means a drug-induced depression of consciousness that bypasses the gastrointestinal tract or oral mucosa during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(18) "Moderate sedation" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(19) "Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract, that is, through an intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraosseous technique.

(20) "Pediatric Advanced Life Support" or "PALS" means a certification that an individual has successfully completed a pediatric advanced life support course that meets or exceeds the standards established by the American Heart Association and incorporated by reference in 201 KAR 8:530.

(21) "Sedation" means the reduction of stress or excitement by the administration of a drug that has a soothing, calming, or tranquilizing effect.

Section 2. Minimal Sedation Without a Permit. (1) A permit shall not be required for a dentist to administer minimal enteral sedation for patients age thirteen (13) and older.

(2) A dentist who intends to administer minimal sedation shall indicate the intent to administer minimal sedation in the patient's record.

(3) Medication used to produce minimal sedation shall not exceed the manufacturer's recommended dose (MRD) for unmonitored use by the individual. Additional dosing shall be within the MRD limits.

(4) A dentist who administers minimal sedation shall maintain a margin of safety and a level of consciousness that does not approach moderate sedation and other deeper states of sedation and

general anesthesia.

(5) Nitrous oxide may be combined with an oral medication only if the level of sedation is maintained at the level of minimal sedation.

Section 3. Permit and Location Certificate Required. (1) A dentist shall not administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry unless:

(a) The dentist holds an appropriate Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation or Deep Sedation or General Anesthesia permit issued by the board; or

(b) The dentist holds a conscious sedation or general anesthesia permit that shall be converted to a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation/General Anesthesia permit at the next license renewal.

(2) A dentist shall not administer an anesthetic technique under a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia, conscious sedation, or general anesthesia permit issued by the board at a facility unless:

(a) The facility has a current Anesthesia and Sedation Facility Certificate issued by the board; or

(b) The facility passed an inspection by the board for the purpose of issuing a conscious sedation or general anesthesia permit.

(3) A treating dentist who does not hold an anesthesia and sedation permit shall not allow a physician anesthesiologist, another dentist who holds an anesthesia and sedation permit, or a certified registered nurse anesthetist to administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry at a facility owned or operated by the treating dentist unless:

(a) The facility has a current Anesthesia and Sedation Facility Certificate issued by the board; or

(b) The facility passed an inspection by the board for the purpose of issuing a conscious sedation or general anesthesia permit.

Section 4. Classifications of Anesthesia and Sedation Permits. The following permits shall be issued by the board to a qualified licensed dentist:

(1) Minimal Pediatric Sedation permit that authorizes a dentist to use minimal enteral sedation for patients age five (5) to twelve (12). Medication or medications used to produce minimal sedation shall not exceed the manufacturer's recommended dose (MRD) for unmonitored use by the individual. Incremental dosing shall be prohibited. All dosing shall be administered in the dental office. A dentist who administers minimal sedation shall maintain a margin of safety and a level of consciousness that does not approach moderate sedation and other deeper states of sedation and general anesthesia. Nitrous oxide may be combined with an oral medication only if the level of sedation is maintained at the level of minimal sedation.

(2) Moderate Enteral Sedation permit that authorizes a dentist to use moderate enteral sedation for patients age thirteen (13) and older;

(3) Moderate Parenteral Sedation permit that authorizes a dentist to use moderate parenteral sedation for patients age thirteen (13) and older;

(4) Moderate Pediatric Sedation permit that authorizes a dentist to use moderate sedation by any route of administration for patients age twelve (12) and under.

(5) Deep Sedation or General Anesthesia permit that authorizes a dentist to use:

(a) General anesthesia; or

(b) Deep sedation.

Section 5. Qualifications for Obtaining a Minimal Pediatric Sedation Permit. To qualify for a Minimal Pediatric Sedation permit, an applicant shall:

(1) Submit an Application for a Sedation or Anesthesia Permit which is incorporated by reference;

(2) Pay the fee required by 201 KAR 8:520;

(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and

(4) Provide proof of successful completion of:

(a) a Commission on Dental Accreditation (CODA) accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage minimal sedation; or

(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of twenty-four (24) hours of didactic instruction on pediatric minimal sedation by the enteral route or the combination enteral and nitrous oxide route.

Section 6. Qualifications for Obtaining a Moderate Enteral Sedation Permit. To qualify for a Moderate Enteral Sedation permit, an applicant shall:

(1) Submit an "Application for a Sedation or Anesthesia Permit" which is incorporated by reference;

(2) Pay the fee required by 201 KAR 8:520;

(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and

(4) Provide proof of successful completion of:

(a) A Commission on Dental Accreditation (CODA) accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage moderate sedation; or

(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of twenty-four (24) hours of didactic instruction plus management of at least ten (10) adult case experiences by the enteral route or the combination enteral and nitrous oxide route. These ten (10) cases shall include at least three (3) live (on sight) clinical dental experiences managed by participants in groups that shall not exceed five (5) individuals. These three (3) live (on-sight) experiences may be obtained by observing a permit level dentist in their office; and the remaining cases may include simulations and video presentations and shall include at least one (1) experience in returning a patient from deep to moderate sedation.

Section 7. Qualifications for Obtaining a Moderate Parenteral Sedation Permit. To qualify for a Moderate Parenteral Sedation permit, an applicant shall:

(1) Submit an Application for a Sedation or Anesthesia Permit which is incorporated by reference;

(2) Pay the fee required by 201 KAR8:520;

(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and

(4) Provide proof of successful completion of:

(a) a CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage moderate parenteral sedation; or

(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of sixty (60) hours of didactic instruction plus management of at least twenty (20) patients per course participant in moderate parenteral sedation techniques.

Section 8. Qualifications for Obtaining a Moderate Pediatric Sedation Permit. To qualify for a Moderate Pediatric Sedation permit, an applicant shall:

(1) Submit an Application for a Sedation or Anesthesia Permit which is incorporated by reference;

(2) Pay the fee required by administrative regulation;

(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and

(4) Provide proof of successful completion of a CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage

moderate sedation for patients age twelve (12) and under.

Section 9. Qualifications for Obtaining a Deep Sedation/General Anesthesia Permit. To qualify for a Deep Sedation/General Anesthesia permit, an applicant shall:

(1) Submit an Application for a Sedation or Anesthesia Permit which is incorporated by reference;

(2) Pay the fee required by administrative regulation;

(3) Hold current certification in either ACLS or PALS; and

(4) Provide proof of successful completion of:

(a) A board-approved Accreditation Council for Graduate Medical Education (ACGME) accredited post doctoral training program in anesthesiology which affords comprehensive and appropriate training necessary to administer deep sedation and general anesthesia; or

(b) Provide proof of successful completion of a minimum of two

(2) years advanced clinical training in anesthesiology from a Joint Commission on Accreditation of Healthcare Organization (JCAHO) accredited institution that meets the objectives set forth in part two (2) of the American Dental Association's "Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry"; or

(c) Provide proof of successful completion of a CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage deep sedation and general anesthesia.

Section 10. Multiple Application Levels Permitted. Dentists with education and training for more than one (1) level of sedation may mark their levels of qualification on the Application for a Sedation or Anesthesia Permit, based on the requirements of Sections 4 through 7 of this administrative regulation.

Section 11. Location Requirement. A dentist holding a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, Deep Sedation/General Anesthesia, conscious sedation, or general anesthesia permit shall advise the Board of the name and address of each facility where the dentist intends to or has ceased to administer anesthesia and sedation by submitting the "Anesthesia and Sedation Permit Location Notification Form" which is incorporated by reference within ten (10) business days of the change.

Section 12. Anesthesia and Sedation Facility Certificates. (1) The owner or operator of a facility shall obtain an Anesthesia and Sedation Facility Certificate from the board for any location at which:

(a) A dentist holding a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, Deep Sedation/General Anesthesia, conscious sedation, or general anesthesia permit may administer anesthesia and sedation under the permit; or

(b) The treating dentist may allow a physician anesthesiologist, another dentist who holds an anesthesia and sedation permit, or a certified registered nurse anesthetist to administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry.

(2) A facility owner or operator desiring to obtain an Anesthesia and Sedation Facility Certificate shall:

(a) Submit an Application for an Anesthesia and Sedation Facility Certificate which is incorporated by reference;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Successfully pass a facility inspection as outlined in Section 10 of this administration.

(d) A dentist that is currently in an advanced training course for sedation may request the Board of Dentistry complete a Sedation Facility Inspection prior to completion of the course.

(3) The owner or operator of a facility may not allow an individual to administer anesthesia or sedation unless the individual is permitted to do so under this administrative regulation.

(4) The owner or operator of a facility shall maintain for five (5) years for inspection by the board the name and license number of each dentist, physician anesthesiologist, or certified registered nurse anesthetist who has administered anesthesia or sedation at that location.

(5) The owner or operator of a facility shall ensure that the facility:

(a) Remains properly equipped in accordance with Section 10 of this administrative regulation; and

(b) Remains properly staffed in accordance with Section 11 of this administrative regulation.

(6) In addition to the requirements contained in Subsection (5) of this section, the owner or operator of a facility shall ensure that the facility has appropriate nonexpired emergency and sedation medications.

Section 13. Facility Inspection Criteria. (1) To qualify for an Anesthesia and Sedation Facility Certificate, the facility shall pass an evaluation of facility equipment, medications, and clinical records to include at least the following:

(a) Oxygen and gas delivery system, backup system fail-safe;

(b) Gas storage facility;

(c) Safety indexed gas system;

(d) Suction and backup system;

(e) Auxiliary lighting system;

(f) Suitability of operating room to include:

1. Size, which must be at a minimum ten (10) feet by eight (8) feet or eighty (80) square feet;

2. Operating primary light source and secondary portable back-up source, unless back-up generator is available;

3. Accessibility by Emergency Medical Staff;

(g) Recovery area, including oxygen, suction, and visual and electronic monitoring, which may include the operating room;

(h) Appropriate emergency drugs;

(i) Non-expired drugs;

(j) Appropriate devices to maintain an airway with positive pressure ventilation,

(k) Preoperative medical history and physical evaluation form;

(l) Anesthesia records, including monitoring and discharge records;

(m) Monitoring equipment, including pulse oximeter and blood pressure monitoring;

(n) Electrocardiogram (EKG):

1. May be present for use by Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, and Moderate Pediatric Sedation permit holders for patients with significant cardiac history; and

2. Shall be present for use by Deep Sedation/General Anesthesia permit holders.

(o) Anesthesia and monitoring equipment to ensure they are in proper working order;

(p) Defibrillator or automated external defibrillator (AED) for Deep Sedation/General Anesthesia permits on adult patients; and

(q) For deep sedation or general anesthesia in pediatric patients:

1. A precordial stethoscope; or

2. A pretracheal stethoscope.

(2) During a facility inspection, inspectors shall:

(a) Examine the facility's equipment to determine if it is in proper working order;

(b) Determine if appropriate emergency drugs are present; and

(c) Determine if emergency drugs are nonexpired.

Section 14. Inducing a Level of Sedation for a Patient. (1) Administration of minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia to a patient requires at least the following appropriately trained individuals:

(a) The treating dentist;

(b) An individual trained and competent in basic life support (BLS) or its equivalent to assist the treating dentist; and

(c) Another individual trained and competent in BLS or its equivalent in close proximity to assist if needed.

(2) A dentist administering minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia to a patient may not leave the site until the patient:

(a) Is conscious;

(b) Is spontaneously breathing;

(c) Has stable vital signs;

(d) Is ambulatory with assistance; and

(e) Is under the care of a responsible adult.

(3) A treating dentist who allows a physician, another dentist, or certified registered nurse anesthetist to administer minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia under Sections 18 and 19 of this administrative regulation shall ensure that the physician, dentist, or certified registered nurse anesthetist does not leave the site until the patient:

(a) Is conscious;

(b) Is spontaneously breathing;

(c) Has stable vital signs;

(d) Is ambulatory with assistance; and

(e) Is under the care of a responsible adult.

Section 15. Conscious Sedation Permits and General Anesthesia permits. (1) A dentist who holds a current general anesthesia permit may continue to administer anesthesia and sedation consistent with a Deep Sedation/General Anesthesia permit until the expiration date of the permit.

(2) A dentist who holds a current conscious sedation permit and meets the requirements of Section 6(4) of this administrative regulation may continue to administer anesthesia and sedation consistent with a Moderate Pediatric Sedation permit until the expiration date of the permit.

(3) A dentist who holds a current conscious sedation permit and meets the requirements of Section 5 of this administrative regulation may continue to administer anesthesia and sedation consistent with a Moderate Parenteral Sedation permit until the expiration date of the permit.

(4) During the license renewal process, current general anesthesia permit holders shall convert the permit to a Deep Sedation/General Anesthesia permit.

(5) During the license renewal process, current conscious sedation permit holders shall convert the permit to a minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, and/or moderate pediatric sedation permit.

(6) A dentist who currently practices enteral sedation without a permit may continue without a permit until January 1st, 2012 and shall receive a Moderate Enteral Sedation permit by the submission of:

(a) Twenty-four (24) hours of didactic education plus twenty (20) sedation records documenting their experience; and

(b) Satisfactory completion of an on-site inspection as outlined in Section 10 of this administrative regulation.

Section 16. Issuance and Expiration of Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation/General Anesthesia Permits.

(1) Once an applicant has met the qualifications for obtaining a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation/General Anesthesia permit the board shall issue a permit in sequential numerical order.

(2) Each permit issued under this administrative regulation shall expire on the same date as the permit holder's license to practice dentistry.

Section 17. Renewal of Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, and Deep Sedation/General Anesthesia Permits. An individual desiring renewal of an active Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, and Deep Sedation/General Anesthesia permits shall:

(1) Submit a completed and signed Application for Renewal of a Sedation or Anesthesia Permit which is incorporated by reference;

(2) Pay the fee required by 201 KAR 8:520; and

(3) Provide evidence satisfactory to the board that the applicant meets the continuing education requirements outlined in Section 15 of this administrative regulation.

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Section 18. Continuing Education Requirements for Renewal of a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation/General Anesthesia Permit.

(1) An individual desiring renewal of an active Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, or Moderate Pediatric Sedation permit shall:

(a) Complete not less than six (6) hours of clinical continuing education related to sedation or anesthesia in a classroom setting that includes hands-on airway management during the two (2) year term of the permit; or

(b) Shall maintain ACLS or PALS certification.

(2) An individual desiring renewal of an active Deep Sedation/General Anesthesia permit shall:

(a) Complete not less than four (4) hours of on-sight clinical continuing education related to sedation or anesthesia during the two (2) year term of the permit; and

(b) Maintain ACLS or PALS certification.

(3) Continuing education required by this administrative regulation shall:

(a) Not be used to satisfy other continuing education requirements; and

(b) Be in addition to other continuing education requirements of 201 KAR 8:530.

Section 19. Facilities Inspected Prior to the Effective Date of this Regulation. (1) A facility owner or operator desiring to obtain an Anesthesia and Sedation Facility Certificate for a facility which passed an inspection by the board prior to the effective date of this regulation shall provide acceptable proof to the board of having passed a facility inspection for the purpose of issuing a conscious sedation or general anesthesia.

Section 20. Issuance of an Anesthesia and Sedation Facility Certificate. (1) Once an applicant has met the qualifications for obtaining an Anesthesia and Sedation Facility Certificate the board shall issue a certificate in sequential numerical order.

Section 21. Administration by a Physician Anesthesiologist or Dentist at the Facility of a Treating Dentist. (1) A treating dentist who desires to allow a physician anesthesiologist or another dentist who holds an anesthesia and sedation permit to administer anesthesia and sedation to a patient at a specific practice location shall comply with Section 9 of this administrative regulation.

(2) A physician anesthesiologist may administer anesthesia and sedation in accordance with Section 4 of this administrative regulation without the need for review by the board.

Section 22. Administration by a Certified Registered Nurse Anesthetist. (1) A treating dentist who wishes to allow a certified registered nurse anesthetist to administer anesthesia and sedation to a patient at a specific practice location shall comply with Section 9 of this administrative regulation.

(2) Nothing under this section shall preclude a dentist from working with a certified registered nurse anesthetist in an ambulatory care center or hospital.

Section 23. Morbidity and Mortality Incident Reports. (1) A dentist shall report to the board, in writing, any death caused by or resulting from the dentist's administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within seven (7) days after its occurrence.

(2) A dentist shall report to the board, in writing, any incident that resulted in hospital in-patient admission caused by or resulting from the dentist's administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within thirty (30) days after its occurrence.

(3) The written report to the board required in subsections (1) and (2) of this section shall include:

(a) The date of the incident;

(b) The name, age, and address of the patient;

(c) The patient's original complete dental records;

(d) The name and license number of the licensee and the name and address of all other persons present during the incident;

(e) The address where the incident took place;

(f) The preoperative physical condition of the patient;

(g) The type of anesthesia and dosages of drugs administered to the patient;

(h) The techniques used in administering the drugs;

(i) Any adverse occurrence including:

1. The patient's signs and symptoms;

2. The treatment instituted in response to adverse occurrences;

3. The patient's response to the treatment; and

4. The patient's condition on termination of any procedures undertaken; and

(j) A narrative description of the incident including approximate times and evolution of symptoms.

(4) The duties outlined in this section apply to every dentist whether or not the dentist holds a permit.

Section 24. Registered Dental Assistant Duties permitted when working with Sedation Permit holders: (1) A registered dental assistant working with Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation/General Anesthesia permit holders may, under direct supervision:

(a) Apply noninvasive monitors;

(b) Perform continuous observation of patients and noninvasive monitors appropriate to the level of sedation, during the pre-operative, intra-operative and post-operative (recovery) phases of treatment;

(c) Report monitoring parameters to the operating dentist on a periodic basis and when changes in monitored parameters occur; and

(d) Record vital sign measurements in the sedation record.

(e) Remove IV lines (Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation/General Anesthesia Permit holders only).

(2) A registered dental assistant working with Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation/General Anesthesia Permit holders, may under direct supervision assist in the management of emergencies.

(3) A registered dental assistant working with Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation/General Anesthesia Permit holders may, under direct supervision:

(a) Administer medications into an existing IV line upon the verbal order and direct supervision of a dentist with a Moderate Parenteral Sedation, Moderate Pediatric or Deep Sedation/General Anesthesia permit; and

(b) Establish an IV line under direct supervision if they have completed a course approved by the board of Dentistry in intravenous access.

Section 25. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Application for Sedation or Anesthesia Permit;

(b) Application for Sedation or Anesthesia Facility Certificate; and

(c) Sedation of Anesthesia Permit Location Notification Form.

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

C. MARK FORT, DMD, President

APPROVED BY AGENCY: February 1, 2011

FILED WITH LRC: February 2, 2011 at 11 a.m.

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

## VOLUME 37, NUMBER 8 – MARCH 1, 2011

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures for issuing permits to dentists for the administration of anesthesia and sedation as mandated by KRS 313.035.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement KRS 313.035, which requires the board to promulgate administrative regulations regarding the requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary about the requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist as required by KRS 313.035.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets out the requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist as required by KRS 313.035.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the statutory authority citation of this administrative regulation and makes cardiopulmonary resuscitation requirements and forms incorporated by reference consistent with other agency requirements.

(b) The necessity of the amendment to this administrative regulation: The statutory authority for this administrative regulation has changed, which necessitates an amendment of the statutory citation of this regulation.

(c) How the amendment conforms to the content of the authorizing statute: This administrative regulation provides information necessary about the requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist as required by KRS 313.035.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides information necessary about the requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist as required by KRS 313.035. The amended forms improve agency efficiency by ensuring consistency across forms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact 268 current anesthesia and sedation permit holders and approximately 20 new applicants per year. Additionally, the Kentucky Board of Dentistry will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: There will be no new impact on the 268 current anesthesia and sedation permit holders and approximately 20 new applicants per year.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no new actions for licensees to take in order to comply with this administrative regulation. The Kentucky Board of Dentistry is charged by KRS 313.035 to regulate the practice of dentistry in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): From 201 KAR 8:520: Section 1. Dentists.

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

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

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

The renewal fee for an anesthesia or sedation facility certificate

shall be seventy-five (75) dollars.

The board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of \$705,400 and for FY 2011 - 2012 and allotment of \$714,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees who are in compliance will have the legal ability to administer general anesthesia, conscious sedation, and deep sedation in the Commonwealth of Kentucky. The Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for its licensees to legally practice dentistry in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of \$705,400 and for FY 2011 - 2012 and allotment of \$714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this regulation are fully funded by licensing fees paid by dentists as part of compliance with this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: The fees found in 201 KAR 8:520 make the agency financially solvent.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all licensees.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 313 et seq.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Compliance with this regulation will provide the agency with enough money to meet its budgetary obligations as set forth in HB 1, 2010 Extraordinary Session of the GA.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Compliance with this regulation will provide the agency with enough money to meet its budgetary obligations as set forth in HB 1, 2010 Extraordinary Session of the GA.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1, 2010 Extraordinary Session of the GA is \$705,400.

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(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1, 2010 Extraordinary Session of the GA is \$714,000

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:



ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
Division of Student and Administrative Services  
(As Amended at ARRS, February 14, 2011)

11 KAR 4:080. Student aid applications.

RELATES TO: KRS 164.518, 164.744(2), 164.748(4), (7), (8), 164.753(3), (4), (6), 164.7535, 164.769, 164.780, 164.785, 164.7890, 34 C.F.R. 654.1-654.5, 654.30-654.52, 20 U.S.C. 1070d-31 - 1070d-41

STATUTORY AUTHORITY: KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3), (6), 164.7535, 164.769(5), (6)(f), 34 C.F.R. 654.30, 654.41, 20 U.S.C. 1070d-37, 1070d-38

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) authorizes the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by KHEAA.

Section 1. Applications. In order to participate in a specified grant, scholarship, or work-study program administered by the Kentucky Higher Education Assistance Authority, the following application forms shall be completed in accordance with their instructions:

(1) For the KHEAA Grant Program as set forth in 11 KAR 5:130, the 2010-2011 Free Application for Federal Student Aid (FAFSA);

(2) For the KHEAA Work-Study Program as set forth in 11 KAR 6:010, the KHEAA Work-Study Program Student Application;

(3) For the Teacher Scholarship Program as set forth in 11 KAR 8:030, the Teacher Scholarship Application;

(4) For the Early Childhood Development Scholarship Program as set forth in 11 KAR 16:010:

(a) The 2010-2011 Free Application for Federal Student Aid (FAFSA);

(b) The Early Childhood Development Scholarship Application; ~~[and]~~

(5) For the Robert C. Byrd Honors Scholarship Program as set forth in 11 KAR 18:010:

(a) For high school and home school students, the Robert C. Byrd Honors Scholarship Program; and

(b) For GED recipients, the Robert C. Byrd Honors Scholarship Program GED Recipients; ~~[and]~~

(6) For the Go Higher Grant Program as set forth in 11 KAR 5:200;

(a) The 2010-2011 Free Application for Federal Student Aid (FAFSA); and

(b) The Go Higher Grant Program Application; ~~and[-]~~

(7) For the Coal County Scholarship Program for Pharmacy Students as set forth in 11 KAR 19:010, the Coal County Scholarship Program for Pharmacy Students Application.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "2010-2011 Free Application for Federal Student Aid (FAFSA)", December 2009;

(b) The "KHEAA Work-Study Program Student Application", July 2001;

(c) The "Teacher Scholarship Application", June 2006;

(d) The "Early Childhood Development Scholarship Application", April 2006;

(e) The "Robert C. Byrd Honors Scholarship Program", June 2009; ~~[and]~~

(f) The "Robert C. Byrd Honors Scholarship Program-GED Recipients", June 2009; ~~[and]~~

(g) The "Go Higher Grant Program Application", January 2008; ~~and~~

(h) The "Coal County Scholarship Program for Pharmacy Students Application", February 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material may also be obtained at [www.kheaa.com](http://www.kheaa.com).

KRISTI P. NELSON, Chair

APPROVED BY AGENCY: October 26, 2010

FILED WITH LRC: December 15, 2010 at noon

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
Division of Student and Administrative Services  
(As Amended at ARRS, February 14, 2011)

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

RELATES TO: KRS 164.740, 164.7890

STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4), 164.753(3), 164.7890(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships. KRS 164.748(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.7891. KRS 164.7890(9) requires the authority to promulgate administrative regulations establishing the terms and conditions for the award, cancellation, and repayment of coal county scholarships for pharmacy students. This administrative regulation establishes the eligibility, application, and disbursement requirements for ~~[selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to]~~ scholarships provided under the program.

Section 1. Definitions. (1) "Authority" is defined by KRS 164.740(1).

(2) "Coal-producing county" is defined by KRS 164.7890(2).

(3) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date for the obligation.

(4) "Eligible student" means any individual who satisfies the requirements set forth in KRS 164.7890(3) and (5) ~~[(4) and (6)]~~.

(5) "Full-time practice" means providing services as a pharmacist in a coal-producing county for a minimum of 2,000 hours per calendar year.

(6) "Home County" means the county of permanent home residence of the student at the time in which the application is made, as determined by a preponderance of evidence such as a student's permanent address, parent's mailing address, parent's tax returns, location of high school of graduation and additional criteria as needed for a determination of residency status in accordance with ~~[as contained in]~~ 13 KAR 2:045.

(7) "Qualified service" is defined in KRS 164.7890(3)(d).

Section 2. Eligibility of Applicants and Selection Process. (1) Applicants shall complete the Coal County Scholarship Program for Pharmacy Students Application as required by ~~[set forth in]~~ 11



KAR 4:080, Section ~~1(7)~~[4(3)], according to its instructions. The applicant shall ensure that the completed application is received by the authority on or before May 1, or the next regular business day if May 1 falls on a weekend or holiday, preceding the academic year for which the award is requested.

(2) Eligibility of renewal applicants. A person who previously received a loan or scholarship pursuant to KRS 164.7890 shall be eligible to apply for and be considered for a renewal coal county scholarship if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with ~~the~~ standards prescribed by the participating institution.

(3) Recipients ~~shall~~[will] be selected from among eligible applicants in the following order:

(a) Renewal applicants whose home counties are coal-producing counties;

(b) Initial applicants whose home counties are coal-producing counties;

(c) Renewal applicants whose home counties are not coal-producing counties; and

(d) Initial applicants whose home counties are not coal-producing counties.

**(4) If:-**

~~(e) In the event that~~ there are more applicants within a category listed in subsection (3) of this section~~any of the above categories~~ than there are funds available, the applications in each category shall be ranked to receive available funds by date of receipt of application.

Section 3. Entrance Counseling. (1) Each participating institution shall conduct entrance counseling for each scholarship recipient prior to requesting scholarship funds from the Authority on the recipient's behalf.

(2) ~~The~~[Such] counseling shall be provided through either in-person sessions or by electronic or written means with the recipient's acknowledgement of receipt thereof.

(3) The following topics shall be covered through the counseling:

(a) The recipient's obligation to repay the scholarship if the recipient fails~~in the event of the recipient's failure~~ to provide qualified service as required under the program;

(b) The consequences of defaulting on any repayment obligation imposed under this program;

(c) The recipient's obligation to repay the scholarship even if the recipient is not satisfied with the quality of education received, does not complete the program of study, or does not find employment in the appropriate field or service area after graduation; and

(d) The importance of contacting the authority to advise of any change with respect to the recipient's name, address, enrollment status, or other contact information.

Section 4. Disbursements. (1) Each disbursement of a coal county scholarship shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified pharmacy service in lieu thereof.

(2) Within thirty (30) days following receipt by the authority of the original signed promissory ~~note~~[notes] for the ~~student~~[students] awarded a coal county scholarship, the authority shall send to the institution a roster containing ~~the~~[each] recipient's name and Social Security number.

(3) The participating institution shall verify the student's full-time enrollment in a Pharm D. program and completion of entrance counseling on the roster and return it to the authority.

(4) Upon receipt of the institution's completed roster, the authority shall disburse funds to the institution on behalf of all eligible students to receive the scholarship by electronic funds transfer.

(5) Disbursement of a coal county scholarship shall be made at the beginning of each fall and spring term.

(6) The participating institution shall be responsible for proper delivery of ~~the~~ funds. Upon the receipt of funds, the participating institution shall immediately credit the recipient's account and notify the recipient in writing that it has so credited that account, and deliver to the recipient any remaining scholarship proceeds.

(7) The participating institution shall retain record of the date funds were either credited to the student's account or disbursed to the student, the name of a recipient for whom funds are being returned, the amount being returned, and the reason funds are being returned.

(8) If a recipient withdraws or is expelled prior to the first day of classes of the period of enrollment for which the scholarship is awarded, the institution shall return the proceeds to the authority.

(9)(a) If a recipient subsequently refuses to repay the scholarship on grounds that ~~the student~~[he] was unaware of or did not receive delivery of the scholarship proceeds from the school, upon written request from the authority, the institution shall promptly provide documentary evidence to the authority that the recipient received or had funds credited to ~~the student's~~[his student] account and was notified of this transaction.

(b) The school shall otherwise reimburse the authority for any amount of the scholarship that is unenforceable absent that documentary evidence.

(c) The obligation of the school to provide the documentary evidence specified in paragraph (a) of this subsection shall continue until the recipient's obligations for repayment of the scholarship is paid in full or otherwise discharged.

Section 5. Refunds. (1) If a student fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the program on or after the student's first day of class of the period of enrollment or changes enrollment status, the Authority ~~shall~~[may] be due a refund of monies paid to the institution on behalf of that student or a repayment of cash disbursements made to the student for educational expenses.

(2) If the student received financial assistance administered by the authority, the refund and repayment shall be due to the authority for its financial assistance programs in accordance with this section.

(3) The institution shall adopt and implement a fair and equitable refund policy for financial assistance administered by the authority which shall be:

(a) A clear and conspicuous written statement;

(b) Made available to a prospective student, prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement, and to currently-enrolled students;

(c) Consistently administered by the institution; and

(d) Made available to the authority upon request.

(4) The institution's refund policy for financial assistance administered by the authority shall either:

(a) Use the same methods and formulas for determining the amount of a refund as the institution uses for determining the return of federal financial assistance funds; or

(b) Be a separate and distinct policy adopted by the institution that is based upon:

1. The requirements of applicable state law; or

2. The specific refund standards established by the institution's nationally-recognized accrediting agency.

(5) The amount of the refund shall be determined in accordance with the educational institution's refund policy relative to financial assistance funds, except as provided in subsection (7) of this section.

(6) If the institution determines that a refund of financial assistance is due in accordance with its policy, the institution shall allocate to the financial assistance programs administered by the authority the refund and repayment prior to allocating the refund to institutional or private sources of financial assistance.

(7)(a) If a coal county scholarship recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an over award and a full refund and repayment of the coal county scholarship shall be required, notwithstanding any institutional policy to the contrary.

(b) If the institution is unable to document the student's last date of attendance, any coal county scholarship disbursement for that award period shall be subject to full refund.

(c) If a coal county scholarship recipient's enrollment is terminated with no assessment of tuition and fees by the institution, the full coal county scholarship shall be subject to:

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1. Cancellation, if not yet disbursed; or
2. Refund if the coal county scholarship has already been disbursed.

(8)(a) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

(b) Refunds by the institution transmitted to the authority shall be accompanied by:

1. The student's name and Social Security Number;
2. The reason for the refund;
3. The date of enrollment status change; and
4. The semester and year.

(c) Failure of the institution to make restitution ~~if~~<sup>when</sup> required shall, without precluding other remedies, be deemed cause for limitation, suspension, or termination of the participation of the institution in accordance with 11 KAR 4:020.

Section 6. Notification Requirements. (1) A scholarship recipient shall notify the authority in writing within thirty (30) days of:

- (a) Cessation of full-time enrollment in a pharmacy program;
- (b) Certification to practice pharmacy in the Commonwealth of Kentucky;
- (c) Failure to obtain certification to practice pharmacy in the Commonwealth of Kentucky;
- (d) Employment in a qualified service position;
- (e) Cessation of employment in a qualified service position;
- (f) Failure, within 180 days following certification to practice pharmacy in the Commonwealth of Kentucky, to obtain employment in full-time practice in a coal-producing county within the Commonwealth of Kentucky as a certified pharmacist for a majority of the calendar year; or
- (g) Change of name, permanent home address or place of employment.

(2) The school of pharmacy shall notify the authority in writing within thirty (30) days of learning that a Coal County Scholarship Program for Pharmacy Students award recipient ceases to be enrolled on a full-time basis in the school of pharmacy.

Section 7. Records. (1) A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of each student receiving aid under this program and the disbursement of funds and institutional charges ~~as may be~~ necessary to audit the disposition of these funds.

(2) The institution's records shall be maintained for at least three (3) years after the student ceases to be enrolled at the institution.

KRISTI P. NELSON, Chair

APPROVED BY AGENCY: October 26, 2010

FILED WITH LRC: December 15, 2010 at noon

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

### KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (As Amended at ARRS, February 14, 2011)

#### 11 KAR 19:020. Service cancellation and repayment of Coal County Pharmacy Scholarship.

RELATES TO: KRS 164.740, 164.7890

STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4), 164.753(3), 164.7890(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships. KRS 164.748(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.7891. KRS 164.7890(9) requires the authority to promulgate administrative regulations

establishing the terms and conditions for the award, cancellation, and repayment of coal county scholarships for pharmacy students. This administrative regulation establishes the requirements for service cancellation and repayment of ~~selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to~~ scholarships provided under the program.

Section 1. Definitions. (1) "Coal-producing county" is defined in KRS 164.7890(2).

(2) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date for the obligation.

(3) "Full-time practice" means providing services as a pharmacist in a coal-producing county for a minimum of 2,000 hours per calendar year.

(4) "Qualified service" is defined in KRS 164.7890(3)(d).

Section 2. Cancellation. (1) A recipient shall receive cancellation under this program for each year during which service is provided as specified in KRS 164.7890(5)(b) if the recipient:

- (a) Has completed the program of study;
  - (b) Has provided qualified service in a coal-producing county in Kentucky; and
  - (c) Has submitted to the authority written verification of qualified service.
- (2) A recipient rendering qualified service shall remain eligible for the credit cancellation if:
- (a) The county in which qualified service is provided ceases to be a coal-producing county as defined in KRS 164.7890(2); and
  - (b) The recipient continues to render continuous qualified service in the area.

Section 3. Repayment. (1) ~~A recipient failing to complete the eligible program of study, attain a license to practice after completion of the eligible program of study, commence rendering pharmacy service within the six (6) month period following completion of the eligible program of study or cease providing qualified service at any point thereafter shall immediately become liable to the authority to pay the sum of all promissory notes and accrued interest thereon, unless the authority grants a deferment or forbearance for cause.~~

(2) Interest at the rate of six (6) percent per annum shall be applicable to the coal county scholarship under this section and shall begin accruing upon disbursement of the award.

(2) If repayment becomes necessary pursuant to KRS 164.7890(5)(c), the authority shall send a written notification of demand for repayment to the scholarship recipient's last known address. The notification ~~(3) Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and~~ shall be effective upon mailing.

Section 4. Application of Payment. (1) The authority may agree ~~in its sole discretion,~~ to accept repayment in installments in accordance with a schedule established by the authority.

(2) Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

(3) If a repayment obligation subsequently becomes eligible for service credit cancellation as a result of the recipient's provision of pharmacy service, refund of payments previously made shall not be given to the recipient.

Section 5. Default. (1) Upon default on a repayment obligation under this program, the recipient's account shall be transferred to the appropriate agency of the Commonwealth of Kentucky for collections and shall be subject to the collection charges and fees assessed by that agency.

(2) A recipient whose repayment obligation has defaulted and who subsequently begins providing pharmacy service in a coal-producing county in the Commonwealth of Kentucky shall be removed from default status.

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Section 6. Rehabilitation. (1) The authority ~~shall~~may offer a recipient in default under this program an opportunity to rehabilitate the loan obligation in order to remove it from default.

(2) A defaulted recipient interested in pursuing loan rehabilitation shall contact the authority and enter into a written agreement to submit six (6) consecutive, voluntary, on-time monthly payments to the agency of the Commonwealth currently charged with collecting the obligation.

(3) At the completion of the rehabilitation repayment agreement, the recipient's loan shall be removed from default and the account shall be transferred back to the authority which shall resume servicing the loan~~where loan servicing will resume~~.

(4) ~~A~~No refund of fees or charges assessed during the default period shall not be due a recipient who completes rehabilitation.

(5) A recipient whose loan obligation has been removed from default due to rehabilitation shall not be eligible for subsequent rehabilitation if there is~~in the event of~~ a subsequent default.

Section 7. Disability Discharge. A conditional or permanent discharge of the repayment obligation required by this program shall be granted by the Authority upon submission by the recipient of the documentation required by this section.

(1) Conditional discharge. A conditional discharge shall be granted for a maximum two (2) year period, subject to annual review by the Authority, upon the submission of one (1) of the following as proof of the recipient's qualifying disability:[-:]

(a) A finding of permanent disability by the Social Security Administration; or

(b) A statement by the recipient's treating physician that:

1. Identifies:

a. The nature of the condition; and

b. The date the condition occurred; and

2. Certifies that the:

a. Recipient is unable to work or earn money; and

b. Condition is expected to persist indefinitely~~completed Coal County Scholarship Program Application for Discharge, which shall include a certification by the recipient's treating physician that the recipient is unable to work or earn money and that the condition is expected to persist indefinitely~~.

(2) Permanent discharge. At the expiration of the two (2) year Conditional Discharge period specified in subsection (1) of this section, the Authority shall grant a permanent discharge to a recipient under this program upon the Authority's review of the submission by the recipient of current documentation verifying that the qualifying disability continues to exist~~exists~~ at the time the documentation is submitted~~permanent discharge is granted~~.

KRISTI P. NELSON, Chair

APPROVED BY AGENCY: October 26, 2010

FILED WITH LRC: December 15, 2010 at noon

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

### KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (As Amended at ARRS, February 14, 2011)

#### 11 KAR 19:030. Deferment of Repayment of Coal County Scholarships for Pharmacy Students.

RELATES TO: KRS 164.740, 164.7890

STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4), 164.753(3), 174.7890(9)~~KRS 164.7890, KRS 164.748(4), KRS 164.753(3)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships. KRS 164.748(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.7891. KRS 164.7890(9) requires the authority to promulgate administrative regulations

establishing the terms and conditions for the award, cancellation, and repayment of coal county scholarships for pharmacy students including deferments. This administrative regulation establishes conditions for deferment of the repayment obligation.

Section 1. Definitions. (1) "Authority" is defined by KRS 164.740(1).

(2) "Coal-producing county" is defined in KRS 164.7890(2).

(3) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date for the obligation~~thereon~~.

(4) "Deferment" means a temporary waiver of the obligation of a ~~teacher scholarship~~ recipient of a coal county scholarship for pharmacy students to make payments to the authority, pursuant to one (1) or more promissory notes executed between the recipient and the authority, which is granted by the authority, for a specified period of time, upon a showing of cause by the recipient.

(5) "Full-time practice" means providing services as a pharmacist in a coal-producing county for a minimum of 2,000 hours per calendar year.

(6) "Qualified service" is defined in KRS 164.7890(3)(d).

Section 2. Request for Deferment. (1) The recipient shall request a deferment in writing by submitting to the Authority complete and accurate information verifying the recipient's circumstances that qualify for deferment in accordance with this administrative regulation.

(2) The recipient's submission of a request for deferment shall constitute authorization for the authority to request and receive the verification of facts represented by the recipient as may be deemed necessary by the Authority.

Section 3. Effect on Repayment. (1) During a deferment, principal or interest payments shall not be required. Interest shall:

(a) Continue to accrue on the unpaid principal balance owed by the recipient during a period specified in Section 4(1)(a), (d), or (e)~~[-(4), or (5)]~~ of this administrative regulation; and

(b) Not accrue during a period specified in Section 4(1)(b) or (c)~~4(2) or (3)~~ of this administrative regulation.

(2) The authority shall not grant a deferment that legally impairs~~be required to grant a deferment if the deferment would legally impair~~ the ultimate recovery of the principal and accrued interest otherwise owed by the recipient. ~~[(3) If, during a deferment, the recipient resumes full-time enrollment in a Pharm D. program at a participating institution or renders qualified service, the deferment shall nullify the prior commencement of repayment, and a promissory note so deferred may be subsequently cancelled in accordance with 11 KAR 19:020.]~~

Section 4. Types of Deferment. Except as provided in Section 5 of this administrative regulation~~subsection (6) of this section~~, if the requirements established in this section are met, the authority shall grant an enrollment deferment, disability deferment, unemployment deferment, hardship deferment, military service deferment or residency deferment.

(1) Enrollment deferment.

(a) An enrollment deferment shall be granted to a recipient who is enrolled on at least a half-time basis at an eligible institution in the United States.

(b) Each semester, the recipient shall provide to the Authority written certification from the recipient's institution of~~in writing evidence of the~~ current enrollment.

(c) The Authority shall grant deferment of repayment upon this basis for a period not to exceed an aggregate of forty-eight (48) months.

(2) The Authority shall grant deferment of repayment for periods not to exceed an aggregate of thirty-six (36) months for any one (1) or combination of the following circumstances, unless a documented extenuating circumstance is approved by the executive director of the authority:

(a) Disability deferment.

1. A disability deferment shall be a deferment granted to a recipient who is:

a. Temporarily totally disabled and, therefore, unable to obtain full-time employment or attend school; or  
b. Unable to obtain full-time employment or attend school due to the temporary total disability of the recipient's spouse who:

(i) Requires continuous (twenty-four (24) hour) nursing or similar care by the recipient; and

(ii) Is not confined to a hospital, nursing home, intermediate care facility, or similar institution.

2. For purposes of a disability deferment, a recipient, or the spouse of a recipient, shall be considered temporarily totally disabled if the person suffers an injury or illness which necessitates an extended or indefinite period of recovery which can be expected to preclude gainful employment or school attendance.

3. The recipient shall provide to the authority a statement from a licensed physician certifying that the recipient or spouse is temporarily totally disabled in accordance with subparagraphs 1 and 2 of this paragraph. The recipient shall be solely responsible for securing the physician's certification.

4. The authority shall grant a disability deferment subject to an annual review of the physician's certification.

5. After the third year of a disability deferment, the authority shall cancel the debt if it appears that the disability is expected to continue for an indefinite time.

(b) Unemployment deferment. An unemployment deferment shall be granted to a recipient seeking, but unable to obtain, a service-creditable position as a pharmacist in a coal-producing county within six (6) months following completion of a pharmacy program at a participating institution. The recipient shall:

1. Be eligible to begin practice as a pharmacist;

2. Have applied for a service-creditable position with at least three (3) employers within Kentucky coal-producing counties;

3. Not have refused an offer of employment in a service-creditable pharmacy position within a Kentucky coal-producing county to which the recipient ~~may have~~ applied; and

4. Provide the authority with a signed statement which sets forth:

a. The recipient's current address;

b. The names of the employers to which the recipient has applied for qualified service-creditable employment as a pharmacist; and

c. The recipient's agreement to notify the authority if the recipient obtains full-time employment in a service-creditable position.

(c) Hardship deferment. The authority shall determine that a hardship exists and grant a hardship deferment if:

1. Enrollment in a pharmacy program or employment in a service-creditable pharmacy position is temporarily interrupted due to circumstances beyond the recipient's control, including major illness, accident or death in the family, after which the recipient intends to resume enrollment in a pharmacy program or a full-time pharmacy practice; or

2. The recipient is insolvent due to circumstances beyond his control, including natural disaster, involuntary unemployment, or unforeseen medical expenses.

(3) Military service deferment. The authority shall grant a military service deferment to a recipient upon proof of current active duty status in the United States Armed Forces, subject to annual review and verification by the authority.

(4) Residency deferment. The authority shall grant a deferment for a maximum of twenty-four (24) months to a recipient who provides proof of participation in a qualified pharmacy residency program.

(5) Pharmacy service deferment. A deferment shall be granted to a recipient who, due to verified current employment in a service-creditable position as a pharmacist in a coal-producing Kentucky county, is reasonably~~may reasonably be~~ expected, on an annual basis, to qualify for cancellation benefits pursuant to 11 KAR 19:020.

**Section 5.**~~(6)~~ Upon default of a repayment obligation under this program, a recipient shall be permanently barred from eligibility for the deferment options provided for in this administrative regulation unless the obligation is rehabilitated as provided in 11 KAR 19:020, **Section 6**~~(6)~~.

KRISTI P. NELSON, Chair

APPROVED BY AGENCY: October 26, 2010

FILED WITH LRC: December 15, 2010 at noon

CONTACT PERSON: Ms. Diana L. Barber, General Counsel,  
Kentucky Higher Education Assistance Authority, P.O. Box 798,  
Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

**PUBLIC PROTECTION CABINET  
Crime Victims' Compensation Board  
(As Amended at ARRS, February 14, 2011)**

**107 KAR 2:010. Payment schedule for sexual assault~~medical~~ examination of reported victims of sexual offenses.**

RELATES TO: KRS 216B.050, 216B.400, 314.142, Chapter 346, 403.707, Chapter 510

STATUTORY AUTHORITY: KRS 216B.400~~], 2003 Ky. Acts ch. 156, Part IX, 53]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.400 and 346.200 require~~requires~~ that examinations for victims of sexual assault shall be paid for by the Crime Victims' Compensation Board at a rate determined by the board after consultation with the Sexual Assault Response Team Advisory Committee. This administrative regulation establishes the payment schedule for sexual assault examinations. ~~[2003 Ky. Acts ch. 156, Part IX, 53, requires that during fiscal year 2003-2004 examinations for reported victims of sexual assault shall be paid by the Crime Victims Compensation Board at a rate set by the board, notwithstanding KRS 216B.400. The board shall reimburse the hospital, sexual assault examination facility, physician, or sexual assault nurse examiner for the examination of reported victims of sexual offenses as provided in administrative regulations promulgated by the board. This administrative regulation establishes a standard payment rate for hospitals, sexual assault examination facilities, physicians, and sexual assault nurse examiners for services rendered pursuant to KRS 216B.400.]~~

Section 1. **Definitions. (1) "Examination facility" means a sexual assault examination facility as defined in KRS 216B.015(26).**

**(2) "HIV" means human immunodeficiency virus.**

**(3) "Qualified medical professional" means any physician's assistant or advanced practice registered nurse whose training and scope of practice include performance of specimen examinations.**

**(4)**~~Definition.~~ "Sexual assault examination" means the forensic-medical examination and related services established by KRS 216B.400 and 502 KAR 12:010.

Section 2. ~~[The] Reimbursement for [a physician, sexual assault nurse examiner, hospital, or sexual assault examination facility for] performing a sexual assault examination shall be the actual amount billed and shall not~~~~[not to]~~ exceed the following limits:

(1) A physician, ~~or~~ sexual assault nurse examiner, or another qualified medical professional ~~[as defined in 502 KAR 12:010.] performing the examination - \$200;[-]~~

(2) ~~An~~~~[A hospital or sexual assault]~~ examination facility for use of an emergency or examination room - \$250;[-]

(3) ~~An~~~~[A hospital, sexual assault]~~ examination facility~~[-]~~ or laboratory to perform diagnostic laboratory testing - \$100; ~~and~~~~[-]~~

(4) ~~An~~~~[A hospital or sexual assault]~~ examination facility for **administered** medications and pharmaceuticals prescribed as a result of the examination and as part of basic treatment - \$100.

Section 3. Reimbursement for additional services related to a sexual assault examination requiring HIV postexposure prophylaxis shall be the actual amount billed ~~and shall not~~~~[not to]~~ exceed the following limits:

(1) **Three (3)** follow-up examinations - \$150, not to exceed a total of fifty (50) dollars per examination;

(2) Laboratory testing;

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~~(a) Initial testing conducted during the sexual assault examination in the examination facility - \$150[-\$225]; and~~

~~(b) Follow-up testing conducted during the three (3) follow-up examinations - \$215[-\$465], not to exceed:~~

~~1. Fifty (50) dollars for testing conducted during day five (5) to day seven (7) of prophylactic treatment;~~

~~2. Ninety (90) dollars for testing conducted after day twelve (12) of prophylactic treatment; and~~

~~3.[-] Seventy five (75) dollars for testing conducted near or at the end of prophylactic treatment; and~~

~~(3) Medications:~~

~~(a) Twenty-eight (28) day supply of HIV prophylaxis medication - \$800, not to exceed:~~

~~1. \$200 for the first seven (7) day supply; and~~

~~2. \$600 for the remaining twenty-one (21) day supply; and~~

~~(b) Twenty-eight (28) day supply of anti-nausea medication - not to exceed thirty (30) dollars:~~

~~1. \$200 for the first seven (7) day supply; and~~

~~2. \$600 for the remaining twenty-one (21) day supply; and~~

~~(b) Twenty-eight (28) day supply of anti-nausea medication - not to exceed thirty (30) dollars.]~~

This is to certify that the Sexual Assault Response Team Advisory Committee has ~~consulted~~~~[consulted]~~ with the Crime Victims' Compensation Board on this administrative regulation prior to its adoption, as required by KRS 216B.400(8)(a).

JO ANN PHILLIPS, CVCB Chair

EILEEN RECTENWALD, Advisory Committee Co-chair

MAJOR LYNN CROSS, Advisory Committee Co-chair

APPROVED BY AGENCY: September 20, 2010

FILED WITH LRC: November 9, 2010 at 1 p.m.

CONTACT PERSON: Lindsay Crawford, policy advisor, Crime Victims Compensation Board, 130 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-2290, fax (502) 573-4817.

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS, February 14, 2011)**

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

RELATES TO: KRS 150.010, 150.240, 150.620, 150.640, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.240(2), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.240(2) authorizes the department to promulgate administrative regulations to establish permits for public or commercial shooting areas. KRS 150.620 authorizes the department's Commission to acquire, improve, and maintain lands for public shooting, fishing, and other recreational uses, to impose and enforce special regulations in the maintenance and operation of these lands, to pay for the cost of the operations and maintenance of these areas, and to charge fair and reasonable fees to the public for use of these areas. This administrative regulation establishes requirements for the use of the Otter Creek Outdoor Recreation Area.

Section 1. Definitions. (1) "Event" means a planned gathering of thirty (30) or more people twelve (12) years or older on the area at the same time.

(2) "Shooting range" means a department built:

(a) Firearm target range facility in which a person is required to shoot through a metal tube at various stationary targets; or

(b) Archery range facility in which a person shoots at stationary targets from specified locations.

Section 2. General Area Use Restrictions. (1) ~~[Pursuant to 301~~

~~KAR 3:022.]~~ A person, except for permit exempt individuals, shall possess and carry:

(a) A valid daily or annual Area Entry Permit when using the Otter Creek Outdoor Recreation Area; and

(b) A valid daily or annual Special Activities Permit if:

1. Biking on designated trails;

2. Horseback riding on designated trails; or

3. Using designated shooting range facilities.

(2) A person shall not be on the area when the area is closed, except for:

(a) Registered campers at the designated campground area;

(b) Authorized hunters; or

(c) A special activity or event authorized by the department.

(3) The department shall notify the public when the area is closed by:

(a) A pre-recorded phone message;

(b) An internet posting; and

(c) Visible signage on the area.

(4) A person shall park vehicles in designated parking areas only.

(5) A person who is hunting, fishing, trapping, or boating on the area shall follow all applicable administrative regulation requirements pursuant to 301 KAR Chapters 1, 2, 3, and 6;

(6) The area shall be closed to the general public, except for authorized hunters, during:

(a) A firearms deer quota hunt pursuant to 301 KAR 2:178; and

(b) Spring turkey season, pursuant to 301 KAR 2:142.

(7) The following activities are prohibited without prior department authorization:

(a) Cutting or removing live or standing trees, shrubs, or other vegetation;

(b) Riding motorized all-terrain or off-highway vehicles;

(c) Allowing unleashed dogs, except at times and areas designated by the department;

(d) Camping, except in designated areas;

(e) Setting fires, except for attended fires:

1. In designated camping areas; or

2. In grills at designated picnic areas.

(f) Blocking a roadway or gate;

(g) Igniting fireworks or rockets;

(h) Participating in a commercial activity or endeavor;

(i) Damaging or destroying crops or wildlife food plots;

(j) Damaging or defacing buildings, structures, signs, or other property;

(k) Hunting in an area closed to hunting;

(l) Tethering a horse to a tree, shrub or sign; or

(m) Discharging a firearm:

1. Within 100 yards of a building;

2. Except on a designated firearm shooting range; ~~or~~and

3. Except during an authorized hunting season in an authorized hunting area.

Section 3. Trail Requirements. (1) A person shall only ride a horse or bike on designated trails or roadways.

(2) A person shall not possess a wheeled vehicle other than a bike on a designated bike trail, except for department authorized maintenance activities.

(3) A person shall not ride a bike or a horse on designated trails that have been temporarily closed by the department due to:

(a) Hunting activity;

(b) Wet conditions;

(c) Trail maintenance activity;

(d) Downed trees;

(e) Unsafe conditions; or

(f) An event authorized by the department.

(4) The department shall provide the public with a reasonable notification system for temporary trail closures that includes:

(a) A pre-recorded phone message;

(b) An internet posting; and

(c) Visible signage on the area.

Section 4. Event Permits. (1) A group of people conducting an event shall not meet on the area without first applying for and obtaining a completed Event Permit from the department.

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(2) A person, on behalf of the people involved with an event, shall apply for an Event Permit at least thirty (30) days in advance of the planned event.

(3) The application for an Event Permit shall be on a form provided by the department.

(4) The department shall deny an Event Permit if the planned activity or event:

- (a) Is prohibited pursuant to this administrative regulation; or
- (b) Is in conflict with:

1. Another Event Permit activity already authorized by the department;

- 2. A hunting season;
- 3. A quota hunt; or
- 4. Recreational use of the area.

Section 5. Incorporation by Reference. (1) "Otter Creek Event Permit Application", 2011 Edition, is incorporated by reference.

(2) The permit application may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

BENJY T. KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: December 3, 2010

FILED WITH LRC: December 15, 2010 at 8 a.m.

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.

### JUSTICE AND PUBLIC SAFETY CABINET

#### Parole Board

(As Amended at ARRS, February 14, 2011)

#### 501 KAR 1:030. Determining parole eligibility.

RELATES TO: KRS 119.025, 197.410(2), 346.185, 439.340, 439.3401, 439.563, 532.043, 532.060, 532.080, 640.080

STATUTORY AUTHORITY: KRS 439.340(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

Section 1. Definitions. (1) "Board" is defined by KRS 439.250(5).

(2) "Chair" means the chairman of the board.

(3) "Deferment" means a decision by the board that an inmate shall serve a specific number of months before further parole consideration.

(4) "Detainer" means a document issued or made by a legal authority, authorizing the keeper of a prison or jail to keep the person named in the document in custody.

(5) "Evidence Based Program" means a program certified by the Kentucky Department of Corrections as having a positive impact on recidivism if recidivism when successfully completed by an offender.

(6)(~~6~~) "Parole" means the release of an inmate with a signed parole certificate to:

(a) The community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision; **or**

(b) Answer the detainer.

(7)(~~6~~) "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence.

(8)(~~7~~) "Parole rescission" means a decision of the board to terminate or rescind an inmate's parole recommendation, before the inmate is actually released on parole.

(9) "Parole for violent offender" is defined in KRS 439.3401.

(10)(~~8~~) "Parole revocation" means the formal procedure by which the board may terminate or revoke an offender's~~a parolee's~~ release on parole.

(11)(~~9~~) "Physical injury" is defined in KRS 500.080(13).

(12)(~~40~~) "Preliminary revocation hearing" means the initial hearing conducted by a hearing officer to determine whether probable cause exists to believe an offender~~a parolee~~ has violated the conditions of his parole.

(13)(~~44~~) "Reconsideration" means a decision to review a previous board action.

(14)(~~42~~) "Restitution" is defined in KRS 532.350(1)(a).

(15)(~~43~~) "Serious physical injury" is defined in KRS 500.080(15).

(16)(~~44~~) "Serve-out", "SOT", or "serve-out-time" means a decision of the board that an inmate shall serve until the completion of his sentence.

(17)(~~45~~) "SOTP" means Sex Offender Treatment Program.

(18)(~~46~~) "Youthful offender" is defined in KRS 600.020(64)~~600.020(63)~~.

Section 2. Ineligibility. (1) An eligible sex offender, as defined in KRS 197.410(2), convicted prior to July 15, 1998 shall not be eligible for a parole consideration hearing unless:

(a) He has been denied entrance into the Sex Offender Treatment Program;

(b) He has been terminated from the SOTP; or

(c) He has successfully completed the SOTP.

(2) On or after July 15, 1998, a sex offender's eligibility shall be governed by KRS 197.045(4).

(3) On or after July 15, 1998, a person confined to a state penal institution or county jail as a result of the revocation of his conditional discharge by the court pursuant to KRS 532.043 and 532.060 shall not be eligible for parole consideration.

(4) If an inmate is within sixty (60) days of being released by minimum expiration, administrative release, or maximum expiration at the time of his next scheduled parole hearing, the inmate shall not be eligible for parole.

Section 3. Parole Eligibility. (1) Initial parole review ~~[date]~~. Except as provided by Section 2 of this administrative regulation, a person confined to a state penal institution or county jail shall have his case reviewed by the board, in accordance with the following schedules:

(a) A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years shall have his or her case reviewed by the Parole Board upon reaching his or her parole eligibility date as established in KRS 439.340(3)(a).

(b) For a felony offense committed prior to December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1 year and less than 18 months	5 months
18 months up to and including 2 years	6 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to and including 9 years	1 year
More than 9 years, up to and including 15 years	2 years
More than 15 years, up to and including 21 years	4 years
More than 21 years, up to and including life	6 years

(c) For a felony offense committed after December 3, 1980:

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<u>Sentence Being Served</u>	<u>Time Service Required Before First Review (Minus Jail Credit)</u>
<u>1 year, up to but not including 2 years</u>	<u>4 months</u>
<u>2 years, up to and including 39 years</u>	<u>20 % of sentence received</u>
<u>More than 39 years, up to and including life</u>	<u>8 years</u>
<u>Persistent felony offender I in conjunction with a Class A, B, or C felony</u>	<u>10 years</u>

(d) For any crime, committed on or after July 15, 1986, but prior to July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1:

<u>Sentences of a number of years</u>	<u>50 % of the sentence received or 12 years, whichever is less</u>
<u>Sentence of life</u>	<u>12 years</u>

(e) For a crime:

1. Committed on or after July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1: [ef]

2. Committed on or after July 15, 2002, which is:

a. Burglary in the first degree accompanied by the commission or attempted commission of a felony sexual offense in KRS Chapter 510;

b. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

c. Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

d. Robbery in the first degree; [ef]

3. Committed on or after July 12, 2006, which is:

a. A capital offense;

b. Class A felony;

c. Complicity to a Class A felony;

d. Class B felony involving the death of the victim or serious physical injury to a victim;

e. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;

f. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);

g. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);

h. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

i. Promoting prostitution in the first degree as described in KRS 529.030(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

j. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

k. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

l. Robbery in the first degree; or

4. Committed on or after June 26, 2007, which is:

a. A capital offense;

b. Class A felony;

c. Complicity to a Class A felony;

d. Class B felony involving the death of the victim or serious physical injury to a victim;

e. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;

f. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);

g. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);

h. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

i. Human trafficking as described in KRS 529.010(5)(b) when the victim is a minor;

j. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

k. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

l. Robbery in the first degree;

<u>Sentences of a number of years</u>	<u>85 % of sentence received or twenty 20, whichever is less</u>
<u>Sentences of life</u>	<u>20 years</u>

(f) 1. A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years shall have his or her case reviewed by the Parole Board upon reaching his or her parole eligibility date as established in KRS 439.340(3)(a).

2. Except as provided by subparagraph 3 of this paragraph, the offender shall be released on parole if the offender:

a. Has completed the programs recommended by the Kentucky Department of Corrections;

b. Has not been found to have committed a disciplinary violation that is ranked as Category 3 and involves violence or that is ranked as Category 4 or higher, pursuant to Corrections Policy and Procedures 15.2 and 15.6, incorporated by reference in 501 KAR 6:020; and

c. Does not have an active detainer.

3. The offender shall not be released under subparagraph 2 of this paragraph if the offender:

a. Is a violent offender as defined in KRS 439.3401;

b. Is convicted of a sex crime listed in KRS Chapter 510, 530.020, 530.064(1)(a), 531.310, or 531.320; or

c. Is convicted of a crime in which the elements of the offense or the judgment of the Court demonstrate that in the commission of the crime:

(i) A weapon was used;

(ii) A human life was taken; or

(iii) A serious physical injury occurred.

(b) If convicted of a felony offense after December 3, 1980:

<u>Sentence Being Served</u>	<u>Time Service Required Before First Review (Minus Jail Credit)</u>
<u>1 year, up to but not including 2 years</u>	<u>4 months</u>
<u>2 years, up to and including 39 years</u>	<u>20% of sentence received</u>
<u>More than 39 years, up to and including life</u>	<u>8 years</u>
<u>Persistent felony offender I in conjunction with a Class A, B, or C felony</u>	<u>10 years</u>

(c) For a crime, committed on or after July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1:

<u>Sentences of a number of years</u>	<u>85% of sentence received or 20 years, whichever is less</u>
<u>Sentences of life</u>	<u>20 years</u>

(d) For a crime, committed on or after July 15, 2002, which is:

1. Burglary in the first degree accompanied by the commission or attempted commission of a felony sexual offense in KRS Chapter 510;

2. Burglary in the first degree accompanied by the commission

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or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

3. Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

4. Robbery in the first degree:

Sentences of a number of years	85% of sentence received or 20 years, whichever is less
Sentences of life	20 years

(e) For a crime, committed on or after July 12, 2006, which is:

1. A capital offense;

2. Class A felony;

3. Complicity to a Class A felony;

4. Class B felony involving the death of the victim or serious physical injury to a victim;

5. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;

6. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and KRS 531.310(2)(c);

7. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and KRS 531.320(2)(c);

8. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

9. Promoting prostitution in the first degree as described in KRS 529.030(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

10. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

11. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

12. Robbery in the first degree:

Sentences of a number of years	85% of sentence received or 20 years, whichever is less
Sentences of life	20 years

(f) For a crime, committed on or after June 26, 2007, which is:

1. A capital offense;

2. Class A felony;

3. Complicity to a Class A felony;

4. Class B felony involving the death of the victim or serious physical injury to a victim;

5. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;

6. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);

7. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);

8. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

9. Human trafficking as described in KRS 529.010(5)(b) when the victim is a minor;

10. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

11. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

12. Robbery in the first degree:

Sentences of a number of years	85% of sentence received or 20 years, whichever is less
Sentences of life	20 years

(g) For any crime, committed on or after July 15, 1986, but prior to July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1:

Sentences of a number of years	50% of the sentence received or 12 years, whichever is less
Sentence of life	12 years

(h) If convicted of a felony offense committed prior to December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1 year and less than 18 months	5 months
18 months up to and including 2 years	6 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to and including 9 years	1 year
More than 9 years, up to and including 15 years	2 years
More than 15 years, up to and including 21 years	4 years
More than 21 years, up to and including life	6 years

(i) For an individual serving multiple sentences, if one (1) or more of the crimes resulted in a conviction committed under paragraph (e) of this subsection and one (1) or more of the crimes resulted in a conviction committed under paragraph (c) of this subsection, parole eligibility shall be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

(2) **Subsequent parole review.** Except as provided by paragraphs (a) and (b) of this subsection, after the initial review for parole, a subsequent review, during confinement, shall be at the discretion of the board.

(a) The maximum deferment given at one (1) time shall not exceed the statutory minimum parole eligibility for a life sentence.

(b) The maximum deferment given at one time shall not exceed twenty-four (24) months for an offender convicted of a Class D or Class C felony except for:

1. A violent offender as defined in KRS 439.3401;

2. An offender convicted of a sex offense listed in KRS Chapter 510, 530.020, 530.064(1)(a), 531.310, or 531.320; and

3. An offender who has ever been convicted of a crime in which the elements of the offense or the judgment of the court demonstrate that in the commission of the crime:

a. A human life was taken;

b. A serious physical injury occurred; or

c. A sex offense listed in KRS Chapter 510, 530.020, 530.064(1)(a), 531.310, or 531.320 was committed.

(c) The board, at the initial or a subsequent review, may order a serve-out on a sentence, except as provided by Section 3(1)(b)2 of this administrative regulation. If the sentence is a life sentence, the full board shall vote.

(3) **Parole review with new felony conviction.**

(a) 1. a. Except as provided by clause b of this subparagraph, If a confined prisoner is sentenced for a felony committed prior to the date of his current incarceration, he has not been discharged since his original admission, and if this new conviction will be served consecutively, the sentence received for the latter conviction shall be added to the sentence currently being served to determine his parole eligibility.

(b) 1. b. If the sentence received for the latter conviction requires the prisoner to serve a fixed percentage of the sentence or a fixed number of years prior to becoming eligible for parole, parole eligibility shall be determined by the latter conviction only.

2. a. If a confined prisoner is a returned parole violator who receives an additional consecutive sentence, his parole eligibility shall be calculated on the length on the new sentence only, beginning from the date of his final sentencing, unless the board has previously set a new parole eligibility date.

2. b. If the board has previously set a new parole eligibility date, the parole eligibility date shall be the date which last occurs.

(c) 3. If parole is recommended, and a confined prisoner receives an additional sentence after board consideration, but before



his release:

1.~~[a.]~~ The recommendation of parole shall automatically be voided; and

2.~~[b.]~~ The new parole eligibility date shall be calculated from the date of original admission on the aggregate sentences.

(4) Parole review for crimes committed while in an institution or while on escape.~~(4)~~ If an inmate commits a crime while confined in an institution or while on an escape and receives a concurrent or consecutive sentence for this crime, eligibility time towards parole consideration on the latter sentence shall not begin to accrue until he becomes eligible for parole on his original sentence. This shall include a life sentence.

~~(a)[4-]~~ Except as provided by paragraph (b) of this subsection~~[subparagraph 2 of this paragraph]~~, in determining parole eligibility for an inmate who receives a sentence for an escape, a sentence for a crime committed while in the institution, or on a sentence for a crime committed while on an escape, the total parole eligibility shall be calculated by adding the following, regardless of whether the sentences are ordered to run concurrently or consecutively:

1.~~[a.]~~ The amount of time to be served for parole eligibility on the original sentence;

2.~~[b.]~~ If the inmate has an additional sentence for escape, the amount of time to be served for parole eligibility on the additional sentence for the escape;

3.~~[c.]~~ If the inmate has an additional sentence for a crime committed while in the institution, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while in the institution; and

4.~~[d.]~~ If the inmate has an additional sentence for a crime committed while on escape, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while on escape.

~~(b)[2-]~~ If the board has previously set a parole eligibility date for an inmate described in paragraph (a) of this subsection~~[subparagraph 1 of this paragraph]~~, and that date is later than that calculated under paragraph (a) of this subsection~~[subparagraph 1 of this paragraph]~~, the later date shall be the parole eligibility date.

~~(c)1.(m)1-]~~ Except as provided by paragraph (b) of this subsection~~[subparagraph 2 of this paragraph]~~, if a confined prisoner who has previously met the board is given a deferment, escapes during the period of the deferment, and returns from that escape without a new sentence for the escape, the time out on the escape shall be added to the original deferment date to arrive at the new adjusted date.

2.a. If the prisoner later receives a sentence for the escape, the previous deferment shall be automatically voided and the new parole eligibility date shall be calculated based on the new sentence beginning from the date of sentencing for the new sentence, unless the deferment date set by the board is a later date than that determined by the calculations.

b. If the deferment date set by the board is a later date, the parole eligibility date shall be the date which last occurs.

~~(d)[(a)]~~ If an inmate receives a serve-out or deferment on his original sentence prior to receiving an escape sentence or a sentence for a crime committed while on escape or confined in an institution, his parole eligibility date shall be calculated from the date of his new sentence or from the date previously set by the board, whichever occurs last.

~~(e)[(a)]~~ If an inmate receives a parole recommendation but escapes prior to being released, the parole recommendation shall be void. Upon return to a state institution, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines it may conduct a face-to-face hearing with this person at the institution with a three (3) member panel.

(5) Parole reviews for persons on shock probation or on prerelease probation.~~(5)~~ If a person is shock probated, or on prerelease probation, and is later returned to the institution as a shock probation violator or prerelease probation violator, his new parole eligibility shall be calculated by adding the period of time the inmate is on shock probation or prerelease probation to his original parole eligibility date.

~~(a)[(a)]~~ If a person on shock probation or prerelease probation

is returned to the institution with a new consecutive sentence acquired while on shock probation or prerelease probation, he shall be eligible for a parole hearing if he has reached parole eligibility on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation or prerelease probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences. The time spent out on shock probation or prerelease probation shall not be included as part of the total period of time to be served for parole eligibility.

~~(b)[(a)]~~ If a person on parole is returned to the institution, has received a new sentence for a crime committed while on parole, and is probated or shock probated on the new sentence, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines, it may conduct a face-to-face hearing with this person at the institution with a panel of at least two (2) members.

#### (6) Parole hearing procedures:

~~(a)[(2)]~~ The parole hearing shall consist of an interview with the inmate by the board, or a panel. If the inmate is too ill to appear:

~~1-](a)]~~ [the board may appoint one (1) member to interview the inmate in the health care facility where he is confined and report back to the remaining members; and

~~2-](b)]~~ [A majority vote by a quorum shall be required before action is taken.

~~(b)[(3)]~~ [If an inmate refuses to meet the board on his scheduled hearing date, a statement to that effect signed by the inmate and the prerelease or re-entry coordinator][institutional parole officer] shall be presented to the board. A person refusing to meet the board may petition the board for reconsideration.

~~(c)[(4)]~~ [An inmate who is psychologically unstable may be deferred in absentia until he is able to meet the board if the board receives documentation from a certified psychologist or psychiatrist.

~~(d)[(5)]~~ [The board shall schedule the initial parole hearing as follows:

~~1-](a)]~~ [For an institution that has hearings scheduled once per month, the inmate shall, if administratively possible, be seen during the month he is eligible for parole consideration.

~~2-](b)]~~ [For an institution that has hearings scheduled bi-monthly, the inmate shall, if administratively possible, be seen during the month eligible or one (1) month prior to the month he is eligible for parole consideration.

~~3-](c)]~~ [If it is not administratively possible to conduct the initial parole hearing during the month the inmate is eligible, the inmate shall be seen at the next available board hearing conducted at the institution where the inmate is housed except for inmates confined in county jails as provided by KRS 439.310(4).

Section 4. Board Criteria for Recommending or Denying Parole. (1) Before recommending or denying parole, the board shall apply one (1) or more of the following factors to an inmate:

(a) Current offense — seriousness, violence involved, firearm used, life taken or death occurred during commission;

(b) Prior record — prior felony convictions, prior misdemeanor convictions, history of violence, prior contact with law enforcement or criminal courts where conviction did not occur;

(c) Institutional adjustment and conduct — disciplinary reports, loss of good time, work and program involvement, particularly evidence-based program involvement;

(d) Attitude toward authority — before and during incarceration;

(e) History of Substance Abuse][History of alcohol or drug involvement];

(f) History of prior probation, pre-trial, shock probation or parole violations;

(g) Educational history][Education and job skills];

(h) Employment history and job skills;

(i) Emotional stability;

(j) Mental status — capacity and stability;

(k) Terminal illness;

(l) History of deviant behavior;

(m) Official and community attitudes toward accepting an inmate back in the county of conviction;

(n) Victim impact statement and victim impact hearing;

(e) Review of parole plan]—housing, employment, need for community treatment and follow-up resources]; and

(p) Other factors involved that relate to public safety or the inmate's needs.

(2) If the board makes a parole recommendation:

(a) It may rescind the recommendation at any time prior to the release of an inmate on parole; and

(b) Parole shall not become effective until the home placements are approved, the parole certificate is signed, and the inmate leaves the institution.

(3) The board may reconsider a decision to deny parole if the chair requests the full board to reconsider a decision, the full board votes in writing, and the majority votes in favor of the reconsideration hearing.

(4) An inmate whose parole is revoked, rescinded or denied by deferment or serve-out, or his authorized legal representative, may request reconsideration][an appellate review] [by the board. A request for the review shall be in writing and shall be postmarked no later than twenty-one (21) days from the date the final disposition is made available to the inmate. If the request is not postmarked within twenty-one (21) days, it shall be denied. The request shall be screened by the board chairperson][a board member] [or his designee to decide if a review shall be conducted. A review shall be conducted for the following reasons:

(a) If there is an allegation of misconduct by a board member that is substantiated by the record;

(b) If there is a significant procedural error by a board member; or

(c) If there is significant new evidence that was not available when the hearing was conducted. A request based on the availability of new evidence or information shall be accompanied by adequate documentation.

(5) A request for reconsideration][appellate review] [shall be based on one (1) or more of the reasons established in subsection (4) of this section. A request based on an allegation of misconduct or significant procedural error shall clearly indicate the specific misconduct or procedural error. If the case is set for review, it shall be conducted from the record of the first hearing. The appearance of the inmate shall not be necessary. If a board member wishes to have additional testimony, an appearance hearing may be conducted. The board shall vote after reviewing the initial taped interview and the record. A decision to change the result of the hearing that is the subject of the appeal shall require the concurrence of a quorum of the board. This decision shall be final.

Section 5. Youthful Offender. (1) A youthful offender shall be subject to the jurisdiction of the board as described in KRS 640.080.

(2) The Department of Juvenile Justice and the Department of Corrections shall provide the board with necessary records to conduct a hearing as described in KRS 640.100.

(3) A youthful offender shall be subject to the board's applicable administrative regulations.

(4) A youthful offender housed by the Department of Juvenile Justice shall have a hearing at a site agreed upon by that department and the board.

(5) A youthful offender housed by the Department of Corrections shall have a hearing at a site determined by the board.

(6) An administrative law judge shall hold a preliminary revocation hearing at a facility out of sight and sound of adult inmates.

(7) A final revocation hearing for a youthful offender shall be held at a site agreed upon by the Department of Juvenile Justice and the board or the central office of the board.](8) Special hearings for a youthful offender shall be held in central office.]

[Section 6. Conditions of Parole. (1) The parolee shall:

(a) Report to his parole officer immediately upon arrival at his destination and submit a report in writing once a month, or more if directed by the officer;

(b) Permit his parole officer to visit his home and place of employment at any time;

(c) Not indulge in the use of a nonprescribed controlled substance or alcohol;

(d) When directed to do so by the parole officer, submit to random tests of blood, breath, saliva, or urine to determine the existence of any illegal substances in his system;

tence of any illegal substances in his system;

(e) Work regularly and support his legal dependents; if unemployed, he shall report this fact to his officer and make every attempt to obtain other employment;

(f) Not associate with a convicted felon except for a legitimate purpose, including family, residential, occupational, or treatment;

(g) Not visit with an inmate of a penal institution without permission of his parole officer;

(h) Not leave the state, district, residence, or change employment][place of employment] [without written permission of his parole officer;

(i) Not be permitted to purchase, own, or have in his possession a firearm or other weapon;

(j) Not violate any law or city ordinance of this state, any other state or the United States;

(k) Not falsify any report to his parole officer;

(l) Not have the right to register for voting purposes and may not hold office; if he registers or reregisters prior to restoration of his civil rights, he shall be in violation of the law which carries a maximum penalty of five (5) years in prison pursuant to KRS 419.025;

(m) Comply with 501 KAR 1:030 through 1:050 and special instructions of his parole officer;

(n) Pay a supervision fee unless expressly waived by the board;

(o) Pay the balance of the restitution ordered pursuant to KRS 439.563; and

(p) Pay the balance of the sum payable to the Crime Victims Compensation Fund pursuant to KRS 346.185.

(2) If additional supervision or conditions are deemed necessary in a case, the board may order a parolee to observe any condition the board has determined is necessary for the safety of the public or rehabilitation of the parolee.]

The Chairman of the Kentucky Parole Board, with the authorization and approval of a majority of the members of the Kentucky Parole Board, hereby approves the promulgation of the regulation on behalf of the Kentucky Parole Board, as indicated by his signature below.

VERMAN WINBURN, Chairman

APPROVED BY AGENCY: November 15, 2010

FILED WITH LRC: November 15, 2010 at noon

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

## JUSTICE AND PUBLIC SAFETY CABINET Parole Board

(As Amended at ARRS, February 14, 2011)

### 501 KAR 1:080. Parole Board policies and procedures.

RELATES TO: KRS ~~439.310-439.440~~[119.025, 197.410(2), 346.185, 439.340, 439.3401, 439.563, 532.043, 532.060, 532.080, 640.080]

STATUTORY AUTHORITY: KRS ~~439.340(3)(b)~~[439.320(8)]

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 439.340(3)(b) requires the Parole Board to promulgate administrative regulations with respect to the conduct of parole and parole revocation hearings and other matters that come before the board, and conditions to be imposed upon parolees. This administrative regulation establishes the policies and procedures for**[KRS 439.320(8) authorizes the promulgation of administrative regulations by] the Parole Board.

Section 1. Incorporation by Reference. (1) "**Kentucky Parole Board Policies and Procedures**," February 14, 2011["Probation and Parole Policies and Procedures", March 20, 2010], are incorporated by reference. **Kentucky Parole Board**[Probation and Parole] Policies and Procedures include: [KYPB-01-00 Parole Board Organization and Administration

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KYPB-02-00	Fiscal Management
KYPB-03-00	Personnel: Parole Board Members
KYPB-05-00	Management Information Systems
KYPB-06-00	Records
KYPB-09-00	Organization of the Parole Board
KYPB 10-00	Parole Hearing Process <b>(Amended 2/14/2011)</b>
KYPB 10-01	Parole Release Hearings <b>(Amended 2/14/2011)</b>
KYPB 11-00	Conditions of Parole <b>(Amended 2/14/2011)</b>
KYPB 12-00	Discharge: <u>Payment of Restitution</u> <b>(Amended 2/14/2011)</b>
KYPB 13-00	Revocation: <u>Warrants and Determinations</u> <b>(Amended 2/14/2011)</b> [ <del>and Arrests: Determination</del> ]
KYPB 13-01	Revocation [ <del>and Arrests</del> ]: Preliminary Hearings <b>(Amended 2/14/2011)</b>
KYPB 13-02	Revocation: <u>Final Revocation Hearings</u> <b>(Amended 2/14/2011)</b>
KYPB 13-03	Revocation: <u>Youthful Offenders</u> <b>(Amended 2/14/2011)</b> [ <del>and Arrests: Revocation Hearings</del> ]
KYPB 14-00	Public and Legislative Relations <b>(Amended 2/14/2011)</b>

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Parole Board, 275 Main Street, 2nd Floor, 40602, telephone (502) 564-3620, fax (502) 564-8995, Monday through Friday, 8 a.m. to 4:30 p.m.

VERMAN WINBURN, Chairman

APPROVED BY AGENCY: November 15, 2010

FILED WITH LRC: November 15, 2010 at noon

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

### TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Vehicle Licensing (As Amended at ARRS, February 14, 2011)

#### 601 KAR 9:210. Continuation of title liens.

RELATES TO: KRS 186A.185, 186A.190, 186A.193, 186A.195 [~~186A.185~~]

STATUTORY AUTHORITY: KRS 186A.010(2), 186A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186A.010(2) requires the Transportation Cabinet to develop an automated motor vehicle and trailer registration and titling system. KRS 186A.190 establishes the procedures for the perfection and discharge of a security interest in property that has been issued a Kentucky certificate of title under the cabinet's titling system. [~~KRS 186A.190 states that the notation of a security interest on a certificate of title shall automatically expire within a certain period. The statute further provides that secured parties may continue their security interest notation beyond the expiration by filing a continuation statement.~~] This administrative regulation establishes [~~sets forth~~] the procedure for filing a continuation statement to extend a security interest notation on a certificate of title.

Section 1. Continuation of a Security Interest. (1) A secured party shall [~~may~~] continue a security interest on a certificate of title beyond the expiration date established [~~set forth~~] in KRS 186A.190 by filing a Title Lien Statement, TC Form 96-187 [~~(96-187E)~~] in the office of the county clerk of the county where the original lien is filed.

(2) [(4)] For the purpose of continuing a security interest, the Title Lien Statement, TC Form 96-187 shall be filed:

(a) No sooner than six (6) months prior to the expiration date of the initial period established [~~set forth~~] in KRS 186A.190(1);

(b) On the expiration date; [~~date corresponding to the date of lapse~~] or

(c) If there is no expiration date, then on the last day of the month of expiration [~~if there is no corresponding date~~].

(3) The Title Lien Statement [~~form~~] shall be filed no later than

close of business on the date upon which the financing statement lapses.

(4) The date the Title Lien Statement [~~form~~] is received in the appropriate county clerk's office [~~as indicated in this section~~] shall control the effectiveness of the continuation statement.

Section 2. Incorporation by Reference. (1) "Title Lien Statement" Form, TC 96-187, revised December 2010 [~~July 2004~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Vehicle Regulation, Division of Motor Vehicle Licensing, Transportation Cabinet Building, 200 Mero Street [~~Division of Motor Vehicle Licensing, 2nd Floor, State Office Building, 501 High Street~~], Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

MIKE HANCOCK, Secretary

APPROVED BY AGENCY: December 7, 2010

FILED WITH LRC: December 14, 2010 at 2 pm.

CONTACT PERSON: D. Ann D'Angelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Administration and Financial Management (As Amended at ARRS, February 14, 2011)

#### 902 KAR 8:040. Definitions for [~~Definition of terms in~~] 902 KAR Chapter 8.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870, Chapter 337, 29 U.S.C. 206, 29 C.F.R. Part 541

STATUTORY AUTHORITY: KRS 194A.050, 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. This administrative regulation establishes definitions for the terms used in 902 KAR Chapter 8.

Section 1. Definitions. (1) "Above minimum salary" means due to recruitment difficulties the local health department has requested and been given approval by the department for a minimum salary upon appointment for a specific classification which is higher than the minimum salary established by the Compensation Plan.

(2) "Agency" is defined by KRS 211.1751(1).

(3) [(2)] "Allocate" means assigning a position to an appropriate class on the basis of similarity of work and level of responsibility performed in the position.

(4) [(3)] "Appeal" means the right, under [~~the provisions of~~] 902 KAR 8:110, to appear before the Local Health Department Employment Personnel Council or a hearing officer appointed by the department and be heard on matters of discrimination or disciplinary actions, provided for under 902 KAR 8:060 through 902 KAR 8:140.

(5) [(4)] "Appointing authority" means the board of health or other individual authorized under KRS Chapter 212 to make appointments.

(6) [(5)] "Available" means an individual on a register for a class of positions willing to accept appointment in specified areas to a particular position of that class.

(7) [(6)] "Cabinet" means the Cabinet for Health and Family Services. [~~Cabinet for Health Services.~~]

(8) [(7)] "Certification of eligibles [~~eligible's~~]" means a list of eligible applicants [~~eligible's~~] issued by the Department for Public Health to the appointing authority of an agency certifying that the individuals listed meet the established minimum qualifications of the position, passed the required examination, if any, and may be considered for employment.

(9) [(8)] "Class" means a group of positions similar as to the duties performed; degree of supervision exercised or required;

minimum requirements of training, experience, or skill; and other relevant characteristics.

~~(10)(9)~~ "Classified service" means employment subject to ~~the terms of administrative regulations~~ 902 KAR 8:060 through 902 KAR 8:140 except for:

(a) A health officer or a health department director employed under the provisions of 902 KAR 8:140; ~~or~~

(b) An employee appointed on a seasonal, temporary, or emergency basis as described in ~~administrative regulation~~ 902 KAR 8:080; ~~or~~

(c) An employee appointed as a janitor ~~after the effective date of this administrative regulation~~; or

(d) An employee appointed under ~~the provisions of~~ 902 KAR 8:080 to work an irregular schedule as needed by an agency and whose hours of actual work do not exceed 800 ~~400~~ hours per year.

~~(11)(40)~~ "Classification plan" is defined by KRS 211.1751(2).

~~(12)~~ "Closed Advertisement" means the local health department recruits for a position by accepting applications only in response to a designated advertisement having a specified date.

~~(13)(44)~~ "Compensation plan" is defined by KRS 211.1751(3).

~~(14)(42)~~ "Compensatory time" means the accumulation of leave time for time worked on an hour-for-hour basis in excess of thirty-seven and one-half (37.5) hours per week subject to ~~the provisions of~~ KRS Chapter 337 and the Fair Labor Standards Act, 29 U.S.C. 206.

~~(15)~~ "Continuous open recruitment" means the local health department accepts applications at any time for a designated classification.

~~(16)(43)~~ "Council" is defined by KRS 211.1751(4).

~~(17)(44)~~ "Demotion" means a change of an employee from a position in one (1) class to a position in another class having a lower entrance salary.

~~(18)(46)~~ "Department" is defined by KRS 211.1751(5).

~~(19)(46)~~ "Detail to special duty" means the assignment of an employee to a position for not more than twenty-six (26) pay periods to fulfill the responsibilities of an employee on leave or the assumption of additional job duties which are temporary.

~~(20)(47)~~ "Disabled veteran" means a veteran who has established by official records of the United States government the present existence of a service connected disability.

~~(21)(48)~~ "Discrimination" means any administrative decision based on a person's race, sex, age, religion, national origin, color, or disability, except if where the decision is supported by a valid occupational qualification.

~~(22)(49)~~ "Discipline" means any effort to positively instruct or punish an employee concerning inappropriate conduct and behavior or unsatisfactory job performance requiring redirection.

~~(23)(20)~~ "Eligible" means an individual whose name appears on a register for a particular class.

~~(24)(24)~~ "Eligible list" means a list of names of persons who have been found qualified for positions or classes of positions.

~~(25)(22)~~ "Emergency appointment" means the appointment of a person to a position, for a period not to exceed seven (7) pay periods, if when an emergency makes it impractical or impossible to fill the position through standard appointment procedures.

~~(26)(23)~~ "Excessive absenteeism" means absences from the employee's work station or assigned place of work that cause the irregular attendance with or without approval of the agency. Absences may include tardiness, leaving early, abuse in the use of sick leave, excessive unexcused absence that causes repetitive disruption of job performance and responsibilities of the employees and the agency, abuse in the use of annual leave, violating agency break policy, or violation of agency lunch policy.

~~(27)~~ "Exempt" means **an employee in an executive, administrative, or professional position who receives an exemption from the minimum wage and overtime pay requirements under the Fair Labor Standards Act, 29 C.F.R. Part 541, based upon salary level, salary basis, and job duties** ~~the employee receives an exemption from the minimum wage and overtime pay requirements, as provided for by the Fair Labor Standards Act (29 C.F.R. Part 541). This determination is based upon salary level, salary basis and job duties for those employed in executive, administrative or professional positions~~.

~~(28)(24)~~ "Flagrant violation" means:

- (a) A breach of: State law;
2. An agency rule; or
3. An agency policy; ~~or~~

(b) Failure of an employee to follow a directive which constitutes a clear, present, threat or danger to the life, safety, health, or welfare of:

1. A patient;
2. Another employee;
3. The general public; or
4. The subject employee; or

(c) Activity or behavior by an employee that seriously disrupts the normal course of business in the agency.

~~(29)(26)~~ "Full-time employee" means an employee who is compensated on a salary basis for a standard biweekly pay period.

~~(30)~~ "In-Range adjustment" means **an increase in an employee's salary because the employee's position duties and responsibilities have changed, but not to the extent that would warrant a reclassification** ~~an employee may receive an increase in salary due to a change in position duties and responsibilities but are less than those that would indicate a reclassification~~.

~~(31)~~ "Initial probationary period" means the period of six (6) months an employee is required to serve prior to becoming a regular employee in an agency.

~~(32)~~ "Initial salary adjustment" means **an adjustment in an employee's salary upon appointment** ~~the salary upon appointment may be adjusted~~ above the classification grade minimum to reflect additional education or experience the person has which is above the minimum requirements set for that classification.

~~(33)~~ "Irregular ~~hours~~ hour" means the employee:

**(a) Works variable hours and does not follow a regular schedule for work; and**

**(b) The individual is paid per service or paid an hourly rate salary.**

~~(34)(26)~~ "Insubordination" means the refusal or the ignoring of a request to perform a task or to comply with an order given to the employee by a supervisor under circumstances where:

(a) The employee understands the order or request; and

(b) Refusal to perform is not justified by a reasonable safety concern.

~~(35)(27)~~ "Job description" means a written description for each classification which establishes the:

- (a) Title of the class;
- (b) Duties and responsibilities of the work;
- (c) Minimum requirements for the job; and
- (d) Special requirements for the job, including physical standards necessary to perform the work.

~~(36)(28)~~ "Local health department" means an agency subject to ~~the provisions of administrative regulations~~ 902 KAR 8:040 through 902 KAR 8:140.

~~(37)(32)~~ "Lump sum ~~Outstanding~~ merit payment" means a lump sum payment made to an employee ~~payment~~ based on that employee's outstanding job performance.

~~(38)~~ "Material and permanent duties" means **a substantial and noticeable difference in status or duties which will be ongoing, without time limitations, and is not expected to change.**

~~(39)~~ "Mid-point" means the salary is equidistant between the **minimum and maximum rates of salary compensation set for a classification.**

~~(40)(29)~~ "Minimum qualifications" means a comprehensive statement which establishes the minimum background required as to education and experience.

~~(41)(30)~~ "Minimum salary" means the lowest rate of pay in the salary range for a class of positions.

~~(42)~~ "Non-exempt" means **the employee is required to** ~~must~~ receive minimum wage and overtime pay benefits **under** ~~as provided for by~~ the Fair Labor Standards Act (29 C.F.R. Part 541).

~~(43)~~ "Partial year appointment" means the appointment of a person to a position that shall contain regularly-scheduled hours, for a period of time not to exceed seven (7) pay periods per year, during which the incumbent remains an employee but is not at work.

~~(44)(33)~~ "Part-time employee" means an employee who is compensated on a biweekly basis for hours worked and whose

hours worked average less than 100 hours of work per month.

(45)(34) "Part-time 100 hour employee" means an employee who is compensated on a biweekly basis for hours worked and whose hours worked average 100 hours per month or more.

(46)(35) "Pay status" means a period of time for which an employee receives pay for:

- (a) Time worked;
- (b) A holiday; or
- (c) Approved accumulated leave of absence, including:
  1. Sick leave;
  2. Extended sick leave;
  3. Vacation, using annual or compensatory leave;
  4. Military leave; or
  5. Another type of paid leave provided by 902 KAR 8:120.

(47)(36) "Performance evaluation" means a method of evaluating each employee on the employee's capability of performing the duties and responsibilities of the job.

(48) "Position description" means a written description of responsibilities and duties for an individual employee that:

(a) The employee is expected to assume for a particular position; and

(b) ~~This written description~~ Is in line with the job description for the designated classification.

(49)(37) "Probationary employee" means an employee serving the required initial probationary period following appointment.

(50)(38) "Promotional probationary period" means a period during which an employee is required to demonstrate fitness for the duties to which the employee has been promoted by actual performance of the duties of the position.

(51) "Reallocation" means the placement of an employee in one position to a newly established class, or to another class due to the employee's current class having been abolished.

(52) "Reclassification with probation" means the reclassification of an employee who:

(a) Is reclassified to a supervisory position or to a different classification within the same grade;

(b) Will serve a six (6) month probationary period; and

(c) Will receive a three (3) percent salary increase upon successful completion of the probationary period~~(an employee is to serve a six (6) month probationary period upon being reclassified, if the reclassification is to a supervisory position or to a different classification within the same grade. The employee upon successful completion of the probationary period of the reclassification will receive a three (3) percent salary increase).~~

(53)(39) "Reemployment list" means a list of persons who may be appointed to a class of positions without further certification or examination due to their prior career status in the classification or related classification.

(54)(40) "Register" means an officially promulgated list of eligible applicants~~eligible's~~ for a job classification.

(55)(41) "Regular status employee" means an employee who has successfully completed a required initial probationary period upon appointment, and any extension, and is subject to ~~the provisions of~~ 902 KAR Chapter 8.

(56) "Reinstatement" means to return~~that~~ a former employee ~~may return~~ to a position which the employee held in previous employment.

(57) "Revert" means to return an employee to a previously held position.

(58)(42) "Salary range" means the rate and range of pay established for a class of positions.

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

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CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Administration and Financial Management

(As Amended at ARRS, February 14, 2011)

**902 KAR 8:060. Salary adjustments~~[Classification and compensation plans]~~ for local health departments.**

RELATES TO: KRS 211.170(1), (2), 211.1751, 211.1752, 211.1755, 212.170, 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the local health department personnel program. This administrative regulation sets forth the policies and procedures regarding salary ad-~~justments~~~~[for establishing the classification and compensation plans]~~ for local health departments.

Section 1. ~~[Classification Plan. (1) The department shall establish a comprehensive position classification plan in accordance with KRS 211.1755(3)(b) and with the advice of the Local Health Department Employment Personnel Council and the local health departments.~~

~~(2) The classification plan shall establish for each class of positions:~~

- ~~(a) A title;~~
- ~~(b) A description of the duties and responsibilities;~~
- ~~(c) The minimum requirements of training and experience; and~~
- ~~(d) Other qualifications necessary or desirable for the satisfactory performance of the duties of the class.~~

~~(3) The class specifications shall be descriptive and explanatory and shall be used to allocate positions as determined by their respective duties or responsibilities. The language of class specifications shall not be construed as limiting or modifying the authority of an appointing authority to change the duties and responsibilities of similar kind or quality, or to assign duties of similar kind or quality to an employee.~~

~~(4) Each position in an agency shall be allocated to one (1) of the classes established by the classification plan.~~

~~(5) A reallocation or allocation shall be made to new or existing classes as additional classes are established, abolished, or changed.~~

~~(6) The department shall allocate a newly established position to a class upon receipt of a statement, from the appointing authority, of duties, responsibilities, and requirements of the position.~~

~~(7) The department shall:~~

~~(a) Maintain the classification plan by reviewing job descriptions prepared by the appointing authority for appropriate allocation of positions to approved classes; and~~

~~(b) Periodically review the classification plan, and revise existing classifications, or add classifications, based on the review of job descriptions and other information provided by the agencies.~~

~~(8) An agency shall change the classification of an existing position through a reclassification if:~~

~~(a) A material and permanent change in the duties and responsibilities of a position occurs;~~

~~(b) The change in the duties and responsibilities is characteristic of a different classification; and~~

~~(c) The employee within a position at the time it is reclassified shall serve with the same status obtained before the position was reclassified]; and~~

~~(d) A reclassification shall not be permitted during the initial employment probationary period];~~

~~(9) The department shall change the allocation of an existing position if it is determined that the position is incorrectly allocated and there has been no substantial change in duties from those in effect when the position was originally classified. If a position is reallocated, the employee within the class of position shall be entitled to serve with the same status obtained before the position was reallocated.~~

~~(10) The department shall:~~

- ~~(a) Maintain a master set of approved class specifications; and~~
- ~~(b) Provide each appointing authority with a copy of the master~~

set of class specifications.

**Section 2- Compensation Plan.** (1) The department shall establish a compensation plan with the advice of the Local Health Department Employment Personnel Council and the local health departments. The plan shall take into consideration the following:

- (a) Evaluation of the complexity of the duties and responsibilities of the various classes as described by the classification plan provided for in Section 1 of this administrative regulation;
- (b) Financial condition of the agency;
- (c) Experience in recruiting for a position;
- (d) Prevailing rates of pay for services of similar kind and quality;

- (e) Benefits received by employees; and
- (f) Consistency in application among local health departments.

(2) The compensation plan shall:

- (a) Include minimum, midpoint, and maximum rates of pay for the various classes within the classification plan; and
- (b) Be used to determine:

1. A salary adjustment provided for under this administrative regulation; and

2. The circumstances under which a salary adjustment may exceed the maximum.

(3) The department shall periodically review and amend as necessary the compensation plan with the advice of the Local Health Department Employment Personnel Council and local health departments. An amendment shall include:

- (a) A change in the minimum, midpoint, and maximum salary level for a respective classification of the classification plan; and
- (b) The manner in which a salary adjustment shall be granted.

**Section 3-] Salary Upon Appointment.** (1) The entrance salary of an employee entering employment shall be at the minimum of the range established for the class to which the employee is appointed, unless otherwise approved by the department, based on the criteria established in subsections (2) and (3) of this section.

(2)(a) Prior to the start date of a new employee, a new minimum entrance salary may be established by an agency, with the approval of the department, if it is determined that it is not possible to recruit qualified employees for a class of positions at the established entrance salary to attract qualified applicants. This shall be approved by the agency and the department[local health personnel] before the start date of employment.

(b) If an appointment is made at the newly-established minimum entrance salary, employees of the agency in the same class paid at a lower salary shall have their salaries adjusted to the newly-established minimum entrance salary.

(c)1. If a new minimum entrance salary is established by an agency for a specified class, in addition to the adjustment required by subsection (3)[3] of this section, based on documented recruitment needs, or a new entrance salary is established by a compensation plan change, the department may approve a salary adjustment for employees in the same class.

2. The adjustment shall be a fixed amount provided to each employee in the classification and shall not exceed the amount of increase applied to the newly established minimum.

3. In fixing salaries for this adjustment, an appointing authority shall afford equitable treatment to all employees affected by the adjustment.

(3)(a) An appointment of an applicant who meets the minimum requirements for a position may be made at a higher entrance salary than the established minimum, within the salary range applicable to the class, if:

- 1. The newly-appointed employee has previous, relevant experience above the minimum requirements of the job;
- 2. It is necessary to attract qualified applicants; and
- 3. The newly-appointed employee's hire rate does not exceed the salary of a present employee in the same classification with the comparable years of relevant experience, education, and training.

(b) If the individual possesses qualifications in training and experience in addition to the minimum requirements for the class, the newly-appointed employee may receive a two (2) percent salary adjustment, not to exceed the midpoint, for each year of appropriate experience and education or training in excess of the minimum requirements for the respective classification.

requirements for the respective classification.

(c) An employee possessing the same qualifications, in the same class of positions, in the same agency, and who is paid below the entrance salary level as adjusted for the newly-appointed employee, shall have his or her salary adjusted to the approved entrance salary level.

**Section 2.[4-] Initial Probationary Salary Adjustment** (1) The appointing authority shall grant an employee a five (5) percent increase in salary upon successful completion of the required initial employment probationary period of thirteen (13) pay periods. The salary adjustment shall take effect the first pay period following completion of the probationary period.

(2) Except as provided for in 902 KAR 8:080, Section 3(3), an employee shall not be given an original probationary increment more than once for successful completion of the probationary period in the same classification.

**Section 3.[5-] In-Range Salary Adjustment[Due to a Change in Position Duties and Responsibilities].** (1) An appointing authority may request a salary adjustment not to exceed five (5) percent if an employee is assigned permanent job duties and responsibilities which are more complex and difficult than current job duties, but are less than those indicated through a reclassification.

(2) Only one (1) in-range salary adjustment shall be allowed for an employee per classification.

**Section 4.[6-] Salary Adjustment Due to a Position Reclassification.** (1) A position shall be reclassified if the duties and responsibilities of a position have materially changed.

(2) An agency, based on an evaluation of a position, may request a reclassification to a different position:

(a) Within the same classification series that has more complex nonsupervisory job duties and responsibilities and has a higher grade level;

(b) That has supervisory responsibilities and a higher grade level; or

(c) In a different classification series that has the same or higher grade level.

(3) An employee that occupies the position to be reclassified shall:

- (a) Meet the minimum requirements of the new classification;
- (b) Not have previously performed the job duties of the new classification; and
- (c) Serve a probationary period of thirteen (13) pay periods if the reclassification is to a supervisory position or a different classification series within the same grade. If the employee has performed satisfactorily, as determined by the employee's supervisor, the employee shall receive a three (3) percent salary increase at the end of the probationary period.

(4) An employee that is reclassified with or without probation to a position having a higher pay grade shall receive a salary increase that is the higher of:

- (a) Five (5) percent of the employee's current salary;
- (b) Three (3) percent for each grade increase to the new position not to exceed ten (10) percent; or
- (c) The minimum salary of the grade assigned to new position.

**Section 5.[7-] Promotion of an Employee to a Vacant Position.** (1) An employee may be promoted upon the request of an appointing authority if the employee meets the minimum requirements of the vacant position having a higher salary determined by the department to have and more extensive and complex job duties and responsibilities.

(2) An [The] employee who is advanced to a higher pay grade through a promotion shall receive a salary increase that is the higher of:

- (a) Five (5) percent;
- (b) Three (3) [{percent}] for each grade increase to the new position not to exceed ten (10) percent; or
- (c) The minimum salary of the new position.

(3)(a) The employee shall serve a promotional probationary period of thirteen (13) pay periods and, except as provided by paragraph (b) of this subsection, shall receive a three (3) percent

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cent salary increase following satisfactory completion of the probationary period, as documented by the performance evaluation;

~~(b) [–However–] If the employee was promoted while serving an initial probation, the employee shall receive a five (5) percent increment in salary in lieu of a three (3) percent increase.~~

Section ~~6.[8–]~~ Demotion. If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

(1) If an employee requests a voluntary demotion:

(a) The employee's salary shall be reduced by five (5) percent; and

(b) The employee's salary shall be reduced by an additional three (3) percent if the voluntary demotion is to a position that no longer requires supervisory responsibilities;

(2) If the demotion is due to reorganization by the agency, the employee may retain the salary received prior to demotion. If the employee's salary is not reduced upon demotion, if funding is sufficient the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files; or

(3) The salary of an employee who is demoted because of a documented disciplinary problem or inability to perform a duty or responsibility required of the position shall be reduced to the lesser of ten (10) percent or to the minimum of the new grade.

Section ~~7.[9–]~~ Salary Upon Reinstatement of Former Employee. (1) A former employee may be reinstated to a position for which the employee was previously employed.

(2) The salary of an employee that is reinstated shall be:

(a) At a salary level offered by the appointing authority if not above the salary the employee made at the time of separation;

(b) At the same pay rate the employee had been paid at the termination of service, if the time period between separation and reinstatement does not exceed three (3) years; or

(c) At a higher salary rate if justified on the basis of:

1. Additional qualifications that have been obtained by the employee since separation from the agency;

2. Established minimum entrance salary above the former salary; or

3. Compensation plan changes.

Section ~~8.[10–]~~ Lump Sum Merit Payment. (1) The appointing authority, with the approval of the department, may award a regular, full-time, part-time 100 hour, or part-time employee a merit ~~(an outstanding meritorious)~~ lump sum payment.

(2) The appointing authority may grant a lump sum payment to an employee meeting the eligibility criteria of this section in an amount not to exceed eight (8) percent of the ~~[minimum of the]~~ established minimum of the employee's classification grade during the annual evaluation period of twenty-six (26) pay periods.

(3) A lump sum payment may be granted by the appointing authority with the approval of the department, to an employee meeting the following eligibility criteria:

(a) The employee has completed the initial probationary period required on appointment; and

~~(b)1.~~ The employee's job performance is consistently above what is normally expected or required by the job duties and responsibilities; or

2. The employee has successfully completed a special project of significant importance to warrant special attention.

(4) The appointing authority shall prepare and submit written documentation to the department that shall substantiate that the employee satisfies the eligibility criteria in ~~[subsection (3) of]~~ this section for the lump sum payment to be effective.

(5) The appointing authority shall inform the Board of Health the number of lump sum payments granted during the fiscal year that exceed \$2,000 per payment.

~~(6) An agency may grant a one (1) time lump sum payment across the board during the fiscal year to all employees in recognition of the agency exceeding expectations.~~

~~(a) The flat amount per employee shall not exceed \$1,000;[–] and~~

~~(b) The appointing authority shall receive prior[must have received] approval from the Board of Health and the department.~~

Section ~~9.[14–]~~ Responsibility Pay or Detail to Special Duty. (1) An employee may be detailed to special duty on a temporary basis, not to exceed twenty-six (26) pay periods, to:

(a) Occupy a position and assume the job duties and responsibilities of an employee on an approved leave of absence or an employee that has separated from the agency; or

(b) To undertake a special project assigned by the appointing authority in addition to the employee's regular duties and responsibilities.

(2) An employee who is approved for detail to special duty shall receive a salary increase of five (5) percent over the salary received prior to detail to special duty.

(3) After completion of the special assignment, the employee shall be transferred to the former classification or resume normal duties with the employee's salary reduced by the salary rate increase received for the detail assignment.

(4) An employee shall be entitled to salary increases provided by the agency during the special assignment.

Section ~~10.[12–]~~ Educational Achievement and Skill Enhancement Pay. (1) The job-related skill enhancement pay shall be granted to recognize and reward an employee who takes the initiative through his or her own efforts to increase job worth and significantly enhance his or her value to the agency by achieving a higher level of performance through a prescribed course of study in the employee's job field.

(2) An agency may elect not to participate in the educational achievement program and advise the department in writing, if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

(4) An appointing authority may grant a five (5) percent increase to an employee's salary for completing a high school diploma, high school equivalency certificate, or a passing score on the GED test if: (a) The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

1. Outside of work hours; and

2. While in the employment of the agency;

(b) The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

(c) The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate, or a passing score on the GED test.

(5) An appointing authority may grant a five (5) percent increase to an employee's salary for postsecondary education or training if:

(a) The department has determined the employee has completed 260 hours of job-related classroom instruction;

(b) The employee began the course work after becoming an employee of the agency and completed the course work after establishing an increment date;

(c) The employee has completed the course work within five (5) years of the date on which it began;

(d) The course work has not previously been applied toward an educational achievement award;

(e) The agency has not paid for the course work or costs associated with it; and

(f) The employee was not on educational or extended sick leave when the courses were taken.

(6) An appointing authority may grant, with the approval of the department, an employee a lump sum payment not to exceed three (3) percent of the employee's grade minimum to an employee that presents a certificate, license, or other evidence of mastering a body of knowledge obtained through a prescribed course of study that is directly related to the position held and based on this evidence is identified as an approved program by the department with the advice of the council and agencies.

(7) The salary adjustment for educational achievement shall not include on the job training provided by or required by the agency as part of the assigned job duties and responsibilities.

Section ~~11.[13–]~~ Other Salary Adjustments. (1)(a) An agency

may submit a request to the department substantiating the need for a specific salary adjustment to address:

1. Compensation issues of the agency that negated the ability of the agency to commit available financial resources to salary adjustments based on the most recent compensation plan changes;

2. Special working conditions;

3. After hours adjustment if working hours cannot be adjusted;

4. Internal or external equity issues among individual employees or groups of employees; or

5. Other specific circumstances.

(b) The request shall address:

1. The nature of the salary problem;

2. The consequences of the salary issue;

3. Recommendation of a equitable resolution; and

4. Other pertinent information substantiating the need for the salary adjustment.

(c) The department may undertake a review of the request to determine the validity of the request, the impact on the submitting agency, and the impact on other agencies.

(2)(a) An agency may grant a one (1)-time salary adjustment for all employees during the fiscal year to:

1. Respond to retention and recruitment needs and issues of the agency based on the inability of the agency to attract and maintain a qualified workforce in order to provide services; or

2. Place the agency in a more favorable competitive market and equity position based on an assessment of comparable agencies.

(b) The salary adjustment shall be a prescribed amount given to an employee determined by:

1. Applying an amount not to exceed five (5) percent to the employee's grade minimum;

2. Applying an amount not to exceed five (5) percent to the employee's grade midpoint; or

3. Specifying a fixed hourly amount that would be provided to an employee.

Section 12.14. Discretionary Salary Increases. (1) The appointing authority may grant, with the approval of the department, a salary increase not to exceed five (5) percent for a regular status employee or employees who have demonstrated, based on the current performance evaluation, excellent performance and achievement.

(2) The Board of Health may grant, with the approval of the department, a salary increase not to exceed five (5) percent for a regular status public health director or administrator who has demonstrated, based on the current performance evaluation, excellent performance and achievement. The increase shall be limited to one increase per twenty-four (24) months.

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner

JANIE MILLER, Secretary

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#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Public Health

##### Division of Administration and Financial Management

(As Amended at ARRS, February 14, 2011)

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

RELATES TO: KRS 211.170(1), (2), 211.1751, 212.170, 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to establish policies and procedures for the personnel program for local health departments through the promulgation of administrative regulations pursuant to

KRS Chapter 13A. This administrative regulation provides for a recruitment program and establishes procedures and standards for the recruitment, examination, and certification of individuals for potential employment by local health departments.

Section 1. Announcement of a Vacant Position. (1) An agency, prior to announcing a specific vacancy, shall determine whether to recruit for a vacant position on a scheduled basis or on a continuous basis for positions that are difficult to attract qualified applicants.

(2) Except as provided by 902 KAR 8:090, Sections 1 and 2, and 902 KAR 8:080, Section 3 [~~Section 4~~], an agency desiring to fill a vacant position shall announce the vacant position in the following manner:

(a) Provide notice of the vacant position within the agency in a manner that affords the ability of current employees to know of the vacancy and procedures for submitting an application;

(b) Provide notice of the vacant position through recruitment resources that are external to the agency; or

(c) A combination of paragraphs (a) and (b) of this subsection.

(3) An announcement shall contain the following information:

(a) The conditions under which an application for potential employment will [~~shall~~] be received;

(b) The assessment method utilized to select the individual, that may include an interview or demonstration of skills and abilities;

(c) The title and minimum salary of the class of position;

(d) The rates of pay at which appointments are expected to be made;

(e) A general statement of the duties to be performed;

(f) The minimum qualifications of education, training, and experience required as stated in the classification plan;

(g) The date, if required, on which an application is to be received in the agency;

(h) Veteran's preference, if applicable;

(i) All other conditions of competition, including the fact that failure in one (1) part of the selection criteria shall disqualify an applicant; and

(j) If an agency requires preemployment drug testing, criminal records information, physical examination, or other special conditions, a statement that they shall be required upon an offer of employment.

(4) The notice of the external recruitment effort shall meet the criteria of subsection (3) of this section [~~3~~] and [~~4~~] shall be distributed to one (1) or more of the following [~~primary~~] advertising methods:

(a) Newspapers;

(b) Web site;

(c) Other media viewable by the public;

(d) Employment services offices;

(e) Educational institutions;

(f) Public officials;

(g) Professional and vocational societies; or

(h) Other media, individuals, and organizations as appropriate. [~~be distributed to one (1) or more of the following:~~

~~(a) Public officials;~~

~~(b) Employment service offices;~~

~~(c) Newspapers;~~

~~(d) Educational institutions;~~

~~(e) Professional and vocational societies; or~~

~~(f) Other media, individuals, and organizations, as necessary.]~~

Section 2. Application for Employment Submittal and Review Process. (1) The agency [~~department~~] shall be the custodian of applications.

(2) An application for employment, Form CH-36, shall be required of an individual seeking employment with an agency.

Section 3. Review of Applications by the Department. (1) The department shall review and determine the eligibility of an applicant for a position announced by an agency.

(2)(a) The department shall take one (1) or more of the actions listed in paragraph (b) of this subsection if an applicant, eligible, or



appointee:

1. Lacks a specific requirement established for the assessment for the class or position;
2. Is unable to perform the duties of the class;
3. Except as provided for in subsection (3) of this section, has been convicted of a felony or misdemeanor;
4. Has previously been dismissed from a public service or agency for delinquency, misconduct, or other similar cause;
5. Made a false statement or misrepresentation in the application;
6. Has used or attempted to use political pressure or bribery to secure an advantage in obtaining the position in the examination or appointment;
7. Has directly or indirectly obtained information regarding the assessment method to which the applicant was not entitled;
8. Has failed to submit a complete application as determined by the department;
9. Has failed to submit the application within the time limits prescribed by the agency in a ~~the~~ published announcement;
10. Has taken part in the compilation or administration of the interview process; ~~or~~
11. Has submitted an application for an unadvertised position to an agency that is not on continuous open recruitment; or;
12. Has failed a background check or drug screen. [otherwise failed to meet the provisions of this administrative regulation.]

(b) Based on one (1) or more of the reasons listed in paragraph (a) of this subsection, the department shall take any of the following actions:

1. Refuse to examine an applicant;
2. Not qualify an applicant;
3. Remove the applicant's name from a register;
4. Refuse to certify an eligible on a register; or
5. Consult with the appointing authority in taking steps to remove a person already appointed.

(3) ~~[Subject to final department approval,]~~ An applicant or employee who has been convicted of a misdemeanor may be employed, or continue employment, if the appointing authority and the department determine after review that:

- (a) The applicant is highly qualified and eligible for appointment;
  - (b) The misdemeanor conviction will not adversely affect the applicant's job performance;
  - (c) A specific need exists for the appointment or continuing appointment of this applicant or employee; and
  - (d) Every determination made is fully supported by written documentation available for public inspection under the provisions of KRS Chapter 61.
- (4) A disqualified applicant shall be promptly notified of the action by letter to the applicant's last known address.

Section 4. Establishment of Registers of Eligible Applicants. (1) An agency may announce a position on a continuous basis for a position that is difficult to recruit for and fill.

(2) If a job classification requires an applicant to meet the minimum qualifications, an individual shall remain on the register for a period of one (1) year from the date on which the individual is determined qualified.

(3) If a vacancy exists in a class of positions for which there is no appropriate register, the department may prepare an appropriate register for the class from one (1) or more existing related registers.

(4) A register may be deemed to be exhausted by the department if fewer than five (5) ~~three (3)~~ eligible applicants remain on the register. If a register is exhausted, each eligible on the register shall be notified by mail at his last known address.

(5) The department may remove the name of an eligible from a register:

- (a) For a disqualifying cause stipulated in Section 3(2)(a) of this administrative regulation;
- (b) If the eligible applicant cannot be located by the postal authorities as evidenced by the return of one (1) notice or a returned notice marked "no forwarding address";
- (c) On receipt of a statement from the eligible stating that he no longer desires consideration for a position;

(d) If an offer of a probationary appointment to the class for which the register was established has been declined by the eligible;

(e) ~~[If the eligible receives a probationary appointment they shall be removed from the applicable register unless otherwise requested in writing;~~

~~(f)~~ If the eligible ~~[he]~~ declines an offer of appointment for which the eligible previously indicated acceptance;

~~(f)(g)~~ If the eligible fails to report for a scheduled interview without valid reason;

~~(g)(h)~~ If an eligible fails to maintain a current address as evidenced by the return from postal authorities of unclaimed but properly addressed letters; or

~~(h)(i)~~ If an eligible has been certified three (3) times to an appointing authority and has not been offered employment.

**(6) If an eligible receives a probationary appointment, the eligible shall be removed from the applicable register unless otherwise requested in writing.** ~~[(6)(a) An eligible that is appointed on a probationary basis shall be removed from all applicable registers.~~

~~(b) The eligible may request in writing to the department that his name be reinstated to the applicable register before its expiration.~~

~~(c) The department shall notify the eligible by mail to his last known address of removal from the register, and the reason for removal.]~~

Section 5. Issuance of Certification of Eligible Applicants. (1) The department shall issue a certification of eligible applicants to an agency in the following manner:

(a) A promotional certification of eligible applicants that responded to an announcement provided within an agency;

(b) A regular certification of eligible applicants that responded to an announcement provided to recruitment resources external to the agency; or

(c) A combination of **paragraphs** (a) and (b) **of this subsection.**

(2) The appointing authority may request in writing to the department, special experience, education, or skills different from the minimum requirements of the class. If, after investigation of the duties and responsibilities of the position, the department approves the request, a certification may be issued to the agency containing the names of those individuals who possess the qualifications specified.

(3) The life of a certification of eligible applicants during which action may be taken shall be sixty (60) days from the date of issue unless otherwise specified on the certification of eligible applicants.

(4) A regular-status employee, placed in a layoff category, shall have first priority for consideration in filling a vacancy in a classified position for which the employee is qualified in the agency from which the employee was laid off.

(5) A regular-status employee in the layoff category shall indicate in writing to the department that he desires reemployment.

(6) If a laid-off regular status employee desires reemployment in a different job classification, the employee shall meet the minimum requirements of the classification.

(7) The life of the reemployment register is one (1) year or until the employee is reemployed, whichever comes first.

Section 6. Assessment Method. (1) An assessment method shall be practical in nature, constructed to reveal the capacity of the applicant for the particular position, as well as general background and related knowledge. An assessment method may be:

- (a) A personal interview;
- (b) Physical examination;
- (c) An evaluation of experience and training;
- (d) A demonstration of skill; or
- (e) A combination of types, ~~if [so long as]~~ all applicants for a position are given the same assessment method.

(2) An agency may form an interview committee to evaluate an eligible applicant through a structured interview process.

(3) The interview committee shall structure questions to assess the knowledge, skills, abilities, and the education and work experience of the applicants chosen to be interviewed.

(4) The interview questions, criteria for selecting applicants to be interviewed, profiles of interviewed applicants, and results of the interview process shall be maintained by the agency for a period of sixteen (16) months after an applicant has been appointed to the vacant position.

Section 7. Incorporation by Reference. (1) "Form CH-36 Application for Employment", ~~2/2011~~~~[5/4/2005 Edition]~~, Cabinet for Health and Family Services, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 at 4 p.m.

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

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Public Health**

**Division of Administration and Financial Management**

**(As Amended at ARRS, February 14, 2011)**

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

RELATES TO: KRS 211.170(1), (2), 212.040, 212.850, 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. This administrative regulation establishes employment categories of permissible appointments and employment probationary periods, and the employee evaluation process.

Section 1. Initial Appointments. (1) The appointing authority of a local health department shall make an initial appointment of an eligible applicant from a certification of eligible applicants issued by the department.

(2) The reemployment of a person shall be an initial appointment if the person:

- (a) Was formerly employed by an agency; and
- (b) Is receiving retirement benefits from the:
  1. Kentucky Employee Retirement System; or
  2. Kentucky Teachers Retirement System.

Section 2. Provisional Appointments. (1) If there is an urgent reason for filling a position and no appropriate register exists, the appointing authority may submit to the department the name of a person to fill the position pending examination and establishment of a register. If the person's qualifications have been certified by the department as meeting the minimum qualifications, the person may be provisionally appointed to fill the existing vacancy.

(2) A provisional appointment shall not:

- (a) Be made until the position has been classified and minimum qualifications established for the class of position; and
- (b) Exceed thirteen (13) pay periods from the date of appointment or within two (2) weeks of the date on which the department notifies the appointing authority that an appropriate register has been established, whichever occurs first.

(3) Successive provisional appointments of the same person shall not be permitted. A position shall not be filled by repeated provisional appointments.

(4) Provisional service immediately prior to initial appointment may be credited, at the request of the appointing authority, toward

the required probationary period.

Section 3. Reinstatement. (1) For a period of time not to exceed three (3) years since termination of employment from an agency, a regular-status employee who has resigned while in good standing, or separated without prejudice, may be eligible for reinstatement to the same position or in a corresponding position within the agency, with the same seniority rights and leave status. The individual being considered for reinstatement shall be certified by the department as meeting the current minimum qualifications.

(2) The individual being considered for reinstatement shall not be required to serve an initial probationary period if the employee has had a break in service of not more than twelve (12) months. The accumulated balance of sick leave earned during prior employment with the agency shall be reinstated upon employment and the period of time of prior employment with the agency shall be used to determine the rate at which the employee earns annual leave.

(3) If the employee has had a break in service of more than twelve (12) months, and the break in service does not exceed thirty-six (36) months, the employee shall serve an initial probationary period and be eligible to receive a probationary increment based on satisfactory performance. If the employee satisfactorily completes the initial probationary period, the accumulated balance of sick leave earned during prior employment with the agency shall be reinstated and the period of time of prior employment with the agency shall be used to determine the rate at which the employee earns annual leave.

(4) The annual increment date shall be twenty-six (26) pay periods from the effective date of reinstatement.

Section 4. Emergency Appointments. (1) If an emergency exists that requires the immediate services of one (1) or more persons and it is not possible to secure a person from an appropriate register, or there is no person qualified for a provisional appointment, the appointing authority may appoint a person with the approval of the department. An emergency appointment shall not exceed seven (7) pay periods in duration and shall not be renewable. The department may make investigations as necessary to determine if an emergency exists.

(2) The appointing authority shall report an emergency appointment to the department, providing the name of the appointee, rate of pay, length of employment, nature of emergency, and duties to be performed. Separation from service of an emergency appointee shall also be reported.

(3) An emergency appointment shall not confer upon the incumbent a privilege or right to promotion, transfer, or reinstatement to a position under the merit system.

~~Section 5. Temporary Appointments. (1) If a vacancy occurs in a position having duties of a strictly temporary nature, the department may issue a certification of eligible applicants who have indicated a willingness to accept temporary employment, in the order of their places on an appropriate register.~~

~~(2) The duration of a temporary appointment shall not exceed thirteen (13) pay periods.~~

~~(3) The acceptance or refusal of a temporary appointment shall not affect an eligible applicant's standing on a register or eligibility for a probationary appointment.~~

~~(4) The period of temporary service shall not constitute a part of the initial employment probationary period.~~

~~(5) Successive temporary appointments of an employee to the same position shall not be made.~~

~~Section 6. Seasonal Appointment. (1) The appointing authority may, with the approval of the department, establish a position on a temporary [seasonal] basis for up to nineteen (19) pay periods to accommodate the following:~~

- ~~(a) Increased work activity of a seasonal nature;~~
- ~~(b) Work study or job training programs;~~
- ~~(c) Special projects; or~~
- ~~(d) Summer employment.~~

~~(2) An applicant shall not be appointed to a temporary [seasonal] position unless the applicant meets established minimum~~

requirements.

(3) Continuous appointments to the same temporary ~~[seasonal]~~ position shall not be made.

(4) The period of temporary service shall not constitute a part of the initial employment probationary period.

Section 6.~~[7.]~~ Appointment of an Individual to a Variable Hour Position. (1) An agency, because of special working requirements in meeting programmatic service needs, may establish a position having variable hours of work.

(2) An agency may appoint to a variable hour position an individual who meets the minimum requirements of education and experience established for the position.

(3) An individual appointed shall be compensated on a fee for service or hourly rate.

(4) The hours of work of the individual shall not exceed 800 ~~[400]~~ hours per year.

(5) An individual appointed to the variable hour position shall be considered in the unclassified service and continued employment shall be subject to the current employment needs of the agency.

(6) The compensation of the individual employed shall be determined by the appointing authority and in accordance with 902 KAR 8:070.

(7) The individual employed shall not be eligible for salary adjustments provided by 902 KAR 8:060.

Section 7.~~[8.]~~ Partial-year Appointment. (1) An agency may establish a partial-year position to accommodate foreseeable seasonal fluctuations in staffing, budgetary, operational, programmatic, or other needs.

(2) A partial-year position shall contain regularly-scheduled periods, not to exceed seven (7) pay periods per year, during which an incumbent in the position remains an employee but is not at work.

(3) An employee in a designated partial-year position shall receive the following agency-provided benefits:

(a) Health and life insurance benefits provided by the agency for full-time and part-time 100-hour employees;

(b) Sick and annual leave, in accordance with 902 KAR 8:120, Sections 2 and ~~[Section]~~ 4, for pay periods the employee actually works;

(c) Enrollment in the Kentucky Employee Retirement System and receipt of appropriate service credit for those pay periods of actual work; and

(d) Service credit for computation of seniority for those pay periods the employee has actually worked.

(4) The employee in a designated partial-year position shall be considered a regular-status employee following completion of the initial probationary period in accordance with Section 9~~[40]~~ of this administrative regulation.

(5) The employee in a designated partial-year position shall:

(a) Work the required number of hours, unless the employee is absent due to illness or needing to provide care for an immediate family member; and

(b) Work at the request of the agency during periods of non-work to cover during coworker periods of illness, vacation schedules, and other periods of agency demand.

Section 8.~~[9.]~~ Performance Appraisal. (1) Except as provided in 902 KAR 8:096, the appointing authority, or designated supervisory staff, shall conduct a performance appraisal 080 using Form Ch-40 for a:

(a) Regular status employee on an annual basis; and

(b) Probationary employee prior to completion of the required probationary period.

(2) An overall rating of "below requirements" or "inadequate" shall require that a new rating of the employee be made within ninety (90) days.

(a) If the employee performance has improved, the appointing authority shall approve the annual increment as approved by the Board of Health.

(b) If employee has not improved or performance deteriorates, the appointing authority shall initiate a disciplinary action.

(c) An employee whose annual increment is denied shall be notified by the appointing authority in writing at least fourteen (14) days prior to the annual increment date.

(3) Performance appraisals shall be considered in determining:

(a) An annual and probationary salary advancement;

(b) Requesting and approving a:

1. Promotion;

2. Demotion; or

3. Dismissal; and

(c) The order of separation due to a reduction of work force.

(4) Each agency shall elect, by Board-of-Health vote, to participate in one (1) of the following employee performance evaluation programs:

(a) The current employee performance evaluation described in this section; or

(b) The evaluation program described in 902 KAR 8:096.

(5)(a) An agency choosing the current employee evaluation program described in this section shall notify the department at the beginning of the new fiscal year [by July 1, 2006].

(b) The agency shall remain under the requirements of this section, unless the agency, by vote of the Board of Health, elects to participate in the provisions of 902 KAR 8:096 at the beginning of a subsequent fiscal year.

(c) An agency choosing the current employee evaluation program, as described in this section, shall not be subject to any provision of 902 KAR 8:096.

(6) An agency, by vote of the Board of Health that elects to participate in the employee evaluation program of 902 KAR 8:096 shall notify the department at the beginning of the new fiscal year [by July 1, 2006]. The agency electing to participate under 902 KAR 8:096 shall not convert to another employee evaluation program.

Section 9~~[40.]~~ Initial Probationary Period. (1) An employee shall be required to serve a probationary period upon initial employment.

(2) The initial probationary period shall be thirteen (13) pay periods except as provided in the remaining subsections ~~[(4) and (5)]~~ of this section~~[administrative regulation]~~ ~~[section]~~.

(3) If the employee has satisfactorily completed the initial probationary period based on a performance evaluation, the appointing authority shall notify the department fourteen (14) days prior to the expiration of the initial probationary period that regular status has been confirmed.

(4) An employee may be separated from his position during the initial probationary period and shall not have the right to appeal except as provided by ~~[administrative regulation]~~ 902 KAR 8:110, Section 1(4).

(5)(a) Except as provided by paragraph (b) of this subsection, if an employee is to be dismissed during the initial probationary period, the employee shall be notified in writing at least seven (7) calendar days prior to the effective date of dismissal and prior to the expiration of the probationary period.

(b) If the employee commits a serious infraction of agency policy as defined by 902 KAR 8:100, Section 4, [or is involved in misconduct], the employee shall be dismissed in writing immediately without pay.

(c) The dismissed employee shall not be placed on a register.

(6) Unless the appointing authority notifies the employee in writing seven (7) calendar days prior to the end of the initial probationary period that the employee [he] is separated, the employee shall be deemed to have served satisfactorily and shall acquire regular status in the classified service.

(7) The initial probationary period may be extended, by informing the employee in writing, for one (1) of the following reasons:

(a) For the same length of time as leave granted to cover an absence due to medical reasons causing the employee to be absent from work for twenty (20) days or more during the probationary period; [or]

(b) If the employee, acting with due diligence, has been unable to complete a required job related training course during the probationary period; or

(c) The appointing authority may require an initial probationary period in excess of thirteen (13) pay periods, not to exceed a total

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probationary period of nineteen (19) pay periods, for determination of competency.

(8) The employee serving a probationary period may be eligible for promotion to a position in a higher class, ~~if the employee is certified from an appropriate register.~~ If an employee is promoted during a probationary period, the new probationary period shall begin with the date the employee was promoted. ~~[(9) The department, with the advice of the Local Health Department Employment Personnel Council, may require an initial probationary period in excess of thirteen (13) pay periods, not to exceed a total probationary period of twenty-six (26) pay periods, for specific classifications that require extensive on-the-job training.]~~

Section 10.~~[44-]~~ Resignations. (1) An employee who desires to terminate his service with an agency shall submit a written resignation to the appointing authority.

(2) A resignation shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be filed in the employee's personnel file.

(3) An employee's lump sum payment for accumulated annual leave ~~and compensatory time~~ may be held by an agency until the employee who has resigned, retired, or been dismissed, returns agency credit cards, keys to buildings and automobiles, or other agency property in the possession of the employee.

Section 11. Voluntary and Involuntary Furlough. (1) An agency may implement a voluntary or involuntary furlough program as part of a layoff plan established in Section 12 of this administrative regulation.

(2) A voluntary or involuntary furlough shall be considered a temporary nondisciplinary leave without pay, for a specified period of time if major organizational program and funding changes occur that may result in work reductions of one (1) or more employees of an agency.

(3) A furlough may apply to the entire agency, certain organizational units of the agency, or to one (1) or more employees as the need arises.

(4) A furlough may be for periods of up to twenty-two (22) working days per fiscal year. The furlough may be designated as one (1) continuous period of twenty-two (22) working days or may be discontinuous days or periods, including portions of days.

(5) Employees shall not be paid for days while on furlough. If the furlough is for a continuous period:

(a) An employee's benefits shall not be adversely affected except for the following:

1. Retirement contributions shall be based on actual earnings;

2. Holidays that occur during the furlough shall not be paid;

3. Annual leave, compensatory time, and sick leave shall not be used; and

4. Accrual of annual and sick leave, anniversary dates, and seniority shall be treated as if the employee is in pay status for the duration of the furlough; and

(e) Medical, dental, life and flexible spending accounts shall continue to be in effect upon payment of required contributions by the employee; and

(b) Accrual of annual and sick leave, anniversary dates, and seniority shall be treated as if the employee is in pay status for the duration of the furlough.

(6) An employee who is interested in being placed in a voluntary furlough status shall request prior approval from the appointing authority. The request shall include the reason for and the manner in which the employee proposes to use the furlough period that may include:

(a) Shorter work days;

(b) Intermittent days off; or

(c) Consecutive days off.

(7) An appointing authority may direct an employee to be placed in a furlough status in lieu of a layoff status. Notice of the required furlough shall:

(a) Be received at least fifteen (15) calendar days prior to the beginning date of furlough;

(b) Include the period of the furlough and if the furlough is continuous or noncontinuous;

(c) Include the status of employee benefits; and

(d) State that failure to return to work after the completion of the mandatory furlough may be grounds for disciplinary action, up to and including dismissal from employment.

Section 12. Layoffs. (1) An agency shall have a Board of Health approved workforce reduction plan on file to ~~appointing authority may~~ lay off an employee in the classified service if necessary because of:

(a) Curtailment of work;

(b) Shortage of funds;

(c) Abolishment of a position;

(d) Modification of service requirements; or

(e) Other material change in the duties or organization of the agency.

(2)(a) Prior to the notification of an employee that he is subject to layoff and prior to the layoff of an employee, the appointing authority shall submit a layoff plan to the department for approval.

(b) The plan shall contain the names [name] of the employees, months of service, [employee] and the reasons, in detail, for the layoff and criteria used to select those employees subject to layoff.

(c) Upon written approval of the plan by the department, the employee shall be notified that the employee he is subject to layoff~~;~~ and of the:

1. Reason for the layoff;

2. Procedures established for the layoff of employees; and

3. Rights granted employees subject to layoff.

(3) An agency established under KRS 212.040 shall undertake the following procedures in assisting an employee subject to layoff:

(a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties, and responsibilities for which the employee is qualified within the agency.

(b) If a vacancy does not exist for a position of the same pay grade, level of duties, and responsibilities for which the employee is qualified within the agency, the employee shall be notified of all vacant positions within the agency for which the employee is qualified. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified before another applicant or eligible on a register, except another laid-off employee with greater seniority already on a reemployment register.

(c) If no position is available to an employee subject to layoff, the employee shall be notified in writing:

1. That the employee is to be laid off effective at least fifteen

(15) calendar days after receipt of the notice; and

2. Of the rights and privileges granted laid-off employees.

(4) An agency established under KRS 212.850 shall undertake the following procedures in assisting an employee subject to layoff:

(a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties and responsibilities for which the employee is qualified within the agency. The position shall be located in the same county as the position from which the employee is subject to layoff;

(b) If a vacancy does not exist for a position of the same pay grade, level of duties, and responsibilities for which the employee is qualified within the same county as the position from which the employee is subject to layoff, the employee shall be transferred to a vacant position within the agency for which the employee is qualified. The position shall be located in the same county as the position from which the employee is subject to layoff;

(c) 1. If a position is not available, the employee shall be notified of all vacant positions within the agency for which the employee is qualified.

2. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified.

3. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified before another applicant or eligible on a register, except another laid-off employee with greater seniority already on a reemployment register; and

(d) If no position is available to an employee subject to layoff, the employee shall be notified in writing:

1. That the employee is to be laid off effective at least fifteen

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- (15) calendar days after receipt of the notice; and  
2. Of the rights and privileges granted laid-off employees.

(5) In the same agency, county and job classification, provisional, temporary, emergency, and probationary employees shall be laid off before regular full-time or regular part-time employees with status. An employee serving a promotional probation shall not be considered a probationary employee for purposes of layoff.

(6) If two (2) or more employees subject to layoff in a layoff plan submitted to the department have the same qualifications, the employee with the lesser seniority shall be laid off first.

(7) An employee who is laid off, upon written request, shall be placed on a reemployment register for the class of position from which the employee was laid off and for any class for which the employee is qualified.

(8) For a period of one (1) year, a laid-off employee shall be given priority consideration by the agency before another applicant or eligible except another laid-off employee with greater seniority who is already on a reemployment register.

(9) For a period of one (1) year, a laid-off employee shall not be removed from a register unless the employee:

(a) Notifies the agency [~~department~~] in writing that the employee no longer desires consideration for a position on a register;

(b) Declines two (2) written offers of appointment to a position of the same classification and salary, and located in the same county or agency, as the position from which the employee was laid off;

(c) Without good cause, fails to report for an interview after being notified in writing at least ten (10) calendar days prior to the date of the interview;

(d) Is unable to perform the duties of the class;

(e) Has been convicted of a job related misdemeanor; or

(f) Cannot be located by postal authorities at the last address provided by the laid-off employee.

~~Section 13. [Voluntary and Involuntary Furlough. (1) An agency may implement a voluntary or involuntary furlough program as part of a layoff plan established in Section 13 of this administrative regulation.~~

~~(2) A voluntary or involuntary furlough shall be considered a temporary nondisciplinary leave without pay, for a specified period of time if major organizational, program, and funding changes occur which may result in work reductions of one (1) or more employees of an agency.~~

~~(3) A furlough may apply to the entire agency, certain organizational units of the agency, or to one (1) or more employees as the need arises.~~

~~(4) A furlough may be for periods up to twenty-two (22) working days per fiscal year. The furlough may be designated as one (1) continuous period of twenty-two (22) working days or may be discontinuous days or periods including portions of days.~~

~~(5) Employees shall not be paid for days while on furlough. If the furlough is for a continuous period, an employee's benefits shall not be adversely affected except for the following:~~

~~(a) Retirement contributions shall be based on actual earnings;~~

~~(b) Holidays that occur during the furlough period shall not be paid;~~

~~(c) Annual leave and sick leave shall not be used;~~

~~(d) Accrual of annual and sick leave, anniversary dates, and seniority shall be treated as if the employee is in pay status for the duration of the furlough; and~~

~~(e) Medical, dental, life, and flexible spending accounts shall continue to be in effect upon payment of required contributions.~~

~~(6) An employee who is interested in being placed in a voluntary furlough status shall request prior approval from the appointing authority. The request shall include the reason for and the manner in which the employee proposes to use the furlough period that may include:~~

~~(a) Shorter work days;~~

~~(b) Intermittent days off; or~~

~~(c) Consecutive days off.~~

~~(7) An appointing authority may direct an employee to be placed in a furlough status in lieu of a layoff status. Notice of the required furlough shall:~~

~~(a) Be received at least fifteen (15) calendar days prior to the~~

~~beginning date of furlough;~~

~~(b) Include the period of the furlough and if the furlough is continuous or noncontinuous;~~

~~(c) Include the status of employee benefits; and~~

~~(d) State that failure to return to work after the completion of the mandatory furlough may be grounds for disciplinary action, including dismissal from employment.~~

~~Section 14.]~~ Incorporation by Reference. (1) "Form CH-40, Employee Performance Appraisal", 4/93 [~~Edition~~], Cabinet for Health and Family Services, is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner  
JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 at 4 p.m.

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

### **CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Administration and Financial Management (As Amended at ARRS, February 14, 2011)**

#### **902 KAR 8:090. Promotion, transfer, and demotion of local health department employees.**

RELATES TO: KRS Chapter 18A, 211.090(3), 211.170(1), (2), 211.1751, 212.170(4), 212.350, 212.640, 212.782, 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. This administrative regulation describes the provisions and requirements for promotions, transfers, and demotions of local health department employees.

Section 1. Promotion. (1) An employee may be promoted at any time upon the request of an appointing authority if the employee meets the minimum requirements of the position for having a higher grade [~~salary~~] as determined by the department.

(2) A promotion of an employee shall be based upon individual performance, with due consideration for length of service and capability of the individual employee to perform the duties and responsibilities of the new position.

(3) A promoted employee shall serve a probationary period of thirteen (13) pay periods, to determine through performance evaluation if the employee can satisfactorily perform the duties and responsibilities of the position.

(4) An employee who satisfactorily completes the required promotional probationary period of thirteen (13) pay periods, as documented by the performance evaluation, shall receive a three (3) percent increase in salary.

(5) A regular-status employee may be promoted from a classified position to an unclassified position. If separated from an unclassified position following promotion, an employee shall revert to the class in which the employee previously held status. If there is no vacancy in that class, the employee may be reverted to a position for which the employee is qualified and certified by the department, or separated from employment if a position is not available. Time served in an unclassified position shall count towards years of service and seniority. The employee shall retain eligibility to earn annual, sick, and compensatory time, if applicable, and also receive agency provided benefits.

(6) If an employee is granted leave for medical reasons in excess of twenty (20) work days during the promotional probationary period, the employee's probationary period shall be extended

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for the same length of time as the granted leave to cover the absence.

(7) A performance evaluation shall be completed for an employee ~~fourteen (14) calendar days~~ prior to completing the probationary period in order to determine the employee's ability to perform the job duties successfully.

(8) An employee who has been promoted, but fails to successfully complete the probationary period, as documented by the performance evaluation conducted by the appointing authority ~~or designated~~ designated supervisory staff, shall revert to a position in the former class subject to subsection (9) of this section. Documentation ~~[of the reasons]~~ for the unsuccessful completion shall be provided to the employee and the department ~~[of the reasons for unsuccessful completion]~~.

(9) If approved by the appointing authority, a promoted employee may request, during the probationary period, to be reverted to a position in the former class. The employee may revert to a position in a different class if:

- (a) There is no vacancy in the former class; ~~and~~
- (b) The employee is qualified; and
- (c) The employee is determined eligible by the department.

(10) If a regular employee in the classified service is dismissed for cause while serving a promotional probationary period, the employee shall have the right to appeal the dismissal in accordance with 902 KAR 8:110.

Section 2. Transfers. (1) The appointing authority may, at any time, transfer a regular employee from a position in one (1) organizational subdivision to a position of the same class in another organizational subdivision within an agency.

(2) A transfer of a regular employee from a position in one class to a position in another class within an agency having the same entrance salary may be made only with the approval of the appointing authority and upon determination of eligibility and certification by the department.

(3) An employee of one (1) agency shall not transfer to another agency without prior approval of each appointing authority. If the transfer is approved:

- (a) Accumulated annual and sick leave shall be transferred;
- (b) Accumulated compensatory leave shall be paid in lump sum by the sending agency; and
- (c) The annual increment date shall be retained by the employee.

(4) An employee initially appointed to a position in an agency having prior work experience in a health department established under KRS 212.350, 212.640, or 212.782, or an employee covered under KRS Chapter 18A, shall use the length of prior employment in determining the rate of earning annual leave provided for under 902 KAR 8:120, if the prior work experience does not exceed three (3) years since separation.

Section 3. Demotions. (1) An employee may be demoted for one (1) of the following reasons:

- (a) Documented unsatisfactory employee performance during the promotional probationary period;
- (b) An employee, with the approval of the appointing authority, voluntarily requests a demotion to a position having a lower salary range and less responsibilities and duties;
- (c) A documented disciplinary problem or the inability of an employee to perform a duty or responsibility required of the position; or
- (d) Due to a reorganization or reassignment of job duties based on a reorganization plan submitted by an agency and approved by the department.

(2) If a demotion is due to a reorganization of an agency, the plan shall state if a reduction in salary of an employee is to occur.

(3) If an employee is demoted during the initial probationary period, the employee shall continue in the employee's probationary period as if the original appointment had been to the position of the lower class.

(4) The salary of an employee demoted as a result of documented unsatisfactory performance during the promotional probationary period shall be reduced to the level prior to promotion.

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 at 4 p.m.

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

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Administration and Financial Management (As Amended at ARRS, February 14, 2011)

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

RELATES TO: KRS 211.090(3), 211.170(1), 211.1751, ~~[(2),]~~ 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the personnel program for local health departments. This administrative regulation establishes the requirements and the procedures for the evaluation of local health department employee performance.

#### Section 1. ~~[Effective Date of This Administrative Regulation.]~~

(1) An agency electing to participate in the employee evaluation program of this administrative regulation shall have Board of Health approval and shall notify the department prior to the start of each fiscal year.

~~(2) [The effective date for this administrative regulation shall be July 1, 2006.]~~

~~(2) The purpose of the extended effective date shall be to provide for a period of time for local health departments to transition to the new employee performance evaluation program described in this administrative regulation.~~

~~(3) The cabinet shall provide technical assistance and training [upon request] for appropriate local health department supervisory employees if requested by the agency and upon notification of the board's approval [prior to the adoption] [effective date] [of this administrative regulation].~~

~~(3) [(4)]~~ Each agency shall elect, with Board of Health approval, to participate in one (1) of the following employee performance evaluation programs:

(a) The evaluation program described in 902 KAR 8:080, Section ~~8[9]~~; or

(b) The evaluation program described in this administrative regulation.

~~(4) [(a)] [(5)]~~ An agency choosing the employee evaluation program described in 902 KAR 8:080, Section ~~8[9]~~, shall notify the department prior to the beginning of each fiscal year ~~[by July 1, 2006].~~

(b) The agency shall remain under the requirements of 902 KAR 8:080, Section ~~8[9]~~, unless the agency, with Board of Health Approval, elects to participate in the provisions of this administrative regulation at the beginning of a subsequent fiscal year.

~~(c) An agency choosing 902 KAR 8:080, Section 8[9] [the current employee evaluation program, as described in this section], shall not be subject to any provision of this administrative regulation. [(6) An agency electing to participate in the employee evaluation program of this administrative regulation shall notify the department by July 1, 2006.]~~

Section 2. Purpose of the Employee Performance Evaluation Program. (1) The purpose of the employee performance evaluation program shall be to establish a uniform process for the evaluation of an employee's performance during a specified period of time.

(2) Specific objectives of the program shall include the following:

(a) Increase the efficiency of the agency and employee through the annual planning of job duties, objectives, and performance characteristics and assisting the employee to improve performance

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through prior knowledge of the expectations of the supervisor;

(b) Serve as a medium which brings the supervisor and employee together for constructive performance discussion and written documentation;

(c) Serve as a means to determine the level at which an employee is performing;

(d) Recognize performance that meets and exceeds performance standards;

(e) Identify and correct substandard performance;

(f) Assist in determining and recording special talents, skills, and capabilities that might otherwise not be noticed or recognized;

(g) Ensure understanding of duties and standards expected of the employee;

(h) Provide assistance in assigning work and delegating responsibility based on a mutual understanding of the employee's skills and abilities;

(i) Encourage the continued growth and development of employees; and

(j) Serve as a basis to review the employee's performance for granting work related salary adjustments.

Section 3. Designated Employee Performance Evaluations. (1) Employee performance evaluations shall be completed at the following times:

(a) Prior to the completion of the required initial appointment probationary period established in 902 KAR 8:080, Section 9;

(b) At the annual employee performance evaluation in accordance with Section 4 of this administrative regulation;

(c) Prior to completion of the required probationary period following promotion established in 902 KAR 8:090, Section ~~1[40]~~;

(d) Following reinstatement of an employee that had a gap of service with an agency of more than one (1) year but does not exceed three (3) years from date of separation in accordance with 902 KAR 8:080, Section 3(3); or

(e) At a special performance evaluation required by Section 10 of this administrative regulation.

Section 4. Annual Employee Performance Evaluation. (1) An employee that has gained regular status shall be evaluated by the appointing authority or designated supervisor on an annual basis.

(2) An employee's established annual increment date shall be the first day of the first pay period after completion of twenty-six (26) pay periods of service during which the employee earned annual and sick leave pursuant to 902 KAR 8:120. A designated part-time employee's established annual increment date shall be the first day of the first pay period upon completion of twenty-six (26) pay periods of service.

(3) An employee returning to duty from leave without pay shall receive an annual increment when the employee has completed twenty-six (26) pay periods of service since the date the employee last received an annual increment.

(4) An annual increment date shall not change when an employee:

(a) Is in a position that is assigned a new or different salary grade;

(b) Receives a salary adjustment as a result the employee's position being reallocated;

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Returns from military leave covered under the Uniformed Services Employment and Reemployment[Re-employment] Rights Act, 38 U.S.C. 4301 to 4335;

(g) Is reclassified; or

(h) Is promoted.

(5) A regular-status employee shall maintain his current annual increment date ~~[upon the effective date of this administrative regulation]~~. The performance evaluation date for an employee appointed ~~[on or after July 1, 2006]~~ shall be twenty six (26) pay periods following initial appointment.

Section 5. Employee Performance Evaluation Process. (1) The supervisor shall maintain a record throughout the evaluation period for each employee supervised.

(2) The record shall provide a chronological record of consistently maintained accomplishments or problems by an employee.

The records shall include:

(a) Dates;

(b) Details;

(c) Names; and

(d) Any written statements regarding accomplishments or problems.

(3) The purpose of the record shall be to ensure that the evaluations are based on actual activities and performance during the review-rating period and provide documentation necessary for the performance salary adjustment or indicated disciplinary actions necessary in the case of unacceptable performance.

(4) A performance evaluation shall be completed for each regular status employee using the Local Health Department employee performance evaluation form (CH-40A), developed by the department in consultation with the agencies and the council.

(5) The CH-40A shall contain documented efforts made by the supervisor during the review period to correct unacceptable performance of the employee.

(6) At the beginning of the review period, the supervisor shall identify for each employee supervised:

(a) The performance competencies;

(b) Expectations;

(c) Goals; and

(d) Objectives.

(7) A supervisor shall develop an annual, written performance plan for each employee supervised.

(8) The supervisor and employee shall meet to discuss the identified performance competencies, expectations, goals, and objectives and decide on an individual development plan to assist the employee in performing the job. The annual performance plan shall include:

(a) An annual performance plan period;

(b) Job-related performance competencies, goals, and objectives that are consistent with the employee's position description and relate to the agency's goals and performance competencies. Each performance competency shall describe:

~~1.[(4)]~~ Standards or indicators of success; and

~~2.[(2)]~~ Measurable results and time frames if applicable; and

(c) Provisions for a minimum of one (1) interim performance plan review during the plan year to discuss performance progress, any deficiencies and plan updates as necessary.

(9) The supervisor, at the end of the review period, shall rate the performance of an employee on the identified performance competencies, indicating both the level of work performed and examples of the employee's work supporting the rating given on each measure and the final rating the employee will receive.

(10) The supervisor shall identify the performance competencies, goals, expectations, and objectives for the next plan year.

(11) The results of the employee performance evaluation may be submitted to the reviewer, if other than the appointing authority, and the appointing authority prior to meeting with the employee.

(12) The supervisor and the employee shall meet to discuss the supervisory ratings, performance competencies, goals, and expectations, objectives identified for the next review period and the employee's development plan for the next review period. The employee shall have the opportunity to provide input, examples of work and a self-evaluation for the supervisor's consideration.

(13) The employee shall have an opportunity to attach written comments concerning the rating of the supervisor's evaluation. The comments shall be provided to the supervisor no later than five (5) working days after the supervisor and employee meet to discuss the performance evaluation.

(14) An employee that disagrees with the performance rating conducted by the employee's supervisor may ask for a review with the reviewer. If the employee is not satisfied with the response of the reviewer, the employee may submit a grievance through the agency's grievance procedure.

Section 6. Employee Performance Evaluation Competencies.

(1) An employee shall be evaluated on at least the following performance competencies:

(a) Position knowledge;

- (b) Communication;
  - (c) Concern for accuracy;
  - (d) Service orientation;
  - (e) Organizational awareness; and
  - (f) Performance orientation.
- (2) A supervisor shall be evaluated on the following competencies in addition to those stated above:
- (a) Staff development;
  - (b) Functional planning; and
  - (c) Decision making.
- (3) In addition to the required competencies established in subsections (1) and (2) of this section, additional competencies may be added to the employee's or supervisor's evaluation that reflects the level of development of the employee, level of responsibility, degree of independence, complexity, and the overall scope of the employee's job duties.

Section 7. Employee Evaluation Rating Factors. The following ratings shall be used by the supervisor to evaluate an employee's job performance for the competencies identified:

5	Highly Commendable Performance
4	Proficient and Commendable Performance
3	Effective and Competent Performance
2	Needs Development Performance
1	Unacceptable Performance

- ~~(1) Highly Commendable Performance;~~
- ~~(2) Proficient and Commendable Performance;~~
- ~~(3) Effective and Competent Performance;~~
- ~~(4) Needs Development Performance; or~~
- ~~(5) Unacceptable Performance.]~~

Section 8. Overall Performance Rating of the Employee. The supervisor shall provide an overall rating of the employee's performance based on the supervisor's judgment regarding the following levels of performance:

- (1) Highly commendable performance rating level for the employee who:
  - (a) Consistently surpasses skill expectations in execution of the majority of critical job responsibilities and objectives;
  - (b) Makes exceptional contributions to the overall functioning of a department by demonstrating initiative, flexibility, and creativity in addressing issues or developing systems, procedures, or enhancements for greater efficiencies and effectiveness;
  - (c) Possesses superb skills and knowledge;
  - (d) Constantly anticipates or responds quickly to changing situations and departmental needs;
  - (e) Constantly contributes workable solutions to projects or problems;
  - (f) Demonstrates work of a superior quality; and
  - (g) Is a solution-oriented team player who maintains and promotes excellent working relationships.
- (2) Proficient and commendable performance rating level for the employee who:
  - (a) Consistently demonstrates skill in the execution of the majority of critical job responsibilities and objectives;
  - (b) Makes important contributions to the overall functioning of a department by demonstrating solid performance with respect to productivity and quality;
  - (c) Possesses strong skills and knowledge; and
  - (d) Is a strong team player who maintains and promotes good working relationships.
- (3) Effective and competent performance rating level for the employee who:
  - (a) Competently executes the majority of critical job responsibilities and objectives;
  - (b) Makes positive contributions to the overall functioning of an agency by demonstrating sufficient performance with respect to productivity and quality of work;
  - (c) Possesses appropriate level of skills and knowledge;
  - (d) Maintains and promotes positive working relationships as a team player;
  - (e) Works positively to influence the work group; and
  - (f) Adjusts readily to changing situations and work assignments.

- (4) Needs development performance rating level for the employee who:
  - (a) The overall performance to ensure consistent execution of all job responsibilities and objectives needs development;
  - (b) Demonstrates success in some areas but guidance in other areas has been needed; and
  - (c) Demonstrates performance competencies that need further development and consistent application.
- (5) Unacceptable performance rating level for the employee whose overall performance indicates that:
  - (a) Job duties, responsibilities, and objectives have not been consistently met;
  - (b) Employee's performance requires close monitoring and has not kept pace with job related requirements; and
  - (c) Successes have been only occasional or of minimal impact and performance has failed to demonstrate sufficient level of competencies required.

Section 9. Salary Adjustment for an Employee Based on the Levels of Performance. (1) If, in the judgment of the supervisor and appointing authority, an employee who receives an overall rating at the highly commendable or proficient and commendable level, the employee shall receive:

- (a) The annual employee performance rate adopted by the Board of Health at the beginning of the fiscal year not to exceed five (5) percent of the employee's salary; ~~and~~
- (b) An additional lump sum payment ~~that was adopted by the Board of Health at the beginning of the fiscal year~~ not to exceed three (3) percent of the employee's salary ~~if provided~~ adequate documented justification is provided to the department for approval; ~~and~~[-]

(c) The lump sum payment shall be effective the same date as the annual increment was awarded.

(2) If, in the judgment of the supervisor and appointing authority, an employee receives a performance rating at the effective and competent level, the employee shall receive the annual employee performance rate adopted by the Board of Health at the beginning of the fiscal year not to exceed five (5) percent of the employee's salary.

(3)(a) If, in the judgment of the supervisor and appointing authority, an employee receives a rating at the needs development level after appropriate supporting documentation has been made, the employee shall be entitled to receive a salary adjustment equivalent to fifty (50) percent of the annual performance evaluation rate adopted by the Board of Health at the beginning of the fiscal year not to exceed five (5) percent of the employee's salary.

(b) An appointing authority shall require a special evaluation to be conducted no later than 120 days following the annual evaluation to determine if the employee's level of performance has improved.

(c) If the employee's performance has improved to the effective and competent level, the appointing authority shall approve the employee's receipt of the additional fifty (50) percent over the remainder of the evaluation period.

(d) For the employee who shows no improvement in performance or whose performance deteriorates, the appointing authority shall:

1. Remove the fifty (50) percent salary increment; and
2. Initiate appropriate disciplinary action as found in 902 KAR 8:100.

(4)(a) If, in the judgment of the supervisor and appointing authority, an employee receives a rating at the unacceptable level, the appointing authority shall not grant a salary increase except as provided in paragraph (d) of this subsection.

(b) The appointing authority shall initiate dismissal action if indicated by supporting documentation.

(c) If the supporting documentation does not indicate a dismissal action, the appointing authority shall initiate appropriate disciplinary action followed by a performance re-evaluation to be completed no later than 120 days after the disciplinary action was initiated.

(d) The appointing authority shall provide the employee a salary adjustment equivalent to fifty (5) percent of the annual performance evaluation rate at the needs development performance



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level; if an employee improves the level of performance and satisfactorily meets the performance improvement objectives as determined by the re-evaluation.

(5) The employee performance salary adjustment shall be given to the eligible employee at the beginning of the first pay period following twenty-six (26) pay periods of service during which the employee was in pay status.

(6) An employee whose annual increment is denied shall be notified by the appointing authority in writing at least fourteen (14) calendar days prior to the annual increment date.

Section 10. Special Performance Evaluation. A special performance evaluation may be conducted at any time by the employee's supervisor to gauge the level of performance or to improve performance.

Section 11. Employee Rights and Responsibilities. (1) An employee shall have the opportunity to include written comments pertaining to an evaluation and may attach additional pages, as necessary.

(2) If the employee provides comments, the comments shall be attached to the evaluation form and made part of the employee personnel file.

(3) The employee shall sign the performance evaluation. However, the employee's signature shall not be required for the evaluation to be complete; the signature shall only indicate the evaluation has been discussed with the employee and shall not imply agreement or disagreement with the evaluation.

(4) An employee shall be provided with the basis of the evaluation and, upon written request, shall be provided a copy of documents which were considered in completing the evaluation.

(5) Upon written request to the next higher-level administrator, an employee with regular status shall be granted an opportunity to discuss any concerns regarding the evaluation.

Section 12 Incorporation by Reference. (1) "Form CH-40 A, Local Health Department Employee Performance Evaluation Form", 7/1/2006 ~~[Edition]~~, Cabinet for Health and Family Services, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner  
JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

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### CABINET FOR HEALTH AND FAMILY SERVICES

#### Department for Public Health

#### Division of Administration and Financial Management

(As Amended at ARRS, February 14, 2011)

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

RELATES TO: KRS 211.090(3), 211.170(1), 211.1751, (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the personnel program for local health departments. This administrative regulation establishes separations and disciplinary procedures applicable to a local health department.

Section 1. Disciplinary Action. (1) An appointing authority may discipline an employee for:

- (a) Lack of good behavior; or
- (b) Unsatisfactory performance of a job duty.
- (2) A situation that may warrant disciplinary action shall include:
  - (a) Inefficiency or incompetency in the performance of a duty;
  - (b) Negligence in the performance of a duty;
  - (c) Careless, negligent, or improper use of local health department property or equipment;
  - (d) Excessive absenteeism;
  - (e) Habitual pattern of failure to report for duty at the assigned time and place;
  - (f) Failure to obtain or maintain a current license or certificate or other qualification required by law or rule as a condition of continued employment;
  - (g) Willful abuse or misappropriation of funds, property, or equipment;
  - (h) Falsification of an official document relating to or affecting employment;
  - (i) Disrupting, disturbing, or interfering with management of agency operation;
  - (j) Abusive behavior towards a patient, coworker, or the public in the performance of a duty;
  - (k) Insubordination;
  - (l) Reporting to work under the influence of alcohol or illegal drugs, or partaking of alcohol or illegal drugs on the job;
  - (m) Sleeping or failure to remain alert during working hours;
  - (n) Violation of confidential information policies of the agency or assigned program;
  - (o) Prohibited political activity;
  - (p) Unauthorized or unreported absence or absence for any period of working without notifying supervisor;
  - (q) Breach of state law, an agency rule, policy, or directive; and
  - (r) Performing an unauthorized duty~~or task~~, or performing a duty/task requiring special training, licensure, or certification, which the employee has not attained.

Section 2. Administering Disciplinary Actions. (1) A classified employee with regular status shall not be disciplined by the appointing authority except for cause.

(2) Except as provided by subsection (4) of this section, an appointing authority shall apply discipline in a progressive manner, with each disciplinary action more severe, in an effort to correct an employee's performance or behavior problem.

(3) Progressive discipline shall consist of the following actions:

- (a) Verbal admonishment;
- (b) Written admonishment or warning;
- (c) Demotion or suspension; and
- (d) Dismissal.

(4) One (1) or more of the disciplinary actions stated in subsection (3) of this section may be bypassed by the appointing authority based on the severity of the performance or behavior problem.

Section 3. Predisciplinary Action hearing. (1) Except as provided in Section 5(1) of this administrative regulation, prior to a demotion provided by 902 KAR 8:090, Section 3(1)(c), suspension, or dismissal, a classified regular employee with status shall be notified in writing of the intent of the agency to demote, suspend or dismiss the employee. The notice shall also include the following:

(a) The specific reasons for the demotion, suspension, or dismissal including:

- 1. The statutory, regulatory, or agency policy violation; and ~~or~~
- 2. The specific action or activity on which the intent to demote, suspend, or dismiss is based;
- (b) The date, time, and place of the action or activity;
- (c) The name of each party involved; and
- (d) That the employee has the right to appear personally, or with counsel if the employee has retained counsel, to reply to the appointing authority regarding the intent to demote, suspend, or dismiss.

(2) A request in writing to appear to reply to the appointing authority shall be made within six (6) working days of receipt of the notice of intent to demote, suspend, or dismiss.

(3) The meeting shall be held within six (6) working days after receipt of the employee's request to appear before the appointing

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authority, excluding the day the request is received.

(4) No later than five (5) working days after the employee appears to reply to the intent to demote, suspend, or dismiss, the appointing authority shall determine whether to demote, suspend, or dismiss the employee or to alter, modify, or rescind the intent to demote, suspend, or dismiss. The appointing authority shall notify the employee in writing of the decision.

(5) If the appointing authority decides to demote, suspend, or dismiss, the employee shall be notified of the following, in writing:

(a) The effective date of the demotion, suspension, or dismissal; and

(b) The reason for the demotion, suspension, or dismissal, including the:

1. Statutory, regulatory, or agency policy violation; and ~~or~~

2. Specific action or activity on which the demotion, suspension, or dismissal is based;

(c) The date, time, and place of the action or activity;

(d) The name of each party or witness involved;

(e) Of his right to appeal the demotion, suspension, or dismissal; and

(f) That an appeal shall be:

1. Prepared on a ["]Form CH-41 Request for Appeal["]; and

2. Filed with the Local Health Department Employment Personnel Council and submitted to the Administrative Hearings Branch within fifteen (15) calendar days of the effective date of the decision of the appointing authority. If an appeal is mailed to the council by certified mail, return receipt requested, it shall be considered filed on the date it is postmarked.

(6) The appointing authority shall provide the employee with the appeal request form.

Section 4. Conditions for Bypassing Progressive Discipline and the Issuance of a Notice of Intent for the Suspension or Dismissal of an employee. (1) An appointing authority may issue a notice of intent for the suspension or dismissal of an employee for a serious misconduct infraction.

(2) An example of a misconduct infraction that may be considered serious enough to merit an immediate intent of suspension or dismissal include the following:

(a) Threatening, assaulting, fighting with, or harassing a supervisor, another employee, or anyone encountered during the normal course of business;

(b) Stealing or deliberately damaging the property of:

1. The agency;

2. A client;

3. A patient; or

4. Another employee; ~~and~~

(c) Carrying a concealed, deadly weapon at work;

1. Without a license; or

2. In violation of a prohibition established by a local government unit pursuant to KRS 237.115(2);

(d) Reporting to work under the influence of alcohol, narcotics, or other drugs, unless the drug was prescribed by a physician;

(e) Taking unauthorized leave or failing to show up at work without notifying a supervisor for more than three (3) consecutive work days;

(f) Engaging in a fraudulent activity;

(g) Breach of the employee confidentiality agreement; or

(h) Performing a procedure on a patient or client for which the employee has neither been certified nor has the current credentials to perform.

(3) The employee shall be notified by the appointing authority regarding the intent to suspend or dismiss.

(4) If an employee wishes to reply to a notice he shall:

(a) Request to appear personally before the appointing authority. The request shall be:

1. In writing; and

2. Made within six (6) working days of receipt of the notice; and

(b) File the request with the appointing authority. If a request is mailed by certified mail, return receipt requested, it shall be considered filed on the date it is postmarked.

(5) An employee may be represented by counsel at an appearance before the appointing authority.

(6) The meeting shall be held within six (6) working days after

receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.

(7) Within five (5) working days after the employee appears to reply to the intent to suspend or dismiss, the appointing authority shall determine whether to modify, or rescind the intent to suspend or dismiss. The appointing authority shall notify the employee in writing of the decision.

(8) If the appointing authority decides to suspend or dismiss immediately following the meeting, ~~the~~ the employee shall be notified of the following, in writing:

(a) The effective date of the suspension or dismissal; and

(b) The reason for the suspension or dismissal, including the:

1. Statutory, regulatory, or agency policy violation; and

2. Specific action or activity on which the suspension or dismissal is based;

(c) The date, time, and place of the action or activity;

(d) The name of each party or witness involved;

(e) Of his right to appeal the suspension or dismissal; and

(f) That an appeal shall be:

1. Prepared on a ["]Form CH-41 Request for Appeal["]; and

2. Filed with the Local Health Department Employment Personnel Council and submitted to the Administrative Hearings Branch within fifteen (15) calendar days of the effective date of the suspension or dismissal. If an appeal is mailed to the Council by certified mail, return receipt requested, it shall be considered filed on the date it is postmarked.

Section 5. Directive to Vacate Premises. (1) If an employee has committed a serious misconduct infraction and there is a need to diffuse a presently dangerous or disruptive situation, a supervisor may direct the offending employee to vacate the premises. The appointing authority shall, by the most immediate means, contact the department and relate the action taken.

(2) A pre-termination hearing shall be provided within three (3) working days after removal.

(3) The employee may be placed on leave using accumulated leave or on immediate suspension without pay.

Section 6. Incorporation by Reference. (1) "Form CH-41 Request for Appeal", 1/98 ~~Edition~~, Cabinet for Health and Family Services, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM D. HACKER, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 at 4 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7572.

### **CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Administration and Financial Management (As Amended at ARRS, February 14, 2011)**

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

RELATES TO: KRS 211.170(1), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194A.050(1) ~~(194.050(1), 211.1752)~~, 211.1755

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755 and 211.1752 requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. KRS 211.1752 provides for an appeal process for employees who are disciplined, applicants or employees who allege discrimination in personnel actions and eligibles who question their rating in the examination

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process. This administrative regulation provides for the specific appeal process.

Section 1. Appeals. (1) An employee with status who is demoted according to 902 KAR 8:090, Section ~~3(1)(c), [3(e)]~~ suspended, or dismissed shall have the right to appeal the action. The appeal shall be:

(a) In writing, on a "Form CH-41 Request for Appeal"; and  
(b) Filed with or mailed to the department by certified mail, return receipt requested within fifteen (15) days of the demotion, suspension, or dismissal.

(2) An applicant who has taken an oral or written examination may appeal his rating in any part of an examination to assure rating procedures have been applied fairly and equitable. The appeal shall be in writing and mailed to the department no later than thirty (30) days after the date on which the notification of removal was mailed to the eligible.

(3) An eligible whose name has been removed from a register for any of the reasons specified in ~~[administrative regulation]~~ 902 KAR 8:070, Section ~~4(5)(a) through (i)~~ 4. Item (5) (a, b, c, d, e, f, g, h, and i) ~~[4](4)]~~ may appeal the action. The appeal shall be mailed to the department within thirty (30) days after the date on which the notification of removal was mailed to the eligible.

(4) An applicant or employee may appeal within thirty (30) days of the alleged discrimination if he believes that he has been discriminated against in a personnel action because of:

- (a) Sex;
- (b) Religious opinion or affiliation;
- (c) Political opinion or ~~affiliation~~ affiliations;
- (d) Race;
- (e) National origin;
- (f) Disability; or
- (g) Age.

(5) An appeal shall be conducted in accordance with ~~[procedures as set forth in]~~ Section 2 of this administrative regulation.

Section 2. Hearing Process. (1) The department shall schedule an administrative hearing upon an appeal to be held within sixty (60) days of receipt of the appeal. Notice of the hearing and conduct of the proceedings shall be in accordance with the requirements of KRS Chapter 13B.

(2) The hearing shall be conducted by a designated hearing officer ~~[and the decision will be submitted to the Local Health Department Employment Personnel Council]~~ ~~[- or a designated hearing officer]~~

(3) ~~[Within the time allowed by KRS Chapter 13B, the Administrative Hearings Branch]~~ [Local Health Department Employment Personnel Council] shall:

- (a) Make findings of fact and conclusions of law; and
- (b) Issue a recommended order. ~~[final] [order, based on the record.]~~

~~(4) Designate a hearing officer to hear the appeal and [if a hearing officer is designated to hear the appeal,] The hearing officer shall:~~

- (a) Make findings of fact and conclusions of law; and
- (b) Issue a recommended order.

(4) The recommended order shall be submitted [Recommend a final order] to the Local Health Department Employment Personnel Council at its next meeting.

(5) The Local Health Department Employment Personnel Council may:

- (a) Adopt the report as submitted;
- (b) Amend the findings and recommendations based on the evidence contained in the report; or
- ~~(c) Remand the appeal to the hearing officer for further appropriate action; or~~

~~[(d)]~~ Rehear the appeal.

(6) The decision of the Local Health Department Employment Personnel Council shall be a final order, binding upon the employee and appointing authority.

Section 3. Hearing Process (1) "Form CH-41 Request for Appeal", ~~[1/98, Edition]~~ Cabinet for Health and Family Services, is incorporated by reference.

(2) This material ~~[#]~~ may be inspected, copied, or obtained,

subject to applicable copyright law, at the Department for Public Health, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM D. HACKER, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 at 4 p.m.

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

### CABINET FOR HEALTH AND FAMILY SERVICES

#### Department for Public Health

#### Division of Administration and Financial Management

(As Amended at ARRS, February 14, 2011)

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

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870, Chapter 337, 29 C.F.R. Part 825, 29 U.S.C. 206

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the local health department personnel program. This administrative regulation establishes work hours, leave, and compensatory time provisions for employees of local health departments.

Section 1. Hours of Work. (1) The normal work week shall consist of thirty-seven and one-half (37.5) hours per week.

(a) The appointing authority shall establish the hours and days of work for the agency or for specific employees.

(b) The work schedule may be changed by the appointing authority to provide for flexibility in meeting particular work requirements of the agency or specific employees whose schedules may require them to work different hours.

(2) Hours worked in excess of the thirty-seven and one-half (37.5) hours during the established work week shall be:

(a) Approved by the appointing authority; and

(b) Subject to compensatory time and overtime provisions of this administrative regulation.

(3) The standard pay period shall consist of seventy-five (75) hours.

(4) An appointing authority, with department approval, may establish a position having special conditions of employment based on the needs of the agency.

(5) The employee who requests and receives consideration for special conditions shall acknowledge acceptance of the special conditions in writing.

(6) Special conditions may include the following:

(a) Earning annual leave and sick leave at a rate based on the hours worked;

~~(b) [A method of payment of earned compensation that may be prorated; and~~

~~(c)] An arrangement for handling nonwork time that may occur with the specific job responsibilities.~~

Section 2. Earning of Annual Leave. (1) Except for a ~~[seasonal;]~~ temporary~~;~~ or emergency employee, a full-time employee shall earn annual leave credit at the following rate:

Years of Service	Annual Leave Hours Earned Per Pay Period/Per Year of Twenty-six (26) Pay Periods
0 to 5 years	3.5 hours per pay period/91.0 hours per year
5 to 10 years	4.4 hours per pay period/114.4 hours per year
10 to 15 years	5.2 hours per pay period/135.2 hours per year

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Years of Service	Annual Leave Hours Earned Per Pay Period/Per Year of Twenty-six (26) Pay Periods
15 to 20 years	6.1 hours per pay period/158.6 hours per year
20 years or more	7.0 hours per pay period/182 hours per year

(2) Annual leave for a full-time employee shall not accrue unless the employee has been in pay status at least thirty-seven and one-half (37.5) hours of the standard pay period. The employee shall be credited with additional leave credit upon the first day of the pay period following the pay period in which the leave was earned.

(3) Except for a ~~seasonal~~ temporary or emergency employee, a part-time employee, who is designated as serving on a part-time 100 hour basis and is in pay status at least twenty-three (23) hours each pay period, shall earn annual leave credit at the following rate:

Years of Service	Annual Leave Hours Earned Per Pay Period/Per Year of Twenty-six (26) Pay Periods
0 to 5 years	2.1 hours per pay period/54.6 hours per year
5 to 10 years	2.6 hours per pay period/67.6 hours per year
10 to 15 years	3.1 hours per pay period/80.6 hours per year
15 to 20 years	3.6 hours per pay period/93.6 hours per year
20 years or more	4.2 hours per pay period/109.2 hours per year

(4) In computing years of total service for determining the rate of earning annual leave for designated part-time 100 hour employees, only those months shall be used during which the employee was designated as a full-time, part-time 100 hour, or was on educational leave with pay.

(5) An employee who has retired from a position covered by a state retirement system, is receiving retirement benefits, and returns to an agency, shall not receive credit for months of service prior to retirement.

(6) An employee who has resigned from one agency and returns to another agency as an original appointment shall not receive credit for months of service prior to resignation.

(7) Annual leave shall not accrue unless an employee is working or on authorized leave with pay. Annual leave shall not accrue if an employee is on authorized ~~educational~~ education leave with pay.

(8) ~~(7)~~ The maximum amount of annual leave earned by a full-time employee that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

Years of Service	Maximum Amount of Annual Leave Earned by Full Time Employees
0 to 5 years	225.0 hours
5 to 10 years	277.5 hours
10 to 15 years	337.5 hours
15 to 20 years	390.0 hours
Over 20 years	450.0 hours

(9) ~~(8)~~ The maximum amount of annual leave for a designated part-time 100 hour employee who works an average of 100 hours per month that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

Years of Service	Maximum Amount of Annual Hours Earned by Designated Part-time 100 Employees
0 - 5 years	120 hours
5 - 10 years	148 hours
10 - 15 years	180 hours
15 - 20 years	208 hours
Over 20 years	240 hours

~~(10)~~ ~~(9)~~ Except as provided for in Section 3(8) of this administrative regulation, annual leave earned in excess of that which is allowed to be accumulated shall be converted to sick leave and credited during the first pay period following the end of the calendar year. Annual leave shall not be granted in excess of that earned.

Section 3. Use of Annual Leave Credit. (1) An employee who has accumulated annual leave credit, upon timely request and subsequent approval of the appointing authority, shall be granted leave subject to the operating requirements of the agency.

(2) An employee shall not be charged with annual leave for absence except on a day upon which they would otherwise work and receive pay.

(3) Absence for a fraction or part of a day that is chargeable to annual leave shall be charged in fifteen (15) minute periods.

(4) An employee shall be paid a lump sum for accumulated annual leave, not to exceed the maximum amounts established in Section 2 of this administrative regulation, if separated by proper resignation, layoff, retirement, or change from full-time or part-time 100 hour to part time. Following payment of annual leave, leave remaining after the payment of the maximum provided in Section 2 of this administrative regulation shall be removed from the balance.

(5) Upon the death of an employee, the employee's estate shall be entitled to be paid for the unused portion of the employee's accumulated annual leave, ~~not to exceed the maximum amount allowable~~.

(6) Annual leave shall not be advanced or taken until it is earned.

(7) An absence due to sickness, injury, or disability in excess of accumulated sick leave, may be charged against annual leave if approved by the appointing authority.

(8) An employee who has accumulated annual leave in excess of 275 hours may request payment of an amount of annual leave not to exceed seventy-five (75) hours during the fiscal year of the agency. The requested annual leave payment, if approved by the appointing authority, shall not reduce the employee's balance of annual leave below 275 hours and shall be paid in a manner convenient to the agency.

(9) An appointing authority may require an employee who has a balance of compensatory leave hours to use compensatory leave before the employee's request to use annual leave balance is granted, unless the employee's annual leave balance will exceed the maximum number of hours that may be carried forward pursuant to Section ~~2(8) and (9)~~ 2(7) and (8) of this administrative regulation.

Section 4. Earning of Sick Leave. (1) A full-time employee, except an emergency employee, shall earn sick leave at the rate of three and one-half (3.5) hours per pay period.

(a) An employee shall have worked or been in pay status for at least thirty-seven and one-half (37.5) hours of the seventy-five (75) standard hours in each pay period in order to accumulate sick leave.

(b) The employee shall be credited with sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(2) An employee designated as a part-time 100 hour employee, except an emergency employee, who is in pay status at least twenty-three (23) hours in a pay period shall earn sick leave at the rate of two and one-tenth (2.1) hours per pay period. A part-time 100 hour employee shall be credited with additional sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(3) A full-time employee completing ten (10) years of total service with an agency shall be credited with seventy-five (75) additional hours of sick leave.

(4) An employee designated as a part-time 100 hour employee completing ten (10) years of total service with an agency shall be credited with forty-five (45) additional hours of sick leave.

(5) A full time employee completing 240 months of total service with one (1) or more agencies shall be credited with an additional seventy-five (75) hours of sick leave.

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(6) An employee designated as a part-time 100 hour employee completing 240 months of total service with one (1) or more agencies shall be credited with forty-five (45) additional hours of sick leave.

Section 5. Uses of Sick Leave Credit. (1) The appointing authority, upon proper request, may grant sick leave with pay to a full-time or designated part-time 100 hour employee with sufficient leave credit, if the employee:

- (a) Receives medical, psychiatric, dental, or optical examination or treatment;
- (b) Is disabled by sickness or injury;
- (c) Is required to provide care for a sick or injured spouse, child, step-child, parent, step-parent, brother, step-brother, sister, step-sister, grandparent, step-grandparent, ~~[or]~~ grandchild, step-grandchild, ~~[or]~~ mother- or father-in-law, or daughter- or son-in-law;
- (d) Would jeopardize the health of others at his or her workstation ~~[duty]~~ post because of exposure to a contagious disease;
- (e) Has lost by death a spouse, ~~[parent]~~ child, step-child, parent, step-parent, brother, step-brother, sister, step-sister, grandparent, step-grandparent, grandchild, step-grandchild, mother- or father-in-law, or daughter- or son-in-law; or
- (f) Is required to take the employee's spouse, child, step-child, parent, step-parent, brother, step-brother, sister, step sister ~~[mother- or father-in-law]~~, grandparent, step-grandparent, ~~[or]~~ grandchild, step-grandchild, mother- or father-in-law, or daughter- or son-in-law; for medical, psychiatric, dental, or optical examination or treatment.

(2) **Accumulated** sick leave **may be** granted for death in the employee's family, as described in subsection (1) of this section, **and** shall be limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(3) An employee shall file a written request ~~[application]~~ for sick leave with or without pay within a reasonable time. An employee shall request advance approval for sick leave for medical, dental or optical examination and for sick leave without pay.

(4) Except for an unexpected absence from work because of an illness, the employee shall notify the employee's supervisor or other designated person. Failure to do so in a reasonable time period may be cause for denial of the sick leave for the period of absence or for disciplinary action.

(5) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave for the days or hours sick leave that is requested. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required signed by a licensed practitioner and certifying to the incapacity, examination, and treatment during the time for which sick leave was taken. An appointing authority may grant sick leave if the application is supported by acceptable evidence.

(6) ~~[The following licensed practitioners shall be used in providing verification of an absence:~~

- ~~(a) Doctor of medicine;~~
- ~~(b) Doctor of osteopathy;~~
- ~~(c) Pediatrician;~~
- ~~(d) Dentist;~~
- ~~(e) Clinical psychologist;~~
- ~~(f) Optometrist;~~
- ~~(g) Chiropractor;~~
- ~~(h) Nurse practitioner;~~
- ~~(i) Nurse midwife; or~~
- ~~(j) Christian Science practitioner, certified by the Church of Christ, Scientist.~~

~~(7)~~ If an employee requests leave in excess of five (5) working days, a statement from the employee's licensed practitioner shall accompany the request for leave. The statement shall contain the following:

- (a) The licensed practitioner's judgement that the employee is incapable of performing the essential duties of the job;
- (b) Estimate of the length of time that the employee's illness or disability will last;
- (c) Restrictions which would render the employee incapable of performing the essential duties of the job; and
- (d) Recommendation for special considerations to accommo-

date the employee once released to return to work.

~~(7)(4)~~ An appointing authority may place an employee on sick leave if:

- (a) The employee's health might jeopardize others;
- (b) The employee's health prevents performance of his duties and responsibilities;
- (c) The employee fails to produce a satisfactory medical certificate upon request; or
- (d) The employee exhibits behavior that disrupts the agency's ability to function in providing services or that might endanger the employee ~~[himself]~~ or others.

~~(8)(4)~~ Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in fifteen (15) minute periods.

~~(9)(4)~~ An employee who is transferred or otherwise changed from one (1) agency to another shall retain accumulated sick leave in the receiving agency.

~~(10)(4)~~ A former employee who is reinstated or reemployed shall have his previous rate of earning annual leave and unused sick leave balances reinstated upon successful completion of probation, if applicable.

~~(11)(4)~~ Sick leave may be utilized in cases of absence due to illness or injury for which worker's compensation benefits are received for lost time to the extent of the differences between these benefits and the employee's regular salary.

Section 6. Family and Medical Leave. ~~[(4)]~~ An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, **29 U.S.C. 2601 et seq.**, Pub.L. 103-3, and the federal regulations implementing the Act, 29 C.F.R. Part 825.

Section 7. Maternity Leave. (1) The appointing authority shall grant a maternity leave of absence to an employee because of pregnancy or the adoption of a child. Maternity leave shall not exceed twelve (12) weeks, unless the appointing authority approves additional maternity leave. However, the total leave shall not exceed twenty-six (26) pay periods.

(2) The employee on maternity leave shall use accumulated sick leave credit if available, only for the period of time medically necessary to be absent from work as indicated by the certification of a licensed practitioner.

(a) If sick leave is not available, the employee shall use accumulated annual or compensatory leave if available.

(b) If leave credit is exhausted, the employee shall be placed on leave without pay.

(3) Accumulated annual and compensatory time shall be used for maternity leave that extends beyond the period of absence that is medically necessary for the employee as certified by the employee's medical practitioner.

(4) The employee shall submit a written request for maternity absence, which shall include a statement from a licensed practitioner indicating the expected date of delivery.

(a) The request shall be submitted to the appointing authority as soon as practical to allow for adjustments in the work schedule during the employee's absence.

(b) Additional information from the employee's licensed practitioner may be required if there are complications and the period of absence begins sooner than agreed, extends further than agreed, or requires the use of maternity leave beyond twelve (12) weeks.

Section 8. ~~[(7-)]~~ Workers' Compensation. (1) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick or annual leave may ~~shall~~ be used to maintain full salary.

(2) If paid leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the agency for the period of time the employee received paid leave.

(3) The employee's sick and annual leave shall be immediately reinstated to the extent that workers compensation benefits are assigned. An employee shall not receive paid sick and annual leave and workers compensation pay for the same period of time.

Section 9. ~~[(8-)]~~ Sick Leave Without Pay. (1) An appointing authority may approve sick leave without pay upon appropriate re-

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quest of an employee for reasons provided for in this section and in Section ~~7[6]~~ of this administrative regulation.

(2) An employee shall have used accumulated annual, sick, and compensatory leave credit prior to approved leave without pay.

(3) The amount of continuous sick leave without pay approved by an appointing authority shall not exceed twenty-six (26) pay periods.

(4) If an employee approved for leave with pay exhausts accumulated annual, sick, and compensatory leave credit, the employee shall be placed on sick leave without pay, if the total absence does not exceed twenty-six (26) pay periods.

(5) The appointing authority may require periodic statements from a licensed practitioner during the sick leave without pay period attesting to the employee's inability to perform the essential functions of the employee's job duties with or without reasonable accommodation.

### Section ~~10. [9-]~~ Return from Sick Leave With or Without Pay.

(1) At the termination of sick leave with pay not exceeding thirteen (13) pay periods, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding thirteen (13) pay periods, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstance permit. If the employee is unable to perform the essential functions of the position and there is no other vacant position for which the employee qualifies and is able to perform, the employee may be laid off.

(2) If an employee on approved sick leave without pay for less than twenty-six (26) pay periods has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. If the employee is unable to perform the essential functions of the position and there is no other vacant position for which the employee qualifies and is able to perform, the employee may be laid off.

(3) An employee shall be considered to have resigned if the employee:

(a) ~~1.~~ Has been on continuous sick leave without pay for twenty-six (26) pay periods; ~~and~~

~~2. [4-]~~ Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave; and

~~3. [e-]~~ Is unable to return to work; or

~~(b) 1. [4-]~~ Has been given priority consideration by the appointing authority for a vacant position with the agency, for which the employee qualifies and is capable of performing its essential functions with or without reasonable accommodation; and

~~2. [e-]~~ The appointing authority has been unable to place the employee in a vacant position.

Section ~~11. [40-]~~ Sharing of Sick Leave. (1) An employee of the local health department ~~[LHD]~~ who has accrued a sick leave balance of more than seventy-five (75) hours may, with the approval of the appointing authority, request the transfer of a specified amount of the employee's sick leave balance in excess of seventy-five (75) hours to another named employee of the local health department who is authorized to receive sick leave.

(2) The appointing authority may approve the amount of sick leave received under this section, if any, if:

(a) The employee or a member of his immediate family suffers from a medically certified illness, injury, impairment, or physical or psychiatric condition which has caused, or is likely to cause, the employee to go on leave for at least ten (10) consecutive working days;

(b) The employee's need for absence and use of leave are certified by a licensed practitioner; and

(c) The employee has exhausted his accumulated sick leave, annual leave, and compensatory leave balances.

(3) Leave may be transferred from an employee of one agency to an employee within the same agency or may be transferred from an employee of one (1) agency to an employee of another agency. The department shall maintain records of leave transferred between employees and the utilization of transferred leave.

(4) If an employee is on leave transferred under this section, he shall receive the same treatment with respect to salary, wages, and employee benefits.

(5) Salary and wage payments made to an employee while on leave transferred under this section shall be made by the agency employing the person receiving the leave. Leave transferred under this section which remains unused shall be returned, on a prorated basis, to the employees who transferred the leave if the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the illness or injury for which the leave was transferred to an employee in his agency.

(6) An employee shall not intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, either directly or indirectly, another employee for the purpose of interfering with the employee's right to voluntarily contribute leave as authorized under this section.

Section ~~12. [44-]~~ Court Leave. An employee shall be entitled to a leave of absence, without loss of pay or time, for each day during which the employee is subpoenaed by a court to serve as a juror or witness, except in a case where the employee or a member of the employee's family is a party plaintiff. If relieved from duty as a juror or witness during normal working hours, the employee shall return to work. An employee shall retain the fees earned while serving as a potential juror.

Section ~~13. [42-]~~ Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from duty without the loss of pay or time ~~[upon request]~~ to serve under orders on training duty for a period of up to ten (10) working days, not to exceed seventy five (75) hours in any one (1) federal fiscal (October 1 to September 30) [calendar] year. The appointing authority, before granting military leave, may require a copy of the orders requiring the attendance of the employee.

(2) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of active duty not to exceed six (6) years. Accumulated annual leave and compensatory leave may be paid in lump sum at the request of the employee, upon being placed on leave.

(3) A Part Time 100 or Full Time status employee, who is a spouse or a member of the U.S. Armed Forces, including a member of a state National Guard or a Reserve component on federal duty, shall receive [ ] one (1) day off, with pay, from work when the member is deployed and one (1) day off, with pay, from work when the member returns.

Section ~~14. [43-]~~ Voting Leave. The appointing authority shall allow each employee four (4) hours [ample time] to vote, if requested in advance. The absence shall not be charged against accumulated leave.

Section ~~15. [44-]~~ Special Leave of Absence. (1) An appointing authority may grant special leave for education, training or for other circumstances.

(2) Leave may be granted for a period not to exceed twenty-six (26) pay periods.

(3) Leave may be granted with or without pay.

(4) Leave for attendance at a college, university, vocational or business school shall be for training in subjects that:

(a) Relate to the employee's work; and

(b) Will benefit the agency.

Section ~~16. [45-]~~ Special Leave for Investigative Purposes. (1) An appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(2) Leave shall not exceed thirty (30) working days.

(3) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

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(4) If the investigation reveals no misconduct by the employee:

(a) The employee shall be made whole for the period of the leave; and

(b) Records relating to the investigation shall be purged from agency files.

(5) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. Notification shall be made to the employee, whether the employee has remained with the agency, or has voluntarily resigned during the interim between being placed on special leave for investigative purposes and the completion of the investigation. ~~[Section 16. Family and Medical Leave. An agency shall comply with the Family and Medical Leave Act, Pub.L. 103-3 and C.F.R. 29 Part 825, if applicable.]~~

Section 17. Absence Without Leave. (1) An employee who is absent from duty without approval shall report the reason for the absence to the employee's supervisor immediately.

(2) Unauthorized or unreported absence shall be considered absence without leave and deduction of pay may be made by the appointing authority for each period of absence.

(3) Absence without leave may constitute grounds for disciplinary action.

(4) An employee who has been absent without leave or notice to the supervisor for more than three (3) working days shall be considered to have resigned the employee's position.

Section 18. Holidays. (1) Agency full-time employees shall be given a holiday on the following days:

(a) The first day of January and one (1) extra day;

(b) The third Monday in January;

(c) One-half (1/2) day for Good Friday (3.75 hours);

(d) The last Monday in May;

(e) The fourth day of July;

(f) The first Monday in September;

(g) The 11th day of November;

(h) The fourth Thursday in November plus one (1) extra day;

(i) The 25th of December and one (1) extra day; and

(j) Presidential election day.

(2) If a day enumerated in subsection (1) of this section falls on a Saturday, the preceding Friday shall be observed as the holiday. If the day enumerated falls on a Sunday, the following Monday shall be observed as the holiday. If an extra day is provided for it shall be observed as stated by the department.

(3) A full-time employee shall be in pay status on the work day prior to the holiday in order to receive the holiday benefit.

(4) Full-time exempt employees required to work on a holiday shall accrue compensatory time for the time worked.

Section 19. Absences Due to Adverse Weather. (1) An employee who chooses not to report to work, or who leaves early, in the event of adverse weather conditions, ~~[he]~~ shall have the absence:

(a) Charged to annual leave; or

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted.

(2) An employee who is on prearranged annual, compensatory, or sick leave shall charge leave as originally requested.

(3) If catastrophic, life-threatening weather conditions occur, such as that created by hurricane, tornado, flood, or blizzard, and it becomes necessary for authorities to order evacuation or shut-down of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to Section 20 of this administrative regulation.

Section 20. Earning of Compensatory Time. (1) An employee determined to be exempt under the provisions of the Fair Labor Standards Act, 29 U.S.C. 206, and Kentucky Wage and Labor

Law, KRS Chapter 337, authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours of duty in one (1) week shall accumulate compensatory time in fifteen (15) minute periods for excess time worked. The maximum amount of compensatory time accumulated shall be 200 hours.

(2) An employee shall have the prior approval of the appointing authority or the employee's immediate supervisor before compensatory leave may be earned.

(3) A nonexempt employee authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours shall be paid at the employee's current salary for each hour not subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. 206, and Kentucky Wage and Labor Law, KRS Chapter 337.

Section 21. Using Accumulated Compensatory Time. (1) An employee who has accrued compensatory time shall be permitted by the appointing authority to take compensatory time off if practical and upon proper request by the employee.

(2) An employee who has accumulated at least thirty (30) hours of compensatory time may be paid for the accumulated leave by the appointing authority upon written request. If payment is approved by the appointing authority, it shall be at the employee's regular rate of pay and in thirty (30) hour increments.

(3) If an employee has accumulated the maximum amount of compensatory leave, the appointing authority shall pay the employee for at least fifty (50) hours of accumulated compensatory leave at the employee's regular rate of pay and shall reduce the employee's compensatory leave balance accordingly.

(4) Upon separation from service or transfer to another agency, unused compensatory time shall be reimbursed in a lump sum payment to the employee.

(5) Upon the death of an employee, the employee's estate shall be paid for unused accumulated compensatory time.

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner  
JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 at 4 p.m.

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

### CABINET FOR HEALTH AND FAMILY SERVICES

#### Department for Public Health

#### Division of Administration and Financial Management

(As Amended at ARRS, February 14, 2011)

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

RELATES TO: KRS 211.170(1), (2), 212.170, 212.230, 212.870~~[212.270]~~

STATUTORY AUTHORITY: KRS 194A.050~~[194.050]~~, 212.170, 212.870

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. This administrative regulation establishes the process for appointing a health officer or health department director and the provisions of the merit system.

Section 1. Appointment of Health Officer. (1) An agency shall appoint a health officer in accordance with the provisions of KRS 212.170, 212.230, or 212.870.

(2) The health officer shall be an unclassified employee and hold office at the pleasure of both the board of health of the agency and the department.

(3) The health officer in the unclassified service shall be subject to the following administrative regulations:

(a) 902 KAR 8:060, Salary adjustments~~[Classification and compensation plans]~~ for local health departments ~~[of Kentucky]~~;

[and]

(b) 902 KAR 8:070, Recruitment, examination and certification of eligible applicants~~[eligibles]~~ for local health departments; ~~[and]~~

(c) 902 KAR 8:080, Initial appointment, probationary period, layoffs, ~~[and]~~ performance evaluation, and the resignation of employees of local health departments; ~~[and]~~

(d) 902 KAR 8:120, Leave provisions applicable to employees of local health departments; and

(e) This administrative regulation~~[902 KAR 8:140, Appointment of a health officer or a health department director of a local health department]~~.

(4) An individual promoted to the position of health officer shall receive a salary increase, which shall be the greater of the following:

(a) Fifteen (15) percent above current salary; ~~[or]~~

(b) The minimum of the grade assigned to the health officer; or

(c) Three (3) percent per grade not to exceed midpoint of grade.

Section 2. Appointment of Health Department Director. (1) In the absence of a health officer provided for in this administrative regulation, an agency shall be under the direction of a health department director who shall meet minimum qualification of education and experience established by the department.

(2) A qualified individual appointed or promoted to the position of health department director after the effective date of this administrative regulation, shall be employed in the unclassified service and hold office at the pleasure of both the board of health of the agency and the department.

(3) Individuals who are in the position of physician director or health department director as of September 3, 1993 shall maintain their status ~~[after the effective date of this administrative regulation]~~.

(4) A health department director in the unclassified service shall be subject to the following administrative regulations:

(a) 902 KAR 8:060, Salary adjustments~~[Classification and compensation plans]~~ for local health departments ~~[of Kentucky]~~; ~~[and]~~

(b) 902 KAR 8:070, Recruitment, examination and certification of eligible applicants~~[eligibles]~~ for local health departments; ~~[and]~~

(c) 902 KAR 8:080, Initial appointment, probationary period, layoffs, ~~[and]~~ performance evaluation, and the resignation of employees of local health departments; ~~[and]~~

(d) 902 KAR 8:120, Leave provisions applicable to employees of local health departments; and

(e) This administrative regulation~~[902 KAR 8:140, Appointment of a health officer or a health department director of a local health department]~~.

(5) An individual promoted to the position of health department director shall receive a salary increase, which shall be the greater of the following:

(a) Fifteen (15) percent above current salary; ~~[or]~~

(b) The minimum of the grade assigned to the health officer; or

(c) Three (3) percent per grade not to exceed midpoint of grade.

Section 3. Removal of a Health Officer or Health Department Director in the Unclassified Service. (1) Except as provided for in Section 2 (3) and (4) of this administrative regulation, if a health officer ~~and~~~~[or]~~ health department director in the unclassified services is removed by the board of health or the department, he shall be notified in writing, and within fourteen (14) days may make a written request for a pre-termination conference.

(2) If no request for a pre-termination conference is made, the removal shall become effective upon the expiration of fourteen (14) days.

(3) If a request for a pre-termination conference is made, the pre-termination conference shall be held at the office of the agency within fourteen (14) calendar days after the request is received by the board of health of the agency.

(4) The health officer or director of health shall not be removed until the pre-termination conference has been held and a decision rendered by the board of health of the agency and the department.

(5) Upon termination of employment, an employee who was

promoted to the health officer or health department director position may revert to the position from which he was promoted or may be considered for a vacant position for which he qualifies in the agency. The employee shall have had at least five (5) years of continuous service with the agency prior to the promotion to be considered for reversion. The reversion shall be subject to the approval of the board of health of the agency.

(6) An employee originally appointed to the health officer or health department director position shall not be reverted to a position in the classified service unless he qualifies.

WILLIAM D. HACKER, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 at 4 p.m.

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Public Health Protection and Safety**  
**(As Amended at ARRS, February 14, 2011)**

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

RELATES TO: KRS 217C.010-217C.990

STATUTORY AUTHORITY: KRS 194A.050, 211.090, 217C.040~~[-217C.040]~~~~[-EO 2004-726]~~

NECESSITY, FUNCTION, AND CONFORMITY:~~[EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.]~~ KRS 217C.040 requires the cabinet to promulgate administrative regulations concerning the production, transportation, processing, handling, sampling, examination, grading, sale and such other matters relating to Grade A milk and milk products as may be necessary to protect the public health. This administrative regulation establishes uniform permit requirements and sanitary standards for Grade A milk producers, processors, handlers and distributors, Grade A dry and condensed milk, Grade A dry and condensed whey, and the fabrication of single-service containers and closures for milk and milk products.

Section 1. Grade A Milk and Milk Products. The permit ~~[requirements]~~, sanitary, and quality requirements for the production, processing, handling, and distribution of Grade A milk and milk products shall be the same as the requirements established in the ~~[publication entitled,]~~ "Grade A Pasteurized Milk Ordinance", 2009 edition, published by~~[2003]~~ ~~[recommendations of]~~ the United States Public Health Service/Food and Drug Administration.

Section 2. Incorporation by Reference. (1) "Grade A Pasteurized Milk Ordinance", 2009 edition,~~[(2003 edition)]~~ is incorporated by reference. ~~[(a) "Grade A Pasteurized Milk Ordinance", (2003 edition).]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. ~~[(a) Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.]~~

WILLIAM D. HACKER, Commissioner

JANIE MILLER, Secretary

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CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Medical Management  
(As Amended at ARRS, February 14, 2011)

**907 KAR 3:215. Tobacco cessation coverage and reimbursement.**

RELATES TO: KRS 205.520(3), 205.560(1)(j), 42 U.S.C. 1396r-8(d)

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. KRS 205.560(1)(j) authorizes the department to cover smoking cessation treatment interventions or programs. 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)(~~(9)~~) "Supervising physician" is defined by KRS 311.840(4).

(11)(~~(10)~~) "Tobacco cessation medication~~[product]~~" means:

(a) Nicotine replacement therapy:

1.(~~(a)~~) Gum;

2.(~~(b)~~) Lozenge;

3.(~~(c)~~) Patch;

4.(~~(d)~~) Inhaler; or

5.(~~(e)~~) Spray; or

(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:

1.(~~(a)~~) 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;

4. 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) A provider and recipient shall:

1. Choose one (1) of the following tobacco cessation programs for the recipient:

a. The Cooper/Clayton Method;

b. Freedom from Smoking® Online;

c. Kentucky's Tobacco Quitline;

d. GetQUIT Plan;

e. <http://www.becomeanex.org>;

f. <http://mylastdip.com>;

g. <https://positivelysmokefree.org/cgi-bin/WebObjects/PSFs>; or

h. Another program designed to offer support for tobacco cessation;

2. Determine that the recipient does not require a support program; or

3. Determine that a hardship exists that prevents the recipient from accessing a tobacco cessation support program.

(c) The provider shall denote on the Tobacco Cessation Referral Form the decision made by the provider and recipient pursuant to paragraph (b) of this subsection~~[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~~

~~(e) 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 shall [to] reimburse for a refill of a medication referenced in subsection (1)[(2)] of this section for a recipient if the requirements established in this subsection are met.[:]

(a) For a recipient who is not participating in a tobacco cessation program:

- 1. The department shall have received, from the provider or the recipient, a completed Tobacco Cessation Referral Form corresponding to the recipient's assessment; and
- 2. The recipient shall have contacted the department and requested the refill.[:or]

(b) For a recipient who is participating in a tobacco cessation program:

- 1. The department shall have received, from the provider or the 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.]~~

~~(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) The department shall reimburse for a tobacco cessation medication

provided to a recipient if:

(a) The medication is:

1. Medically necessary;

2. Approved by the FDA for tobacco cessation;

3. Prescribed for the recipient in accordance with Section 4 of this administrative regulation; and

4. If subject to prior authorization, prior authorized by the department; and

(b) For a refill, the recipient has met the requirements established in Section 4(2) of this administrative regulation ~~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 4[2] 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 nicotine replacement therapy that consists of] no more than two (2) simultaneous 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 **not** impose ~~ne~~ cost sharing for any tobacco cessation medication **prescribed for tobacco cessation purposes and** 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.

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Section 10. Incorporation by Reference. (1) The "Tobacco Cessation Referral Form", ~~January 2011~~~~December~~ [July] [2010] edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and is also available at <http://www.chfs.ky.gov/dms/incorporated.htm>~~The material referenced in subsection (1) of this section is available at:~~

~~(a) <http://www.chfs.ky.gov/dms/incorporated.htm>; 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.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Aging and Independent Living**  
**Division of Quality Living**  
**(As Amended at ARRS, February 14, 2011)**

**910 KAR 1:190. Nutrition program for older persons**~~[the elderly].~~

RELATES TO: KRS 205.201, 205.203, 205.455(4), 205.460,~~[~~ 205.465, 209A.030, 310.005, 310.021, 310.031~~]~~ 902 KAR 45:005, 42 U.S.C. 3018, 3025, 3030a to 3030g-22~~[3004 et seq.]~~

STATUTORY AUTHORITY: KRS 194A.050~~(1)~~, 205.204~~(1)~~, ~~(2)~~, 42 U.S.C. 3030e

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 3030e~~[U.S.C. 3004 et seq., the Older Americans Act of 1965, as amended,]~~ authorizes grants to states under approved state plans to establish and operate a nutrition program~~[to provide assistance in the development of new or improved programs]~~ for older persons. KRS 194A.050~~(1)~~ authorizes the Cabinet for Health and Family Services to promulgate administrative~~adopt~~ regulations as necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds. KRS 205.204~~(1) and (2)~~ designates the cabinet ~~[for Health Services]~~ as the state agency to administer the Older Americans Act in Kentucky and authorizes the cabinet to promulgate ~~[such]~~ administrative regulations ~~[as are]~~ necessary to comply with any requirement imposed or required by federal law. ~~[The function of]~~ This administrative regulation sets~~[is to set]~~ forth the standards of operation for the nutrition program for older persons~~[as implemented by the area agencies on aging. This administrative regulation is promulgated to comply with the statutory requirement of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter. This administrative regulation contains the substance of 905 KAR 8:030 which is repealed].~~

Section 1. Definitions. (1) "Area Agencies on Aging and Independent Living" or "AAAIL" means~~"Acceptable brands list"~~ means a listing of food brands which have been tested and approved by the State Food Committee, Cabinet for Finance and Administration, Division of Purchases.

(2) "Agency" means the area agency on aging; an entity designated by the state to administer, at the local level, the programs funded by the Older Americans Act of 1965, as amended.

(2) "Area plan" means the plan that:

(a) Is submitted by a district for the approval of the department; and

(b) [which] Releases funds under contract for the delivery of services within the planning and service area.

(3) "Central kitchen" means an institutional kitchen which is equipped and used for preparing food to be sent to meal sites for service~~[(3) "Area development district" means any of fifteen (15)~~

~~regional planning and development agencies with which the Office of Aging Services contracts for the local delivery of aging services].~~

(4) "Certified nutritionist" is defined by KRS 310.005 and KRS 310.031.

(5) "Congregate meal" means a meal provided to a qualified individual in a congregate or group setting.

(6) "Congregate nutrition services" means the provision of meals and related nutrition services in a group setting to older individuals that include:

(a) Nutrition education;

(b) Nutrition assessment;

(c) Nutrition counseling;

(d) Nutrition screening;

(e) Opportunities for social engagement at senior centers or on field trips; and

(f) Volunteer roles that contribute to overall health and well-being.

(7)~~(6)~~ "Cycle menu" means a menu planned for at least five (5) weeks and repeated with modification for seasonal menu items.

(8)~~(7)~~ "Department" means the Department for Aging and Independent Living.

(9) "Dietary reference intakes" means the nutritional requirements:

(a) Established by the Food and Nutrition Board of the Institute of Medicine of the National Academies; and

(b) Included in DAIL-NP-17.9.8, Meal Planning Nutrient Requirements.

(10)~~(9)~~ "District" is defined by KRS 205.455(4).

(11)~~(10)~~ [means one who has completed a master's degree in food science, nutrition or a closely related field and has a minimum of twelve (12) semester hours of graduate credit in nutrition from an accredited college or university.

(5) "Chilled food system" means any system of food production which results in the partial or complete cooking of a prepared product which is then chilled, maintained at refrigeration temperatures and reheated before service.

(6) "Dietitian" means one who has met the training and education requirements for membership in the American Dietetic Association, including a master's degree or advanced training in addition to an undergraduate degree in dietetics, food and nutrition, or institutional management.

(7) "District nutrition program" means the program approved by the department~~[office]~~ and administered in each of the fifteen (15) planning and service areas in Kentucky by the ~~[area development]~~ districts or other contract agencies.

(12) "Home delivered meal" means a meal provided to a qualified individual in his or her place of residence.

(13)~~(14)~~ "Home delivered nutrition services" means the provision of meals and related nutrition services to older individuals who are homebound that include:

(a) Nutrition screening;

(b) Nutrition education;

(c) Nutrition assessment; and

(d) Nutrition counseling.

(14)~~(14)~~ "Licensed dietitian" is defined by KRS 310.005~~(11) [and 310.021].~~

(15) "Meal" means a portion of food that:

(a) Consists of a minimum of five (5) dissimilar components;

(b) Provides the equivalent of one-third (1/3) of the dietary reference intakes;

(c) Meets the requirements of the Dietary Guidelines for Americans; and

(d) Is served with optional condiments to complete the meal as approved by the licensed dietitian or certified nutritionist.

(16)~~(12)~~ [The district program shall include meals or nutrition services funded by the:

(a) Older Americans Act of 1965;

(b) United States Department of Agriculture;

(c) Homecare program;

(d) Adult day care program;

(e) Adult day health care program;

(f) Alzheimer's respite program; or

(g) Other funds designated in the approved plan.

(8) ["Meal" means a portion of food consisting of a minimum of:

(a) Five (5) dissimilar components;

(b) Three (3) cups total volume; and

(c) The equivalent of one-third (1/3) of the dietary reference intakes[daily recommended dietary allowances] [as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy; and

(c) The Dietary Guidelines for Americans, published by the Secretary of Health and Human Services and the Secretary of Agriculture.

(13) "Modified atmosphere packaging" means the method of extending the shelf life of fresh food products where the atmospheric air inside a package is replaced with a protective gas mix that helps ensure the product stays fresh for as long as possible.

(17) "Nontraditional meal" means a meal approved by the department that is cold, frozen, dried, canned, or modified atmosphere packaging.

(18)(14) "Nontraditional meal" means a type of home delivered meal, except a hot meal, delivered daily to a participant.

(16) "Nutrition counseling" means individualized guidance:

(a) To an individual who is at nutritional risk because of the individual's health or nutritional history, dietary intake, chronic illness, medications use, or to caregivers; and

(b) Provided one-on-one by a licensed dietitian[registered dietitian] to address options and methods for improving the individual's nutrition status.

(19)(16) "Nutrition screening" means the identification of those at risk of poor nutrition in accordance with Section 9 of this administrative regulation.

(20) "Nutrition service provider" means an entity that is awarded a contract under the area plan to provide nutrition services covered under this administrative regulation.

(21)(17) "Nutrition Services Incentive Program" or "NSIP" means federally provided incentives to encourage and reward effective performance by states in the efficient delivery of nutrition meals to older individuals.

(22)(18) [of Sciences – National Research Council.

(9) ["Nutrition service provider" means an entity that is awarded a contract under the area plan to provide nutrition services covered under this administrative regulation.

(19)(19) "OAA" means the Older Americans Act of 1965, as amended, with the relevant portions of the federal law for purposes of this program codified as 42 U.S.C. 3030a to 3030g-22.

(23)(20)(11) "Office" means the Office of Aging Services, Cabinet for Health Services.

(12) "Registered dietitian" means one who has successfully completed a standard competency test administered by the American Dietetic Association.

(13) "Standardized recipe" means a written formula for producing food items of a consistent quality and quantity that specifies the yield and portion size adjusted for the requirements of the nutrition program for older persons.

(24)(21) "State nutrition program for older persons" means the nutrition program administered by the department that includes:

(a) Meals;

(b) Nutrition screening and education; and

(c) Nutrition assessment and counseling.

Section 2. Eligibility. (1) Except as provided in subsection (2) of this section, an individual shall be eligible for congregate meals and congregate nutrition services if the individual:

(a) Is aged sixty (60) or older;

(b) Is the spouse of an individual aged sixty (60) or older; or

(c) Eligibility for Title III congregate meal services shall be based on the following criteria:

(a) An individual who is aged sixty (60) or older; or

(b) Who is under age sixty (60), if the individual:

1. Is the spouse of the individual that is specified in subsection (1)(a) of this section; or

2. Has a disability and resides at home with the eligible older individual.

(2) The AAAIL may, in accordance with 42 U.S.C. 3030g-21(2)(H), (I), provide a congregate meal to:

(a) A volunteer providing services during meal hours; or

(b) An individual under age sixty (60) who:

1. Has a disability; and

2. Resides in a housing facility primarily occupied by older individuals at which congregate nutrition services are provided.

(3) An individual shall be eligible for home-delivered meals and home-delivered nutrition services if the individual:

(a) 1. Is a person aged sixty (60) or over, or the spouse of a person aged sixty (60) or over;

2. Is unable to attend a congregate site because of illness or an incapacitating disability; and

3. Does not have a person in the home able to prepare a nutritious meal on a regular basis; or

(b) 1. Is under age sixty (60);

2. Has a disability; and

3. Resides with a homebound individual aged sixty (60) or over. Eligibility for Title III home-delivered meals shall be based on the following criteria:

(a) A person aged sixty (60) or over and the spouse of that person, if:

1. Either is, by reason of illness or incapacitating disability, unable to attend a congregate site; and

2. There is no person in the home able to prepare a nutritious meal on a regular basis; or

(b) An individual who is under age sixty (60) with a disability and resides with a homebound older individual.

(4) Eligibility for the Homecare Program home-delivered meals shall be in accordance with 910 KAR 1:180.

Section 3. District Nutrition Funding. The district nutrition program may include meals or nutrition services from the following funding sources:

(1) Congregate or home delivered meals funded by the OAA;

(2) Home delivered meals as specified in 910 KAR 1:180 funded by the State Homecare Program;

(3) A congregate meal as specified in 910 KAR 1:160 funded by the State Adult Day and Alzheimer's Respite Program;

(4) NSIP funding for expansion of meals served in the state; or

(5) Other funds designated in the AAAIL's approved area plan such as United Way or other local funding.

Section 4. Congregate Nutrition Services[Program]. Congregate meals shall be provided by a nutrition service provider who, five (5) or more days per week within the nutrition service provider's service and planning area[in each county], provides at least one (1) hot or nontraditional[other appropriate] meal per day and any additional meals which the nutrition service provider[recipient of a grant or contract] may elect to provide in a congregate setting pursuant to 42 U.S.C. 3030(e).

(1) The [following] requirements established in this subsection shall apply to the transportation of meals to a congregate site.:

(a) [An insulated container shall be used for bulk food delivery.

(b) 1. Bulk foods shall be transported in a stainless steel pan or aluminum disposable pan in an insulated container.

2. Use of plastic shall be restricted to cold foods only.

(b) [e] 1. Hot items shall be transported in a bulk container separated from cold products.

2. A container shall be preheated or prechilled before being loaded.

(2) The order of service shall be as established in this subsection.[follows:]

(a) Congregate meals shall be served after packaging the home delivered meals.

(b) Nutritional site personnel shall check and record temperatures of congregate meals daily.

(c) Milk and other cold food items shall not be preset on a table prior to meal service.

(d) A table shall not be preset with eating or drinking utensils more than four (4) hours prior to meal service unless each item is individually wrapped.

(e) A preset table shall not be used for activities prior to meal

service.

(f) After all participants have been served, volunteers and other staff may be served.

(g) Food items left over at the point of service shall be:

1. ~~May be~~ offered as seconds to a participant, if requested by the participant and after all have been served; or

2. ~~or shall be~~ Discarded.

(3)(a) Only complete meals shall be claimed for payment.

(b) Omission of required meal components shall cause that meal to be incomplete and ineligible for payment and for USDA reimbursement.

(c) Refusal by a participant of specific meal components shall not render that meal incomplete.

(4) ~~Each center's~~ **Center** carry-out policy shall:

(a) **Prohibit the carryout of potentially hazardous foods in accordance with 902 KAR 45:005**~~Discourage the carry out of food items with particular emphasis on potentially hazardous foods in accordance with 902 KAR 45:005~~;

(b) Assure a participant is advised concerning the risks involved if foods are held at unsafe temperatures; and

(c) Assure staff or volunteers shall not ~~to~~ devote time or supplies to the task of packaging individual menu items as carry-outs for participants or staff.

(5) A center shall not provide carry out of unserved or left over meals.

(6) A participant shall have an opportunity to **complete a satisfaction survey developed by the nutrition service provider to evaluate meals and service at least annually.**

(7)(a) An ongoing participant nutrition education program shall be implemented by the nutrition service provider or AAAIL and include at a minimum one (1) session per month at each nutrition site.

(b) The education program shall include a variety of teaching methods on the following topics:

1. Nutrition and its relevance to health promotion and disease prevention;

2. Consumer approaches to food safety and food purchasing;

3. Food fads and diets;

4. Physical activity; and

5. Activities to modify behavior and improve health literacy, including providing information and optimal nutrients.

#### Section 5. Home Delivered Nutrition ~~Services~~**Program**.

Home delivered meals shall be provided by a nutrition service provider who, five (5) or more days a week, provides at least one (1) home delivered hot **or nontraditional**~~cold, frozen, dried, canned, modified atmosphere packaging or supplemental foods~~ meal per day and any additional meals which the **nutrition service provider**~~recipient of a grant or contract~~ may elect to provide.

(1)(a) **Except as provided in paragraph (b) of this subsection**, a meal shall be delivered only to an eligible person in the eligible person's home.

(b) A meal may be left with a designee of the older person ~~if provided~~ the designee has been informed of the requirements of the nutrition program and has indicated a willingness to comply with those requirements.

~~(2)(a) Non-traditional meals shall not be used in the home delivered meals program without prior approval of the department dietitian.~~

~~(b)~~ Documentation for the provision of non-traditional meals shall show:

~~(a)~~1- The participant has expressed a preference for the non-traditional meals or lives off an established route;

~~(b)~~2- Proper storage and heating facilities are available in the home;

~~(c)~~3- The participant is able to prepare and consume the meal alone or with available assistance; and

~~(d)~~4- Cost is no more than a traditional meal.

(3)(a) A provider of home delivered meals shall use methods of delivery that shall prevent outside contamination and hold food at appropriate temperatures as specified in paragraph (b) of this subsection.

(b) **Meals shall be delivered in accordance with the requirements established in this paragraph.**~~Delivery of meals~~

~~shall meet the following criteria:~~

1. Delivery routes shall be **established by the nutrition service provider**~~kept as short as possible~~ to minimize nutrient loss and to facilitate temperature retention.

2. ~~Unless an exception is approved by the department,~~ Meals shall be delivered within three (3) hours from the end of preparation to the final destination, **unless a waiver is approved by the licensed dietitian or certified nutritionist to alleviate a temporary problem meeting this deadline.**

3. ~~Nutrition site personnel shall check and record temperatures of meals at least weekly toward the end of each meal delivery route and, if temperature retention problems are found, daily checks of temperatures shall be made until the problem is corrected.~~

4-1 Hot food shall be maintained at or above 135 degrees Fahrenheit.

4.15-1 Cold food shall be maintained at or below forty-one (41) degrees Fahrenheit, and ice may be used if the food containers are constructed to prevent water seepage into the food.

**5. Nutrition site personnel shall check and record temperatures of meals at least weekly toward the end of each meal delivery route. If the temperatures are not consistent with the requirements of subparagraphs 3. and 4. of this paragraph, the nutrition site personnel shall check and record the meal temperatures daily until the temperatures are consistent with those requirements.**

6. Neutral temperature foods shall be packaged and delivered in a way as to prevent outside contamination.

7.a. Frozen meals shall be maintained in a frozen state during delivery.

b. If the meal has thawed to the extent that ice crystals are not contained in the meal **or the temperature is above forty (40) degrees Fahrenheit**, the meal shall not be refrozen for later use. **The meal shall be either:**

**(i) Heated and consumed immediately; or**

**(ii) Discarded.**~~[e. A thawed meal may be held for a brief period provided the temperature is at or below forty-one (41) degrees Fahrenheit or heated and consumed immediately.]~~

(4) A participant shall have an opportunity to:

**(a) Complete a satisfaction survey developed by the nutrition service provider to evaluate meals and services at least annually; and**

**(b) Provide ongoing comments for preparation of menus.**

(5)(a) An ongoing **participant** nutrition education program shall be implemented by the nutrition service provider and shall include a minimum of one (1) session each month for the home delivered meal participant.

(b) The program shall include nutrition training as specified in Section 4(7)(b) of this administrative regulation.

(6) A nutrition service provider shall have a contingency plan in place to replace a meal if the meal:

(a) Does not register the correct temperature on delivery; or

(b) Is not delivered.

#### Section 6. Emergency Meals.

(1) Provisions shall be made for furnishing emergency meals during inclement weather conditions, power failure, or any disaster that may cause isolation or create a special need.

**(2) An emergency meal shall:**

**(a) Be shelf stable, frozen, freeze-dried, dehydrated, modified atmosphere packaging, or a combination of these types of meals;**

**(b) Meet the nutritional requirements of this program;**

**(c) Follow a menu that has been:**

**1. Approved by the agency nutrition service provider dietitian; and**

**2. Planned for a minimum of three (3) days; and**

**(d) Use frozen meals**~~Meals may be shelf stable, frozen, freeze-dried, dehydrated, modified atmosphere packaging, or a combination of these provided the meals meet the nutritional requirements of the program and menus have been approved by the agency nutrition service provider dietitian. Additional criteria shall include:~~

**(a) Menus shall be planned for a minimum of three (3) days;**

and

~~(b) Frozen meals shall be used~~ only if the:

1. Participant is able to store, prepare, and consume the meal alone or with available assistance; and

2. Delivery system is arranged so that storage time after delivery is minimal.

(3) Water shall be provided if necessary to prepare a meal.

(4) The menu plan shall include some foods which require no cooking prior to consumption.

(5) One (1) dish meals may be used ~~if provided~~ the nutritional requirements of the Dietary Guidelines of Americans ~~published by the Secretary of Health and Human Services and the Secretary of Agriculture~~ are met.

(6)(a) Foods may be taken to the nutrition site.

(b) A participant may assist with packaging foods for distribution if the participant is a volunteer at the nutrition site.

(7) An emergency meal package shall be distributed to the eligible homebound client receiving home delivered meals.

(8) Emergency meals may be used for a congregate participant if the center is closed.

(9) For reporting purposes, meals shall be counted by a senior center during the quarter of distribution.

Section 7. Nutrition Services Incentive Program (NSIP). (1) ~~NSIP provides~~ Additional funding **received from the NSIP** for the nutrition program ~~shall be~~ be used exclusively to purchase food and shall not be used to pay for ~~another~~ **other** nutrition-related service or for state or agency administrative costs.

(2) The department shall disburse NSIP monies to AAAILs based upon the AAAIL's proportion of the total number of eligible meals served in the state.

(3) The AAAIL shall:

(a) Expend NSIP monies within the **fiscal** year funds are allocated by the department;

(b) Use the NSIP funds to expand the total number of meals provided in the state;

(c) Not use the NSIP funds to reduce funds from any other grant or contract which the provider may be given;

(d) Maintain records to show the amount of cash received and how it was expended;

(e) Only use the NSIP funds to purchase:

1. Foods approved by the United States Department of Health and Human Services and other foods produced in the United States of America;

2. ~~Meals if purchase meals provided~~ the cost of the meal is quoted as a unit of service cost which includes both food and labor. Ready to serve meals may be purchased on a unit of service cost basis provided each meal contains food equivalent in value to the current rate of reimbursement; and

(f) Serve meals through a nutrition service provider under the jurisdiction, control, management, and audit authority of the department and AAAIL and to eligible individuals as described in Section 2 of this administrative regulation.

(4) Financial records kept by the nutrition service provider shall show:

(a) Meals provided are bid without regard to NSIP reimbursement;

(b) NSIP funds are used as a revenue source for expansion of meals served in the state;

(c) The unit of service cost of a meal is not reduced in anticipation of future NSIP reimbursement but is stated as a true cost in both bidding and reporting procedures; and

(d) Monthly financial reports reflect NSIP expenditures.

(5) NSIP funding shall not be used for the following situations:

(a) Meals served to individuals, guests, or staff less than sixty (60) years of age;

(b) Meals served to a person who is paying a set fee for the meal;

(c) Meals that are served to consumers that meet income eligibility criteria under other programs;

(d) Meals used as a non-federal match for other federal program funding;

(e) Alcoholic beverages and vitamin supplements ~~not allowed under the nutrition program of Guidelines for Americans published~~

~~by the Secretary of Health and Human Services and the Secretary of Agriculture~~;

(f) Sponsored meals if a set fee or charge is involved; or

(g) Meals served to individuals in nursing homes, adult day care, or assisted living facilities ~~if where~~ the meal is a part of the per diem.

Section 8. Nutrition Program Costs. (1) Ready-to-serve meal costs shall include the following:

(a) The cost of raw food, including food purchased with NSIP cash resources;

(b) The costs of serving supplies, disposables, cleaning materials, and noncapital items used in the preparation of food;

(c) The costs of labor for food preparation, cooking, portioning of foods, and delivery of food to the site of service. Labor costs shall include:

1. Fringe benefits;

2. Wages for persons who prepare and maintain the sanitary condition of the kitchen and storage areas; and

3. Wages paid for time spent in food and supplies inventorying, storing and receiving, and in direct supervision of employees;

(d) Equipment costs for capital items such as a:

1. Range;

2. Dishwasher;

3. Truck or van;

4. Steam table; or

5. Freezer;

(e) The costs of space, related utility costs, equipment operation, maintenance and repair costs; and

(f) The nonlabor costs of transporting food, food storage, insurance, and general liability.

(2) Food service and delivery costs shall include:

(a) The total labor costs for serving foods and for home delivery of meals to a participant;

(b) Mileage and maintenance of vehicle costs for home delivery of meals;

(c) Costs incurred for nutrition education and nutrition outreach services; **and**

(d) Project management costs, including personnel, equipment, and supply costs; ~~and~~

~~(e) Other general expenses related to overall program management~~;

(3)(a) A food service contract bid shall be structured in accordance with Kentucky's Procurement Code, **KRS Chapter 45A**.

(b) Meals shall ~~be~~:

1. Be bid without regard to funding source; and

2. Contain both a **meal preparation cost** and a **delivery** ~~ready to serve cost and a served/delivered~~ cost.

Section 9. Responsibilities of AAAIL. (1) An AAAIL shall have **written** policies and procedures to carry out the AAAIL's responsibilities **as established in this subsection. The AAAIL shall follow**:

(a) Solicit the expertise of a dietitian or other individual with equivalent education and training in nutrition science or an individual with comparable expertise in the planning of nutritional **services** pursuant to 42 U.S.C. 3030g-21(1);

(b) Pursuant to 42 U.S.C. 3030g-21(2)(K), encourage individuals who distribute nutrition services to provide homebound older individuals with medical information approved by health care professionals, such as informational brochures ~~in the individual's community~~ on how to get vaccines **in the individual's community** ~~including vaccines~~ for:

1. Influenza;

2. Pneumonia; and

3. Shingles; ~~and~~

(c) Provide implementation and management of the state nutrition program for older persons;

(d) Assure that a nutrition service provider provides:

1. At least one (1) meal per day in a congregate nutrition site or provide home delivered meals based upon a determination of a participant's needs;

2. **Meals to reach the maximum number of eligible older individuals consistent with the requirement established in 42**



U.S.C. 3025(a)(2)(E) That the maximum number of eligible older individuals, with emphasis on the frail, those with greatest social and economic need, and the isolated, have the opportunity to participate];

3. Nutrition screening and counseling and nutrition education services to address a participant's assessed needs and ensure that nutrition funds are used to provide these services. **Nutrition screening shall be provided for all participants of the nutrition program for older persons as outlined in the state data system at least annually. The results of this screening shall be reported to the department;**

4. Nutrition services to keep older persons healthy, reduce the older adult's risk of chronic disease and disability, and help the older adult to manage chronic diseases and conditions;

5. An emergency plan for back up food preparation sites, nutrition sites, and meal delivery; and

6. A plan for furnishing emergency meals during an emergency, such [emergencies] as:

a. Inclement weather conditions;

b. Power failure;

c. A disaster that may cause isolation; or

d. A medical emergency;

(e) Use meal contributions to increase the number of meals served and facilitate access to these meals; and

(f) Monitor the nutrition program a minimum of twelve (12) times per year to evaluate compliance with nutrition program policies and central kitchens a minimum of one (1) time per year.

(2) If the AAAIL is the provider of meals and services, the AAAIL shall comply with all responsibilities of the nutrition service provider as specified in Section 10 of this administrative regulation.

Section 10. [(14)] "State nutrition program for the elderly" means the nutrition program administered by the office and shall include meals or nutrition services funded as designated in subsection (6) of this section.

[(15)] "USDA" means the United States Department of Agriculture.

Section 2.] Responsibilities of Nutrition Service Providers. (1) The nutrition service provider contracting to provide meals and services shall have **written** policies and procedures to carry out the responsibilities of the service provider as **established in this subsection. The nutrition service provider shall**[follows]:

(a) Provide the **AAAIL using the state data system**[agency] with statistical and other information necessary for state reporting requirements **established in KRS 205.465 and federal reporting requirements established in 42 U.S.C. 3018;**

(b) Provide a recipient[recipients] with an opportunity to voluntarily contribute to the cost of the service, **Pursuant to 42 U.S.C. 3030c-2(b), voluntary contributions:**

**1. May be solicited in the method of solicitation is non-coercive; and**

**2. Shall be encouraged for an individual whose self-declared income is at or above 185 percent of the federal poverty level, at contribution levels based on the actual cost of the service**[Voluntary contributions shall be allowed and solicited, if the method of solicitation is non-coercive, and encouraged for an individual whose self-declared income is at or above 185 percent of the federal poverty level at contribution levels based on the actual cost of the service in accordance with 42 U.S.C. 3030c-2(b)];

(c) Assure that an older person shall not be denied service because **the older person**[he] does not or cannot contribute to the cost of the service;

(d) Protect the privacy of each older person with respect to contributions;

(e) ~~Use meal contributions to increase the number of meals served, and to facilitate access to these meals;~~

(f) Report to appropriate officials, such as Department for Community Based Services, EMS, local law enforcement, for follow-up, conditions or circumstances which place the older person or his household in imminent danger;

(g) ~~If feasible and appropriate,~~ Make arrangements for services to older persons in weather-related emergencies;

(g) Assist a participant with access to (h) Assist participants in

taking advantage of] benefits under other programs;

(h) Employ staff to ensure that the service staff is based on the number of program participants and the type of services provided;

(i) ~~Employ adequate numbers of qualified staff to ensure satisfactory conduct of the service;~~

(j) Have a site director, on a paid or volunteer basis, responsible for activities at the site.[-]

1. **Congregate and home delivered meals funds shall pay up to**[AAA Title III-C funds may pay] a maximum of five (5) hours, **per day**, of the site director's time[If OAA Title III-C funds are utilized the maximum paid hours per day shall be five (5)]; and

2. **Other funding sources**[OAA Title III-B or other funds] may be used to pay for additional hours;

(i) [(h)] Permit staff of the AAAIL[agency or] the cabinet, and federal representatives to monitor and inspect the operation of the site; and

(k) [(4)] Attend meetings **and training sessions as requested**[scheduled] by the AAAIL and the department[agency and the office].

(2) The service provider contracting to provide meals only shall:

(a) Provide the **AAAIL using the state data system**[contracting agency] with statistical and other information necessary for state reporting requirements **established in KRS 205.465 and federal reporting requirements established in 42 U.S.C. 3018; and**

(b) Abide by the requirements of subsection (1)(i) through (k) of this section.

Section 11. [(b)] ~~Employ adequate numbers of qualified staff to ensure satisfactory conduct of the service;~~

(c) Permit staff of the nutrition service provider, the agency, the Cabinet for Health Services and federal representatives to monitor and inspect the operation; and

(d) Attend meetings scheduled by the agency and the office.

Section 3. Eligibility. (1) Eligibility for congregate meals shall be based on the following criteria:

(a) A person aged sixty (60) or older and the spouse of that person;

(b) Volunteers to handicapped persons residing in elderly housing complexes where a congregate site is located;

(c) Disabled individuals who reside in noninstitutional households with and accompany persons eligible for congregate meals; and

(d) Clients in adult day care, adult day health care, and Alzheimer's respite programs.

(2) Eligibility for home-delivered meals shall be based on the following criteria:

(a) A person aged sixty (60) or over and the spouse of that person, if:

1. Either is, by reason of illness or incapacitating disability, unable to attend a congregate site; and

2. There is no one in the home able to prepare a nutritious meal on a regular basis; or

(b) A nonelderly disabled person who is a member of a noninstitutional household with an elderly person.

Section 4.] Meal Planning. Nutrient dense meals shall be planned using preparation and delivery methods that preserve the nutritional value of foods. The use of saturated fats, salt and sugar shall be restricted to maintain good health, **in accordance with the dietary reference intakes and the Dietary Guidelines for Americans.**

(1) Menus shall be:

(a) Planned through a formal procedure for soliciting participant comments[with suggestions from participants. A formal procedure shall be] established in each district;

(b) Planned a minimum of one (1) month in advance or, if a cycle menu is planned, **used**[use] at least for five (5) weeks;

(c) In compliance with the **[most recent]** Dietary Guidelines for Americans[, published by the Secretary of Health and Human Services and the Secretary of Agriculture].

(d) Provided to each participating older individual and shall

include a meal plan to provide:

1. A minimum of thirty-three and one-third (33 1/3) percent of the allowances established in the dietary reference intakes, if the individual is provided~~(established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences if the project provides)~~ one (1) meal per day, pursuant to 42 U.S.C. 3030g-21(2)(A)(ii)(I);

2. A minimum of sixty-six and two-third (66 2/3) percent of the allowances established in the dietary reference intakes, if the individual is provided~~(if the project provides)~~ two (2) meals per day, pursuant to 42 U.S.C. 3030g-21(2)(A) (ii)(II); or~~and~~

3. One hundred (100) percent of the allowances established in the dietary reference intakes, if the individual is provided~~(if the project provides)~~ three (3) meals per day, pursuant to 42 U.S.C. 3030g-21(2)(A)(ii)(III);

(e) Altered to meet participant dietary needs such as low sugar, low salt, low fat, or low cholesterol;

(f) Certified by the licensed dietitian or certified nutritionist as meeting the nutritional requirements;

(g) Adhered to without substitution, unless a substitution is approved by the licensed dietitian or certified nutritionist. Is a substitution is approved, the nutrition service provider shall provide a copy of the revised menu to the AAAIL; and~~with minimal substitution;~~

(h)1. Provided with condiments; and

~~(b)~~ Planned on a monthly or quarterly basis using inclusive months, and prepared on menu forms which shall bear the name of the person who prepared the menu.

(c) Certified in writing as providing one-third (1/3) of the current daily recommended dietary allowances for persons fifty-one (51) years and older as established by the Food and Nutrition Board of the National Academy of Sciences—National Research Council. Certification shall be by the dietitian or certified nutritionist whose services are used by the provider.

(d) Submitted for approval to the office dietitian.

1. Two (2) copies of the menu shall be prepared:

a. The original shall be submitted to the office for approval; and  
b. One (1) copy shall be retained in the agency.

2. Copies of corrected menus shall be resubmitted to the office.

(e) Adhered to, subject to seasonal availability of food items as well as availability of USDA donated foods, if applicable. Substitution to the approved menu shall be minimal. A list shall be submitted to the office compositely each month that includes:

1. The date of substitution;  
2. The original menu item; and  
3. The substitution.

(f) Posted in a conspicuous location, including at each congregate meal site and each preparation site; or

2. Provided in advance to each participant~~[Notification of the meals to be served shall be provided to participants]~~ receiving home delivered meals.

(2)(a) Special menus which allow for religious, ethnic, cultural, or ~~[and]~~ regional dietary practices may be provided ~~if~~ when ~~foods and preparations are available.~~

~~[(b)]~~ where feasible and appropriate but are not required on an individual basis; ~~[Dietary preferences of a majority of the participants shall be reflected.]~~

(3)(a) [Therapeutic diets may be offered if practical and feasible. A written order signed by the physician shall be on file, and reviewed and reordered if a change in the condition of the participant is reported or observed, but at least annually. Therapeutic menus shall be planned and prepared under the supervision of a registered dietitian.

(4) Additional foods, such as~~like~~ fresh produce, baked items, or~~and~~ donated canned items, may be added to the meal to provide personal satisfaction and additional nutrition but shall not be considered part of the reimbursable program meal.

(b) Home-canned foods shall not be used.

(4)(a) ~~If~~ When ~~[(6)]~~ a potluck meal is served at a particular site, a~~ne~~ congregate meal shall not be served at that site for that particular mealtime.

(b) Home delivered meals shall be provided on the same basis as if the potluck meal had not been scheduled.

Section 12. Consultation Requirements. A licensed~~registered~~ dietitian or certified nutritionist shall provide an AAAIL with a minimum of four (4) hours of consultation per month including: (1) Food quality, safety, and service;

(2) Assessment of employee practices;

(3) Staff training;

(4) Menu preparation or review;

(5) Assurances that nutrition screening, assessment, and counseling is completed;

(6) Reliable nutrition education is provided to a congregate and home delivered meal participant; and

(7) Individual diet counseling.

Section 13. Food Procurement. (1) Foods purchased for use in the nutrition program shall be ~~[of good quality and]~~ obtained from sources which conform to the nutritional requirements of 902 KAR 45:005.

~~[(2)]~~ (6) Vitamin and mineral supplements shall not be provided with nutrition program funds; however, citrus juice or drinks fortified with vitamin C are recommended. Only full strength juices shall be used as one (1) of the required meal components. A fruit beverage or drink, even if fortified, shall be used in the optional beverage category.

(7) A minimum of four (4) hours of consultation per month by a registered dietitian or certified nutritionist is required. Responsibilities shall include, but are not restricted to:

(a) Evaluation of the food preparation and service operations including measurement of food temperatures and portion sizes;

(b) Assessment of food quality and employee practices;

(c) Staff training; and

(d) Menu preparation or review.

(8) Individual diet counseling with participants shall only be provided by a dietitian.

Section 5. Meal Components. Meal component standards shall be as follows:

(1) The meat or meat alternate requirement shall be three (3) ounces of cooked edible portion of meat, fish or poultry with each meal. A three (3) ounce equivalent of meat alternate (nonmeat protein source) may be used to fulfill the requirement. Additional requirements include:

(a) Breeding shall be in addition to the three (3) ounce requirement;

(b) The use of cured and processed meat items shall be limited to one (1) time per week due to their high sodium content;

(c) The use of meat extender items shall be limited to a maximum of twice per week to minimize portion control problems;

(d) Cold entrees may be used during the hot months but shall not be used in the winter.

(2) The vegetable and fruit requirement shall be a minimum of two (2) one-half (1/2) cup servings or three (3) one-third (1/3) cup servings of a fruit or vegetable, or full strength fruit or vegetable juice. The following criteria shall apply:

(a) Partial strength or simulated fruit juice or drinks, even when fortified, shall only be considered optional beverages;

(b) One (1) cup portions of tossed salad shall be considered as one-half (1/2) cup servings;

(c) A rich source of vitamin A shall be included at least every other day;

(d) The vitamin C meal requirement shall not come from more than two (2) food items, which shall be designated by an asterisk on each menu; because extended heating of food diminishes vitamin C content, the C source shall be a cold item as often as possible;

(e) When fruit or fruit salad is used in place of a second vegetable, the dessert shall not be a "fruit only" item;

(f) When soup is served as one (1) of the fruit and vegetable components, juice shall not be served as the second;

(g) Starchy vegetables shall be limited to one (1) per meal, and a good balance of succulent and starchy vegetables shall be presented;

(h) A bread alternate shall be used as one (1) of the vegetable choices only if a full one-half (1/2) cup portion of fruit is used as the dessert in the same meal;



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(i) Vegetables that may be used as meat alternates shall not simultaneously fulfill both the vegetable and the protein requirement; and

(j) Fresh and frozen vegetables shall be used to the capacity that freezer and refrigerated storage shall allow. To minimize the sodium content of meals provided in the nutrition program, salt shall not be added during the cooking of canned vegetables.

(3) The bread or bread alternate requirement shall:

(a) Be one (1) serving of enriched or whole grain bread, biscuits, muffins, rolls, sandwich buns, cornbread or other hot breads with each meal;

(b) Weigh at least one (1) ounce;

(c) Furnish a minimum of two (2) grams protein; and

(d) Be one-half (1/2) cup volume for bread alternates.

(4) The butter or fortified margarine requirement shall be one (1) teaspoon per meal. The following criteria shall apply:

(a) All purchased margarine shall be from predominantly vegetable sources; special emphasis shall be placed on limiting saturated fats and cholesterol.

(b) Butter or margarine used in cooking may count toward the required amount.

(c) Condiments shall be served in place of butter or margarine:

1. On days when the bread item is used to make a sandwich; and

2. The menu shall indicate the condiment.

(5) The dessert requirement shall be one-half (1/2) cup serving and shall meet the following criteria:

(a) Fruit shall be served for dessert twice weekly, and desserts containing fruits as well as fruit only items shall be included;

(b) Fresh fruit shall be used weekly or a minimum of twice monthly;

(c) A dessert which furnishes a minimum of 100-200 milligrams of calcium shall be provided at least weekly;

(d) Ice cream, ice milk or sherbet shall be served weekly during the hot months and at least monthly thereafter, except that yogurt or puddings made with milk may be served instead of ice cream in the home-delivered meals program or in those sites not equipped with freezer storage; and

(e) Juice may be served occasionally as the dessert item but shall be accompanied by a small cookie or peanut butter cracker to provide the satiety value normally furnished by the dessert.

(6) The milk requirement shall be:

(a) One-half (1/2) pint of skim or two (2) percent milk served:

1. In an unopened, commercially filled container; or

2. From an approved bulk milk dispenser;

(b) Other choices such as fortified whole milk, buttermilk or the calcium equivalent in cheese; or

(c) A calcium alternate for the required one (1) cup fluid milk if approved by the office dietitian.

(7) Other foods or beverages may be provided according to the following criteria:

(a) Coffee, tea, decaffeinated beverages, fruit juice and fruit-flavored drinks may be offered but are not required.

(b) The service of water is required with meals; it is recommended that cups and pitchers of cold water be preset just prior to meal service in locations convenient to participants.

(c) When a full-strength citrus juice listed under other foods and beverages is to fulfill the vitamin C requirement for the meal, then it shall be so indicated with an asterisk; this designation shall require the service of this menu item to participants.

Section 6. Food Procurement. Foods purchased for use in the nutrition program shall be of good quality and shall be obtained from sources which conform to federal, state and local regulatory standards for quality, sanitation, and safety. The following requirements apply:

(1) Foods shall be purchased and received according to the acceptable brands list or the approved equal to those brands.

(2) Quantity food purchases shall be made using specifications on the current acceptable brands list.

(3) Purchases for canned, packaged and frozen foods shall, when feasible, be made quarterly.

(4) Meat products shall be ordered monthly.

(5) Fresh dairy products, bread and eggs shall be purchased

weekly.

(6) Fresh fruits and vegetables shall be purchased on a local market basis.

(7) ~~Other methods of purchasing may be used if the methods they result in the best price for the quality desired.~~

~~(3)(a)(4)~~ Use of Term contracts may be used for repetitively purchased items ~~is encouraged~~.

(b) Fixed quantity contracting shall be used ~~if when~~ definite items and quantities can be determined for future delivery dates.

Section 14. ~~Food Preparation.~~ (1)(a) Standardized recipes shall be used in food preparation and yield shall be indicated.

(b) Recipes shall specify the yield and portion size adjusted for the requirements of the nutrition program for older persons.

~~(2) the elderly.~~

(4) The standards established in this section shall apply for quality control. ~~following standards shall be established for quality control:~~

(a) Food production standards.

1. Hot foods shall be produced within eight (8) hours preceding service unless otherwise directed in the recipe.;

2. Protein foods shall be cooked completely once the cooking cycle has begun.;

3. Foods to be served cold and neutral temperature foods may be prepared earlier than the preceding eight (8) hours if so directed in the recipe.;

4. Solid and semisolid cooked foods stored under refrigeration shall be placed in containers that are no more than four (4) inches in depth.

(b) The holding time for hot foods shall not exceed three (3) hours after preparation, unless a waiver is approved by the licensed dietitian or certified nutritionist to alleviate a temporary problem meeting this deadline. ~~[A chilled food system for bulk food shall not be used; chilled food systems for individually portioned meals may be considered for approval by the office dietitian provided that the cumulative hot holding time for these meals is less than two (2) hours.~~

(c) ~~[Holding times shall be kept to an absolute minimum;~~

~~1-] but [The holding time for hot foods shall not exceed three (3) hours after preparation.~~

~~2- Exception to this requirement may be granted by the department office provided that meal quality is not compromised with extended hot holding and that appropriate temperatures are maintained.]~~

(c)(d) Temperature standards.

1. ~~[Potentially hazardous foods (protein foods) shall be cooked to heat all parts of the product to an internal temperature of at least 140 degrees Fahrenheit; minimum internal temperature shall be 165 degrees Fahrenheit for poultry and 150 degrees Fahrenheit for pork;~~

2-] Hot foods shall be packed at temperatures of at least 160 degrees Fahrenheit, and the internal temperature of hot foods to be transported shall be at least ~~135~~ 140 degrees Fahrenheit during transportation and service.

~~2-];~~

3-] Cold foods shall not exceed ~~forty-one (41)~~ forty-five (45) degrees Fahrenheit during transportation and service.

~~3-]; and~~

4-] Thermometers used to check food temperatures shall be:

a. Of metal stem-type construction;

b. Numerically scaled;

c. Accurate to plus or minus three (3) degrees Fahrenheit; and

d. Checked periodically to ensure that each thermometer is registering accurately.

~~4-5-] Food temperatures for both hot and cold items shall be checked and recorded daily at the kitchen and at the site of service.~~

(3)(a)(2) Food preparation facilities shall be in compliance with state and local fire, health, sanitation and safety regulations which apply to food service operations.

(b) A food preparation and service kitchen ~~kitchens~~ shall be inspected periodically by state and local health officials and the department ~~office~~ dietitian.

(4)(3) Standards for food handling and personal hygiene shall

be in accordance with the food service requirements of the Kentucky Food[State Food Service] Code governed by 902 KAR 45:005.

**Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:**

**(a) DAIL-NP-17.9.8, Meal Planning Nutrient Requirements, December 30, 2009; and**

**(b) Dietary Guidelines for Americans, 2010, U.S. Department of Agriculture, and U.S. Department of Health and Human Services.**

**(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.**

**(3) The Dietary Guidelines for Americans may be accessed online at [www.dietaryguidelines.gov](http://www.dietaryguidelines.gov).**

[Section 8. Congregate Meal Service. Congregate meals shall be provided by nutrition service providers who, five (5) or more days per week, provide at least one (1) hot or other appropriate meal per day and any additional meals which the recipient of a grant or contract may elect to provide in a congregate setting.

(1) The following requirements shall apply to the transportation of meals to congregate sites:

(a) Insulated containers shall be used for bulk food delivery;

(b) Bulk foods shall be transported in stainless steel pans or aluminum disposable pans. Use of plastic shall be restricted to cold foods only; and

(c) Hot items shall be transported in bulk containers separate from cold products. Containers shall be preheated or prechilled before being loaded.

(2) The following order of service shall be followed:

(a) Congregate meals shall be served after packaging the home delivered meals. Foods shall be maintained at appropriate temperatures during all phases of food service.

(b) Milk and other cold food items shall not be preset on tables prior to meal service; tables shall not be preset with eating or drinking utensils for more than four (4) hours prior to meal service unless each item is individually wrapped.

(c) After all participants have been served, volunteers and other staff may be served.

(d) Food items left over from meals may be:

1. Offered as seconds to participants after all have been served;

2. Packaged in individual trays, labeled, dated and immediately frozen for later use in the home delivered meals program;

a. Frozen meals shall be stored at zero degrees Fahrenheit or below; and

b. Distributed within two (2) weeks from the date they are packaged in the center.

3. If neither of these options is possible, the foods shall be discarded.

(3) Only complete meals shall be claimed for payment. The omission of any of the required meal components shall cause that meal to be incomplete and ineligible for payment and for USDA reimbursement. Refusal by a participant of specific meal components shall not render that meal incomplete.

(4) Center carry-out policy shall:

(a) Discourage the carry out of food items with particular emphasis on potentially hazardous foods but shall not prohibit this practice. Food items which may be taken home are those items which a participant has left from his own meal;

(b) Assure participants shall be advised concerning the risks involved when foods are held at unsafe temperatures; and

(c) Assure staff or volunteers shall not devote time or supplies to the task of packaging individual menu items as carry-outs for participants or staff.

(5) Participants shall have an opportunity to evaluate meals and service.

(6) The aging planner or representative shall monitor the food service operation a minimum of twelve (12) times per year to evaluate compliance with nutrition program policies.

(7) An ongoing nutrition education program shall be imple-

mented and may include a minimum of one (1) session each month at each nutrition site. The program shall include using a wide range of teaching techniques for a variety of topics including, but not limited to:

(a) Health promotion and disease prevention;

(b) Consumer approaches; and

(c) Food fads and diets.

~~Section 9. Home Delivered Meal Service. Home delivered meals shall be provided by nutrition service providers who, five (5) or more days a week, provide at least one (1) home delivered hot, cold, frozen, dried, canned or supplemental foods meal per day and any additional meals which the recipient of a grant or contract may elect to provide.~~

~~(1) Meals shall be delivered only to eligible persons in their homes. Meals may be left with a designee of the older person provided the designee has been informed of the requirements of the nutrition program and has indicated a willingness to comply with those requirements.~~

~~(2) Frozen meals or shelf stable meals shall not be used in the home delivered meals program without prior approval of the office dietitian. Alternatives to frozen meals shall be sought especially during the hot months for those participants who do not have fans or air conditioning and the heating of a frozen meal in the home may substantially increase the temperature of the home. Documentation for the provision of frozen or shelf stable meals shall show:~~

~~(a) The participant has expressed a preference for frozen or shelf stable meals; or~~

~~(b) The participant lives off an established route; and~~

~~(c) Proper storage and heating facilities are available in the home; and~~

~~(d) The participant is able to prepare and consume the meal alone or with available assistance.~~

~~(3) Providers of home delivered meals shall use methods of delivery that shall prevent outside contamination and hold food at appropriate temperatures. Delivery of meals shall meet the following criteria:~~

~~(a) Delivery routes shall be kept as short as possible to minimize nutrient loss and to facilitate temperature retention;~~

~~(b) Meals shall be delivered within three (3) hours from the end of preparation to the final destination, unless an exception is approved by the office;~~

~~(c) Nutrition site personnel shall check and record temperatures of meals at least weekly toward the end of the longest delivery route. When temperature retention problems are found, daily checks of temperatures shall be made until the problem is corrected;~~

~~(d) When heated delivery equipment is not available, other means to hold temperature shall be used;~~

~~(e) Eutectic plates or artificial ice shall be placed over the cold foods within the food boxes. Ice may be used if the food containers are constructed so as to prevent water seepage into the food;~~

~~(f) Neutral temperature foods shall be packaged and delivered in a way as to prevent outside contamination; and~~

~~(g) Frozen meals shall be maintained in a frozen state during delivery. When the meal has thawed to the extent that ice crystals are not contained in the meal:~~

~~1. The meal shall not be refrozen for later use; however,~~

~~2. A meal which has begun to thaw may be held for a brief period at forty-five (45) degrees Fahrenheit or below, or heated and consumed immediately.~~

~~(4) The aging planner or representative shall monitor the food service operation a minimum of twelve (12) times per year to evaluate compliance with nutrition program policy.~~

~~Section 10. Emergency Meals. Provisions shall be made for furnishing emergency meals during inclement weather conditions, power failure, or any disaster that may cause isolation or create a special need. Meals may be shelf stable, frozen, freeze dried, dehydrated, or a combination of these, provided they meet the nutritional requirements of the program and menus have been approved by the office dietitian. Additional criteria include:~~

~~(1) Menus shall be planned for a minimum of three (3) days;~~

- (2) Frozen meals shall be used only:
  - (a) If the participant is able to store, prepare and consume the meal alone or with available assistance; and
  - (b) If the delivery system is arranged so that storage time after delivery is minimal;
- (3) Water shall be provided if necessary;
- (4) Butter or margarine may be optional;
- (5) The menu plan shall include some foods which require no cooking prior to consumption;
- (6) One (1) dish meals may be used provided that both the protein and one (1) of the vegetable requirements are contained in the single serving;
- (7) Foods may be taken to the nutrition sites and participants may assist with packaging the foods for distribution;
- (8) Emergency meal packages shall be distributed to home-bound clients with home delivered meals and may be used for congregate participants when centers are closed;
- (9) For reporting purposes, meals shall be counted during the quarter in which they were distributed.

Section 11. USDA Assistance. The USDA provides a per meal rate of assistance, in the form of commodities or cash in lieu of commodities, for each meal served to an eligible participant. Revenue generated shall accrue to the office.

(1) The area development district shall disburse USDA monies to service providers based upon each provider's proportion of the total number of eligible meals served in the state.

(a) Disbursements of cash and receipt of commodities shall be reflected in the next billing after receipt by the provider.

(b) The provider shall expend USDA monies within one (1) year from the time payment is received.

(c) USDA funds shall be used to expand the total number of meals provided in the state and shall not be used to reduce funds from any other grant or contract which the provider may be given.

(2) When commodities are accepted, the provider shall:

(a) Place orders according to procedures established by the office;

(b) Maintain records to indicate items received and utilized; and

(c) Store commodities together on designated shelves or pallets separate from purchased goods; a separate room is not required.

(3) When cash in lieu of commodities is accepted, the provider shall:

(a) Maintain records to show the amount of cash received and how it was expended;

(b) Use cash to purchase USDA commodities and other foods for the nutrition program;

(c) Purchase meals provided the cost of the meal is quoted as a unit cost which includes both food and labor. Ready to serve meals may be purchased on a unit cost basis provided each meal contains food equivalent in value to the current rate of reimbursement.

(4) Cash reimbursement criteria include:

(a) Only meals containing the components of the required meal pattern and actually consumed by eligible participants may be claimed;

(b) Meals claimed for reimbursement shall not be claimed under other USDA reimbursement programs;

(c) Section 2 of the USDA NPE Budget and Financial Summary Report, herein incorporated by reference, shall be submitted to the office by the 15th of the month following the report period to:

1. Claim cash reimbursement;

2. Certify commodity meals served; and

3. Certify meals ineligible for USDA reimbursement.

(d) Cash reimbursement is to be based on the total number of meals served to eligible participants multiplied by the reimbursement rate as established by USDA less commodity entitlement monies if applicable.

(5) Financial records kept by the provider shall show:

(a) Meals provided are bid without regard to USDA reimbursement;

(b) USDA funds are used as a revenue source for expansion of meals served in the state;

- (c) The unit cost of a meal is not reduced in anticipation of future USDA reimbursement but is stated as a true cost in both bidding and reporting procedures; and
- (d) Monthly financial reports reflect USDA expenditures.

Section 12. Nutrition Program Costs. (1) Ready-to-serve meal costs shall include the following:

(a) The cost of raw food, including food purchased with USDA cash resources and the dollar value of USDA donated foods used;

(b) The costs of serving supplies, disposables, cleaning materials, and noncapital items used in the preparation of food;

(c) The costs of labor for food preparation, cooking, portioning of foods, and delivery of food to the site of service. Labor costs shall include:

1. Fringe benefits;

2. Wages for persons who prepare and maintain the sanitary condition of the kitchen and storage areas; and

3. Wages paid for time spent in food and supplies inventorying, storing and receiving and in direct supervision of employees;

(d) Equipment costs of capital items like ranges, dishwashers, trucks and vans, steam tables, freezers, etc.;

(e) The costs of space, related utility costs, and equipment operation, maintenance and repair costs; and

(f) The nonlabor costs of transporting food, food storage, handling charges for USDA donated foods, insurance and general liability.

(2) Food service and delivery costs shall include:

(a) The total labor costs for serving foods and for home delivery of meals to participants;

(b) Mileage and maintenance of vehicles costs for home delivery of meals;

(c) Costs incurred for nutrition education and nutrition outreach services;

(d) Project management costs, including personnel, equipment and supply costs; and

(e) Other general expenses related to overall program management.

(3) Food service contract bids shall be structured according to the request for proposal outline developed by the office. Meals shall be bid without regard to funding source, and shall contain both a ready-to-serve cost and a served, delivered cost.

Section 13. Material Incorporated by Reference. (1) The form necessary for the implementation of the nutrition program for the elderly shall be herein incorporated.

(2) Material incorporated by reference may be inspected and copied at the Office of Aging Services, CHR Building, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.]

DEBORAH S. ANDERSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 13, 2010

FILED WITH LRC: December 13, 2010 at 4 p.m.

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

## CABINET FOR HEALTH AND FAMILY SERVICES

Department for Aging and Independent Living

Division of Quality Living

(As Amended at ARRS, February 14, 2011)

910 KAR 1:200. Senior Community Service Employment Program.

RELATES TO: KRS 205.201, 205.455, Chapter 342, 20 C.F.R. Part 641, 5 U.S.C. 7323, 29 U.S.C. 206, [20 U.S.C.] 2801, 2881, 2901[et seq.], 38 U.S.C. 4215(a)(1), 42 U.S.C. 401, 402, 641.230, 2002(22), 3021, 3056n, [et seq., 42 U.S.C. 641.230, 42 U.S.C. 2002(22), 42 U.S.C.] 11302(a)[42 U.S.C. 3001 et seq.]

STATUTORY AUTHORITY: KRS 194A.050(1), 205.204(1), (2), 42 U.S.C. 3001 [et seq.]

NECESSITY, FUNCTION, AND CONFORMITY: ~~[42 U.S.C. 3001 et seq.]~~ The Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194A.050(1) **requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations to implement programs mandated by federal law or to qualify for the receipt of federal funds. KRS 205.204(1) and (2) authorize the cabinet secretary**~~[authorizes the Cabinet for Health and Family Services to promulgate administrative]~~~~[adopt]~~ ~~[regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204(1) and (2) designates the cabinet]~~ ~~[for Health Services]~~ ~~[as the state agency]~~ to administer the Older Americans Act in Kentucky and **authorize**~~[authorizes]~~ the cabinet to promulgate ~~[such]~~ administrative regulations ~~[as are necessary]~~ to comply with any requirement imposed or required by federal law. ~~[The function of]~~ This administrative regulation ~~sets[is to set]~~ forth the standards of operation for the senior community service employment program in Kentucky~~[-in compliance with KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter].~~

Section 1. Definitions. (1) "Area plan" means a plan, submitted by a district for approval of the department, which releases funds under contract for the delivery of SCSEP services within a planning and service area.

(2) "At risk for homelessness" means an individual who:

(a) Is likely to become homeless; and

(b) Lacks the resources and support networks needed to obtain housing.

(3) "Authorized position" means an enrollment opportunity during a program year based on an average national unit cost pursuant to 20 C.F.R. 641.140.

(4) "Co-enrollment" means enrollment for an individual who meets the qualifications for SCSEP participation and is also enrolled as a participant in WIA or another employment and training program, as provided in the **participant's**~~[participants]~~ Individual Employment Plan.

(5) "Community service" means a service provided by the SCSEP participant within a community to gain work experience and job skills, including:

(a) Social, health, welfare, and educational services including literacy and tutoring;

(b) Legal and other counseling services and assistance including tax counseling and assistance and financial counseling;

(c) Library;

(d) Recreational;

(e) Conservation, maintenance, or restoration of natural resources;

(f) Community betterment or beautification;

(g) Antipollution and environmental quality efforts;

(h) Weatherization activities;

(i) Economic development; or

(j) Other services essential and necessary to the community as **determined by the Secretary of Health and Human Services** ~~[determines by rule to be appropriate].~~

(6) "Community service assignment" means part-time, temporary employment paid with grant funds for a project at a host agency through which an eligible individual is engaged in community service and **receives**~~[receive]~~ work experience and job skills that can lead to unsubsidized employment.

(7) "Department" means the Department for Aging and Independent Living.

(8) "Disability" means a mental or physical impairment, or a combination of mental and physical impairments, that result in substantial functional limitations in one (1) or more of the following areas of major life activity:

(a) Self-care;

(b) Receptive and expressive language;

(c) Learning;

(d) Mobility;

(e) Self-direction;

(f) Capacity for independent living;

(g) Economic self-sufficiency;

(h) Cognitive functioning; or

(i) Emotional adjustment.

(9) "District" is defined by KRS 205.455(4).

(10) "Frail" means an individual fifty-five (55) years of age or older who is functionally impaired because the individual:

(a) Is unable to perform at least two (2) activities of daily living without verbal reminding, physical cueing, or supervision; or

(b) Requires supervision due to a cognitive or other mental impairment and behaves in a manner that poses a health or safety hazard to the individual or another individual pursuant to 42 U.S.C. 2002(22).

(11) "Greatest economic need" means the need resulting from an income level at or below the poverty guidelines established by the Department of Health and Human Services and approved by the Office of Management and Budget pursuant to 42 U.S.C. 3002(23).

(12) "Greatest social need" means the need caused by non-economic factors pursuant to 42 U.S.C. 3002(24), including:

(a) Physical and mental disabilities;

(b) Language barriers; and

(c) Cultural, social, or geographical isolation, including isolation caused by racial or ethnic status that:

1. Restricts the ability of an individual to perform normal daily tasks; or

2. Threatens the capacity of the individual to live independently.

(13) "Homeless" means an individual, pursuant to 42 U.S.C. 11302(a), who:

(a) Lacks a fixed regular nighttime residence; and

(b) Has a primary nighttime residence that is:

1. A supervised publicly or privately operated shelter designed to provide temporary living accommodations including:

a. A welfare hotel~~[hotels]~~;

b. A congregate shelter; or~~[shelters; and]~~

c. Transitional housing for the mentally ill;

2. An institution that provides a temporary residence for individuals intended to be institutionalized; or

3. A public or private place not designed for or ordinarily used as regular sleeping accommodations for human beings.

(14) "Host agency" means a public agency or private, nonprofit organization, other than a political party, exempt from taxation under the provision of Section 501(c)(3) of the Internal Revenue Code of 1986, **26 U.S.C. 501(c)(3)**, which provides a training work-site and supervision for one (1) or more participants.

(15) "Individual employment plan" or "IEP" means a participant's plan based on:

(a) An assessment of the participant conducted by the sub-recipient; or

(b) A recent assessment or plan of the participant developed by another employment and training program and a related service strategy.

(16) "Job ready" means an individual does not require further education or training to perform work that is available in the individual's labor market.

(17) "Limited English proficiency" means an individual who does not speak English as a primary language and has a limited ability to read, speak, write, or understand English.

(18) "Low income" means an income ~~that[which]~~ during the preceding six (6) months on an annualized basis or the actual income during the preceding twelve (12) months, whichever is more beneficial to the applicant, is not more than 125 percent more than the poverty levels established and periodically updated by the United States Department of Health and Human Services.

(19) "OAA" means the Older Americans Act, 42 U.S.C. 3001 to **3058**~~et seq.~~, as amended.

(20) "One-Stop center" means the One-Stop center system in a WIA local area through which One-Stop partners provide core services and access to other programs and services carried out by the One-Stop partners.

(21) "One-Stop delivery system" means a system **through** which:

(a) Employment and training programs, services, and activities are available through a network of One-Stop partners;

(b) Information about and access to core services is available

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regardless of where the individual initially entered the workforce investment system;

(c) Referral to WIA intensive and training services is available; and

(d) Access to other activities and programs carried out by other One-Stop partners is available.

(22) "Participant" means an individual who is:

(a) Determined to be eligible for the SCSEP program;

(b) Given a community service assignment; and

(c) Receiving a service funded by the SCSEP program.

(23) "Program year" means the one (1) year period beginning on July 1 and ending on June 30.

(24) "Project" means an undertaking by a sub-recipient in accordance with a contract agreement between the department and sub-recipient that provides service to a community and training and employment opportunities to an eligible individual.

(25) "SCSEP" means the Senior Community Service Employment Program authorized under Title V of the OAA, **42 U.S.C. 3056n**, and administered by the Department of Labor that serves unemployed low income persons who:

(a) Are fifty-five (55) years of age and older;

(b) Have poor employment prospects; and

(c) Need training in part-time community service assignments, ~~and~~ skills, and experience to facilitate transition to unsubsidized employment.

(26) "Sub-recipient" means the legal entity to which a sub-award of financial SCSEP assistance is made by the department and who is accountable to the department for the use of the funds provided.

(27) "Sub-recipient agreement" means an agreement between the department and sub-recipient that provides for transfer of SCSEP funds to the sub-recipient for the purpose of carrying out the activities authorized in the agreement.

(28) "Supportive services" means services and incidentals, specified in Section 7 of this administrative regulation, that are necessary to enable an individual to participate in activities authorized under the SCSEP.

(29) "Unemployment" means an individual who is without a job, is available to work~~;~~ and wants to work, or has occasional employment that does not result in a constant source of income.

(30) "Workforce Investment Act" or "WIA" means the Workforce Investment Act of 1998, 29 U.S.C. 2801 ~~to 2901~~~~(et seq.)~~, as amended.

Section 2. Eligibility Criteria. To participate in SCSEP, an applicant shall be: (1) At least fifty-five (55) years old;

(2) Unemployed;

(3) An individual or a member of a family with an income that is not more than 125 percent of the **federal poverty guidelines, updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 U.S.C. 9902(2)**~~[poverty level as determined by Health and Human Services and approved by Office of Management and Budget]; and~~

(4) A resident of Kentucky.

Section 3. Application. (1) A participant shall not be considered a federal employee solely as a result of the participant's participation in the SCSEP.

(2) To apply for SCSEP, an applicant shall submit official records to a sub-recipient that substantiate:

(a) The applicant's state of residence, such as:

1. Driver's license;

2. State, federal, or tribal ID card;

3. Social Security statement;

4. Rental agreement; or

5. Voter registration card;

(b) The applicant's date of birth, such as:

1. Birth certificate;

2. Driver's license;

3. Government identification card; or

4. Social Security award letter;

(c) **The number of individuals residing in the applicant's household, with documentation such as a:**

**1. Lease; or**

**2. Signed attestation:**

**a. From a third party who has knowledge of the number of individuals residing in the applicant's household; and**

**b. That reflects the living situation at the time of the application**~~(The applicant's number in family, with documentation such as a:~~

~~1. Lease; or~~

~~2. Signed third-party attestation that explains how participant supported self];~~

**(d) If applicable, that the applicant has a disability and shall be considered**~~(The applicant is)~~ a family-of-one, with documentation such as:

1. Social Security Disability Insurance (SSDI) or other Social Security Administration records; and

2. Records indicating disability, such as the following:

a. Medical records;

b. Disability records;

c. Veteran's medical record;

d. Vocational rehabilitation letter; or

e. Worker's compensation record; and

**(e)1. The applicant's employment including official documents and business records that establish includable income, military discharge papers, or other military identification; and**

**2. Attestation that** ~~establishes no~~ **other includable income does not exist**~~(exists).~~

(3) An individual selected for participation in the SCSEP shall participate in the following activities:

(a) Initial orientation;

(b) Initial assessment;

**(c) Subsequent assessment as specified in Section 5(1)(c)2 of this administrative regulation; and**

(d) Development of initial and updated IEP.

Section 4. Eligibility Determination. (1) A sub-recipient shall determine an applicant's initial eligibility through the application process **established**~~(described)~~ in Section 3 of this administrative regulation and annually thereafter.

(2) The sub-recipient shall:

**(a) Calculate**~~(compute an applicant's income eligibility by calculating);~~

**1. (a) The includable income received by the applicant during the twelve (12) month period ending on the date the applicant applied; and**

**2. (a) individual applies;**

**(b) The annualized income for the six (6) month period ending on the date the applicant applied; and**

**(b) Compute the applicant's income eligibility using the method identified in paragraph (a) of this subsection that**~~(an individual applies; or~~

~~(c) Whichever method in paragraph (a) or (b) of this subsection) is more favorable to the applicant.~~

(3) The following benefit payments shall be included in SCSEP income eligibility determinations:

(a) Earnings;

**(b) Seventy-five (75) percent of benefits received under Title II of the Social Security Act, 42 U.S.C. 402;**

(c) Survivor benefits;

(d) Pension or retirement income;

(e) Interest income;

(f) Dividends;

(g) Rents, royalties, ~~and~~ estates, and trusts;

(h) Educational assistance;

(i) Alimony; and

**(j) Other inclusions as authorized by the Department of Labor, pursuant to 20 C.F.R. 641.507 and 641.510.**

(4) The following benefit payments shall be excluded from SCSEP income eligibility determinations:

(a) Unemployment compensation received under Title XVI of the Social Security Act, 42 U.S.C. 3021~~(1381 et seq.)~~;

(b) A payment made to or on behalf of veterans or former members of the Armed Forces administered under the Secretary of Veterans Affairs;

(c) Twenty-five (25) percent of a benefit received under Title II

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of the Social Security Act, 42 U.S.C. 401 to 402~~[et seq]~~;

(d) Social Security Income or Social Security Disability Income; and

(e) Other exclusions allowed by the Department of Labor, **pursuant to 20 C.F.R. 641.507 and 641.510.**

(5) Priority for SCSEP shall be given to an individual who has one (1) or more of the following characteristics:

(a) Is age sixty-five (65) years of age or older;

(b) Has a disability;

(c) Has limited English proficiency or low literacy skills;

(d) Resides in a rural area;

(e) Has low employment prospects;

(f) Has failed to find employment after using services provided through the One-Stop delivery system;

(g) Is homeless or at risk for homelessness; or

(h) Is:

1. A veteran as defined by the Jobs for Veterans Act, 38 U.S.C. 4215(a);

~~2. [1. Priority is extended to]~~ The spouse of a veteran who died of a service-connected disability;

~~3. [2.]~~ The spouse of a member of the Armed Forces on active duty who has been listed for a total of more than ninety (90) days as missing in action, captured in the line of duty by hostile force, or forcibly detained by a foreign government or power;

~~4. [3.]~~ The spouse of a ~~any~~ veteran who has a total disability resulting from a service connected disability; or

~~5. [4.]~~ The spouse of a ~~any~~ veteran who died while a disability so evaluated was in existence.

(6) A sub-recipient shall apply priorities in the following order:

(a) A veteran or veteran's spouse who:

1. Qualifies as a covered person under the Job for Veterans Act, 38 U.S.C. 4215(a); and

2. Possesses at least one (1) of the priority characteristics specified in subsection (5)(a) through (g) of this section;

(b) A veteran or veteran's spouse who:

1. Qualifies as a covered person under the Job for Veterans Act, 38 U.S.C. 4215(a); and

2. Does not possess any of the priority characteristics specified in subsection (5)(a) through (g) of this section; and

(c) An individual who:

1. Is not a veteran or veteran's spouse;

2. Does not qualify as a covered person under the Jobs for Veterans Act, 38 U.S.C. 4215(a); and

3. Possesses at least one (1) of the priority characteristics specified in subsection (5)(a) through (g) of this section~~[An individual who qualifies as a veteran or qualified under Section 2(a) of the Jobs for Veterans Act, 38 U.S.C. 4215(a) and who possess at least one (1) of the other priority characteristics specified in subsection (5)(a) through (g) of this section;~~

~~(b) An individual who qualifies as a veteran or qualified spouse under Section 2(a) of the Jobs for Veterans Act, 38 U.S.C. 4215(a) and who does not possess any other of the priority characteristics specified in subsection (5)(a) through (g) of this section; or~~

~~(c) An individual who does not qualify as a veteran or qualified spouse under Section 2(a) of the Jobs for Veterans Act (non-veterans) and who possess at least one (1) of the other priority characteristics specified in subsection (5)(a) through (g) of this section].~~

Section 5. Enrollment Process. (1) If an individual is selected for participation in the SCSEP program, the sub-recipient shall:

(a) Provide orientation to the SCSEP, including:

1. Information of project goals and objectives;

2. Community service assignments;

3. Training opportunities;

4. Available supportive services;

5. The availability of a free physical examination;

6. Participant rights and responsibilities;

7. Permitted and prohibited political activities pursuant to the Hatch Act, 5 U.S.C. 7323; and

8. A written copy and verbal review of its policies for terminating a participant as specified in Section 10(4) of this administrative regulation;

(b) Assess a participant's work history, including:

1. Skills and interests;

2. Physical capabilities;

3. Talents;

4. Aptitudes;

5. Needs for supportive services;

6. Occupational preferences;

7. Training needs;

8. Potential for performing community service assignments; and

9. Potential for transition to unsubsidized employment;

~~(c)1. Perform an initial assessment upon program entry, unless an assessment has already been performed under Title I of WIA, 29 U.S.C. 2881 to 2901; and~~

~~2. Perform assessments at least twice[Subsequent assessments may be made as necessary and shall not be made no less frequently than two (2) times] annually, including the initial assessment;~~

~~(d) Use the information gathered during an initial assessment to develop an IEP that includes an employment goal for the participant, except that an assessment and IEP developed under Title I of WIA shall satisfy the requirement for SCSEP assessment and IEP in accordance with 42 U.S.C. 641.230;~~

~~(e) Update an IEP to reflect information gathered during subsequent assessments;~~

~~(f) Place a participant in a community service assignment in the community in which the participant resides or a nearby community;~~

~~(g) Provide or arrange for training identified in a participant's IEP consistent with the SCSEP's goal of unsubsidized employment;~~

~~(h) Assist a participant with supportive services identified in the participant's IEP;~~

~~(i) Provide services for a participant or refer the participant to services through the One-Stop delivery system established under WIA;~~

~~(j) Provide counseling to the participant on progress in meeting the goals and objectives identified in the participant's IEP[IEPs] and in meeting the participant's supportive service needs;~~

~~(k) Provide a participant with wages and benefits for time spent in the community service assignment, orientation, and training;~~

~~(l) Monitor to ensure a participant's safe and healthy working conditions at the participant's community services employment worksite; and~~

~~(m) Assist the participant in obtaining unsubsidized employment, including providing or arranging for employment counseling in support of the participant's IEP.~~

~~(2) A sub-recipient shall not enroll a job-ready individual as a SCSEP participant but shall refer the individual to an employment provider such as a One-Stop Center for job placement assistance under WIA or another employment program.~~

Section 6. Participant Training. (1) In addition to the training provided in a community service assignment, a sub-recipient may arrange skill training for a participant, if the training:

(a) Is ~~[realistic and]~~ consistent with the participant's IEP;

(b) Makes the most effective use of the participant's skills and talents; and

(c) Prepares the participant for unsubsidized employment.

~~(2) If training is provided, training shall be[Training may be provided];~~

(a) Before or during a community service agreement;

(b) In the form of:

1. Lectures;

2. Seminars;

3. Classroom instruction;

4. Individual instruction;~~;~~ or

5. On-the-job experiences; or

(c) Through the sub-recipient or an arrangement with other workforce development programs such as WIA.

(3) A sub-recipient **shall**~~[may]~~ pay, if necessary in accordance with a participant's IEP, for:

(a) Participant training including the payment of costs of:

1. Instructors;

2. Classroom rental;

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3. Training supplies;
4. Materials;
5. Equipment; and
6. Tuition; or

(b) Costs associated with supportive services as specified in Section 7 of this administrative regulation. [.]

Section 7. Supportive Services. (1) A sub-recipient **shall, if necessary in accordance with the participant's IEP, [may]** provide directly or arrange for supportive services identified on a participant's IEP to enable the participant to successfully participate in the SCSEP project, such as:

- (a) Costs of transportation;
- (b) Health and medical services;
- (c) Special job-related or personal counseling; or
- (d) Incidentals for work or training, such as:

1. Shoes;
2. Badges;
3. Uniforms;
4. Eyeglasses;
5. Tools;
6. Dependent care;
7. Housing, including temporary shelter; or
8. Other needs-related payments for job readiness.

(2) A sub-recipient shall contact a placed participant throughout the first twelve (12) months following placement to determine if the participant has the necessary supportive services to remain employed and to provide or arrange to provide **the[such]** services if needed.

Section 8. Wages and Benefits. (1)(a) Pursuant to 20 C.F.R. 641.565(a), a sub-recipient shall pay a participant's wages for time spent in:

1. Orientation;
2. Training; and
3. Community service assignments.

(b) The highest applicable **required[minimum]** wage shall **be[is]** either the:

1. Minimum wage applicable under the Fair Labor Standards Act of 1938, 29 U.S.C. 206; or
2. Prevailing rate of pay for persons employed in similar public occupations by the same employer.

(2) A SCSEP participant shall be paid the highest applicable required wage while receiving WIA intensive services.

(3) A sub-recipient shall:

(a) Make adjustments to minimum wage rates payable to a participant as required by the Fair Labor Standards Act, 29 U.S.C. 206;

(b) Ensure that a participant receives Worker's Compensation pursuant to KRS Chapter 342;

(c) Offer the participant an opportunity to receive a physical examination annually and inform the participant that:

1. A physical examination is a benefit and not an eligibility criterion; and
2. A participant may choose not to accept the physical examination;

(d) 1. Document a participant's refusal, **if applicable**, of an annual physical examination through a signed statement by the participant and within at least sixty (60) workdays of commencement of the community service assignment;

2. Each year thereafter, offer the physical examination and document the offer and a participant's refusal, **if applicable**;

(e) Provide compensation for scheduled work hours during which a host agency's business is closed for a federal holiday, **that shall either [which may]** be paid or in the form of rescheduled work time; and

(f) Provide sick leave that is not part of an accumulated sick leave program **that shall either[which may]** be paid or in the form of rescheduled work time. [.]

(4) A sub-recipient shall not:

(a) Carry over allowable benefits from one (1) program year to the next;

(b) Provide payment or otherwise compensate a participant for unused benefits such as sick leave or a holiday; and

(c) Use SCSEP funds:

1. To provide contributions to a retirement system or plan;
2. To pay the cost of pension benefits for a program participant;
3. For annual leave;
4. For accumulated sick leave; or
5. For a bonus.

Section 9. Durational Limits. (1)(a) **Except as established in subsection (3) of this section, an eligible individual shall not participate in the SCSEP for more than**[An eligible individual may participate in the SCSEP for a maximum duration of] forty-eight (48) months in the aggregate.

(b) **Consecutive participation shall not be required** [Participation need not be consecutive], from the later of July 1, 2007, or the date of the individual's enrollment in the program.

(2) A sub-recipient shall:

(a) Inform a participant, **upon enrollment**[when enrolled] in the SCSEP, of the time limit specified in subsection (1) of this section and possible extension in subsection (3) of this section;

(b) Provide for a system to transition a participant to unsubsidized employment or other assistance before the maximum enrollment duration has expired;

(c) Reflect the transition in the participant's IEP; and

(d) Ensure that a project does not exceed the overall average participation cap for all participants as described in subsection (4) of this section.

(3) The department may request from the Department of Labor increased periods of participation beyond forty-eight (48) months for a participant who:

(a) Has not obtained the participant's IEP goal; and

(b) **1. Has a severe disability; or**

**2. Is** [Has the following characteristics:

**1. A severe disability; or**

**2.] frail.**

(4)(a) **Except as provided in paragraph (b) of this subsection, a sub-recipient shall manage its SCSEP project so that it [in such a way that]** does not exceed an average participation cap for all participants of twenty-seven (27) months in the aggregate.

(b) The department may request an extended average participation period of up to thirty-six (36) months (in the aggregate) for a particular project area in a given program year, if the Department of Labor determines that circumstances exist to justify an extension due to the following:

1. High rates of unemployment or poverty or participation in the program of block grants to States for temporary assistance for needy families under part A of Title IV of the Social Security Act, **42 U.S.C. 601**, in the areas served by a sub-recipient, relative to other areas of the state involved or of the nation;

2. Significant downturns in the economy of an area served by the sub-recipient or in the national economy;

3. Significant numbers or proportions of participants with one (1) or more barriers to employment, including "most-in-need" individuals described in 20 C.F.R. 641.710(a)(6), serviced by a sub-recipient relative to **the[such]** numbers or proportions for sub-recipients serving other areas of the state or nation;

4. Changes in federal, state, or local minimum wage requirements; or

5. Limited economies of scale for the provision of community service employment and other authorized activities in the areas served by the sub-recipient.

(5) An authorized break in participation from **the** program shall:

(a) Be considered a formal leave of absence for the following reasons:

1. Personal circumstances; or

2. If a suitable community service assignment is not available;

(b) Be formally entered by the sub-recipient in the SCSEP Performance and Results Quarterly Performance Reporting (SPARQ) system; and

(c) Not count toward the individual time limit specified in subsection (1) of this section or the average participation cap specified in subsection (4) of this section.

(6) A host agency shall notify the sub-recipient of a participant's absence or break in participation without pay for up to:



(a)[4-] Two (2) weeks approved by the host agency supervisor:  
or

(b)[2-] Sixty (60) calendar days with approval of the host agency supervisor and sub-recipient staff.

(7) A participant shall[~~may~~] be granted a leave of absence with approval from the department for up to ninety (90) calendar days in extenuating circumstances such as:

1. Illness;
2. Family care; or
3. Institutionalization.

(8) Except for an extenuating circumstance specified in subsection (7) of this section, the participant shall request a leave of absence or approved break in participation from the host agency supervisor at least five (5) working days prior to the proposed absence or break.

(9) A sub-recipient may request a waiver to the state SCSEP coordinator ninety (90) days prior to a participant reaching the forty-eight (48) month durational limit, if the participant meets the requirements of subsection (3) of this section.

Section 10. Termination. (1) A sub-recipient shall give a participant written notice explaining the reason for termination and grievance procedures and may terminate the participant thirty (30) days after it has provided the written notice for the following reasons:

(a) If the[~~at any time, a~~] sub-recipient determines that a participant was incorrectly declared eligible as a result of false information knowingly given by the individual;

(b) If, during eligibility verification, the[a] sub-recipient finds a participant is[~~to be~~] no longer eligible for enrollment;

(c) If the[~~at any time, a~~] sub-recipient determines that it incorrectly determined a participant to be eligible for the program through no fault of the participant;

(d) For failure to comply with the requirements of this administrative regulation or[~~with policies included to the participant concerning~~] for cause [termination], such as:

1. An act or threat of violence[Commit or threaten to commit acts of violence];

2. [Engage in] Inappropriate, disrespectful, demeaning, or[and] abusive behavior such as:

- a. Loud, abusive, profane, foul, obscene, vulgar, crude, insulting, or threatening language;
- b. Inappropriate jokes or gestures, discriminatory slurs, or [any type of] sexual comments;

3. Theft or being[Steal or be] a party to theft [of any property owned by the host agency, sub-recipient, department, or their staff, visitors, or others];

4. Dissemination of[Reveal any] confidential information obtained during the course of the participant's community service assignment;

5. Illegal use, possession, or sale of[Illegally use, possess, or sell] prescription medication, alcohol, or drugs[illegal drugs, or narcotics]; or

6. Intoxication during work hours[Report for work under the influence of intoxicants]; or

(e) Refusal[If the participant refuses] to accept a reasonable number, in accordance with 20 C.F.R. 641.580(e), of job offers or referrals to unsubsidized employment consistent with the IEP and if there are no extenuating circumstances that would hinder the participant from moving to unsubsidized employment.

(2) If a sub-recipient makes an unfavorable determination of enrollment eligibility, the sub-recipient shall refer the individual to other potential sources of assistance, such as the One-Stop delivery system.

(3) If a sub-recipient terminates a participant, the sub-recipient shall refer the participant to other potential sources of assistance, such as the One-Stop delivery system.

(4) A sub-recipient shall provide a participant, upon enrollment, with[when enrolled,] a written copy and verbal review of its policies for terminating a participant as specified in subsection (1) of this section.

(5)(a) A participant shall not be terminated from the SCSEP solely on the basis of [their] age.

(b) A sub-recipient shall not impose an upper age limit for participation in the SCSEP.

Section 11. Sub-recipient Responsibilities. A sub-recipient shall:

(1) Provide SCSEP services throughout the geographic area under its area plan or proposal;

(2) Adhere to provisions set forth in the OAA and federal regulations promulgated under the Act, 20 C.F.R. Part 641;

(3) Implement and carry out the SCEP in accordance with the provisions of a sub-recipient agreement;

(4) Pursuant to 42 U.S.C. 3056(a)(4)(c), enroll and serve eligible individuals, with the focus on:

(a) Individuals with the greatest economic need;

(b) Minority individuals;

(c) Individuals who are limited English proficiency; and

(d) Individuals with the greatest social need[Enroll and serve minority eligible participants in proportion to minority numbers within the geographical jurisdiction of the program];

(5) Recruit and determine the eligibility of SCSEP participants;

(6) Recruit and select host agencies;

(7) Ensure that a host agency shall[does] not reduce the number of employment opportunities or vacancies that would be available to an individual not participating in the program;

(8) Provide supervision for SCSEP participants;

(9) Assist a participant with supportive services identified on the participant's IEP;

(10) Provide participant wages and benefits;

(11) Coordinate with the local Workforce Investment Board initiatives and programs including co-enrollment of SCEP participants;

(12) Monitor for a participant's safe and healthy working conditions;

(13) Permit staff of the department and the district to monitor and evaluate provided SCSEP services;

(14) Monitor that each paid or volunteer[voluntary] staff member meets the qualification and training requirements of SCSEP;

(15) Develop a policy and procedure for a referral for service to other programs and services in accordance with a participant's IEP;

(16) Work with a participant to ensure the participant is:

(a) Receiving SCSEP services; and

(b) Taking actions designed to help achieve the participant's goals;

(17) Contact private and public employers directly or through the One-Stop delivery system to develop or identify unsubsidized employment opportunities;

(18) Encourage host agencies to assist a participant in the participant's transition to unsubsidized employment, including unsubsidized employment in the host agency;

(19) Adhere to other sub-recipient requirements set forth in this administrative regulation; and

(20) Submit required SCSEP data monthly to the Department of Labor, pursuant to 20 C.F.R. 641.700.

Section 12. Department Responsibilities. The department shall:

(1) Develop and implement the state SCSEP plan with the assistance of sub-recipients and national SCSEP providers;

(2) Have an equitable distribution of authorized positions in the aggregate;

(3) Adhere to provisions set forth in the Older Americans Act and federal regulations promulgated under the Act, 20 C.F.R. Part 641;

(4) Pursuant to 42 U.S.C. 3056(a)(4)(c), enroll and serve eligible individuals, with the focus on:

(a) Individuals with the greatest economic need;

(b) Minority individuals;

(c) Individuals who are limited English proficiency; and

(d) Individuals with the greatest social need[Enroll and serve minority eligible participants in proportion to the minority eligible participants' numbers within the geographical jurisdiction of the program];

(5) Provide a sub-recipient with:

(a) Technical assistance related to SCSEP;

(b) SCSEP information required to accomplish the sub-recipient's agreement responsibilities; and



- (c) Annual SCSEP training;
- (6) Monitor the performance of the sub-recipient for compliance with the terms, conditions, and performance criteria included within the sub-recipient agreement;
- (7) Submit required SCSEP data quarterly to the Department of Labor, **pursuant to 20 C.F.R. 641.700**;
- (8) Review performance measures on a quarterly basis and relay that information to each sub-recipient;
- (9)(a) Allocate SCSEP funds to a sub-recipient; and
- (b) Monitor the sub-recipient:
  - 1. For use of the allocated funds; and
  - 2. To ensure **the nonfederal share of the total SCSEP costs shall be** used for in-kind services at a fair market value to services and facilities contributed; and
- (10) Adhere to performance measures and indicators as determined by the U.S. Department of Labor annually, **pursuant to 20 C.F.R. 641.700**.

Section 13. Grievance Procedures. (1)(a) A participant receiving services from a contract agency of the sub-recipient may request a local resolution with the contract agency. **The request shall be made** within thirty (30) calendar days of receipt of denial for eligibility or termination of services.

(b) If the participant is dissatisfied with the results of the local resolution with the contract agency, the participant may request a local resolution with the sub-recipient. **The request shall be made** within thirty (30) calendar days of receipt of the results of the local resolution.

(c) If the participant is dissatisfied with the results of the local resolution with the sub-recipient, the participant may request a state administrative hearing.

**1. The hearing shall be in accordance with KRS Chapter 13B.**

**2. The participant shall submit a written request to the department within thirty (30) days after receipt of the results of the local resolution** [as specified in subsection (2)(b) of this section].

(2)(a) A participant receiving services from a sub-recipient may have a local resolution with the sub-recipient. **The local resolution shall be made** within thirty (30) calendar days of receipt of denial for eligibility or termination of services.

(b) If the participant is dissatisfied with the results of the local resolution with the sub-recipient, the participant may request a state administrative hearing.

**1. The hearing shall be in accordance with KRS Chapter 13B.**

**2. The participant shall submit a written request to the department within thirty (30) days after receipt of the results of the local resolution:**

- 1. In accordance with KRS Chapter 13B; and
- 2. By sending a written request to the department within thirty (30) days after receipt of the results of the local resolution. ["Allotment" means the initial designation of an amount of appropriated funds to project sponsors and subproject sponsors operating in the state.

(2) "Authorized position" means an enrollment opportunity during a program year.

(3) "Cash welfare payment" means public assistance through federal, state or local government cash payments for which eligibility is determined by a need or income test.

(4) "Community service":

(a) Means:

- 1. Social, health, welfare and educational services;
- 2. Legal assistance and other counseling services, including tax counseling and assistance and financial counseling;
- 3. Library, recreational and similar services;
- 4. Conservation, maintenance or restoration of natural resources;

5. Community betterment or beautification;

6. Pollution control and environmental quality efforts;

7. Weatherization activities;

8. Economic development; and

9. Other types of services which the department may approve.

(b) Excludes:

1. Building and highway construction except that normally performed by the project sponsor; and

2. Work which primarily benefits private, profit-making organizations.

(5) "Department" means the United States Department of Labor, including its agencies and organizational units.

(6) "Employment and training program" means publicly funded efforts designed to offer training and placement services which enhance an individual's employability.

(7) "Enrollee" means an individual who is eligible, receives services, and is paid wages for engaging in community service employment under a project.

(8) "Grant agreement" means a legally binding agreement in document form which is a grant or other form of agreement entered into between the Office of Aging Services and an eligible organization and which awards federal funds and provides for authorized activities under Title V of the Act.

(9) "Host agency" means a public agency or private, nonprofit organization, other than a political party, exempt from taxation under the provision of Section 501(c)(3) of the Internal Revenue Code of 1954, which provides a worksite and supervision for an enrollee.

(10) "Local government" means a local unit of government, including:

- (a) County;
- (b) Municipality;
- (c) City, town or township;
- (d) Local public authority;
- (e) Special or intrastate district;
- (f) Council of governments;
- (g) Sponsor group representative organization;
- (h) Other regional or interstate government entity; or
- (i) Any agency or instrumentality of a local government, except institutions of education and hospitals.

(11) "Low income" means an income which during the preceding six (6) months on an annualized basis or the actual income during the preceding twelve (12) months, whichever is more beneficial to the applicant, is not more than 125 percent more than the poverty levels established and periodically updated by the United States Department of Health and Human Services. In addition, an individual who receives or is a member of a family which receives regular cash welfare payments shall be deemed to have a low income.

(12) "National average unit cost" means all administration costs, other enrollee costs and enrollee wage and fringe benefit costs.

(13) "OAA" means the Older Americans Act of 1965, as amended.

(14) "Office" means the Office of Aging Services, Cabinet for Health Services.

(15) "Project" means an undertaking by a project sponsor pursuant to a grant agreement between the department and a project sponsor which provides for the employment of eligible individuals and the delivery of associated services.

(16) "Project sponsor" means an eligible organization which has entered into a grant agreement with the department. The Cabinet for Health Services is the state agency project sponsor.

(17) "Project year" means the twelve (12) month period covered by a grant agreement.

(18) "Reallocation" means the redistribution of Title V funds as proposed by the department from one (1) state to another or from one (1) project sponsor to another.

(19) "SCSEP" means senior community service employment program as authorized under Title V of the OAA.

(20) "Subproject agreement or contract" means an agreement entered into between a project sponsor and an organization which provides for the transfer of federal funds to the organization for the purpose of carrying out activities authorized in the grant agreement.

(21) "Subproject sponsor" means the area development district or the community action agency which contracts with the office.

(22) "Temporary position" means an enrollment opportunity in addition to the authorized positions made available during a project year if a portion of project funds is not being used as planned in the

grant agreement.

**Section 2. Responsibilities of the Subproject Sponsor.** (1) Subproject sponsors shall obtain and record the personal information necessary for a proper determination of eligibility for each individual and may request documentation to ensure that only eligible individuals are enrolled.

(2) Subproject sponsors shall recertify the income of each enrollee once each year according to the schedule set forth in contract. Enrollees found to be ineligible for continued enrollment because of income shall be given immediate written notice of termination and shall be terminated thirty (30) days after the notice.

(3) If a subproject sponsor determines that an enrollee was incorrectly declared eligible as a direct result of false information given by that individual, the enrollee shall be terminated immediately.

(4) If a subproject sponsor determines that an enrollee was incorrectly declared eligible through no fault of the enrollee, the project shall give the enrollee immediate notice and the enrollee shall be terminated thirty (30) days after the notice.

(5) If a subproject sponsor makes an unfavorable determination on continued eligibility the project shall explain in writing to the enrollee the reason or reasons for the determination. Individuals affected by an unfavorable determination shall be informed of the appeals procedures available.

(6) If a subproject sponsor terminates an enrollee for failure to perform assigned tasks, the enrollee shall be informed in writing of the reason or reasons for termination and of the right to appeal in accordance with procedures described in the grant application.

(7) If a subproject sponsor makes an unfavorable determination of enrollment eligibility pursuant to certification for continued enrollment the subproject sponsor shall assure that the individual is referred to other potential sources of assistance.

(8) The subproject sponsor shall assure by contract provision that persons shall not, on the grounds of race, color, religion, sex, national origin, or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination in connection with any program or activity funded in whole or in part with funds made available from the office or under Title V of the Act.

(9) Subproject sponsors shall cooperate with other project and subproject sponsors, agencies providing services to elderly persons and persons with low incomes, and agencies providing employment and training services.

(10) Subproject sponsors shall not select, reject, promote or terminate individuals based on political affiliations. The selection or advancement of enrollees as a reward for political services or as a form of political patronage, whether or not the political service or patronage is partisan in nature shall be prohibited.

(11) Subproject sponsors shall not involve political activities, as defined in Section 674.321(a) (c) Title V OAA, in the overall operations of their projects.

(12) Subproject sponsors shall not use funds provided under the Act or regulations to assist, promote or deter union organizing.

(13) Subproject sponsors shall not hire and a host agency shall not be a worksite for a person in an administrative capacity, staff position, or community service employment position funded under this project if a member of that person's immediate family is engaged in an administrative capacity for that subproject or host agency.

(a) If there are state or local legal requirements regarding nepotism which are more restrictive, those requirements shall be followed by the subproject sponsor;

(b) Immediate family shall mean wife, husband, son, daughter, mother, father, brother, sister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild; and

(c) Engaged in an administrative capacity shall include those persons who in the administration of projects, subprojects or host agencies have responsibility for the selection of enrollees from among eligible applicants.

(14) Subproject sponsors shall ensure through provisions in the annual program plan that host agencies provide adequate orientation, instruction and supervision for enrollees regarding

responsibilities and safety.

(15) Subproject sponsors shall require each enrollee selected for enrollment to receive physical examinations as follows:

(a) Each enrollee shall have an examination within the two (2) month period immediately before the first day of employment;

(b) An enrollee shall have an additional examination at intervals which ensure that no enrollee participates in community service employment more than fifteen (15) months without an examination or a waiver of examination;

(c) If an enrollee is terminated he may reenroll without an additional examination provided the time elapsed since the last examination has not exceeded fifteen (15) months and provided the schedule of one (1) examination per fifteen (15) month period is resumed based on the date of the last examination;

(d) An examination shall not be the basis for denial of participation unless there is clear indication of potential adverse health effects as a result of the performance of the tasks to be assigned; and

(e) If an individual objects to an examination the subproject sponsor shall obtain a signed waiver prior to the enrollee's first day of employment.

(16) Subproject sponsors shall provide orientation as follows:

(a) As soon as practicable to enrollees with information on:

1. Project objectives;

2. Community service employment assignments;

3. Training;

4. Supportive services;

5. Responsibilities, rights and duties of the enrollees;

6. Permitted and prohibited political activities; and

7. Plans for transition to unsubsidized employment.

(b) For host agencies and individuals who supervise enrollees to ensure that enrollees receive adequate supervision and opportunities for transition to the host agency staff or other unsubsidized employment.

(17) Subproject sponsors shall assess each new enrollee to determine the most suitable assignment for the individual, permitting the effective use of each enrollee's skills and aptitudes. The sponsor shall consider the individual's:

(a) Preference of occupational category;

(b) Work history;

(c) Skills;

(d) Aptitudes;

(e) Potential for performing community service duties; and

(f) Potential for transition to unsubsidized employment.

(18) Subproject sponsors shall evaluate at least yearly each enrollee's potential for transition to unsubsidized employment and the appropriateness of the enrollee's current job assignment. An alternate assignment shall be developed if a determination is made that an alternate assignment:

(a) Provides greater opportunity for use of the enrollee's skills and aptitudes;

(b) Provides work experience to enhance the potential for unsubsidized employment; or

(c) Serves the best interests of the enrollee.

(19) Assessments and evaluations shall be documented and a part of each enrollee's permanent record. Information on assessments and evaluations shall be submitted to the office as the activities occur during the program year and at least annually.

**Section 3. Recruitment and Eligibility.** (1) Recruitment methods shall:

(a) Assure that the maximum number of eligible individuals shall have an opportunity to participate in the project; and

(b) Assure equitable participation of minority individuals, Indians, and limited English speaking eligible individuals in proportion to their numbers in the state.

(2) Eligibility criteria shall be as follows:

(a) An individual shall not be less than fifty five (55) years of age and no upper age limit shall be imposed for initial or continued enrollment;

(b) The income of an individual seeking initial enrollment, reenrollment after termination, or certification for continued enrollment, or of the family of which the individual is a member shall not exceed the low income standards defined in Section 674.103 of Title

V-OAA regulations;

(c) Residency requirements shall include:

1. An individual upon initial enrollment shall reside in the state in which the project or subproject is approved;

2. Place of residence shall be the individual's declared permanent dwelling place; and

3. Requirements pertaining to length of residency prior to enrollment shall not be imposed.

(d) Subproject sponsors shall not impose additional conditions or requirements for enrollment eligibility.

(3) Enrollment priorities shall apply to vacant positions, including temporary positions, and shall not require the termination of an eligible enrollee. Enrollment priorities shall be as follows:

(a) Eligible individuals who are sixty (60) years old or older;

(b) Eligible individuals seeking reenrollment following termination due to illness, or unsubsidized placement if reenrollment is sought within one (1) year of termination;

(c) Eligible individuals enrolled in temporary positions;

(d) Other eligible individuals; and

(e) Consideration shall be given to within the above established priorities to individuals most in need. In determining those most in need, subproject sponsors may consider the extent to which the individual's income is below the low income standard.

Section 4. Community Service Employment. (1) The subproject sponsor shall place the enrollee in a community service job as soon as possible after the completion of enrollee orientation or training.

(2) Hours of community service employment shall be as follows:

(a) A subproject sponsor or host agency shall not require an enrollee to work more than twenty (20) hours during one (1) week;

(b) A subproject sponsor or host agency shall not offer an enrollee an average of fewer than twenty (20) hours of paid participation per week unless the shorter period is:

1. Permitted by the office's grant agreement;

2. In writing by the Department of Labor; or

3. By written agreement between an enrollee and the subproject sponsor, if the agreement has been approved by the office;

(c) An enrollee shall not work more than 1,300 hours including paid hours of orientation, training, sick leave, and vacation during the twelve (12) month period specified in the annual program plan and Title V Section 674.310(b)(1) of the OAA;

(d) A subproject sponsor or host agency shall to the extent possible ensure that enrollees work during normal business hours if they so desire.

(3) Enrollees shall be employed at worksites in or near their home areas.

(4) Enrollees shall be employed in assignments which:

(a) Contribute to the general welfare of the community;

(b) Provide services related to publicly owned and operated facilities and projects;

(c) Provide services related to projects sponsored by organizations, other than political parties, exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954; and

(d) Provide community services as defined in Section 1 of this administrative regulation.

(5) Subproject sponsors or host agencies shall to the fullest extent possible give enrollees first consideration for assignments involved in the operation of projects.

(6) Enrollees shall not be assigned to work involving the construction, operation or maintenance of a facility used or to be used for sectarian religious instruction or worship, or to work which primarily benefits private profit-making organizations.

(7) Enrollees shall not be permitted to work in buildings, surroundings or conditions which are unsanitary, hazardous or dangerous to the enrollees' health or safety. Periodic visits shall be made to the worksites to assure the working conditions and treatment of enrollees are consistent with provisions of the Act and regulations promulgated under the Act.

(8) If a portion of the project funds have not been used as planned in the annual program plan, subproject sponsors may use funds during the period of agreement to enroll additional eligible

individuals in temporary positions as follows:

(a) The number of temporary positions may not exceed twenty (20) percent of the total number of authorized positions established in the contract;

(b) Payments to or on behalf of enrollees shall not exceed the amount of the unused funds available;

(c) Subproject sponsors or host agencies shall inform individuals enrolled in temporary positions that the employment is temporary and may be terminated at any time;

(d) Subproject sponsors or host agencies shall seek to maintain full enrollment in authorized positions and shall seek to schedule enrollments and terminations to avoid excessive terminations at the end of the project period;

(e) Subproject sponsors shall notify the office in writing of action taken in the area of employing temporary positions; and

(f) Enrollee file information shall indicate the temporary status of the enrollee and the written agreement between the individual and the host agency. Copies shall be sent to the subproject sponsor and the project sponsor.

(9) Individuals enrolled in this program shall not be federal employees as a result of employment.

(10) Enrollees shall receive wages for community service employment which shall not be lower than whichever is the highest of:

(a) The minimum wage applicable to the employee under Fair Labor Standards Act of 1938, if Title V, Section 6(a)(1) of the OAA applied to the participant and the participant were not exempt under Title V, Section 13 of the OAA;

(b) The state or local minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rates of pay for persons employed in similar public occupations by the same employer.

(11) Subproject sponsors shall administer fringe benefits uniformly to all enrollees including enrollees in temporary positions as follows:

(a) Enrollees shall receive all fringe benefits required by law;

(b) If enrollees are not covered by the state workers' compensation law the subproject sponsor shall provide enrollees with workers' compensation benefits equal to that provided by law for covered employment and OAA Section 504(b) guidelines;

(c) Subproject sponsors shall be authorized to pay the cost of unemployment insurance where required by law and the OAA Section 502(b)(1)(N);

(d) Fringe benefits which shall be allowable costs include the following:

1. Annual leave;

2. Sick leave;

3. Holidays;

4. Health insurance; and

5. Other fringe benefits approved in the annual plan.

(e) Subproject sponsors shall not expend federal funds for contributions into a retirement system unless the project can demonstrate that:

1. Contributions bear a reasonable relationship to the cost of providing benefits to enrollees;

2. Enrollees have a reasonable expectation of receiving the value of contributions vested if they are made on behalf of the enrollees; and

3. The retirement system or plan is of a defined benefit type and a separate actuarial determination has established a reasonable expectation that the enrollees shall receive benefits as a result of contributions.

Section 5. Enrollee Supportive Services. Subproject sponsors shall provide supportive services designed to assist enrollees in successful participation in community service employment and to prepare enrollees for and assist them in attaining unsubsidized employment. Supportive services may include:

(1) Counseling or instruction, including that designed to assist enrollees personally in areas like health, nutrition, Social Security benefits, Medicare benefits and retirement laws;

(2) Incidentals including work shoes, badges, uniforms, safety glasses, eyeglasses and hand tools; and

(3) Transportation for enrollees provided the service is in the direct performance of employment or employment related activi-

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ties. Reimbursement from Title V-OAA funds shall not exceed the limitation on mileage rates established by federal travel regulations.

**Section 6. Training.** (1) Training which in the judgment of the subproject has the primary purpose of providing or improving skills an enrollee expects to use in the performance of his job assignment shall be provided as follows:

(a) An enrollee shall be paid for the hours of training at the established wage rate;

(b) Subproject sponsors shall not schedule required training for an enrollee which exceeds 240 hours during a project year without prior approval from the office; and

(c) Enrollees engaging in required training may be reimbursed for the cost of travel and room and board necessary to participate, provided reimbursement does not exceed rates established by current federal travel regulations.

(2) Training which is available to an enrollee but does not have the primary purpose of providing or improving skills necessary in the performance of job assignments shall be voluntary. Voluntary training may enhance skills for the regular job assignment and an enrollee's potential for unsubsidized employment and may be provided as follows:

(a) Subproject sponsors are not required to compensate enrollees for hours of voluntary training or to count uncompensated hours of voluntary training within the 1300-hour limit on compensated participation;

(b) Subproject sponsors may provide new enrollees with training related to assignments prior to and as a preparation for employment;

(c) Training in preparation for employment combined with time spent in orientation shall be completed within the first eighty (80) hours of the individual's enrollment. The office may approve extended periods.

(d) Subproject sponsors shall enroll each individual in the project prior to orientation and training in preparation for community service employment and shall initiate enrollee status as a paid employee;

(e) Subproject sponsors shall seek to obtain training for enrollees at no cost to the project. If training is not available from other sources Title V funds may be used for training; and

(f) Subproject sponsors shall not prevent or limit enrollees from engaging in training available from sources other than Title V during hours other than hours of community service employment.

**Section 7. Placement into Unsubsidized Employment.** Subproject sponsors shall employ reasonable means to place enrollees into unsubsidized jobs using the following criteria:

(1) Subproject sponsors shall place into unsubsidized employment the number of enrollees which equals twenty (20) percent of the authorized positions;

(2) Subproject sponsors shall contact public and private employers directly to develop or identify suitable unsubsidized employment opportunities;

(3) Subproject sponsors shall encourage host agencies to employ enrollees in their regular work forces; and

(4) Subproject sponsors shall follow up on enrollees who are placed into unsubsidized employment and document follow-up at least once within three (3) months of placement.

**Section 8. Duration of Enrollment.** A subproject sponsor shall establish and use time limitations on enrollment within a subproject. Limitations shall be approved in the annual program plan and grant application. The subproject sponsor shall demonstrate the following:

(1) The limitation shall be applied in an equitable and uniform manner;

(2) Enrollees whose only source of income is the Title V program shall not be terminated solely because of the limitations;

(3) No limitation shall be less than 1,040 hours of paid community enrollment in a twelve (12) month period;

(4) No hours of paid enrollment prior to July 1, 1985 shall be counted against the limitation; and

(5) Enrollees subject to termination because of a limitation on

enrollment shall be informed in writing no less than twelve (12) months prior to scheduled termination.]

DEBORAH S. ANDERSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 13, 2010

FILED WITH LRC: December 13, 2010 at 4 p.m.

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

### **CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (As Amended at ARRS, February 14, 2011)**

#### **921 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).**

RELATES TO: KRS 205.200, 205.210, 205.200(1), 205.211, 45 C.F.R. 233.20(a)(13), Parts 260-265, 400.66(d), 8 U.S.C. 1183a, 20 U.S.C. 1088(b)(1)[4088(a)(4)], 2302(3), (13)(40), 25 U.S.C. 459, 1261, 1401, 29 U.S.C. 723(a)(5), 2801, 2931(a)(2), 38 U.S.C. 1833[4845], 42 U.S.C. 7(xviii), (D)(4), 1381-1384, 1771, 1775, 3001, 4950-5084, 8621, 10602(c), Pub.L. 111-312

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.210(1), 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619 and federal regulations. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Kentucky Transitional Assistance Program (K-TAP), the block grant program funded by 42 U.S.C. 601 to 619. This administrative regulation sets forth the standards of need for and the amount of a Kentucky Transitional Assistance Program payment.

**Section 1. Definitions.** (1) "Assistance" is defined by 45 C.F.R. 260.31.

(2) "Benefit group" means a group composed of one (1) or more children and may include as specified relative a person pursuant to 921 KAR 2:006, Section 11.

(3) "Change in a circumstance" means a change in income or dependent care expense affecting the ongoing K-TAP payment that includes:

- (a) Beginning or ending employment;
- (b) Change in an employer or obtaining additional employment;
- (c) Increase or decrease in the number of work hours;
- (d) Increase or decrease in the rate of pay;
- (e) Increase or decrease in the dependent care expense due to a change in:

1. Provider;
2. Number of hours of care;
3. Number of individuals for whom care is given; or
4. Amount charged; or
- (f) Change in farm cropping arrangement or type of self-employment activity.

(4) "Claimant" means the individual responsible for the repayment of an overpayment.

(5) "Countable income" means income that remains after excluded income and appropriate deductions are removed from gross income.

(6) "Deduction" means an amount subtracted from gross income to determine countable income.

(7) "Electronic benefit transfer" or "EBT" means a computer-based electronic benefit transfer system in which an eligible

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household's benefit authorization is received from a central computer through a point of sale terminal or automated transfer machine.

(8) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(9) "Excluded income" means income that is received but not counted in the gross income test.

(10) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(11) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in:

1. An adult basic education program;
2. A general educational development program; or
3. A literacy program;

(b) The number of hours required by the individual program for participation in a college or university; or

(c) The number of hours required by the individual high school or vocational school to fulfill the high school or vocational school's definition of full time.

(12) "Gross income limitation standard" means 185 percent of the assistance standard, as set forth in Section 9 of this administrative regulation.

(13) "Kentucky Transitional Assistance Program" or "K-TAP" means a money payment program for a child who is deprived of parental support or care pursuant to 921 KAR 2:006, Section 1.

(14) "Kentucky Works" means a program that assists a:

(a) Recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or

(b) Former K-TAP recipient with job retention service.

(15) "Lump sum income" means income that does not:

(a) Occur on a regular basis; or

(b) Represent accumulated monthly income received in a single sum.

(16) "Minor" means a person who is under the age of eighteen (18).

(17) "Minor parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married or is married and not living with the spouse; and

(c) Has a minor child in the applicant's or recipient's care.

(18) "Part-time employment" means employment of:

(a) Less than thirty (30) hours per week; or

(b) Less than 130 hours per month.

(19) "Part-time school attendance" means a workload that is less than full-time school attendance as determined by the educational institution.

(20) "Penalized individual" means a person who is required to be included in the benefit group but fails to fulfill an eligibility requirement, causing a reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.

(21) "Recoupment" means recovery of an overpayment of an assistance payment.

(22) "Sanctioned individual" means a person who is required to be included in the benefit group but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(23) "Self-employment income" means income from a business enterprise if taxes are not withheld prior to receipt of the income by the individual.

(24) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1384 to the aged, blind and disabled.

(25) "Unavailable" means that the income is not accessible to the K-TAP benefit group for use toward basic food, clothing, shelter, and utilities.

(26) "Workforce Investment Act" or "WIA" means a program to assist adults, dislocated workers, and youth with entering, retraining, and advancing within employment, as established by 29 U.S.C. 2801.

(27) "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, and tools.

Section 2. Technical Eligibility. (1) A benefit group shall include:

(a) A dependent child;

(b) A child's parent living in the home with the dependent child who is:

1. Eligible for K-TAP; or

2. Ineligible for K-TAP due to benefit time limitations pursuant to 921 KAR 2:006, Section 21;

(c) An eligible sibling living in the home with a dependent child, except for a sibling who is an applicant or recipient of the Kinship Care Program pursuant to 922 KAR 1:130; or

(d) An eligible child who is:

1. In full-time school attendance or part-time school attendance; and

2.a. Sixteen (16) through eighteen (18) years of age; or

b. A minor parent.

(2) If the K-TAP benefits to a household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, the child shall not be included in the benefit group.

(3) If a dependent child's parent is a minor living in the home with an eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applied for assistance.

(4) An incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors of 921 KAR 2:006 are met.

Section 3. Resource Limitations. (1) A liquid asset shall be considered a countable resource if it is:

(a) Available to the benefit group; and

(b) Owned in whole or in part by:

1. An applicant or recipient;

2. A sanctioned or penalized individual; or

3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.

(2) The total amount of resources reserved by a benefit group shall not be in excess of \$2,000 in liquid assets, excluding an asset listed in subsection (3) of this section.

(3) Excluded resources.

(a) Resources from the following individuals shall be excluded from consideration:

1. A recipient of SSI or the state supplementation program living in the home;

2. A child excluded from the K-TAP grant; or

3. An individual not receiving assistance but living in the home including:

a. The stepparent;

b. The parent or legal guardian of a minor parent;

c. The spouse of a nonresponsible specified relative; or

d. The spouse of a minor dependent child.

(b) The following resources shall not be included in the \$2,000 resource limit:

1. Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home;

2. Funds in an individual retirement account, retirement or deferred compensation account during the period of unavailability;

3. An excluded income payment, pursuant to Section 5 of this administrative regulation;

4. Principal and accrued interest of an irrevocable trust during a period of unavailability;

5. Prepaid burial funds;

6. Cash surrender value of all burial insurance policies per family member;

7. Principal of a verified loan;

8. Up to \$12,000 to Aleutians and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;

9. Payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to a veteran or veteran's survivor;

10. a. Any federal tax refund or advance payment of a re-

**fundable federal tax credit for a period of twelve (12) months from receipt in accordance with Pub. L. 111-312; or**

**b. After December 31, 2012,** earned income tax credit payment in the month of receipt and the following month;

11. A payment received from the Radiation Exposure Compensation Trust Fund;

12. A nonrecurring lump sum SSI retroactive payment that is made to a K-TAP recipient who is not ongoing eligible for SSI, in the month paid and the next following month;

13. Up to a total of \$5,000 in individual development accounts, excluding interest accruing, pursuant to subsection (7) of this section; and

14. A payment received from the National Tobacco Growers Settlement Trust.

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise disposed of a liquid asset in order to qualify for assistance.

(b) The household's application shall be denied, or assistance discontinued if:

1. The transfer was made expressly for the purpose of qualifying for assistance; and

2. The amount of the transfer, when added to total resources, exceeds the resource limit.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d) 1. If the amount of excess transferred resources does not exceed \$500, the period of ineligibility shall be one (1) month.

2. the period of ineligibility shall be increased one (1) month for every \$500 increment up to a maximum of twenty-four (24) months.

(5) Lifetime care agreement.

(a) The existence of a valid agreement between the applicant or recipient and another individual or organization that the applicant or recipient surrendered resources in exchange for lifetime care shall make the case ineligible.

(b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.

(6) Resources held jointly by more than one (1) person.

(a) 1. For a bank account requiring one (1) signature for withdrawal, the total balance of the account shall be considered available to the K-TAP applicant or recipient, unless the other owner is a recipient of SSI.

2. If the other owner receives SSI, the:

a. Balance shall be divided evenly by the number of owners; and

b. K-TAP applicant or recipient's share shall be considered available.

(b) For a bank account that requires more than one (1) signature for withdrawal, the K-TAP applicant or recipient's share shall be determined by obtaining a written statement from the other owners as to the division.

(c) If there is no predetermined allocation of shares from a business enterprise, the applicant or recipient's available share shall be determined by dividing the value of the business enterprise by the number of owners.

(d) If a resource is held jointly, other than a resource pursuant to paragraphs (a) through (c) of this subsection, the applicant or recipient's share shall be determined by dividing the value of the resource by the number of owners.

(e) Rebuttal of ownership shall be accomplished if the applicant or recipient asserts no contribution to or benefits from a jointly held resource and provides:

1. A written statement regarding ownership, who may deposit and withdraw;

2. A written statement from each of the other owners that corroborates the applicant's or recipient's statement, unless the account holder is a minor or is incompetent; and

3. Verification that the applicant's or recipient's name has been removed from the resource.

(7)(a) To be considered an exempt resource, the individual development account shall have been:

1. Established on or after May 1, 1997; and

2. funded through periodic contributions by a member of the benefit group using funds derived from earned income that was earned after May 1, 1997, for a qualified purpose.

(b) A qualified purpose to establish an individual development account shall be for:

1. Postsecondary educational expense that shall include:

a. Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution;

b. Fees, books, supplies, and equipment required for a course of instruction at an eligible educational institution; and

c. An eligible educational institution that shall be an:

(i) Institution pursuant to 20 U.S.C. 1088(b)(1); or

(ii) Area vocational education school pursuant to 20 U.S.C. 2302(3) or (13)[(40)];

2. First home purchase that includes:

a. Costs of acquiring, constructing, or reconstructing a residence; and

b. Usual or reasonable settlement, financing, or other closing costs;

3. A business capitalization expenditure for a business that does not contravene a law or public policy, as determined by the cabinet, pursuant to a qualified plan which shall:

a. Include capital, plant, equipment, working capital, and inventory expenses;

b. Be approved by a financial institution; and

c. Include a description of a service or a good to be sold, a marketing plan, and projected financial statement. An applicant may use the assistance of an experienced entrepreneurial advisor if needed; or

4. Other purpose allowed by a federal regulation or clarification.

(c) Funds held in an individual development account shall not be withdrawn except for one (1) or more of the qualified purposes pursuant to paragraph (b) of this subsection.

(d) To be considered an exempt resource, an individual development account shall be matched by funds from a:

1. Nonprofit organization; or

2. State or local government agency, funding permitted, acting in cooperation with an organization pursuant to subparagraph 1 of this paragraph.

Section 4. Income Limitations. In determining eligibility for K-TAP, the following shall apply: (1) Gross income test:

(a) The total gross non-K-TAP income shall not exceed the gross income limitation standard and shall include:

1. Income of the benefit group;

2. Income of a parent who does not receive SSI or state supplementation pursuant to 921 KAR 2:015;

3. Income of a sanctioned or penalized individual; and

4. An amount deemed available from:

a. The parent of a minor parent living in the home with the benefit group;

b. A stepparent living in the home;

c. The spouse of a minor dependent child living in the home; or

d. An alien's sponsor and sponsor's spouse if living with the sponsor;

(b) Excluded income types pursuant to Section 5(1) of this administrative regulation shall apply; and

(c) If total gross income exceeds the gross income limitation standard, the benefit group shall be ineligible.

(2) Benefit calculation:

(a) If the benefit group meets the criteria pursuant to subsection (1) of this section, benefits shall be determined by subtracting excluded income and applicable deductions pursuant to Section 5(1), (2), and (3) of this administrative regulation;

(b) If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the standard of need for the appropriate benefit group size pursuant to Section 9 of this administrative regulation, the benefit group shall be ineligible; and

(c) Amount of assistance shall be determined prospectively.

(3) Ineligibility period:

(a) A period of ineligibility shall be established for a benefit group whose income in the month of application or during a month the assistance is paid exceeds a limit pursuant to subsection (2) of

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this section due to receipt of lump sum income;

(b) The ineligibility period shall be:

1. The number of months that equals the quotient of the division of total countable income by the standard of need pursuant to Section 9 of this administrative regulation for the appropriate benefit group size; and

2. Effective with the month of receipt of the nonrecurring lump sum amount; and

(c) The ineligibility period shall be recalculated if:

1. The standard of need pursuant to Section 9 of this administrative regulation increases and the amount of grant the benefit group would have received also changes;

2. Income, that caused the calculation of the ineligibility period, has become unavailable for a reason that was beyond the control of the benefit group;

3. The benefit group incurs and pays a necessary medical expense not reimbursable by a third party;

4. An individual, who is required to be a member of the benefit group, joins the K-TAP household during an established ineligibility period; or

5. The benefit group reapplies during an established ineligibility period and the cabinet determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 5. Excluded Income and Deductions. (1) Gross non-K-TAP income received or anticipated to be received shall be considered with the application of excluded income and deduction policy:

(a) By the:

1. Benefit group;

2. Sanctioned or penalized individual;

3. Natural parent;

4. Spouse of a dependent child;

5. Parent of a minor parent living in the home with the benefit group; or

6. Stepparent living in the home; and

(b) Pursuant to subsections (2) to (4) of this section.

(2) Gross income test. An income listed in this subsection shall be excluded:

(a) A deduction applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit group, pursuant to Section 7 of this administrative regulation;

(b) A deduction applicable to an alien sponsor's income, pursuant to Section 8 of this administrative regulation;

(c) A deduction applicable to self-employment income;

(d) Allowances, earnings, and payments received under WIA programs in accordance with 29 U.S.C. 2931(a)(2) ~~The difference between the standard of need and the payment maximum for the benefit group, pursuant to Section 9 of this administrative regulation, if a member of the benefit group receives a WIA stipend~~;

(e) Value of United States Department of Agriculture program benefits including:

1. Donated food;

2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;

3. Special food service program for a child pursuant to 42 U.S.C. 1775;

4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly Supplemental Nutrition Assistance Program ~~food stamp~~ allotment;

(f) Reimbursement for transportation in performance of an employment duty, if identifiable;

(g) The value of Kentucky Works supportive services payment pursuant to 921 KAR 2:017;

(h) Nonemergency medical transportation payment;

(i) Payment from complementary program if no duplication exists between the other assistance and the assistance provided by the K-TAP program;

(j) Educational grant, loan, scholarship, and work study income;

(k) Highway relocation assistance;

(l) Urban renewal assistance;

(m) Federal disaster assistance and state disaster grant;

(n) Home produce utilized for household consumption;

(o) Housing subsidy received from federal, state or local governments;

(p) Funds distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(q) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(r) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as a:

1. Senior health aide; or

2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(s) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5084 if less than the minimum wage under state or federal law, whichever is greater including:

1. Volunteers in Service to America (VISTA);

2. Foster Grandparents;

3. Retired and Senior Volunteer Program; or

4. Senior Companion;

(t) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care;

(u) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(v) The first fifty (50) dollars of child support payment;

(w) Earnings of an individual attending school who is age nineteen (19) or under;

(x) Earnings of a dependent child under eighteen (18) who is a high school graduate;

(y) Nonrecurring monetary gifts totaling thirty (30) dollars or less per month per individual;

(z) The principal of a verified loan;

(aa) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;

(bb) Income of an individual receiving SSI, including monthly SSI benefits and any retrospective SSI benefits;

(cc) The essential person's portion of the SSI check;

(dd) Income of an individual receiving mandatory or optional state supplementary payment pursuant to 921 KAR 2:015;

**(ee) 1. Any federal tax refund or advance payment of a refundable federal tax credit in accordance with Pub. L. 111-312; or**

**2. After December 31, 2012,** the advance payment or refund of earned income tax credit;

(ff) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(gg) Interest and dividend income unless derived from a corporate business;

(hh) In-kind income;

(ii) Income of a technically ineligible child;

(jj) Payment made from the Agent Orange Settlement Fund;

(kk) K-TAP payment including back payment;

(ll) Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship pursuant to 921 KAR 2:006, Section 11;

(mm) Payment made from the Radiation Exposure Compensation Trust Fund;

(nn) Up to \$2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;

(oo) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(pp) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(qq) A payment received from the National Tobacco Growers Settlement Trust;

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(rr) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(c);

(ss) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;

(tt) A payment made to children of Vietnam veterans and certain other veterans, pursuant to 38 U.S.C. 1833[1845 by the Veterans Administration, to children of female Vietnam veterans];

(uu) A discount or subsidy provided to Medicare beneficiaries pursuant to Section 1860D-31(g)(6) of the Social Security Act, 42 U.S.C. 7(xviii) and (D)(4);

(vv) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d); and

(ww) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5).

(3) Benefit calculation. Excluded income pursuant to subsection (2) of this section and an applicable deduction listed in this subsection shall be applied:

(a) Work expense standard deduction of ninety (90) dollars for full-time and part-time employment;

(b) If the caregiver is not the parent, legal guardian or a member of the benefit group, the dependent care disregard shall:

1. Be allowed as a work expense for:

a. An able bodied child age thirteen (13) or over and not under court supervision;

b. An incapacitated adult living in the home and receiving K-TAP;

c. A K-TAP case that is otherwise ineligible for K-TAP without the benefit of the disregard for child care, at the option of the recipient; or

d. The month of application for K-TAP benefits; and

2. Not exceed:

a. \$175 per month per individual for full-time employment;

b. \$150 per month per individual for part-time employment; or

c. \$200 per month per individual for child under age two (2);

(c) Child support payment received and retained until notification of eligibility for K-TAP is received;

(d) Child support payment assigned and actually forwarded or paid to the cabinet;

(e) First thirty (30) dollars and one-third (1/3) of the remainder of earned income not already deducted for each member of the benefit group calculated as follows:

1. The one-third (1/3) portion of this deduction shall be applied to each member's earned income for four (4) months;

2. The thirty (30) dollar portion of this deduction shall be applied concurrently with the one-third (1/3) deduction and for an additional eight (8) consecutive months following the expiration of the concurrent period; and

3. Until the individual has earnings, reported timely, from new employment, the deductions shall not be available to the individual after expiration of the time limits; and

(f) For new employment, or increased wages, acquired after approval and reported timely, a one (1) time only disregard per employed adult member of the benefit group, the amount of two (2) full calendar months earnings calculated as follows:

1. The two (2) months earnings disregard shall be consecutive, and at the option of the recipient; and

2. If otherwise eligible, a sanctioned or penalized member of the benefit group may receive the two (2) months earnings disregard.

(4) Deductions from earnings pursuant to subsection (3)(a), (b) and (e) of this section shall not apply for a month the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists pursuant to 921 KAR 2:370, Section 6(1); or

(b) Fails to report an increase in earnings, that impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:

1. The benefit group has been directly affected by a natural disaster;

2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or

3. The responsible relative in the case and the member employed, if different, is out of town for the entire ten (10) day report period.

Section 6. Child Care Expense. With the exception of those circumstances pursuant to Section 5(3)(b) of this administrative regulation, a child care expense incurred as a result of employment shall be paid pursuant to 922 KAR 2:160.

Section 7. Income and Resources of an Individual Not Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, pursuant to subsection (2) of this section:

(a) A stepparent;

(b) The spouse of a minor dependent child;

(c) The spouse of a specified relative other than a parent; and

(d) A parent of a minor parent. (2) The gross income of the individual shall be considered available to the benefit group, subject to the following deductions:

(a) The first ninety (90) dollars of the gross earned income; and

(b) 1. An amount equal to the K-TAP standard of need for the appropriate family size, pursuant to Section 9 of this administrative regulation for:

a. The support of the individual; and

b. A person living in the home if:

(i) The needs of the person are not included in the K-TAP eligibility determination; and

(ii) The person is or may be claimed as a dependent for the purpose of determining his federal personal income tax liability by the individual;

2. An amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for the purpose of determining his personal income tax liability by the individual; or

3. Payment for alimony or child support to a person not living in the home by the individual.

(3) A resource shall not be considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit group that belongs solely to the:

(a) Stepparent;

(b) Spouse of a minor dependent child;

(c) Spouse of a specified relative other than a parent; or

(d) Parent of a minor parent.

Section 8. Alien Sponsor Income and Resources. (1)(a) For the purpose of this section, the alien's sponsor and sponsor's spouse, if living with the sponsor, shall be referred to as sponsor.

(b) This subsection and subsections (2) through (6) of this section shall apply to an immigrant who has an agreement executed other than an agreement pursuant to 8 U.S.C. 1183a.

(2) The gross non-K-TAP income and resources of an alien's sponsor shall be deemed available to the alien, subject to a deduction set forth in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) If adequate information on the sponsor or sponsor's spouse is not provided, a sponsored alien shall be ineligible for a month.

(5) If an alien is sponsored by an agency or organization, that has executed an affidavit of support, the alien shall be ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

(a) Is no longer in existence; or

(b) Does not have the financial ability to meet the alien's needs.

(6) The provisions of this subsection shall not apply to an alien pursuant to subsection (5) or (7) of this section.

(a) The gross income of the sponsor shall be considered available to the benefit group subject to the following deductions:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;

2. An amount equal to the K-TAP standard of need for the



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appropriate family size pursuant to Section 9 of this administrative regulation of:

- a. The sponsor; and
  - b. Other person living in the household:
    - (i) Who is or may be claimed by the sponsor as a dependent in determining the sponsor's federal personal income tax liability; and
    - (ii) Whose needs are not considered in making a determination of eligibility for K-TAP;
  3. An amount paid by the sponsor to a nonhousehold member who is or may be claimed as a dependent in determining the sponsor's federal personal tax liability;
  4. Actual payment of alimony or child support paid to a non-household member; and
  5. Income of a sponsor receiving SSI or K-TAP.
- (b) Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if the sponsor were a K-TAP applicant in this state, less \$1,500.

(7)(a) For a sponsored alien who enters the United States on or after December 19, 1997, who is required to complete a sponsorship agreement pursuant to 8 U.S.C. 1183a, the total gross income and resources of an alien's sponsor and sponsor's spouse shall be deemed available to the alien.

(b) The sponsor's obligation shall be available until the:

1. Immigrant:
  - a. Becomes a United States citizen;
  - b. Is credited with forty (40) quarters of work; or
  - c. Ceases to hold the status of an alien lawfully admitted for permanent residence; or
2. sponsor dies.

(c) The immigrant shall provide the sponsorship agreement pursuant to 8 U.S.C. 1183a.

(8)(a) The actual amount provided by the sponsor shall be considered for a period up to twelve (12) months from the date of determination, if an:

1. Amount less than the amount in the sponsorship agreement is made available to the immigrant; and
2. Alien is determined indigent.

(b) An alien shall be determined indigent if:

1. The amount of the sponsor's income and resources given to the alien is less than the amount in the agreement; and
2. Without K-TAP assistance and after consideration of the alien's own income, cash, food, housing or assistance provided by an individual including the sponsor, the alien is unable to obtain food and shelter.

(9) Deeming of the sponsor's income shall not apply for twelve (12) months if the:

(a) Alien or alien's child has been subjected to extreme cruelty or battery while living in the United States and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:

1. Spouse or parent; or
2. Spouse or parent's family living with the alien or alien's child and the spouse or parent allows the cruelty or battery; or

(b) Alien is a child who lives with a parent who has been subjected to extreme cruelty or battery while living in the United States, and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:

1. Spouse; or
2. Member of the spouse's family living in the same household and the spouse allows the cruelty or battery.

Section 9. Payment Maximum. (1) The K-TAP payment maximum includes an amount for food, clothing, shelter, and utilities.

(2)(a) Countable income, pursuant to Section 10 of this administrative regulation, shall be subtracted in determining eligibility for and the amount of the K-TAP assistance payment as follows:

Number of Eligible Persons	Payment Maximum	Standard of Need
1 person	\$186	\$401
2 persons	\$225	\$460
3 persons	\$262	\$526
4 persons	\$328	\$592

5 persons	\$383	\$658
6 persons	\$432	\$724
7 or more persons	\$482	\$790

(b) The gross income limit shall be as follows for the appropriate family size:

Number of Eligible Persons	Maximum Gross Income Limits
1 Person	\$742
2 Persons	\$851
3 Persons	\$974
4 Persons	\$1096
5 Persons	\$1218
6 Persons	\$1340
7 or more Persons	\$1462

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4)(a) The assistance payment shall be the lesser amount of either:

1. Fifty-five (55) percent of the deficit pursuant to subsection (3) of this section; or
2. The payment maximum pursuant to subsection (2)(a) of this section.

(b) As a result of applying the forty-five (45) percent ratable reduction pursuant to subsection (3) of this section, an eligible payment to an otherwise eligible family with no income shall be calculated pursuant to KRS 205.200(2).

(5) If a benefit group's assistance payment equals zero (0), the benefit group shall be ineligible for K-TAP.

Section 10. Best Estimate. (1) The benefit shall be computed by using a best estimate of income that may exist in the payment month.

(2) The following method shall be used to calculate a best estimate:

(a) For a case with earned income, other than self-employment earned income, a monthly amount shall be determined as follows:

1. Cents shall:
  - a. Not be rounded to the nearest dollar before adding or multiplying hourly or daily earnings; and
  - b. Be rounded to the nearest dollar before adding or multiplying weekly, biweekly, semimonthly, monthly, quarterly, or annual amounts.

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used.

3. A monthly amount shall be determined by:
  - a. Adding gross income from each pay period;
  - b. Dividing by the total number of pay periods considered;
  - c. Converting the pay period figure to a monthly figure by multiplying a:

- (i) Weekly amount by four and one-third (4 1/3);
- (ii) Biweekly amount by two and one-sixth (2 1/6); or
- (iii) Semimonthly amount by two (2); and

d. Rounding to the nearest dollar.

4. If income has recently begun, and the applicant or recipient has not received two (2) calendar months of earned income, the anticipated monthly income shall be computed by:

- a. Multiplying the hourly rate by the estimated number of hours to be worked in a pay period; or
- b.(i) Multiplying the daily rate by the estimated number of days to be worked in the pay period; and
- (ii) Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3c of this paragraph and rounding to the nearest dollar.[;]

(b) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Rounding cents to the nearest dollar;
2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and
3. Averaging the amount of unstable unearned income re-

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ceived in the three (3) prior calendar months, unless it does not represent the ongoing situation. ~~and~~

(c) For a case with self-employment income, a monthly amount shall be determined as follows:

1. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);

2. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and

3. Profit shall be determined by:

a. Rounding the total gross income to the nearest dollar;

b. Rounding the total amount of allowable expenses to the nearest dollar;

c. Dividing each by twelve (12), or the appropriate number of months, and rounding to the nearest dollar; and

d. Subtracting the rounded monthly expense from the rounded monthly income.

(3) The best estimate shall be recalculated:

(a) At six (6) month intervals for a case with:

~~4. Earned, or unearned, or income other than self-employment income; or~~

~~2. Income from a self-employment enterprise that has not been in existence for at least one (1) year;~~

~~(b) [At twelve (12) month intervals for a case with a self-employment enterprise that has been in existence for at least one (1) year;~~

~~(c) If the agency becomes aware of a change in a circumstance; or~~

~~(d) To reflect a mass change in the standard of need or payment maximum standard pursuant to Section 9 of this administrative regulation.~~

Section 11. K-TAP Recoupment. The following provisions shall apply for recoupment of a K-TAP overpayment.

(1) Necessary action will be taken promptly to correct and recoup an overpayment.

(2) An overpayment shall be recovered:

(a) From an adult claimant, whether currently receiving K-TAP benefits:

1. After notice and an opportunity for a fair hearing pursuant to 921 KAR 2:055 is given;

2. After administrative and judicial remedies have been exhausted or abandoned; and

3. Including assistance paid:

a. Pending the hearing decision; or

b. Due to cabinet error; and

(b) Through:

1. Repayment by the claimant to the cabinet;

2. Reduction of future K-TAP benefits, that shall result in the benefit group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income pursuant to Section 9 of this administrative regulation;

3. Civil action in the court of appropriate jurisdiction; or

4. If the cabinet becomes aware of expunged electronic benefits transfer (EBT) payments, reduction of the overpayment balance by an amount equal to the expunged benefits.

(3) In a case that has both an overpayment and an underpayment, the overpayment and underpayment shall be offset one against the other in correcting the payment to a current recipient.

Section 12. Aid to Families with Dependent Children Recoupment. (1) The cabinet shall recoup an Aid to Families with Dependent Children overpayment discovered on or after April 1, 1982, pursuant to 45 C.F.R. 233.20(a)(13).

(2) An Aid to Families with Dependent Children overpayment shall be recovered from an adult or child member of the benefit group:

(a) Pursuant to 45 C.F.R. 233.20(a)(13); and

(b) In accordance with the recoupment process specified in Section 11 of this administrative regulation.

Section 13. Avoiding an Overpayment. (1) A K-TAP recipient

may voluntarily:

(a) Return a benefit payment; or

(b) Give permission to the cabinet to use EBT benefits by completing and returning a written statement requesting a written statement requesting this option to avoid an overpayment if the case:

1. Is totally ineligible for the month the payment is issued; and

2. Has not been reduced for recoupment of a previous overpayment.

(2) If a payment is voluntarily returned, the cabinet shall determine whether the recipient is due a refund as described in Section 14 of this administrative regulation.

Section 14. Refund. A recipient shall be due a refund in the following situations:

(1) An amount in excess of the actual overpayment is recouped;

(2) An overpayment and an underpayment is offset and a balance is owed to the recipient; or

(3) A K-TAP payment that is voluntarily returned to avoid an overpayment is compared to the current month obligation of child support collected by the cabinet during the month the K-TAP check was intended to cover, leaving a balance owed to the recipient.

Section 15. Correction of Underpayments. The following provisions shall apply to a K-TAP payment:

(1) An underpayment shall be promptly corrected to:

(a) A current K-TAP recipient; or

(b) One (1) who would be a current recipient if the error causing the underpayment had not occurred.

(2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group.

(3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in the:

(a) Month the payment is paid; or

(b) Next following month.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 10, 2010

FILED WITH LRC: December 10, 2010 at 4 p.m.

### **CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (As Amended at ARRS, February 14, 2011)**

#### **921 KAR 2:370. Technical requirements for Kentucky Works.**

RELATES TO: KRS 205.200(7), 205.2003, 45 C.F.R. 98.2, 260-265, 29 U.S.C. 651-678, 42 U.S.C. 601-619, 12101-12213

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.200(7), 205.2003, 42 U.S.C. 601-619, Pub. L. 109-171

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. The Cabinet for Health and Family Services has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program for the Kentucky Transitional Assistance Program, the block grant program funded pursuant to 42 U.S.C. 601 to 619. KRS 205.200(2) and (7) require the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619, and federal regulations. KRS 205.2003 requires that a work program for a recipient of Kentucky Transitional Assistance Program be prescribed by administrative regulations. Pub. L. 109-171, effective October 1, 2006, reauthorized the Temporary Assistance for Nee-

## VOLUME 37, NUMBER 8 – MARCH 1, 2011

dy Families Program known as the Kentucky Transitional Assistance Program in Kentucky. This administrative regulation sets forth the technical requirements of the Kentucky Works Program.

Section 1. Definitions. (1) **"Affordable child care arrangements" means appropriate child care at a reasonable distance that is suitable and with a charge at or below the maximum provider payment rate pursuant to the Child Care and Development Fund plan.**

~~(2) "Americans with Disabilities Act disability" or "ADA disability" is defined by 42 U.S.C. 12102. [(2) "Affordable child care arrangements" means appropriate child care at a reasonable distance that is suitable and with a charge at or below the maximum provider payment rate pursuant to the Child Care and Development Fund plan.]~~

(3) "Appropriate child care" means eligible child care as provided by an "eligible child care provider", pursuant to 45 C.F.R. Part 98.2.

(4) "Assessment" means the ongoing evaluation of an individual's strengths and needs relative to achieving self-sufficiency.

(5) "Assistance" is defined by 45 C.F.R. 260.31.

(6) "Barriers" means a limitation in an individual's ability to become employed and self-sufficient or to comply with K-TAP requirements.

(7) "Community service activities" means "community service programs", as defined by 45 C.F.R. 261.2(h).

(8) "Conciliation" means a process in which a participation problem in the Kentucky Works Program can be resolved.

(9) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(10) "Family member" means an individual:

(a) Related by blood, marriage, or adoption to a child or a work-eligible individual, as defined by 45 C.F.R. 261.2(n), in the benefit group; or

(b) Who is a member of an unmarried couple and has a child in the benefit group in common with the work-eligible individual, as defined by 45 C.F.R. 261.2(n).

(11) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in:

1. An adult basic education program;
2. A general educational development (GED) program; or
3. A literacy program;

(b) The number of hours required by the individual program for participation in a college or university; or

(c) A semester system in a college or university of:

1. Twelve (12) semester hours or more; or
2. Six (6) semester hours or more during the summer term;

(c) The equivalent of paragraph (b) of this subsection in a college or university if other than a semester system is used; or

(d) The number of hours required by the individual high school or vocational school to fulfill the high school or vocational school's definition of full time.

(12) "Job search and job readiness assistance" is defined by 45 C.F.R. 261.2(g).

(13) "Job skills training directly related to employment" is defined by 45 C.F.R. 261.2(j)

(14) "Kentucky Transitional Assistance Program" or "[K-TAP]" means a money payment program for a child pursuant to 921 KAR 2:006, Section 1.

(15) "Kentucky Works" means a program that assists a recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance.

(16) "On-the-job training" is defined by 45 C.F.R. 261.2(f).

(17) "Part-time enrollment" means enrollment with a postsecondary institution at a minimum of half of full-time enrollment as defined by subsection (12)(b) or (c) of this section.

(18) "Qualifying Parent" means a parent who meets prior labor market attachment in accordance with 921 KAR 2:006, Section 1.

(19) "Reasonable distance" means the distance customarily available within a locality.

(20) "Subsidized employment" is defined by 45 C.F.R. 261.2(c) and (d).

(21) "Unsubsidized employment" is defined by 45 C.F.R. 261.2(b).

(22) "Unsuitability of informal child care" means care not regulated pursuant to Kentucky law that does not meet the quality child care need as defined by the parent or the health and safety requirements applicable to unregulated child care in the commonwealth.

(23) "Vocational education" means "vocational educational training" as defined by 45 C.F.R. 261.2(i).

(24) "Work-eligible individual" is defined by 45 C.F.R. 261.2(n).

(25) "Work Experience Program" or "WEP" means the definition of "work experience" if sufficient private sector employment is not available" pursuant to 45 C.F.R. 261.2(e).

Section 2. Program Participation. (1) Unless the K-TAP recipient meets the exception criteria in Section 3 of this administrative regulation, the cabinet shall determine a work-eligible individual as follows:

(a) 1. A one (1) parent household shall be required to participate in a specific activity pursuant to paragraph (c) of this subsection no less than the number of hours per week required in the activity, pursuant to subparagraph 2 of this paragraph.

2. The activity shall be required to have at least a minimum of thirty (30) hours per week, ten (10) hours of which may be satisfied through participation in an education or training activity pursuant to paragraph (c)8, 9, and 11 of this subsection or in literacy or adult education.

(b) A two (2) parent household shall participate in a specific activity no less than the number of hours per week required in the activity, pursuant to this paragraph. The activity shall be required to **meet the following requirements: [have at least a minimum of:]**

1. If the family receives federally funded child care assistance, the activity shall be required to have at least a minimum of fifty-five (55) hours combined from both parents, five (5) of which may be satisfied through participation in an education activity pursuant to paragraph (c)8, 9, and 11 of this subsection or in literacy or adult education.

2. If the family does not receive federally-funded child care, a two (2) parent household shall participate thirty-five (35) hours per week combined, five (5) of which may be satisfied through participation in an education activity pursuant to paragraph (c)8, 9, and 11 of this subsection or in literacy or adult education.

3. If an adult is needed to care for a child in the home with a severe disability pursuant to 921 KAR 2:006, a two (2) parent household shall participate pursuant to paragraph 2 of this paragraph.

4. A two (2) parent household eligible for K-TAP based on the deprivation of incapacity, pursuant to 921 KAR 2:006, shall meet the number of hours of participation in a work activity listed in paragraph (a) of this subsection.

(c) In accordance with 45 C.F.R. 261.2, to be in compliance with the program participation requirement in Kentucky Works, a countable activity may include:

1. Unsubsidized employment;
2. Subsidized employment;
3. Work experience training;
4. On-the-job training;
5. Job search and job readiness assistance;
6. Community service activities;
7. Full-time enrollment, as defined by the educational institution or program, in post secondary or vocational education not to exceed ~~twelve (12)~~ ~~[twenty-four (24)]~~ cumulative months ~~[during which the participant will not be required to participate in other activities];~~

8. Full or part-time enrollment, as defined by the educational institution or program, in postsecondary or vocational education at any time if combined with an activity pursuant to subparagraph 1 through 4 and 6 of this paragraph;

9. Attendance at secondary school or equivalent if the recipient:

- a. Has not completed secondary school or equivalent; or
- b. Couples the attendance with work or work activity in the amount of hours per week pursuant to paragraphs (a) and (b) of this subsection;

10. Provision of child care services to an individual participant

ing in community service activities;

11. Job skills training directly related to employment; and

12. Based on the findings of the assessment, an allowable activity that includes:

- a. Domestic violence counseling;
- b. Life skills training;
- c. A substance abuse program;
- d. Mental health counseling;
- e. Vocational rehabilitation;
- f. Literacy;
- g. Adult education; or
- h. Another preparation or service:
- (i) To address an individual's barriers; and
- (ii) Approved in advance by the cabinet.

(2) Excused absences shall:

(a) Include:

1. Scheduled hours missed due to holidays; and
2. A maximum of ten (10) additional days or eighty (80) hours of excused absences in any twelve (12) month period with no more than two (2) days or sixteen (16) hours occurring in a month; and
- (b) Count as actual hours of participation.

(3) To verify the actual number of hours of participation in approved activities, the K-TAP recipient shall provide the following [a]:

(a) A PA-33, Verification of Kentucky Works Participation; or

(b) A Monthly calendar sheet or log that requires the signature of the work-eligible individual and person supervising the work-eligible individual.

Section 3. Exceptions to Program Participation. (1) A work-eligible individual shall be considered to be engaged in work for a month in a fiscal year if the individual:

- (a) Is a head of household;
- (b) Has not obtained a high school diploma or a GED;
- (c) Has not attained twenty (20) years of age; and
- (d) 1. Maintains regular attendance and satisfactory progress at a secondary school or the equivalent during the month; or

2. Participates in education that is directly related to employment for at least twenty (20) hours a week while maintaining regular attendance and satisfactory progress.

(2)(a) A work-eligible individual shall not be required to comply with a program participation requirement for up to twelve (12) months if the individual is:

1. A single custodial parent; and
2. Caring for a child who has not attained twelve (12) months of age.

(b) The twelve (12) months of exemption from a work participation requirement shall be limited to a total of twelve (12) months in a lifetime for the adult and may be:

1. Consecutive; or
2. Cumulative.

(3)(a) For a work-eligible individual whose compliance with program participation would make it difficult to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, compliance shall not be mandated.

(b) If a K-TAP applicant or work-eligible individual is identified as a victim of domestic violence or with a history of domestic violence, an appropriate services plan shall be required for the individual pursuant to 921 KAR 2:006, Section 25[24].

(4) A work-eligible individual shall be considered to be engaged in work for a month if the individual is:

(a) A single custodial[The only] parent or caretaker relative in the family with a child who has not attained six (6) years in age; and

(b) Engaged in work for an average of at least twenty (20) hours per week during the month pursuant to Section 2(1)(c) 1, 2, 3, 4, 5, 6, or 7 of this administrative regulation.

(5) In accordance with 45 C.F.R. 261.2(n)(2)(i), the cabinet shall exclude from program participation a parent providing care to a disabled family member as verified by the completion of the PA-4, Statement of Required Caretaker Services.

(6) In accordance with 45 C.F.R. 261.2(n)(2), the cabinet shall exclude from program participation a parent who is a recipient of Social Security Disability Insurance (SSDI) benefits.

(7)(a) If an individual with an ADA disability cannot participate in a countable work activity as specified in Section 2 of this administrative regulation, the cabinet shall provide a reasonable accommodation or program modification based on the abilities and barriers of the individual.

(b) A reasonable accommodation or program modification may include:

1. Excused participation from an activity;
2. Participation for a reduced number of hours;
3. Participation in an activity for a longer period of time than is countable; or
4. Participation in an activity that is not countable in accordance with Section 2(1)(c)12 of this administrative regulation

Section 4. Program Participation Requirements. (1) Assessment.

(a) The cabinet or its designee shall make an assessment of the work-eligible individual's employability on KW-200, Kentucky Works Assessment Form.

(b) The cabinet shall request another agency to assist in the assessment process if the need for a diagnostic assessment or an additional professional skill set is indicated.

(c) The assessment shall include consideration of:

1. Basic skills;
2. Occupational skills;
3. Barriers and other relevant factors;
4. An ADA disability; and
5. A reasonable accommodation or program modification needed for an individual with an ADA disability.

(2) The self-sufficiency plan. Based on the findings of the assessment, the cabinet or its designee and work-eligible individual shall jointly develop a self-sufficiency plan by completing the KW-202, K-TAP Transitional Assistance Agreement. This plan shall contain:

- (a) An employment goal for the individual;
- (b) A service to be provided by the cabinet including child care;
- (c) An activity to be undertaken by the individual to achieve the employment goal;
- (d) A reasonable accommodation or program modification needed due to an ADA disability; and
- (e) Other needs of the family.

(3) In accordance with KRS 205.200(7)(a), an adult applicant or recipient of the K-TAP benefit group shall register for work except for a member who is:

- (a) Under age eighteen (18);
- (b) Age sixty (60) or over;
- (c) Age eighteen (18) or nineteen (19) years old in full-time school attendance pursuant to 921 KAR 2:006, Section 3;
- (d) Receiving benefits based on 100 percent disability;
- (e) An individual who has received benefits based on 100 percent disability within the past twelve (12) months but lost the benefits due to income or resources and not an improvement in the disability; or
- (f) Employed thirty (30) hours or more per week at minimum wage or more.

Section 5. Conciliation. (1) Conciliation shall be conducted:

(a) At the request of a work-eligible individual or a Kentucky Works participant;

(b) At the request of a service provider; or

(c) If a situation is identified that could result in a penalty pursuant to Section 7 of this administrative regulation.

(2) The conciliation shall be conducted by the cabinet or its designee.

(3) During conciliation, the cabinet or its designee shall determine if an additional service is needed to assist with Kentucky Works participation.

(4)(a) During conciliation, participation shall be monitored for up to fifteen (15) days following the issuance of form KW-204, Conciliation Notice.

(b) The fifteen (15) day period may be extended for an additional fifteen (15) days, if necessary, to determine if participation is in compliance with the terms of the conciliation.

(5) At the conclusion of the conciliation period, the participant

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shall be notified in writing of an adverse action in accordance with 921 KAR 2:046.

Section 6. Excused from Penalties. (1) A work-eligible individual shall be excused from a penalty for failure to comply with the Kentucky Works Program, pursuant to Section 7 of this administrative regulation, if one (1) of the following good cause criteria is met:

(a) The individual is a single custodial parent who has a demonstrated inability to obtain needed child care for a child under six (6) years of age. A demonstrated inability to obtain needed child care for a child under six (6) years of age shall be met if the single custodial parent:

1. Cannot locate appropriate child care;  
2. Cannot locate child care at a reasonable distance from home;

3. Determines the unsuitability of informal child care; or

4. Cannot locate affordable child care arrangements;

(b) Dependent care is not available for an incapacitated individual living in the same household as a dependent child;

(c) Child care is terminated through no fault of the individual;

(d) Child care does not meet the needs of the child, for example, a child with a disability;

(e) 1. The individual is unable to engage in employment or training for a mental or physical reason as verified by the cabinet; and

2. No reasonable accommodation or program modification exists;

(f) The individual is temporarily incarcerated or institutionalized for thirty (30) days or less;

(g) The cabinet determines there is discrimination by an employer and a formal complaint has been filed based on:

1. Age;

2. Race;

3. Sex;

4. Color;

5. Disability;

6. Religious belief;

7. National origin; or

8. Political belief;

(h) Work demand or condition renders continued employment unreasonable including:

1. Consistently not being paid on schedule; or

2. The presence of a risk to the individual's health or safety;

(i) Wage rate is decreased subsequent to acceptance of employment;

(j) The individual accepts a better job that, because of a circumstance beyond the control of the individual, does not materialize; or

(k) The work activity site is so far removed from the home that commuting time would exceed three (3) hours per day.

(2) The duration of good cause criteria may vary according to the individual's circumstance.

Section 7. Penalties. (1) If a work-eligible individual fails to comply with a requirement of the Kentucky Works Program, the recipient shall be subject to a Kentucky Works and Kentucky Transitional Assistance Program penalty. Failure to comply shall be found if the work-eligible individual:

(a) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a required activity, including:

1. An assessment interview;

2. An assessment; or

3. Self-sufficiency plan development including completion of KW-202;

(b) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a program activity in accordance with form KW-202;

(c) Refuses without good cause, pursuant to Section 6 of this administrative regulation, to accept employment;

(d) Terminates employment or reduces earnings without good cause, pursuant to Section 6 of this administrative regulation; or

(e) Fails to register for work unless an exception in Section 4(3) of this administrative regulation applies.

(2)(a) Except for a requirement listed in paragraph (b) of this subsection:

1. A work-eligible individual who has failed to comply with a Kentucky Works requirement without good cause, pursuant to Section 6 of this administrative regulation, or register for work unless an exception pursuant to Section 4(4) of this administrative regulation applies, shall be penalized by reducing the amount of the assistance otherwise payable to the benefit group on a pro rata basis; or

2. Assistance otherwise payable to a benefit group consisting of a two (2) parent household shall be discontinued if neither the work-eligible individual who is a qualifying parent nor the other parent complies with a Kentucky Works requirement without good cause, pursuant to Section 6 of this administrative regulation.

(b) Assistance to the benefit group shall be denied if the work-eligible individual, fails, without good cause pursuant to Section 6 of this administrative regulation, to:

1. Keep an appointment for an assessment interview; or

2. Pursuant to Section 4 of this administrative regulation:“(

a. Complete an assessment; or

b. Register for work.

(c)[-

3.] The penalties in subsection (2) of this section shall not be applied until after a conciliation procedure is conducted pursuant to Section 5 of this administrative regulation.

(3)[(e)] The penalties in subsection (2)(a) of this section shall continue to be applied until the work-eligible individual complies with a program requirement.

(4).

Section 8. Hearings and Appeals. An applicant or recipient of benefits pursuant to a program described herein who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing pursuant to 921 KAR 2:055.

Section 9. Work Experience Program Training Site Agreement.

(1) A cost incurred by a training site agency because of participation in a WEP shall not be reimbursed.

(2) A WEP participant shall not be removed from training without prior notice to the Department for Community Based Services.

(3) A WEP participant shall not infringe upon the promotional opportunity of a currently employed individual.

(4) An individual shall not be subjected to discrimination, or denied training or employment or benefits, in the administration of, or in connection with, the training program because of:

(a) Race;

(b) Color;

(c) Religion;

(d) Sex;

(e) National origin;

(f) Age;

(g) Disability; or

(h) Political belief or affiliation.

(5) Prior to placement in a WEP activity, a WEP participant shall sign form KWET 241, WEP Training Site Agreement.

(6) A training site agency shall:

(a) Complete surveying or reporting relating to the operation of the training site agreement upon the request of the cabinet;

(b) Not displace a currently employed worker by a WEP participant, including a partial displacement including a reduction of the:

1. Hours of nonovertime work;

2. Wages; or

3. Employment benefits;

(c) Comply with 42 U.S.C. 12101 to 12213;

(d) Report a personnel problem to the departmental representative designated by the cabinet;

(e) Maintain accurate time and attendance records daily for a WEP participant;

(f) Verify time and attendance records for a WEP participant pursuant to Section 2(3) of this administrative regulation to ensure the WEP participant's compliance with subsection (7) of this section;

(g) Grant access for the Department for Community Based Services to the training site during working hours to counsel a par-

ticipant and to monitor the site;

(h) Immediately report an injury to the designated representative;

(i) Conduct an investigation and submit a report upon the request of the Department for Community Based Services;

(j) Not encourage or require a WEP participant to take part in partisan political activity, or involve a WEP participant in partisan political activity;

(k) Maintain the confidentiality of information provided by or about a WEP participant who seeks or receives a service pursuant to form KWET-241, except as authorized by law or in writing by a WEP participant;

(l) Hold the cabinet harmless from a loss, claim, expense, action, cause of action, cost, damage, and obligation arising from a negligent act or omission of the training site agency, its agent, employee, licensee, invitee, or WEP participant that results in injury to a person, or damage or loss relative to a person, corporation, partnership, or other entity;

(m) Provide:

1. Sufficient training to ensure development of appropriate skills;

2. New task after mastery of a skill; and

3. Adequate participation instruction and supervision at all times;

(n) Provide the participant a safe training place;

(o) Assure a participant, engaged in an activity not covered pursuant to 29 U.S.C. 651 to 678, is not required or permitted to receive training or a service in a building or surrounding, or under a training condition that is unsanitary, hazardous, or dangerous to the health and safety of the participant;

(p) Provide adequate material to complete a training activity in a safe environment; and

(q) Sign form KWEP-241 with the cabinet and the participant containing a statement of:

1. The conditions established by subsections (1) through (10) of this section; and

2. The period covered by the agreement, including the required weekly number of hours of participation.

(7) The WEP participant shall submit verification pursuant to Section 2(3) of this administrative regulation completed monthly in accordance with subsection (6)(e) and (f) of this section.

(8) If an amendment is made to the agreement, a new form KWET-241 shall be issued.

(9) A WEP participant or WEP provider shall be notified in writing of discontinuance of a WEP placement on form KWET-241.

(10) A WEP participant shall have the right to request an administrative hearing, in accordance with Section 8 of this administrative regulation, relating to a grievance or complaint.

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

(a) "KW-200, Kentucky Works Assessment Form", edition 2/09;

(b) "KW-202, K-TAP Transitional Assistance Agreement", edition 4/11[2/09];

(c) "KW-204, Conciliation Notice", edition 2/09;

(d) "KWET-241, WEP Training Site Agreement", edition 4/11[2/09];

(e) "PA-4, Statement of Required Caretaker Services", edition 10/08; and

(f) "PA-33, Verification of Kentucky Works Participation", edition 4/11[2/09].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 10, 2010

FILED WITH LRC: December 10, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2011 at 9:00 a.m. in the Conference Suite C, Health Services Building, First Floor, 275 East Main Street,

Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2011, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

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

## CABINET FOR HEALTH AND FAMILY SERVICES

### Department for Community Based Services

#### Division of Family Support

(As Amended ARRS, February 14, 2011)

### 921 KAR 3:010. Definitions.

RELATES TO: 7 C.F.R. ~~271.2[247.2]~~, 273.1, 273.4, 273.5, 273.6, 273.7, 273.11, 273.16, 273.18, ~~274[274.12]~~, 7 U.S.C. 2012(l), 8 U.S.C. 1101, Title 38 U.S.C., 42 U.S.C. 301-306, 401-433, 1201-1206, 1351-1355, 1381-1385, 1396, 45 U.S.C. 231(a) to (v), Pub. L. 110-234[(g), (h)]

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4[~~274.12~~]

NECESSITY, FUNCTION, AND CONFORMITY: ~~[The Cabinet for Health and Family Services shall administer a Food Stamp Program.]~~ KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires the cabinet to administer the Supplemental Nutrition Assistance Program (SNAP) within the state[provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth]. This administrative regulation sets forth definitions of terms used in 921 KAR Chapter 3.

Section 1. Definitions. (1) "Agency error" means an overissuance of SNAP[~~food stamp~~] benefits caused by an action or failure to take an action by the cabinet.

(2) "Allotment" is defined by 7 C.F.R. 271.2[~~means the total value of food stamp benefits a household is authorized to receive during each month or other time period~~].

(3) "Application [for participation]" means "application form" as defined by 7 C.F.R. 271.2[~~the form~~] to apply for SNAP[~~food stamps~~] that is completed by:

(a) A household member; or

(b) An authorized representative.

(4) "Authorized representative" means an individual designated by a household member to act on behalf of the household in one (1) or all of the following capacities:

(a) Making application for the program;

(b) Obtaining the [coupons or] EBT card; and

(c) Using the [coupons or] EBT card.

(5) "Benefits" means the value of SNAP provided to a household by means of an EBT access device[mean the following items issued in accordance with the Food and Nutrition Service regulations for the purchase of eligible food:

(a) Stamp;

(b) Coupon;

(c) Type of certification; or

(d) Access device, including an electronic benefit transfer

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(EBT) card or personal identification number].

(6) "Boarder" means an individual to whom a household furnishes lodging and meals for reasonable compensation.

(7) "Cabinet" means the Cabinet for Health and Family Services or its designee.

(8) "Certification" means the action necessary to determine eligibility of a household including:

- (a) Interview;
- (b) Verification; and
- (c) Decision.

(9) ["Communal dining facility" means:

(a) A public or nonprofit private establishment, approved by FNS, that prepares and serves meals for elderly persons;

(b) A public or private nonprofit establishment (eating or otherwise) that feeds:

- 1. Elderly persons; and
- 2. SSI recipients and their spouses;

(c) Federally subsidized housing for the elderly that prepares and serves meals to the residents; and

(d) A private establishment that contracts with an appropriate state or local agency to offer meals at concessional prices to:

- 1. Elderly persons; and
- 2. SSI recipients and their spouses.

(10) "Date of entry" or "date of admission" means the date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.

(11) "Disability" means in accordance with 7 C.F.R. 271.2:

(a) An individual who receives:

1. Supplemental Security Income (SSI) or presumptive SSI under 42 U.S.C. [U.S.C.] 1381 to 1385;

2. Disability or blindness payments under:

- a. 42 U.S.C. [U.S.C.] 301 to 306;
- b. 42 U.S.C. [U.S.C.] 401 to 433;
- c. 42 U.S.C. [U.S.C.] 1201 to 1206;
- d. 42 U.S.C. [U.S.C.] 1351 to 1355; or
- e. 42 U.S.C. [U.S.C.] 1381 to 1385;

3. Optional or mandatory state supplementation;

4. Disability retirement benefits;

a. From a federal, state, or local government agency; and

b. [;]

a. Federal;

b. State; or

c. Local governmental agency; and

d. Resulting from a disability considered permanent under 42 U.S.C. [U.S.C.] 421(i); or

5. Annuity payments under:

a. 45 U.S.C. [U.S.C.] 231(a) to (v); [and]

b. Is determined to qualify for Medicare by the Railroad Retirement Board; and/or

c. Has a disability based upon the criteria used under 42 U.S.C. [U.S.C.] 1381 to 1385; or

(b) A veteran with a service connected or nonservice connected disability rated by the Veteran's Administration or paid as total (100 percent) by the Veteran's Administration under Title 38 of the United States Code;

(c) A veteran considered by the Veteran's Administration to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;

(d) A surviving spouse of a veteran and considered by the Veteran's Administration to be in need of regular aid and attendance or permanently housebound;

(e) A surviving child of a veteran and considered by the Veteran's Administration to be permanently incapable of self-support under Title 38 of the United States Code;

(f) A surviving spouse or surviving child of a veteran and considered by the Veteran's Administration to be entitled to:

- 1. Compensation for a service-connected death;
- 2. Pension benefits for a nonservice-connected death under Title 38 of the United States Code; and
- 3. Has a disability considered permanent under 42 U.S.C. [U.S.C.] 421(i);

(g) An individual in receipt of disability related medical assistance under 42 U.S.C. [U.S.C.] 1396;

(h) An individual who is certified to receive, but not yet receive

ing SSI or Social Security disability payments; or

(i) An individual who is currently having his entire SSI or Social Security disability benefit check recouped to recover a prior overpayment.

(10) [(42)] "Drug addiction or alcoholic treatment [and rehabilitation] program" means "drug addiction or alcoholic treatment and rehabilitation program" as defined by 7 C.F.R. 271.2 [a program conducted by a private nonprofit organization or institution that is certified by the cabinet or agencies designated by the Governor as responsible for the administration of the state's program for alcoholics or drug addicts].

(11) [(43)] "Elderly" means in accordance with 7 C.F.R. 271.2 an individual who is:

(a) Age sixty (60) or older; or

(b) Fifty-nine (59) years of age at the time of application, but shall turn age sixty (60) before the end of month of application.

(12) [(44)] "Electronic benefit transfer" or "EBT" [(EBT)] means a computer-based electronic benefit transfer system or access device in which an eligible household's benefit authorization is received from a central computer through a point of sale terminal.

(13) "Employment and Training Program" or "E&T";

(a) Is defined by 7 C.F.R. 271.2; and

(b) Means the program pursuant to 921 KAR 3:042.

(14) [(45)] "Eligible foods" means the following:

(a) A food or food product intended for human consumption except:

1. Alcoholic beverages;

2. Tobacco;

3. Hot foods; and

4. Hot food products prepared for immediate consumption;

(b) Seeds and plants to grow foods for the personal consumption by eligible households;

(c) Meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals;

(d) Meals served by a communal dining facility for:

1. The elderly;

2. SSI households; or

3. To both; and

4. To households eligible to use coupons for communal dining;

(e) Meals prepared and served by an authorized drug addiction or alcoholic treatment and rehabilitation center to:

1. Narcotic addicts;

2. Alcoholics; and

3. Their children;

(f) Meals prepared and served by an authorized group living arrangement facility to residents who are blind or have a disability as defined in subsection (11) of this section;

(g) Meals prepared and served by an authorized shelter for battered women and children to its eligible residents;

(h) Meals prepared for and served by an approved authorized public or private nonprofit establishment including a soup kitchen and temporary shelter that feeds homeless persons, provided that the facility is approved by the cabinet; and

(i) Meals prepared by a private establishment that contracts with the cabinet to be sold to homeless individuals at concessional prices.

(16) "Employment and training (ET) program" means a program consisting of one (1) or more of the following components:

(a) Work;

(b) Training;

(c) Education; or

(d) Job search.

(17) "Entitlement" means the amount of SNAP [food stamp] benefits that a household would receive if every disqualified [eligible] household member participates.

(15) [(48)] "Excluded household member" means an individual residing with a household, but excluded when determining the household's size in accordance with the provisions of 921 KAR 3:035, Section 5(3) and (4).

(16) [(49)] "Expungement" means the removal of [EBT] benefits from a household's EBT account if the household has not accessed the account for 365 [270] days.

(17) [(20)] "Federal fiscal year" means a period of twelve (12)

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calendar months beginning with each October 1 and ending with September 30 of the following calendar year.

~~(18)~~~~(24)~~ "FNS" means the Food and Nutrition Service of the United States Department of Agriculture in accordance with 7 C.F.R. 271.2.

~~(19)~~~~(22)~~ "Group living arrangement" is defined by 7 C.F.R. 271.2.

~~(20)~~~~means a public or private nonprofit residential setting that:~~

~~(a) Serves no more than sixteen (16) residents; and~~

~~(b) Is appropriately certified.~~

~~(23)~~ "Head of household" means the person in whose name the application for participation is made as:

(a) Having primary financial responsibility for the household;

(b) Being an adult parent of a child of any age and living in the household; or

(c) Being an adult having parental control over a child under the age of eighteen (18) and living in the household.

~~(21)~~ "Homeless" means "homeless individual" as defined by 7 C.F.R. 271.2

~~(22)~~~~(24)~~ "Household" means:

(a) An individual who:

1. Lives alone; or

2. While living with others, customarily purchases and prepares meals for home consumption separate from others; or

(b) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

~~(23)~~;

~~(25)~~ "Immigration and Naturalization Service (INS)" means the Immigration and Naturalization Service, United States Department of Justice.

~~(26)~~ "Inadvertent household error" means an overissuance resulting from a misunderstanding or unintended error on the part of the household.

~~(24)~~~~(27)~~ "Institution of higher education" means any institution providing post high school education, which normally requires a high school diploma or equivalency certificate for a student to enroll, such as a ~~including but not limited to~~:

(a) College;

(b) University; and

(c) Vocational or technical school.

~~(25)~~~~(28)~~ "Intentional program violation" is defined by 7 C.F.R. 273.16(c).

~~(26)~~~~means having intentionally:~~

~~(a) Made a false or misloading statement;~~

~~(b) Misrepresented, concealed or withheld facts;~~

~~(c) Sold food purchased with food stamp coupons or EBT card;~~

or

~~(d) For the purpose of using, presenting, transferring, acquiring, receiving, possessing, or trafficking a food stamp coupon or EBT card, committed an act that constitutes a violation of:~~

~~1. 7 U.S.C. 2011, et seq.;~~

~~2. 7 C.F.R. 240 through 295; or~~

~~3. 921 KAR Chapter 3.~~

~~(29)~~ "Kentucky Transitional Assistance Program" or "[K-TAP]" means a program pursuant to 921 KAR 2:006.

~~(27)~~~~2:017, Section 1(8).~~

~~(30)~~ "Kentucky Works" means a program pursuant to 921 KAR 2:017, Section 1(9).

~~(31)~~ "Meal delivery service" means an entity with which the cabinet has contracted for the preparation of meals at concessional prices to an individual who is unable to adequately prepare his meals.

~~(32)~~ "Medicaid" means medical assistance under 42 U.S.C. [U.S.C.] 1396 in accordance with 7 C.F.R. 271.2.

~~(28)~~~~(33)~~ "Nonassistance household" (NA) means a household containing at least one (1) member who is not included in a K-TAP household.

~~(34)~~ "Nonhousehold member" means an individual residing with a household, but not considered a household member in determining the household's eligibility or allotment.

~~(29)~~~~(35)~~ "Nonprofit cooperative food purchasing venture" means any private nonprofit association of consumers whose members pool their resources to buy food.

~~(36)~~ "Overissuance" is defined by 7 U.S.C. 271.2.

~~(30)~~~~means the amount by which benefits issued to a household exceeds the amount the household was eligible to receive.~~

~~(37)~~ "Public assistance" or "[JPA]" means any of the programs authorized under 42 U.S.C. [U.S.C.] 601 to 679 in accordance with 7 C.F.R. 271.2, including:

~~(a) [a.]~~ Old age assistance;

~~(b) [b.]~~ K-TAP;

~~(c) [c.]~~ Aid to the blind;

~~(d) [d.]~~ Aid to the persons who have a permanent and total disability; and

~~(e) [e.]~~ Aid to aged, blind or persons with a disability.

~~(31)~~~~(38)~~ "Quality control review" is defined by 7 C.F.R. 271.2.

~~(32)~~~~means a review of a statistically valid sample of active and negative cases to determine the extent to which a household:~~

~~(a) Received the food stamp allotment to which it was entitled to receive; or~~

~~(b) Was not incorrectly denied food stamp benefits or terminated from the Food Stamp Program.~~

~~(39)~~ "Recipient claim" means an amount owed to the cabinet because a household:

(a) Received an overissuance; or

(b) Trafficked SNAP[food stamp] benefits.

~~(33)~~ "Restoration of benefits" means the provision of SNAP benefits that are ~~(40)~~ "Restored benefit" means a food stamp benefit that is owed to a household that received less SNAP[food stamp] benefits than it was entitled to receive during the month pursuant to 921 KAR 3:050, Section 10.

~~(34)~~~~(44)~~ "Self-employment income" means income from a business enterprise from which no taxes are withheld prior to receipt of the income by the individual.

~~(35)~~~~(42)~~ "Shelter for battered women and children" is defined by 7 C.F.R. 271.2

~~(36)~~~~means a public or private nonprofit residential facility that serves battered women and children.~~

~~(43)~~ "Sponsor" means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident.

~~(37)~~~~(44)~~ "Sponsored alien" means an alien lawfully admitted for permanent residence as an immigrant as defined under 8 U.S.C. [U.S.C.] 1101.

~~(38)~~~~(45)~~ "Spouse" means either of two (2) individuals who:

(a) Would be defined as married to each other under applicable state law; or

(b) Are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or trades people.

~~(39)~~~~(46)~~ "Striker" means anyone involved in a strike or other concerted stoppage of work by employees.

~~(40)~~ "Supplemental Nutrition Assistance Program" or "SNAP":

(a) Is defined by 7 U.S.C. 2012(l); and

(b) Means the program formerly known as the Food Stamp Program in accordance with Pub.L. 110-234, Section 4001.

~~(41)~~ "Supplemental Security Income" or "SSI" is defined by 7 C.F.R. 271.2

~~(42)~~~~(47)~~ "Supplemental security income (SSI)" means monthly cash payments made under the authority of:

(a) 42 U.S.C. 1381 to 1385 to the aged, blind and disabled;

(b) 42 U.S.C. 1382e; or

(c) 42 U.S.C. 1382.

~~(48)~~ "Thrifty food plan" is defined by 7 C.F.R. 271.2.

~~(43)~~ "Trafficking" is defined by 7 C.F.R. 271.2~~means the diet required to feed a family of four (4) persons, determined in accordance with the Secretary of the United States Department of Agriculture calculations, consisting of:~~

(a) A man and a woman twenty (20) through fifty (50);

(b) A child six (6) through eight (8); and

(c) A child nine (9) through eleven (11) years of age; and

~~(49)~~ "Trafficking" means:

(a) The buying or selling of a food stamp coupon or an EBT card or other benefit instrument for cash or consideration other than eligible food; or

(b) The exchange of firearms, ammunition, explosives, or controlled substances as defined in Section 802 of title 21 U.S.C. for a



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food stamp coupon or an EBT card.

~~(50) "Underissuance" means the amount that the benefits to that the household was entitled exceeds the benefits which the household received.]~~

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 10, 2010

FILED WITH LRC: December 10, 2010 at 4 p.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(Amended After Comments)

810 KAR 1:012. Horses.

RELATES TO: KRS 230.215[~~EO-2008-668~~]

STATUTORY AUTHORITY: KRS 230.215, 230.260[~~(3), EO-2008-668~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215[~~(2)~~] and 230.260[~~(3)~~] authorize the Kentucky Horse Racing Commission [Authority] to promulgate administrative regulations regulating horse racing in Kentucky. [EO-2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the Commission]. This administrative regulation establishes requirements for the participation of horses in horse race meetings, protects the safety and welfare of the horse, and creates a level playing field for participants thereby protecting the integrity of pari-mutuel wagering.

Section 1. Definition. "Electronic registration system" means the Race Track Operations System created and maintained by InCompass, a wholly owned subsidiary of the Jockey Club, or another software application available online and approved by the commission that allows an association's racing secretary, or his designee, or horse identifier, or his designee, full access to horse and trainer records from all tracks in North America, including current owner information.

Section 2. Registration Required. (1) Except as provided by subsection (2) of this section, a horse shall not be entered or raced in this state unless:

(a) Duly registered [~~and named~~] in The [~~registry office of the~~] Jockey Club ~~breed registry~~ [~~in New York~~]; and

(b) The registration certificate or racing permit issued by The Jockey Club for the horse is on file with the racing secretary; or

(c) The information contained on the registration certificate or racing permit is available to the racing secretary through the electronic registration system.

(2) The stewards may for good cause waive this requirement if the horse is otherwise correctly identified to the stewards' satisfaction.

(3) Upon claim, sale, or any other transfer of ownership, the horse's registration certificate or racing permit shall be given to the new owner. The new owner may report the change in ownership to an association's racing secretary, or his designee, or horse identifier, or his designee, to enter ownership information in the electronic registration system [InCompass] so that it can be updated in the electronic registration system.

(4) If the electronic registration system fails for any reason, the stewards may require presentation of a horse's registration certificate or racing permit prior to a horse being entered or raced in Kentucky.

(5) The stewards may at any time require presentation of a horse's registration certificate or racing permit. Failure to comply with this provision may result in imposition of penalties pursuant to 810 KAR 1:028. [The Jockey Club registration certificate of each horse shall be filed with the horse identifier within forty-eight (48) hours after the horse's arrival on the association grounds.]

Section 3. [2.] Ringers Prohibited. (1) A horse shall not be entered or raced in this state designated by a name other than the name under which the horse is currently registered with The Jockey Club [~~in New York~~]. If a horse's name is changed with [by] The Jockey Club, the horse's former name shall be shown parenthetically in the daily race program the first three (3) times the horse races after the name change.

(2) A person shall not cause or permit the correct identity of a horse to be concealed or altered. A person shall not refuse to re-

veal the correct identity of a horse he owns or that [or which] is in his care[.] to a racing official or member of the regular news media.

(3) A horse shall not race in this state unless the horse has:

(a) A legible lip tattoo number applied by agents of the Thoroughbred Racing and Protective Bureau; ~~or~~

(b) An electronic horse identification microchip that [which] accurately identifies the horse and is compliant with the international standards ISO 11784; or

(c) With regards to a horse from a foreign jurisdiction participating in a graded stakes race, has otherwise been correctly identified to the stewards' satisfaction.

(4) A horse shall not be entered or raced in this state if previously involved in a "ringer" case to the extent that:

(a) A person having control of the horse knowingly entered or raced the horse while designated by a name other than the name under which the horse was registered with The Jockey Club; or

(b) The person having control of the horse participated in or assisted in the entry or racing of some other horse under the name registered as belonging to the horse in question.

Section 4. [3.] Denerving. (1) A horse on which a neurectomy has been performed shall have that fact designated on its registration certificate, ~~or~~ racing permit, or entry in the electronic registration system. It shall be the joint responsibility of the practicing veterinarian who performed the operation and the trainer of the denerved horse to ensure this [that] fact is correctly designated [on the registration certificate or racing permit].

(2) A horse whose ulnar, radial, or median nerve has been either blocked or removed (known as high nerved), or whose volar or plantar nerve has been blocked or removed [~~bilaterally~~], shall not be entered or raced in this state.

(3) A horse that [whose volar or plantar nerve has been removed unilaterally or which] has had a posterior digital neurectomy (known as low nerved), may be permitted to race if the denerving [deserving] has been reported by the trainer to the stewards, and the horse has been approved for racing by the commission veterinarian prior to being entered for a race.

(4) If a horse races in violation of this administrative regulation and participates in the purse distribution, then a protest shall not be considered unless submitted in writing to the stewards within forty-eight (48) hours after the race.

(5) If a horse races in violation of this administrative regulation and is claimed, then a protest shall not be considered unless the successful claimant submits a protest in writing within forty-eight (48) hours requesting the claim be voided. If the claim is voided, the horse shall be returned to the owner who started the horse in the race, and the claim price shall be returned to the claimant.

(6) A list of all denerved horses shall be posted in the racing secretary's office. Only horses that have in fact had a neurectomy shall be so reported [A person shall not report a horse as having a neurectomy if in fact the horse has not had a neurectomy].

Section 5. [4.] Bleeders. (1) A horse that bleeds either during or after a race or workout and is not on bleeder medication may race on bleeder medication at the discretion of the commission veterinarian.

(2)(a) A horse that bleeds while on bleeder medication shall be placed on the veterinarian's list and shall remain on the list until removed by the commission veterinarian after consultation with the practicing veterinarian.

(b) If the commission veterinarian and the practicing veterinarian disagree on the removal of the horse from the veterinarian's list, then a third veterinarian shall be appointed by the chairman of the commission or his designee.

(c) The opinion of the third veterinarian shall be delivered to the chairman [secretary] of the commission or his designee who shall make a final decision on the issue.

Section 6. [5.] Health Certificate Required. A horse shall not be stabled on the grounds of a licensed association or any training

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center under the jurisdiction of the commission ~~[association grounds]~~ unless within ten (10) days prior to arrival on the ~~[association grounds]~~, the horse has been examined by an accredited practicing veterinarian who shall certify:

- (1) The horse's identity ~~[of the horse]~~;
- (2) The horse's body temperature at the time of examination ~~[Temperature when examined]~~;
- (3) That, to the best of the examining veterinarian's ~~[his or her]~~ knowledge and belief, the horse is free from any infectious or contagious disease, or exposure thereto, and observable ectoparasites; and

(4) Any other matters as may be required from time to time by the Kentucky State Veterinarian.

(5) Notice of this requirement shall be included in the stall application of all licensed associations and training centers under the jurisdiction of the commission and all condition books of licensed associations. ~~[accompany stall applications and be included in the condition book.]~~

Section 7.~~[6.]~~ Workouts. A horse shall not be schooled in the paddock or taken onto a track on association grounds for training or workout, other than during normal training hours posted by the association, without special permission of the stewards.

Section 8.~~[7.]~~ Age Restrictions. A maiden six (6) years of age or older ~~[that which]~~ has made five (5) life time starts on the flat shall not be entered or start.

Section 9.~~[8.]~~ Fillies and Mares Bred. (1) A ~~[Any]~~ filly or mare that has been covered by a stallion shall be so reported to the racing secretary prior to being entered in a race.

(2) A list of all fillies and mares so reported, showing the names of stallions to which they have been bred, shall be posted in the racing secretary's office.

(3) A filly or mare that has been covered by a stallion shall not be entered in a claiming race, unless a written release from the stallion owner is attached to the filly's ~~[filly]~~ or mare's registration certificate indicating that the stallion service fee has been paid or satisfied.

Section 10.~~[9.]~~ Serviceable for Racing. A horse shall not be entered or raced that:

- (1) Is not in serviceable, sound racing condition. The stewards may at any time require ~~[cause]~~ a horse on association grounds to be examined by a qualified person;
- (2) Is posted on a veterinarian's list, stewards' list, or starter's list, or is suspended, in any racing jurisdiction;
- (3) Has been administered any drug in violation of 810 KAR 1:018;
- (4) Is blind or has seriously impaired vision in both eyes;
- (5) Is not correctly identified to the satisfaction of the stewards; or
- (6) Is owned wholly or in part by~~[-]~~ or is trained by~~[-]~~ an ineligible person.

Section 11.~~[40.]~~ Equipment. (1) Riding crops and blinkers shall be used consistently on a horse.

(2) Permission to change use of any equipment used on a horse from ~~[in]~~ its last previous start shall be obtained from the stewards.

(3) A horse's tongue may be tied down during a race with a clean bandage or gauze.

(4) A horse's bridle may weigh no more than two (2) pounds.

(5) Bits shall be of a metallic alloy base of stainless steel or aluminum and may be encased in rubber, plastic, or leather.

(6) War bridles and bitless bridles shall not be used.

(7) ~~[A horse shall not race in ordinary training shoes.]~~

~~[(8)]~~ Bar shoes may be used for racing only with permission of the stewards.

~~[(8)]~~ Any goading device, chain, spurs, electrical or mechanical device, or appliance, except for a riding crop, ~~[that which]~~ may be used to alter the speed of a horse shall not be used on a horse in a race or workout.

~~[(9)]~~ Any riding crop ~~[(40)(a)]~~ All riding crops may be subject to

inspection and approval by the stewards or the clerk of the scales to ensure conformity with the specifications of paragraphs (c) through (e) of this subsection.

(b) Only riding crops meeting the specifications of this subsection, including the mandatory shock absorbing characteristics, may be used in thoroughbred racing and ~~[including]~~ training.

(c) A riding crop shall have a:

1. Maximum weight of eight (8) ounces;
2. Maximum length, including flap, of thirty (30) inches; and
3. Minimum diameter of the shaft of one-half (1/2) inch.

(d) The only additional feature that may be attached to the riding crop is a flap ~~[that]~~:-

4. ~~[A flap]~~ shall have a:

1. ~~[a]~~ Maximum length from the end of the shaft of one-half (1/2) inch;

2. ~~[and b]~~ Maximum width of one and six-tenths (1.6) inches, with a minimum width of eight-tenths (0.8) inch;

3. ~~[2]~~ The flap from the end of the shaft shall not contain any reinforcements or additions;

4. ~~[3]~~ There shall not be binding within seven (7) inches of the end of the flap;

5. ~~[4]~~ The contact area of the shaft shall be smooth, with no protrusion or raised surface, and covered by shock absorbing material throughout its circumference; and

6. ~~[5]~~ The flap shall have a similar shock absorbing characteristics to that of the contact area.

(e) A riding crop shall not have:

1. Stingers or projections extending through the hole of a popper; and
2. Any metal parts.

~~[(10)]~~ ~~[(44)]~~ (a) The following shall not be used on the front shoes of thoroughbred horses while racing or training on any ~~[all]~~ racing surface ~~[surfaces]~~:

1. Horse shoes (racing plates) ~~[that which]~~ have toe grabs;

2. Bends;

3. Jar calks;

4. Stickers; and

5. Any other traction device worn on the front shoes of thoroughbred horses.

(b) Wear plates with a height no greater than two (2) millimeters may be used on the front shoes of thoroughbred horses while racing or training.

[(11)] Indiscriminate or brutal use on a horse of a riding crop or any other equipment, as determined by the stewards, at any time on the grounds of a licensed racing association or training center under the jurisdiction of the commission is prohibited.

Section 12.~~[44.]~~ Sex Alteration. Any alteration in the sex of a horse shall be reported by the horse's trainer to the racing secretary and The Jockey Club promptly. The alteration shall be noted on the horse's registration certificate, racing permit, or entry in the electronic system.

Section 13. A licensed racing association and training center under the jurisdiction of the commission shall report the death or euthanization of any horse on its grounds immediately to the chief commission veterinarian. [The racing secretary shall note any alteration in the sex of a horse on the horse's registration certificate.]

Section 14.~~[42.]~~ Postmortem Examination. A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination [Each horse which suffers a breakdown on the race track, in training, or in competition, and is destroyed, and each horse which expires while stabled on a race track under jurisdiction of the Racing Commission, shall undergo a postmortem examination at the University of Kentucky] at the discretion of the commission and at a facility designated by the commission, through its designee, as follows:

[(1)] If a postmortem examination is to be conducted, the commission, through its designee, shall take possession of the horse upon death and shall not return the remains of the horse after completion of the postmortem examination. All shoes and equipment on the horse's legs shall be left on the horse;

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(2) When a postmortem examination is to be conducted, the commission, through its designee, shall collect blood, urine, bodily fluids, or other biologic specimens immediately, if possible before euthanization occurs. The commission may submit blood, urine, bodily fluids, or other biologic specimens collected before euthanization or during a postmortem examination for analysis. The presence of a prohibited substance in a specimen collected during the postmortem examination may constitute a violation; and

(3) All licensees are required to comply with postmortem examination requirements. In proceeding with a postmortem examination the commission, through its designee, shall coordinate with the owner or owner's licensed authorized agent to determine and address any insurance requirements. [steward and the commission veterinarian.]

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: February 11, 2011

FILED WITH LRC: February 14, 2011 at 4 p.m.

CONTACT PERSON: Susan B. Speckert, 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: Susan B. Speckert, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for horses to participate in horse race meetings in Kentucky, including registration requirements and permitted equipment.

(b) The necessity of this administrative regulation: This regulation is necessary to provide the requirements for horses to participate in horse race meetings in Kentucky, to ensure the safety and welfare of the horse and to create a level playing field for participants thereby protecting the integrity of pari-mutuel wagering.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to prescribe conditions under which all legitimate horse racing is conducted in Kentucky. KRS 230.260 grants the commission jurisdiction and supervision over all horse race meetings in Kentucky. This administrative regulation establishes the requirements for horses to participate in horse race meetings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the requirements for registration and identification of horses that run or train in Kentucky. It requires a horse to be serviceable and restricts the types of equipment that may be used on a thoroughbred race horse. It provides the postmortem examination 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: Under the current regulation, a horse may not be entered or raced in Kentucky unless its registration certificate or racing permit is on file with the racing secretary at the relevant racing association. The amendment allows horses to be entered or race in Kentucky if their registration information is available through the Race Track Operations System, or other software application available online and approved by the commission. The amendment also requires horses stabled on the grounds of a training center under the jurisdiction of the commission to obtain a Health Certificate and to undergo postmortem examinations in some circumstances. Additionally, the amendment prohibits the brutal or indiscriminate use of a riding crop or any other equipment on a horse at any time on the grounds of a licensed racing association or training center under the jurisdiction of the commission.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow horsemen to use available, commission approved technology to enter and run their horses in Kentucky. It is also necessary to prohibit the brutal or indiscriminate use of a riding crop or other equipment on a horse at any time on the grounds of a licensed association or training center

under the jurisdiction of the commission. The amendment also clarifies that rules with regards to Health Certificates and postmortem examinations apply to training centers. Finally, the amendment clarifies the postmortem examination process.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to prescribe conditions under which all legitimate horse racing is conducted in Kentucky. KRS 230.260 grants the commission jurisdiction and supervision over all horse race meetings in Kentucky. The amendment establishes the requirements for horses to participate in horse race meetings.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides the requirements for registration and identification of horses that run or train in Kentucky. It requires a horse to be serviceable and restricts the types of equipment that may be used on a thoroughbred race horse. It clarifies the postmortem examination process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Racing associations, training centers under the jurisdiction of the commission, owners, and trainers 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: The associations, through the racing secretary, will be able to confirm a horse's eligibility to enter or run in a race through the Race Track Operations System. Owners and trainers will be able to enter their horses without having to file a horse's registration certificate or racing permit with the racing secretary. Horses stabled on the grounds of a training center under the jurisdiction of the commission will be required to have a valid Health Certificate and will be subject to postmortem examinations under some circumstances.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment will not result in additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Racing associations, owners, and trainers will now have the option of entering and racing a horse in Kentucky if that horse's information is available through the Race Track Operations System. This will streamline and simplify the process of entering and racing horses. Training centers will have assurance that the horses stabled on their grounds are not carrying disease or illness that could affect their horse population.

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

(a) Initially: There is no anticipated increase in cost to the Commission.

(b) On a continuing basis: There is no anticipated increase in cost to the Commission.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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: This administrative regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No tiering is applied.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? The Kentucky Horse Racing Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215 and 230.260.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No estimated change in expenditures or revenues.

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

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

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

(d) How much will it cost to administer this program for subsequent years? There is no anticipated cost to administer this regulation.

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

Revenue (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(Amended After Comments)**

**810 KAR 1:027. Entries, subscriptions, and declarations.**

RELATES TO: KRS 230.215, 230.240~~(2)~~, 230.290, 230.310, 230.320 ~~[230.320]~~

STATUTORY AUTHORITY: KRS 230.260~~(3)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 authorizes the commission to promulgate administrative regulations prescribing the conditions under which all horse racing is conducted in Kentucky. 230.260 grants the commission the [Authority full] authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. ~~[The function of]~~ This administrative regulation establishes is to establish requirements for entry, subscription, and declaration of thoroughbred horses in order to race.

Section 1. Definition. "Subscriber" means an owner who enters a horse into a stakes race and pays the requisite entry fee.

Section 2. Entering Required. A horse shall not be qualified to start in any race unless it has been, and continues to be, entered in the race. Entries or subscriptions for any horse, or the transfer of entries or subscriptions for any horse, may be refused or cancelled by the association without notice or reason given.

Section 3. Procedure for Making Entries. (1) An entry, subscription, declaration, or scratch shall be filed with the racing secretary and shall not be effective until received by the racing secretary. The racing secretary shall maintain a record of the time of receipt of an entry, subscription, declaration, or scratch for a period of one (1) year.

(2) An entry shall be made by the owner, the trainer, or an authorized agent of the owner or trainer. An entry shall be in the name of a horse's licensed owner, as completely disclosed and registered with the racing secretary pursuant to these administrative regulations [under 810 KAR Chapter 1. An entry shall be made by the owner, the trainer, or a licensed authorized agent of the owner or trainer].

(3) An entry shall be submitted in writing or by telephone to the racing secretary. A telephone entry shall be confirmed promptly in

writing if requested by the stewards, the racing secretary, or an assistant to the racing secretary.

(4) An entry shall clearly designate the horse entered. When entered for the first time during a meeting, a horse shall be designated by name, age, color, sex, sire, and dam as reflected by its registration certificate, racing permit, or entry in a [Race Track Operations System created and maintained by InCompass, a wholly owned subsidiary of the Jockey Club, or other] software application available online and approved by the commission that allows an association's racing secretary, or his designee, or horse identifier, or his designee, full access to horse and trainer records from all tracks in North America, including current owner information.

(a) A horse shall not race unless registered pursuant to 810 KAR 1:012 or otherwise correctly identified to the satisfaction of the stewards ~~[as being entered]~~.

(b) Establishing the identity of a horse shall be the responsibility of its owner and of any other person required to certify the identity of the horse. A person shall be subject to appropriate disciplinary action under 810 KAR 1:028 ~~[4-048]~~ for incorrect identification.

(5)(a) A horse that bleeds [requiring the use of medication, drugs or substances to prevent exercise induced pulmonary hemorrhaging (EIPH) bleeding,] shall be registered with the commission [Authority] veterinarian prior to entry.

(b) ~~[Removal from registration shall require Authority veterinarian approval.~~

~~(c) After inclusion, additional notification shall not be required.~~

~~(d)~~ A horse that [which] is not properly registered shall not be permitted to race with furosemide or an adjunct bleeder medication antileeder medications, drugs, or substances.

~~(c) [(e)]~~ The racing program shall indicate usage.

(6) An entry shall not be altered after the closing of entries, except to correct an error with permission of the stewards. [Alterations, except an error corrected with the permission of the stewards, shall not be made in an entry after the closing of entries.]

(7) A horse shall not be entered in two (2) races to be run on the same day.

(8)(a) A horse that [which] has not started in the past forty-five (45) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards ~~[of the meeting]~~.

(b) A horse starting for the first time shall not be permitted to start unless it has three (3) published workouts, one (1) of which is from the starting gate, and one (1) of which is within twenty (20) days of entry.

(c) If a horse has performed the requisite workout, but ~~[through no fault of the trainer,]~~ the workout does not appear in the past performances through no fault of the trainer, the horse shall be permitted to start. ~~[and]~~ The correct workout shall be publicly displayed on television monitors, the tote board, and, if available, the bulletin boards where photo finishes are shown at the time when mutual windows are opened and shall be displayed until the conclusion of the race in which the horse is entered [least fifteen (15) minutes prior to the first race and shall be displayed for the duration of the day's racing].

(d) A horse that has never started shall not be entered until the trainer has produced a document or card issued by the starter indicating ~~[to the starter]~~ that the horse has been adequately trained to race from the starting gate.

(9) If the published conditions of the race permit, an association may accept in a turf race an entry designated "main track only." Preference shall apply to all horses drawn into a race, except that horses entered as "main track only" shall be considered only if the race is taken off the turf.

Section 4. Limitation as to Spouses. (1) An entry in a race shall not be accepted for a horse owned wholly or in part ~~[by, or]~~ trained by ~~[a]~~ a person whose spouse is under license suspension at the time of the entry except as provided in subsection (2) of this section.

(2) If the license of a jockey, ~~[depending on the severity of the offense]~~ has been suspended for a routine riding offense, depending on the severity of the offense, the stewards may waive the application of this section as to the licensed spouse of the suspended jockey.

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Section 5. Mutuel Entries. (1) No more than two (2) horses having common ties through training shall be entered in a purse race.

(2) Horses entered in the same race and owned wholly or in part by the same owner or spouse, shall be joined as a mutual entry and single betting interest, except as provided in subsection (5) of this section.

(3) No more than two (2) horses having common ties through ownership shall be joined as a mutual entry in a purse race. If making a double entry of horses owned wholly[;] or in part by the same owner or spouse[;] a preference for one (1) of the horses shall be made.

(4)(a) Two (2) horses having common ties through ownership shall not start in a purse race to the exclusion of a single entry, unless the horses have been uncoupled pursuant to subsection (5) of this section.

(b) In a purse race, the racing secretary may uncouple entries having common ties through training to make two (2) separate betting interests.

(5) In any thoroughbred stakes race with added money of \$50,000 or more, the racing secretary may uncouple mutual entries of horses sharing common ties through training or ownership or both.

Section 6. Subscriptions. (1) A subscriber to a stakes race may transfer or declare a subscription prior to closing.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. Each owner shall be jointly and severally liable for all payments due.

(3) Death of a horse or a mistake in its entry if the horse is eligible[;] shall not release the subscriber or transferee from liability for all stakes fees due. Fees paid in connection with a subscription to a stakes race that is run shall not be refunded, except as otherwise stated in the conditions of a stakes race.

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) If a horse is sold privately, [or] sold at public auction, or claimed, stakes engagements for it shall be transferred automatically with the horse to its new owner. If the horse is transferred to a person whose license is suspended or otherwise unqualified to race or enter [it], the subscription shall be void as of the date of the transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner unless otherwise provided by the condition for the stakes race. If a stakes race is cancelled for any reason, all subscription fees paid shall be refunded.

Section 7. Closings. (1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for the races.

(a) If a race is not split, an entry, subscription, or declaration shall not be accepted after closing time.

(b) If a purse race fails to fill, or in case of an emergency, the racing secretary may extend the closing time, provided the approval of a steward has been obtained.

(2) Entries ~~that which~~ have closed shall be compiled without delay by the racing secretary and shall be posted along with declarations.

Section 8. Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and any extensions approved by the commission ~~Authority~~ as can be positioned across the width of the track at the starting point for the race. The maximum number of starters further shall be limited by the number of horses ~~that which~~, in the opinion of the stewards after considering the safety of the horses and riders and the distance from the start to the first turn, may be afforded a fair and equal start.

(2)(a) A maiden, starter, or claiming race shall be run if:

1. Eight (8) or more horses are entered;
2. The horses entered represent different betting interests; and

3. The race is listed in the printed condition book.

(b) Except as provided in paragraph (c) of this subsection, any other purse race shall be run if:

1. Six (6) or more horses are entered;
2. The horses entered represent different betting interests; and
3. The race is listed in the printed condition book.

(c) If a purse race under paragraph (b) of this subsection includes two (2)[;]

~~(2)~~ horses having common ties through training, the race shall be run if eight (8) or more horses are entered.

(3) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (2) of this section, the association may cancel or declare ~~off~~ the race off. The names of all horses entered in the race shall be publicly posted in the office of the racing secretary on the date of entry.

Section 9. Split or Divided Races. (1) If a race is cancelled or declared off, the association may split any race programmed for the same day ~~that and which~~ may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) If a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice of the split not less than fifteen (15) minutes before the races are closed in order to grant time for the making of additional entries to the split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions were made and the following conditions:

(a) Horses originally joined as a mutual entry may be placed in different divisions of a split race unless the person making the multiple entry, at the time of the entry, indicates the coupling of horses is not to be uncoupled if the race is split;

(b) Division of entries in any split stakes race may be made according to age, ~~or~~ sex, or both; and

(c) Entries for any split race not divided by any method provided for in this administrative regulation[;] shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of the split race.

Section 10. Post Positions. (1) Post positions for all races shall be determined by lot, except as described in Section 11(5) of this administrative regulation. Owners, trainers, and their representatives shall have the opportunity to be present at the drawing.

(2) Post positions in split races shall be redetermined by lot. Owners, trainers, and their representatives shall have the opportunity to be present at the redetermination.

(3) The racing secretary shall assign pari-mutuel numbers for each starter to conform with the post position drawn, except if a race includes two (2) or more horses joined as a single betting interest.

Section 11. Also-Eligible List. (1) If the number of entries for a race exceeds the number of horses permitted to start, as provided by Section 9 of this administrative regulation, the names of no more than eight (8) horses entered but not drawn into the race as starters shall be posted on the entry sheet as "also-eligible" to start.

(2) After a horse has been excused from a race at scratch time, also-eligible horses shall be drawn into the body of the race based on preference. If preference is equal, horses shall be drawn by preference ~~[into the body of a race by lot]~~, unless otherwise stipulated in the conditions of the race.

(3)(a) An owner or trainer of a horse on the also-eligible list not wishing to start the horse in a race shall notify the racing secretary prior to scratch time for the race. The horse shall forfeit any preference to which it may have been entitled.

(b) If there are no scratches in the body of a race, a horse on the also-eligible list not drawn into the race shall retain its previously established preference.

(4) A horse on ~~the~~ an also-eligible list for a race on the present day that has been drawn into a race as a starter on a succeeding day, shall not be permitted to run in the race on the present day for which it had been listed as also-eligible.

(5) A horse on the also-eligible list ~~[Also-eligible]~~ shall be

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assigned a post position by preference. If preference is equal, post positions shall be drawn by lot, unless otherwise stipulated in the published conditions of the race.

Section 12. Preferred List; Stars. (1) The racing secretary shall maintain a list of horses ~~that [which]~~ were entered but denied an opportunity to race because they were eliminated from a race ~~included [programmed]~~ in the printed condition book either by overfilling or failure to fill.

(2) The racing secretary shall submit, for approval of the ~~commission [Authority]~~ at least thirty (30) days prior to the opening date of a race meeting a detailed description of the manner in which preference will be allocated.

(3) Preferences shall not be given to a horse otherwise eligible for a race if it ~~is~~ also ~~[is]~~ entered for a race on the succeeding day. This includes stakes and handicaps.

Section 13. Arrears. Unless approved by the racing secretary, a horse shall not be entered or raced unless its owner has paid all stakes fees owed.

Section 14. Declarations. (1) Declarations shall be made in the same form, time, and procedure as required for the making of entries.

(2) Declarations shall be irrevocable.

(3) A declaration fee shall not be required by any licensed association.

Section 15. Scratches. Scratches shall be irrevocable and shall be permitted under the following conditions:

(1)(a) Except as provided in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time until four hours prior to post time for the race by obtaining written approval from the stewards. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of the scratch to be made.

(b) If a list of ~~also-eligible horses [also-eligibles]~~ has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Thereafter, a horse shall not be scratched unless:

1. A valid physical reason exists; or

2. The scratch is related to adverse track conditions or change of racing surface.

(2) A horse shall not be scratched from a purse race unless:

(a) The approval of the stewards has been obtained; and

(b) Intention to scratch has been filed in writing with the racing secretary~~[-]~~ or his assistant~~[-]~~ at or before the time conspicuously posted as "scratch time."

(3) A scratch of one (1) horse coupled in a mutual entry in a purse race shall be made at or before the posted scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time.

(4) In a purse race, ~~a horse that is [horses that are]~~ physically disabled or sick shall be permitted to be scratched first. If horses representing more than ten (10) betting interests remain in after horses with physical excuses have been scratched, an owner or trainer [owners or trainers] may be permitted ~~[at scratch time]~~ to scratch horses without physical excuses at scratch time, down to a minimum of ten (10) betting interests. This privilege shall be determined by lot if an excessive number of owners or trainers wishes [wish] to scratch their horses.

(5) A horse that has been scratched or excused from starting by the stewards because of a physical disability or sickness shall be placed on the ~~commission's [Authority's]~~ veterinarian list for six (6) calendar days beginning the day after the horse was scratched or excused.

~~(6) Each licensed [For a period of one (1) year following the effective date of this administrative regulation, each Kentucky] racing association offering thoroughbred racing shall keep records and statistics documenting the effect upon field sizes of the six (6) [nine (9)] day veterinarian list requirement in subsection (5)[(4)] of this section. Records and statistics kept pursuant to this section shall be retained by the licensed racing association for one (1) year.~~

Section 16. Official Publication Statistics. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form, Racing Times or similar publication as the ~~commission [Authority]~~ considers appropriate to advise the public and the monthly chart books, or corresponding official publications of any foreign county, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

ROBERT M. BECK, Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: February 11, 2011

FILED WITH LRC: February 14, 2011 at 4 p.m.

CONTACT PERSON: Susan B. Speckert, 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: Susan B. Speckert, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for entry, subscription and declaration of thoroughbred horses in order to race.

(b) The necessity of this administrative regulation: The regulation is necessary to provide the requirements for entering a horse in a race in Kentucky, including outlining the procedures for scratches and drawing of post positions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to promulgate administrative regulations prescribing the conditions under which all horse racing is conducted in Kentucky. KRS 230.260 grants the commission the authority to regulation conditions under which thoroughbred racing shall be conducted in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prescribes procedures for entering a thoroughbred horse to race in Kentucky, including procedures for scratches and drawing of post positions.

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

(a) How the amendment will change this existing administrative regulation: The amendment allows horses to be entered or race in Kentucky if their registration information is available through the Race Track Operations system, or other software application available online and approved by the commission.

(b) The necessity of the amendment to this administrative regulation: The amendment is consistent with amendments to 810 KAR 1:012 and is necessary to allow horsemen to use available, commission approved technology to renter and run their horses in Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to prescribe conditions under which all legitimate horse racing is conducted in Kentucky. KRS 230.260 grants the commission jurisdiction and supervision over all horse race meetings in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The amendment gives horsemen the option to use available, commission approved technology to renter and run their horses in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Racing associations, owners and trainers 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: The associations, through the racing secretary, will be able to confirm a horse's eligibility to enter or run in a race through the Race Track Operations System. Owners and

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trainers will be able to enter their horses without having to file a horse's registration certificate or racing permit with the racing secretary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment will not result in additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Racing associations, owners, and trainers will now have the option of entering and racing a horse in Kentucky if that horse's information is available through the Race Track Operations System. This will streamline and simplify the process of entering and racing horses.

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

(a) Initially: There is no anticipated increase in cost to the Commission.

(b) On a continuing basis: There is no anticipated increase in cost to the Commission.

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

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

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

(9) TIERING: Is tiering applied? No tiering is applied.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215 and 230.260.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No estimated change in expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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:

### CABINET FOR HEALTH AND FAMILY SERVICES

Office of Health Policy  
(Amended After Comments)

#### 900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

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

216B.010, 216B.015(27), 216B.040(2)(a)2a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2010-2012 State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(28)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The ~~2011~~2011 Update to the 2010-2012 State Health Plan ~~April 20, 2011~~April 20, 2011 ~~(October 13, 2010)~~ as amended ~~April 20, 2011~~April 20, 2011 ~~(October 13, 2010)~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Health Policy, 275 East Main Street, fourth floor, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

CARRIE BANAHAN, Executive Director

JANIE MILLER, Secretary

APPROVED BY AGENCY: February 11, 2011

FILED WITH LRC: February 14, 2011 at 11 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: Carrie Banahan or Chandra Venettozzi

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the State Health Plan, which is used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040.

(b) The necessity of this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared. Changes to the State Health Plan are necessary to provide Certificate of Need application review criteria for Psychiatric Residential Treatment Facility Level I and Psychiatric Residential Treatment Facility Level II. This administrative regulation incorporates the 2010 Update to the 2010 - 2012 State Health Plan by reference to provide the needed review criteria.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The preparation of the State Health Plan is required by KRS Chapter 216B.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The preparation of the State Health Plan is required by KRS Chapter 216B.

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

(a) How the amendment will change this existing administrative regulation: The amendment will update the 2010 - 2012 State Health Plan to establish Certificate of Need requirements for Psychiatric Residential Treatment Facilities Level I and Psychiatric Residential Treatment Facilities Level II.

(b) The necessity of the amendment to this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared triennially. KRS 261B.450 established Psychiatric Residential Treatment Facilities Level I and Psychiatric Residential Treatment Facilities Level II. The State Health Plan requires revision to incorporate Certificate of Need requirements for these new licensure types.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 216B.015(27) which requires that the State Health Plan to provide Certificate of Need requirements.

(d) How the amendment will assist in the effective administration



tion of the statutes: This amendment will provide an updated State Health Plan for purposes of certificate of need review.

(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 health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or develop community health care facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The modifications will apply to potential Certificate of Need applicants for Psychiatric Residential Treatment Facilities Level I and Psychiatric Residential Treatment Facilities Level II.

(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 entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The criteria for applicants proposing to establish Psychiatric Residential Treatment Facilities Level I and Psychiatric Residential Treatment Facilities Level II are now established. These changes may increase access to these services in the state where access may not be available.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing 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: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed healthcare facilities or services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.015(27) requires that the State Health Plan be prepared. This administrative regulation incorporates the 2010 Update to the 2010 - 2012 State Health Plan by reference.

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

None

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

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

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

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

#### CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amended After Comments)

#### 900 KAR 6:125. Certificate of Need annual surveys, and registration requirements for new Magnetic Resonance Imaging units.

RELATES TO: KRS 216B.010, 216B.040

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements for registration of Magnetic Resonance Imaging units and the requirements for submission of annual survey data that are used to produce annual reports necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(5).

(2) "Days" means calendar days, unless otherwise specified.

(3) "Entities" means any licensed hospital, licensed home health agency, licensed ambulatory surgery center, licensed hospice agency, licensed long term care facility, licensed private duty nursing agency, licensed psychiatric residential treatment facility, facility with megavoltage radiation equipment, facility with positron emission tomography equipment, or person or facility with magnetic resonance imaging equipment.

(4) "Exempt physicians" means physicians that operate a Magnetic Resonance Imaging unit pursuant to the exemption allowed in KRS 216B.020(2)(a).

(5) "Long term care facility" means any entity with licensed long term care beds including: nursing facility, nursing home, intermediate care, Alzheimer's, intermediate care facility for the mentally retarded, and personal care.

(6) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(7) "Owner" means a person as defined in KRS 216B.015(21) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(8) "Year" means a calendar year from January 1 through December 31.

Section 2. Entities Completing Surveys. (1) The following entities shall submit annual surveys:

(a) Licensed Ambulatory Surgery Centers;

(b) Licensed Hospitals performing ambulatory surgery services or performing outpatient surgical services;

(c) Licensed Home Health Agencies;

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- (d) Licensed Hospice Agencies;
- (e) Licensed Hospitals;
- (f) Licensed Private Duty Nursing Agencies;
- (g) Facilities with licensed long term care beds;
- (h) Entities that hold a certificate of need for MRI equipment;
- (i) ~~Exempt Physicians that have MRI equipment;~~
- ~~(j) Facilities with Megavoltage Radiation equipment;~~
- ~~(k) Licensed Psychiatric Residential Treatment Facilities;~~

and

~~(l) Facilities with Positron Emission Tomography equipment.~~

(2) An entity that did not perform any services or utilize specified equipment during the reporting year shall not be required to submit an annual survey.

Section ~~4.[3-]~~ Annual Survey Submission. (1) Entities Completing Surveys on a Voluntary Basis. Exempt physicians that have MRI equipment shall submit surveys on a voluntary basis. An annual survey shall be completed for the previous year and transmitted electronically by accessing the Office of Health Policy's Web site at <http://chfs.ky.gov/ohp>.

Section ~~5[4-]~~ Surveys shall be submitted annually as follows:

- (1) Annual Survey of Licensed Ambulatory Surgical Services;
- (2) Annual Survey of Licensed Home Health Services;
- (3) Annual Survey of Hospice Providers;
- (4) Annual Survey of Licensed Hospitals;
- (5) Annual Survey of Licensed Private Duty Nursing Agencies;
- (6) Annual Survey of Long Term Care Facilities;
- (7) Annual Survey of Magnetic Resonance Imaging (MRI) Equipment and Services;
- (8) Annual Survey of Megavoltage Radiation Services;
- (9) Annual Survey of Psychiatric Residential Treatment Facilities; and
- (10) Annual Survey of Positron Emission Tomography (PET) Services.

Section ~~6.[5-]~~ Annual surveys shall be completed no later than March 15th of each year. If the 15th falls on a weekend or holiday, the submission due date shall be the next working day.

Section ~~7.[6-]~~ Extensions for Survey Submission. (1) A request for an extension for submission of data shall be made in writing or via email to the administrator of the specific survey.

(2) The request for an extension shall state the facility name, survey log-in identification number, contact person, contact phone number, contact email address, and a detailed reason for the requested extension.

(3) One extension per survey of up to 10 (ten) days shall be granted.

(4) Additional extensions shall only be granted if circumstances beyond the entity's control prevents timely completion of the surveys.

Section ~~8.[7-]~~ Data Corrections to Draft Annual Reports Utilizing Data Submitted in the Annual Surveys. (1)(a) Prior to the release of draft reports to facilities for their review, the Office of Health Policy shall review data for completeness and accuracy.

(b) If an error is identified, the facility shall be contacted by the Office of Health Policy and allowed fourteen (14) days to make corrections.

(2)(a) Prior to publication of the reports, the Office of Health Policy shall publish draft reports available only to the entities included in each individual report.

(b) The facilities shall be notified of a website and provided with a login identification and password required to access each applicable draft report and shall have fourteen (14) days to review their data for errors.

(c) Corrections shall be submitted in writing or via email to the Office of Health Policy before the expiration of the fourteen (14) day review period.

(3)(a) After publication of the reports, reports shall not be revised as a result of data reported to the Office of Health Policy incorrectly by the facility.

(b) Corrections received after the fourteen (14) day review period shall not be reflected in the published report.

(c) Facilities may provide a note in the comments section for the following year's report, referencing the mistake from the previous year.

Section ~~9.[8-]~~ Annual Reports. (1) Utilizing data submitted in the annual surveys, the Office of Health Policy shall publish reports annually as follows:

- (a) Kentucky Annual Ambulatory Surgical Services Report;
- (b) Kentucky Annual Home Health Services Report;
- (c) Kentucky Annual Hospice Services Report;
- (d) Kentucky Annual Hospital Utilization and Services Report;
- (e) Kentucky Annual Private Duty Nursing Agency Report;
- (f) Kentucky Annual Long Term Care Services Report;
- (g) Kentucky Annual Magnetic Resonance Imaging Services Report;
- (h) Kentucky Annual Megavoltage Radiation Services Report;
- (i) Kentucky Annual Psychiatric Residential Treatment Facility Report; and
- (j) Kentucky Annual Positron Emission Tomography Report.

(2) Electronic copies of annual reports may be obtained at no cost from the Office of Health Policy's Web site at <http://chfs.ky.gov/ohp>. A paper copy may be obtained for a fee of twenty (20) dollars at the Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4WE, Frankfort, Kentucky 40621.

Section ~~10.[9-]~~ Any facility, other than an exempt physician that has MRI equipment, that fails to complete a required annual survey shall be referred to the Office of Inspector General for further action which may impact the facility's license renewal as provided for in 902 KAR 20:008, Section 2(6).

Section ~~11.[40-]~~ Magnetic Resonance Imaging Equipment Registration Magnetic Resonance Imaging Equipment registration on a voluntary basis by Exempt Physicians that have MRI equipment.

(1) A new Magnetic Resonance Imaging unit (MRI) utilized by an exempt physician in the Commonwealth shall be disclosed on a voluntary basis to the Cabinet for Health and Family Services.

(2) The following information shall be submitted by telephone contact and followed up in writing with the Office of Health Policy about every MRI unit utilized in the Commonwealth:

- (a) Name, address, and telephone number of the facility at which each unit is located or to be utilized;
- (b) Identification of designated contact person or authorized agent of each facility;
- (c) Make, model, and serial number of each unit;
- (d) Date the unit became operational at each site; and
- (e) Whether the unit is free-standing or mobile (if the unit is mobile, then also identify the number of days the unit is operational).

(3) The owner or operator of any MRI unit that becomes operational at an unlicensed facility after August 1, 2006, shall have thirty (30) days after use of the unit is commenced to provide the information required by subsection (2) of this section.

(4) Within thirty (30) days of a change in the facility's address or the addition of another MRI unit as well as the discontinuation of any units, the designated contact person or authorized agent shall notify the Office of Health Policy in writing.

Section ~~12.[44-]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "2010 Annual Survey of Licensed Ambulatory Surgical Services";
- (b) "2010 Annual Survey of Licensed Home Health Services";
- (c) "2010 Annual Survey of Hospice Providers";
- (d) "2010 Annual Survey of Licensed Hospitals";
- (e) "2010 Annual Survey of Licensed Private Duty Nursing Agencies";
- (f) "2010 Annual Survey of Long Term Care Facilities";
- (g) "2010 Annual Survey of Magnetic Resonance Imaging (MRI) Equipment and Services";

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- (h) "2010 Annual survey of Megavoltage Radiation Services";
- (i) "2010 Annual survey of Psychiatric Residential Treatment Facilities"; and
- (j) "2010 Annual Survey of Positron Emission Tomography (PET) Services".

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

CARRIE BANAHAN, Executive Director

JANIE MILLER, Secretary

APPROVED BY AGENCY: February 11, 2011

FILED WITH LRC: February 14, 2011 at noon

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan or Chandra Venettozzi, 564-9592

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for completion of annual surveys and the requirement to register new Magnetic Resonance Imaging (MRI) units with the Office of Health Policy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 216B.010, 216B.062, 216B.990.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.010, 216B.062, 216B.990 by establishing the requirements for completion of annual surveys and the requirement to register new Magnetic Resonance Imaging units with the Office of Health Policy for the orderly administration of the certificate of need program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 216B.010, 216B.062, 216B.990 by establishing the requirements for completion of annual surveys and the requirement to register new Magnetic Resonance Imaging units with the Office of Health Policy.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity required to submit annual surveys and an entity required to register a Magnetic Resonance Imaging unit. Approximately 800 entities complete a survey each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As the annual survey process and MRI registration process identified in the administrative regulation are already established for all facilities, no action will be required of regulated entities to comply with this regulation with the exception of Psychiatric Residential Treatment Facilities. These facilities are now required to complete annual surveys to submit data required by HB 231.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

tion (3): As the annual survey process and the registration of MRI units identified in the administrative regulation are already established, no cost will be incurred by regulated entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will provide specific instructions for submission of annual surveys and the requirement to register new Magnetic Resonance Imaging units with the Office of Health Policy for the administration of the certificate of need program.

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

(a) Initially: No additional costs will be incurred to implement this regulation as we already utilize these surveys and MRI registration process as part of our normal operations.

(b) On a continuing basis: No additional costs will be incurred to implement this regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Office of Health Policy's existing budget. As stated above, the annual survey process and registration of MRI units identified in the administrative regulation are already used as part of our normal operations so no additional funding will be required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees or funding 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 establishes a \$20 fee for anyone wishing to purchase a paper copy of annual reports. As the reports are available electronically at no cost, the fee is necessary to recoup the agency's printing costs incurred in producing paper reports.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of Health Policy within the Cabinet for Health and Family Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.062, 216B.990.

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 establishes a \$20 fee for anyone wishing to purchase a paper copy of annual reports. As the reports are available electronically at no cost, the fee is necessary to recoup the agency's printing costs incurred in producing paper reports; therefore, any revenue generated will simply cover the printing costs. There is no net revenue. We anticipate that approximately 40 reports will be purchased.

(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 establishes a \$20 fee for anyone wishing to purchase a paper copy of annual reports. As the reports are available electronically at no cost, the fee is necessary to recoup the agency's printing costs incurred in producing paper reports; therefore,

any revenue generated will simply cover the printing costs. There is no net revenue. We anticipate that approximately 40 reports will be purchased.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## CABINET FOR HEALTH AND FAMILY SERVICES

### Office of Inspector General

#### Division of Health Care

#### (Amended After Comments)

### 902 KAR 20:320. Level I and Level II psychiatric residential treatment facility operation and services.

RELATES TO: KRS 216B.010-216B.130, 216B.450-216B.459, 216B.990, 42 C.F.R. 441.156, 42 C.F.R. 483

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 216B.450-216B.459, 314.011(8), 314.042(8), 320.240(14)[7]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042, 216B.105 and 216B.450 to 216B.459 mandate that the Kentucky Cabinet for Health and Family Services regulate health facilities and services. This administrative regulation provides minimum licensure requirements regarding the operation of and services provided in Level I and Level II psychiatric residential treatment facilities.

Section 1. Definitions. (1) "BAMT" or "Blood Assay for Mycobacterium tuberculosis" means a diagnostic blood test that assesses for the presence of infection with M. tuberculosis. Results are reported as positive, negative, indeterminate, or borderline.

(2) "BAMT conversion" means a change in test result, on serial testing, from negative to positive.

(3) "Boosting" means if nonspecific or remote sensitivity to tuberculin purified protein derivative (PPD) in the skin test wanes or disappears over time, subsequent tuberculin skin tests (TST) may restore the sensitivity. An initially small TST reaction size is followed by a substantial reaction size on a later test, and this increase in millimeters of indurations may be confused with a conversion or a recent M. tuberculosis infection. Two-step testing shall be used to distinguish new infections from boosted reactions in infection-control surveillance programs.

(4) "Chemical restraint" means the use of a drug that:

(a) Is administered to manage a resident's behavior in a way that reduces the safety risk to the resident or others;

(b) Has the temporary effect of restricting the resident's freedom of movement; and

(c) Is not a standard treatment for the resident's medical or psychiatric condition.

(5)(2) "Clinical privileges" means authorization by the governing body to provide certain resident care and treatment services in the facility specified by the governing body within well defined limits, based on the individual's license, education, training, experience, competence, and judgment.

(3) "Direct-care staff" means residential or child-care workers who directly supervise residents.

(6) "Directly Observed Therapy" or "DOT" means an adherence-enhancing strategy in which a healthcare worker or other trained person watches a patient swallow each dose of medication. DOT is the standard care for all patients with TB disease and is a preferred option for patients treated for latent TB infection (LTBI). DOT for treatment of LTBI is called Directly Observed Preventive Therapy (DOPT).

(7) "Emergency safety intervention" is defined by 42 C.F.R.

483.352 as the use of restraint or seclusion as an immediate response to an emergency safety situation.

(8) "Emergency safety situation" is defined by 42 C.F.R. 483.352 as an unanticipated resident behavior that places the resident or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention.

(9)(44) "Freestanding" is defined by [i#] KRS 216B.450(3).

(10)(6) "Governing body" means the individual, agency, partnership, or corporation in which the ultimate responsibility and authority for the conduct of the facility is vested.

(11) "Home-like" is defined by KRS 216B.450(4).

(12) "Induration" means a firm area in the skin which develops as a reaction to injected tuberculin antigen if a person has tuberculosis infection. The diameter of the firm area is measured transversely to the nearest millimeter to gauge the degree of reaction, and the result is recorded in millimeters. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection in a healthcare setting. A reaction of five (5) millimeters or more of induration may be significant in certain individuals, including HIV-infected persons, persons with immunosuppression, or recent contacts of persons with active TB disease.

(13) "Latent TB infection" or "LTBI" means infection with M. tuberculosis without symptoms or signs of disease has manifested.

(14)(6) "Licensure agency" means the Cabinet for Health and Family Services, Office of Inspector General.

(15)(7) "Living unit" means:

(a) The area within a single building that is supplied by a Level [the] facility for daily living and therapeutic interaction of no more than nine (9) residents; or

(b) The area within a Level II facility that is designated for daily living and therapeutic interaction of no more than twelve (12) residents.

(16)(8) "Mechanical restraint" means any device attached or adjacent to a resident's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.

(17)(9) "Mental health associate" means:

(a) An individual with a minimum of a bachelor's degree in a mental health related field; a registered nurse; or a licensed practical nurse with at least one (1) year's experience in a psychiatric inpatient or residential treatment setting for children; or

(b) An individual with a high school diploma or an equivalence certificate and at least two (2) years work experience in a psychiatric inpatient or residential treatment setting for children.

(18)(40) "Mental health professional" is defined by [i#] KRS 645.020(7).

(19)(44) "Personal restraint" means the application of physical force without the use of any device for the purpose of restraining the free movement of a resident's body and does not include briefly holding without undue force a resident in order to calm or comfort him or her or holding a resident's hand to safely escort him or her from one (1) area to another.

(20)(42) "Psychiatric residential treatment facility" or "PRTF" is defined in KRS 216B.450(5) as a Level I facility or a Level II facility.

(21) "Qualified mental health personnel" is defined by KRS 215B.450(6).

(22) "Qualified mental health professional" is defined by KRS 216B.450(7).

(23)(43) "Seclusion" means the involuntary confinement of a resident alone in a room or in an area from which the resident is physically prevented from leaving.

(24) "Serious injury" means any significant impairment of the physical condition of the resident as determined by qualified medical personnel and may include:

(a) Burns;

(b) Lacerations;

(c) Bone fractures;

(d) Substantial hematoma; or

(e) Injuries to internal organs which may be self-inflicted or inflicted by someone else.

(25) "Serious occurrence" means a resident's death, a serious injury to the resident as defined by subsection (24) of this section, or a resident's suicide attempt.

**(26) "Time out" means the restriction of a resident for a period of time to a designated area from which the resident is not physically prevented from leaving, for the purpose of providing the resident an opportunity to regain self-control.**

**(27) "Tuberculin Skin Test" or "TST" means a diagnostic aid for finding M. tuberculosis infection. A TST is performed by using the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). TST results shall be read forty-eight (48) to seventy-two (72) hours after injection and recorded in millimeters of induration.**

**(28) [(25)] "Tuberculosis (TB) disease" means a condition caused by infection with a member of the M. tuberculosis complex that has progressed to causing clinical (manifesting signs or symptoms) or subclinical (early stage of disease in which signs or symptoms are not present, but other indications of disease activity are present, including radiographic abnormalities). The bacteria may attack any part of the body, but disease is most commonly found in the lungs (pulmonary TB). Pulmonary TB disease may be infectious; extra pulmonary disease (occurring at a body site outside the lungs) is not infectious, except in rare circumstances. If the only clinical finding is specific chest radiographic abnormalities, the condition is termed "inactive TB" and may be differentiated from active TB disease, which is accompanied by symptoms or other indications of disease activity, including the ability to culture reproducing TB organisms from respiratory secretions or specific chest radiographic finding.**

**(29) [(26)] "TST conversion" means a change in the result of a test for M. tuberculosis infection in which the condition is interpreted as having progressed from uninfected to infected. A TST conversion is >10 mm increase in the size of the TST induration during a two (2) year period in:**

**(a) A health care worker with a documented negative (<10 mm) baseline two-step TST result; or**

**(b) A person who is not a health care worker with a negative (<10 mm) TST result within two (2) years.**

**(c) A TST conversion is presumptive evidence of new M. tuberculosis infection and poses an increased risk for progression to TB disease.**

**(30) [(27)] "Two-step TST" or "two-step testing" means a series of two (2) TSTs administered seven (7) to twenty-one (21) days apart and used for the baseline skin testing of persons who will receive serial TSTs, including healthcare workers and residents of psychiatric residential treatment facilities to reduce the likelihood of mistaking a boosted reaction for a new infection.**

**(31) [(29)] [(44)] "Special treatment procedures" means any procedure such as chemical restraint, mechanical restraint, personal restraint, or seclusion which may have abuse potential or be life threatening.**

**(45) "Unusual treatment" means any procedure not readily accepted as a standard method of treatment by the relevant profession [professional].**

Section 2. Licensure Application and Fee. (1) An applicant for licensure as a Level I or Level II PRTF shall complete and submit to the Office of Inspector General an Application for License to Operate a Health Facility or Service, pursuant to 902 KAR 20:008, Section 2(1)(f).

(2) If an entity seeks to operate both a Level I and a Level II PRTF and is granted licensure to operate both levels, a separate license shall be issued for each level.

(3) The initial and annual fee for licensure as a Level I PRTF shall be \$270.

(4)(a) The initial and annual fee for licensure as a Level II PRTF that has nine (9) beds or less shall be \$270.

(b) The initial and annual fee for licensure as a Level II PRTF that has nine (9) beds to fifty (50) beds:

1. Shall be \$270; and

2. A fee of ten (10) dollars shall be added to the minimum fee of \$270 for each bed beyond the ninth bed.

Section 3. Location. ~~Applicability.~~ (1)(a) A Level I psychiatric residential treatment facility shall be located in a freestanding structure.

(b) A Level II PRTF may be located:

1. In a separate part of a psychiatric hospital;
2. In a separate part of an acute care hospital;
3. In a completely detached building; or
4. On the campus of a Level I PRTF if the Level II beds are located on a separate floor, in a separate wing, or in a separate building from the Level I PRTF.

(c) A licensed Level II PRTF shall not be licensed for more than fifty (50) beds.

(2) In accordance with KRS 216B.455(5) multiple Level I PRTFs may be located on a common campus if each is freestanding.

(3)(a)1. If a Level I ~~or Level II~~ psychiatric residential treatment facility is located on grounds shared by another licensed facility other than a PRTF, ~~the following shall apply:~~

~~(a) the residents of the Level I or Level II PRTF and the licensed facility with which it shares grounds shall not have any joint activities, except for organized education activities, organized recreational activities, or group therapy for children with similar treatment needs [or interactions].~~

2. If a Level II PRTF is located on grounds shared by a Level I PRTF, the following shall apply:

a. The residents of the Level II PRTF and the Level I PRTF with which it shares grounds shall not have any joint activities ~~or interactions~~, except for organized education activities, organized recreational activities, or group therapy for children with similar treatment needs;

b. ~~Approval for therapeutic~~ Joint activities ~~[or interactions]~~ shall be documented in the resident's comprehensive treatment plan of care; and

c. The maximum age range for joint activities ~~or interactions~~ shall be no more than five (5) years for residents age six (6) to twenty-one (21), and no more than three (3) years for residents in Level II facilities age four (4) to five (5).

(b) Direct-care staff of the licensed facility with which the Level I or Level II PRTF shares grounds may provide relief, replacement, or substitute staff coverage to the PRTF; and

(c) For continuity of care, at least fifty (50) percent of direct care staff of the Level I or Level II PRTF shall be consistently and primarily assigned to the living unit. ~~employed by the PRTF.~~

~~(4) PRTFs that are located in the same structure or on a common campus may share joint activities and staff.~~

Section 4. ~~3.~~ Licensure. (1) A Level I or Level II psychiatric residential treatment facility shall comply with all the conditions for licensure contained in 902 KAR 20:008.

**(2) A Level I or Level II psychiatric residential treatment facility shall operate and provide services in compliance with all applicable federal, state, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in a facility.**

**(3) Pursuant to KRS 216B.455(3) and 216B.457(5) which require compliance with KRS 216B.105, no person shall operate a PRTF without first obtaining a license issued by the Office of Inspector General.**

**(4) [(3)] Pursuant to KRS 216B.455(4) and 216B.457(6), a PRTF shall be accredited by the Joint Commission, Council on Accreditation of Services for Families and Children, or any other accrediting body with comparable standards.**

Section 5. ~~4.~~ Governing Body for a Level I or Level II PRTF. A PRTF shall have a governing body with overall authority and responsibility for the facility's operation.

(1)(a) The governing body shall be a legally constituted entity in the Commonwealth of Kentucky by means of a charter, articles of incorporation, partnership agreement, franchise agreement, or legislative or executive act.

(b) A Level I and a Level II PRTF that are part of the same multifacility system, and a Level II PRTF operated by a psychiatric hospital, may share the same governing body.

(2) A facility that is part of a multifacility system or is operated by a government agency shall have a written description of the system's administrative structure and lines of authority.

(3) The authority and responsibility of any person designated to

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function as the governing body shall be specified in writing.

(4) If a business relationship exists between a governing body member and the organization, there shall be a conflict-of-interest policy that governs the member's participation in decisions influenced by the business interest.

(5) The responsibilities of the governing body shall be stated in writing and shall describe the process for the following:

(a) Adopting policies and procedures;

(b) Providing sufficient funds, staff, equipment, supplies, and facilities to assure that the facility is capable of providing appropriate and adequate services to residents;

(c) Overseeing the system of financial management and accountability;

(d) Adopting a program to monitor and evaluate the quality of all care provided and to appropriately address identified problems in care;

(e) Electing, appointing, or employing the clinical and administrative leadership personnel of the facility, and defining the qualifications, authority, responsibility, and function of those positions; ~~and~~

~~(f) Approving employment of mental health professional staff.~~

(6) The governing body shall meet as a whole at least quarterly and keep records that demonstrate the ongoing discharge of its responsibilities.

(7) If a facility is a component of a larger organization, the facility staff, subject to the overall authority of the governing body, shall be given the necessary authority to plan, organize, and operate the program.

Section 6. ~~[6.]~~ Level I or Level II PRTF Program Director. (1) A program director shall be responsible for the administrative management of the facility.

(2) A program director:

(a) Shall be qualified by training and experience to direct a treatment program for children and adolescents with emotional problems;

(b) Shall have at least minimum qualifications of a master's degree or bachelor's degree in the human services field including:

1. Social work;
2. Sociology;
3. Psychology;
4. Guidance and counseling;
5. Education;
6. Religion;
7. Business administration;
8. Criminal justice;
9. Public administration;
10. Child care administration;
11. Christian education;
12. Divinity;
13. Pastoral counseling;
14. Nursing; or
15. Other human service field related to working with families and children;

(c) 1. With a master's degree shall have two (2) years of prior supervisory experience in a human services program; or  
2. With a bachelor's degree shall have four (4) years of prior supervisory experience in a human services program; and

(d) 1. Shall have three (3) professional references, two (2) personal references, and a criminal record check performed every two (2) years through the Administrative Office of the Courts or the Kentucky State Police; ~~and~~

2. Shall not have a crime conviction, or plea of guilty, pursuant to KRS 17.165 or a Class A felony; ~~and~~

3. Shall be subject to the provisions of KRS 216B.457(12), which requires submission to a check of the central registry, and requires an employee to be removed from contact with a child under the conditions described in KRS 216B.457(12).

(3) A program director shall be responsible to the governing body in accordance with the bylaws, rules or policies for the following, unless the PRTF is part of a health care system under common ownership and governance where such duties are assigned to, or are the responsibility of the program director's supervisor or other staff:

(a) Overseeing the overall operation of the facility, including the control, utilization, and conservation of its physical and financial assets and the recruitment and direction of staff;

(b) Assuring that sufficient, qualified, and appropriately supervised staff are on duty to meet the needs of the residents at all times;

(c) Approving purchases and payroll;

(d) Assuring that treatment planning, medical supervision, and quality assurance occur as specified in this administrative regulation;

(e) Advising the governing body of all significant matters bearing on the facility's licensure and operations;

(f) Preparing reports or items necessary to assist the governing body in formulating policies and procedures to assure that the facility is capable of providing appropriate and adequate services to residents;

(g) Maintaining a written manual that defines policies and procedures and is regularly revised and updated; and

(h) Assuring that all written facility policies, plans, and procedures are followed.

Section 7. ~~[6.]~~ Administration and Operation of a Level I or Level II PRTF. (1) A Level I or Level II PRTF shall have written documentation of the following:

(a) An organizational chart that includes position titles and the name of the person occupying the position, and that shows the chain of command;

(b) A service philosophy with clearly defined assumptions and values;

(c) Estimates of the clinical needs of the children and adolescents ~~[in the area]~~ served by the facility;

(d) The services provided by the facility in response to needs;

(e) The population served, including age groups and other relevant characteristics of the resident population;

(f) The intake or admission process, including how the initial contact is made with the resident and the family or significant others;

(g) The assessment and evaluation procedures provided by the facility;

(h) The methods used to deliver services to meet the identified clinical needs of the residents served;

(i) The methods used to deliver services to meet the basic needs of residents in a manner as consistent with normal daily living as possible;

(j) The methods used to create a home-like environment for all residents, including opportunities for family-style meals in which:

1. Residents dine together;

2. Residents may assist with preparation of certain dishes or help set the table; and

3. Food may be placed in serving dishes on the table;

(k) The methods, means and linkages by which the facility involves ~~[all]~~ residents in community activities, organizations, and events;

(l) The treatment planning process and the periodic review of therapy;

(m) The discharge and aftercare planning processes;

(n) The facility's therapeutic programs;

(o) How professional services are provided by qualified, experienced personnel;

(p) How mental health professionals in Level I facilities and qualified mental health professionals in Level II facilities and direct-care staff in Level I or Level II facilities who have been assigned specific treatment responsibilities are qualified by training or experience and have demonstrated competence and [have appropriate clinical privileges]; or are supervised by a mental health professional or qualified mental health professional who is qualified by experience to supervise the treatment;

(q) How the facility is linked to regional interagency councils, psychiatric hospitals, community mental health centers, Department for Community Based Services offices and facilities, ~~[and]~~ school systems in the facility's service area, and any other agency, organization, or facility deemed appropriate by the cabinet;

(r) The means by which the facility provides, or makes ar-

rangements for the provision of:

1. Emergency services and crisis stabilization;
  2. Discharge and aftercare planning that promotes continuity of care; and
  3. Education and vocational services; and
- (s) Services the facility provides to improve stability of care and reduce re-hospitalization including:
1. How psychiatric and nursing coverage is provided to assure the continuous ability to manage and administer medications in crisis situations except for those that may only be administered by a physician; and
  2. How direct-care staffing with supervision is provided to manage behavior problems in accordance with the residents' treatment plans, including an array of interventions that are alternatives to seclusion and restraint, and the staff training necessary to implement them.

(2) The documentation shall be:

(a) Made available to each mental health professional in a Level I PRTF or qualified mental health professional in a Level II PRTF and to the program director; and

(b) Reviewed and revised as necessary, in accordance with the changing needs of the residents and the community and with the overall objectives and goals of the facility. Revisions in the documentation shall incorporate, as appropriate, relevant findings from the facility's quality assurance and utilization review programs.

(3) Professional staff for a Level I or Level II PRTF.

(a) A Level I PRTF shall:

1. Employ a sufficient number of mental health professionals in a Level I PRTF to meet the treatment needs of residents and the goals and objectives of the facility; and

2. Meet the following requirements with regard to professional staffing:

a.(i) A board-eligible or board-certified child psychiatrist or board-certified adult psychiatrist shall be employed or contracted to meet the treatment needs of the residents and the functions which shall be performed by a psychiatrist specified within this administrative regulation.

(ii) If a facility has residents ages twelve (12) and under, the licensed psychiatrist shall be board-eligible or board-certified in child psychiatry.

(iii) The psychiatrist shall be present in the facility to provide professional services to the facility's residents at least weekly, which includes a review of each resident's progress and a meeting with the resident if clinically indicated~~meeting with each resident at least one (1) time each week~~.

b. A Level I PRTF shall employ at least one (1) full-time mental health professional.

c. A mental health professional in a Level I PRTF shall be available to assist on-site in emergencies on at least an on-call basis at all times.

d. A psychiatrist shall be available on at least an on-call basis at all times.

(b) A Level II PRTF shall:

1. Employ or contract with a sufficient number of qualified mental health professionals in a Level II PRTF to meet the treatment needs of residents and the goals and objectives of the facility;

2. Ensure that at least one (1) qualified mental health professional in a Level II PRTF shall be available to assist on-site in emergencies on at least an on-call basis at all times; and

3. Meet the following requirements with regard to professional staff pursuant to KRS 216B.457(9):

a. A licensed psychiatrist, who is board-eligible or board-certified as a child or adult psychiatrist, shall be employed or contracted to meet the treatment needs of the residents and the functions that shall be performed by a psychiatrist;

b. If a Level II facility has residents ages twelve (12) and under, the licensed psychiatrist shall be a board-eligible or board-certified child psychiatrist;

c. The licensed psychiatrist shall be present in the facility to provide professional services to the facility's residents at least weekly, which includes meeting with each resident at least one (1) time each week unless the resident is not at the facility due to a field trip, medical appointment, or other circumstance in

which the resident is not at the facility; and

d. A licensed psychiatrist shall be available on at least an on-call basis at all times.

(c) Clinical director. The administration of the facility~~governing body~~ shall designate one (1) full-time;

1. Mental health professional as clinical director for a Level I~~the~~ PRTF; or

2. Qualified mental health professional as the clinical director for a Level II PRTF.

a.~~[4.]~~ In addition to the requirements related to his or her profession, the clinical director shall have at least two (2) years of clinical experience in a mental health setting that serves children or adolescents with emotional problems.

b.~~[2.]~~ The administration of the facility~~governing body~~ shall define the authority and duties of the clinical director.

c.~~[3.]~~ An individual may serve as both the clinical director and the program director if the qualifications of both positions are met.

d.~~[4.]~~ The clinical director shall be responsible for:

(i)~~[a.]~~ The maintenance of the facility's therapeutic milieu; and

(ii)~~[b.]~~ Assuring that treatment plans developed in accordance with Section 12~~44~~(3) of this administrative regulation are implemented.

e.~~(i)~~~~[5.]~~ A full-time mental health professional may be designated as clinical director for more than one (1) Level I PRTF if the Level I PRTFs are located on a common campus or in the same county.

(ii) A full-time qualified mental health professional designated as the clinical director of a Level II PRTF may service as the clinical director of more than one (1) PRTF if the PRTFs are~~may be designated as clinical director of a PRTF operating both a Level I and a Level II PRTF~~ located on a common campus or in the same county.

(iii) A full-time qualified mental health professional employed by a psychiatric hospital may serve as the clinical director of a Level II PRTF located on the same campus as the hospital or in the same county.

(4) Direct-care staff for a Level I PRTF.

(a) A Level I PRTF shall employ adequate direct-care staff to ensure the continuous provision of sufficient regular and emergency supervision of all residents twenty-four (24) hours a day.

b)1. Level I Direct-care staff shall have at least a high school diploma or equivalency; and

2. Complete~~two (2) years experience in a program in the mental health field serving children or adolescents.~~

2. Completion of a forty (40) hour training curriculum meeting the requirements of subsection ~~(6)~~~~(5)~~(d) of this section within one (1) month of employment~~may be substituted for experience, except that direct care staff so qualified shall not be given clinical privileges in their first year of employment~~.

(c) In order to assure that the residents are adequately supervised and are cared for in a safe and therapeutic manner, the direct-care staffing plan for a Level I PRTF shall meet each of the following requirements:

1. At least one (1) direct-care staff member who is a mental health associate shall be assigned direct-care responsibilities for a PRTF at all times during normal waking hours when residents are not in school;

2. At least one (1) direct-care staff member shall be assigned to direct-care responsibilities for each three (3) residents during normal waking hours when residents are not in school;

3.a. At least one (1) direct-care staff member shall be assigned direct-care responsibilities, be awake, and be continuously available on each living unit during all hours the residents are asleep; and

b. A minimum of one (1) additional direct-care staff member who is a mental health associate shall be immediately available on the grounds of the PRTF to assist with emergencies or problems which might arise;

4. If a mental health professional is directly involved in an activity with a group of residents, he or she may meet the requirement for a direct-care staff member; and

5. The direct-care staff member who is supervising residents shall know the whereabouts of each resident at all times.

(d) Written policies and procedures approved by the Level I



PRTF's governing body shall:

1. ~~Specify the clinical privileges, if any, of each member of the direct-care staff;~~

2. Provide for the supervision of the direct-care staff; and

3. Describe the responsibilities of direct-care staff in relation to professional staff.

(5) Direct-care staff for a Level II PRTF.

(a) A Level II PRTF shall employ adequate direct-care staff to ensure the continuous provision of sufficient regular and emergency supervision of all residents twenty-four (24) hours a day.

(b) Level II direct-care staff shall:

1. Have at least a high school diploma or equivalence certificate; and

2. Complete a forty (40) hour training curriculum meeting the requirements of subsection (6)(d) of this section within one (1) month of employment.

(c) In order to assure that the residents are adequately supervised and are cared for in a safe and therapeutic manner, a Level II PRTF shall prepare a written staffing plan pursuant to KRS 216B.457(10)(a) that is tailored to meet the needs of the specific population of children and youth that will be admitted to the facility based on the facility's admission criteria.

(d) Pursuant to KRS 216B.457(10)(a), the written staffing plan submitted by a Level II PRTF to the Office of Inspector General shall include the following:

1. Specification of the direct care staffing per resident ratio that the facility shall adhere to during waking hours and during sleeping hours;

2. Delineation of the number of direct care staff per resident, including the types of staff and the mix and qualifications of qualified mental health professionals and qualified mental health personnel, that shall provide direct care and will comprise the facility's per patient staffing ratio;

3. Specification of appropriate qualifications for individuals included in the per resident staffing ratio by job description, education, training, and experience;

4. Provision for ensuring compliance with the written staffing plan, and specification of the circumstances under which the facility may deviate from the per resident staffing ratio due to patient emergencies, changes in patient acuity, or changes in resident census; and

5. Submission of the written staffing plan to the Office of Inspector General for approval as part of the facility's application for initial licensure.

(e) 1. Pursuant to KRS 216B.457(10)(a), a Level II PRTF shall comply with its cabinet-approved written staffing plan.

2. If the facility desires to change its approved per patient staffing ratio, it shall submit a revised plan to the Office of Inspector General and have the plan approved prior to implementation of the change.

(6) Staff development.

(a) Level I and Level II PRTF staff development programs shall be provided and documented for administrative, professional, direct-care, and support staff.

(b) Level I and Level II PRTF professional and direct-care staff shall meet the continuing education requirements of their profession or be provided with forty (40) hours per year of in-service training

(c) ~~Part-time staff shall have at least twenty-four (24) hours of annual training specific to tasks to be performed.~~

(d) Each Level I and Level II PRTF staff member working directly with residents shall receive annual training in the following areas:

1. Child and adolescent growth and development;

2. Emergency and safety procedures;

3. Behavior management, including de-escalation training; ~~and~~

4. Detection and reporting of child abuse or neglect.

5. Physical management procedures and techniques;

6. ~~First aid;~~

7. ~~Cardiopulmonary resuscitation;~~

8. ~~Infection control procedures; and~~

9. ~~Training specific to the specialized nature of the facility.~~

**8. A Level I and Level II PRTF shall develop and implement a plan for staff to obtain training in first aid and cardiopulmo-**

**nary resuscitation.**

~~(7)~~ ~~(6)~~ Employment practices in a Level I and Level II PRTF.

(a) A Level I and Level II PRTF shall have employment and personnel policies and procedures designed, established, and maintained to promote the objectives of the facility, to ensure that an adequate number of qualified personnel under appropriate supervision is provided during all hours of operation, and to support quality of care and functions of the facility.

(b) The Level I or Level II PRTF's personnel policies and procedures shall be written, systematically reviewed, and approved on an annual basis by the governing body, and dated to indicate the time of last review.

(c) The Level I or Level II PRTF's personnel policies and procedures shall provide for the recruitment, selection, promotion, and termination of staff.

(d) The Level I or Level II PRTF shall maintain job descriptions that:

1. ~~Specify~~ ~~Are approved by the governing body for all positions specifying~~ the qualifications, duties, and supervisory relationship of the position;

2. Accurately reflect the actual job situation; ~~and~~

3. Are revised if a change is made in the required qualifications, duties, supervision, or any other major job-related factor; ~~and~~

4. Provide the salary range for each position.

(e) The Level I or Level II PRTF shall provide a personnel orientation to all new employees.

(f) 1. The Level I or Level II PRTF's personnel policies and procedures shall be available and apply to all employees and shall be discussed with all new employees.

2. The Level I or Level II PRTF's facility administration ~~governing body~~ shall establish a mechanism for notifying employees of changes in the personnel policies and procedures.

~~(g) b. Job descriptions shall accurately reflect the actual job situation and shall be revised whenever a change is made in the required qualifications, duties, supervision, or any other major job-related factor. In addition, salary range for each position shall be provided.~~

2.a. ~~Provide a personnel orientation to all new employees.~~

b. ~~The personnel policies and procedures shall be available and apply to all employees and shall be discussed with all new employees.~~

c. ~~The governing body shall establish a mechanism for notifying employees of changes in the personnel policies and procedures.~~

(g) Information on the following shall be included in the personnel policies and procedures:

1. Employee benefits;

2. Recruitment;

3. Promotion;

4. Training and staff development;

5. Employee grievances;

6. Safety and employee injuries;

7. Relationships with employee organizations;

8. Disciplinary systems;

9. Suspension and termination mechanisms;

10. Rules of conduct;

11. Lines of authority;

12. Performance appraisals;

13. Wages, hours and salary administration; and

14. Equal employment opportunity and, if required, affirmative action policies.

~~(h)~~ The Level I or Level II PRTF's personnel policies and procedures shall describe methods and procedures for supervising all personnel, including volunteers.

~~(h) 1.~~ ~~(4)~~ The Level I or Level II PRTF's personnel policies and procedures shall require a criminal record check through the Administrative Office of the Courts or the Kentucky State Police for all staff and volunteers to assure that only persons whose presence does not jeopardize the health, safety, and welfare of residents are employed and used.

2. A new criminal records check shall be completed at least every two (2) years on each employee or volunteer in a Level I or Level II PRTF.



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3. Pursuant to KRS 216B.216.457(12)(a), any employee or volunteer in a Level I or Level II PRTF who has committed or is charged with the commission of a violent offense as specified in KRS 439.3401, a sex crime specified in KRS 17.500, or a criminal offense against a victim who is a minor as specified in KRS 17.500 shall be immediately removed from contact with a child within the residential treatment center until the employee or volunteer is cleared of the charge.

4. Pursuant to KRS 216B.457(12)(b), an employee or volunteer in a Level I or Level II PRTF under indictment, legally charged with felonious conduct, or subject to a cabinet investigation shall be immediately removed from contact with a child.

5. Pursuant to KRS 216B.457(12)(c), the employee or volunteer in a Level I or Level II PRTF shall not be allowed to work with the child until a prevention plan has been written and approved by the cabinet, the person is cleared of the charge, or a cabinet investigation reveals an unsubstantiated finding, if the charge resulted from an allegation of child abuse, neglect, or exploitation.

6. Pursuant to KRS 216B.457(12)(d), each employee or volunteer in a Level I or Level II PRTF shall submit to a check of the central registry established under 922 KAR 1:470.

7. A Level I or Level II PRTF shall not employ or allow any person to volunteer if that individual is listed on the central registry.

8. Pursuant to KRS 216B.457(12)(e), any employee or volunteer removed from contact with a child, may be terminated, reassigned to a position involving no contact with a child, or placed on administrative leave with pay during the pendency of the investigation or proceeding.

~~(l)(4)~~ The Level I or Level II PRTF's personnel policies and procedures shall provide for reporting and cooperating in the investigation of suspected cases of child abuse and neglect by facility personnel.

~~(l)(4)~~ A Level I or Level II PRTF's personnel record shall be kept on each staff member and shall contain the following items:

1. Name and address[Application for employment];

2. [Written references and a record of verbal references;

3.] Verification of all training and experience and of licensure, certification, registration, or renewals;

3. Verification of submission to the background checks required by paragraph (h) of this subsection;

4. [Wage and salary information, including all adjustments;

5.] Performance appraisals;

5.[6. Counseling actions;

7. Disciplinary actions;

8. Commendations;

9.] Employee incident reports; and

6.[49.] Record of health exams related to employment, including compliance with the tuberculosis testing requirements of Section 24 of this administrative regulation.

~~(k)(4)~~ The Level I or Level II PRTF's personnel policies and procedures shall assure the confidentiality of personnel records and specify who has access to various types of personnel information.

~~(l)(4)~~ Performance appraisals shall relate job description and job performance and shall be written.[The criteria used to evaluate job performance shall be objective.]

Section 8.[7.] Resident Rights. (1) A Level I or Level II PRTF shall support and protect the basic human, civil, and constitutional rights of the individual resident.

(2) Written policy and procedure approved by the Level I or Level II PRTF's governing body shall provide a description of the resident's rights and the means by which these rights are protected and exercised.

(3) At the point of admission, a Level or Level II PRTF shall provide the resident and parent, guardian, or custodian with a clearly written and readable statement of rights and responsibilities. The statement shall be read to the resident or parent, guardian, or custodian if either cannot read and shall cover, at a minimum:

(a) Each resident's right to access treatment, regardless of race, religion, or ethnicity;

(b) Each resident's right to recognition and respect of his personal dignity in the provision of all treatment and care;

(c) Each resident's right to be provided treatment and care in the least restrictive environment possible;

(d) Each resident's right to an individualized treatment plan;

(e) Each resident's and family's right to participate in planning for treatment;

(f) The nature of care, procedures, and treatment that the resident shall receive;

(g) The right to informed consent related to the risks, side effects, and benefits of all medications and treatment procedures used; ~~and~~

(h) The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility if the resident refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or, in accordance with professional standards, to terminate the relationship with the resident upon reasonable notice; and

~~(i) The right to be free from restraint or seclusion, of any form, used as a means of coercion, discipline, convenience, or retaliation.~~

(4) The rights of residents in a Level I or Level II PRTF shall be written in language which is understandable to the resident, his or her parents, custodians, or guardians and shall be posted in appropriate areas of the facility.

(5) The policy and procedure concerning Level I or Level II PRTF resident rights shall assure and protect the resident's personal privacy within the constraints of his or her treatment plan. These rights to privacy shall at least include:

(a) Visitation by the resident's family or significant others in a suitable private area of the facility;

(b) Sending and receiving mail without hindrance or censorship; and

(c) Telephone communications with the resident's family or significant others at a reasonable frequency.

(6) If any rights to privacy are limited, the resident and his or her parent, guardian, or custodian shall receive a full explanation from the Level I or Level II PRTF. Limitations shall be documented in the resident's record and their therapeutic effectiveness shall be evaluated and documented by professional staff every seven (7) days.

(7) The right to initiate a complaint or grievance procedure ~~[anonymously]~~ and the means for requesting a hearing or review of a complaint shall be specified in a written policy approved by the Level I or Level II PRTF's governing body and made available to residents, parents, guardians, and custodians responsible for the resident. The procedure shall indicate:

(a) To whom the grievance is to be addressed; and

(b) Steps to be followed for filing a complaint, grievance, or appeal.

(8) The resident and his or her parent, guardian, or custodian shall be informed of the current and future use and disposition of products of special observation and audio-visual techniques such as one (1) way vision mirrors, tape recorders, videotapes, monitors, or photographs.

(9) The policy and procedure regarding resident's rights shall ensure the resident's right to confidentiality of all information recorded in his or her record maintained by the Level I or Level II facility. The facility shall ensure the initial and continuing training of all staff in the principles of confidentiality and privacy.

(10)(a) A Level I or Level II resident shall be allowed to work for the facility only under the following conditions:

1. The work is part of the individual treatment plan;

2. The work is performed voluntarily;

3. The patient receives wages commensurate with the economic value of the work; and

4. The work project complies with applicable law and administrative regulation; and

(b) The performance of tasks related to the responsibilities of family-like living, such as laundry and housekeeping, shall not be considered work for the facility and need not be compensated or voluntary.

(11) A Level I or Level II PRTF's Written policy developed in consultation with professional and direct care staff and approved by the governing body shall provide for the measures utilized by the facility to discipline residents. These measures shall be fully

explained to each resident and the resident's parent, guardian, or custodian.

(12) A Level I or Level II PRTF shall prohibit all cruel and unusual disciplinary measures including the following:

- (a) Corporal punishment;
- (b) Forced physical exercise;
- (c) Forced fixed body positions;
- (d) Group punishment for individual actions;
- (e) Verbal abuse, ridicule, or humiliation;
- (f) Denial of three (3) balanced nutritional meals per day;
- (g) Denial of clothing, shelter, bedding, or personal hygiene needs;
- (h) Denial of access to educational services;
- (i) Denial of visitation, mail, or phone privileges for punishment;
- (j) Exclusion of the resident from entry to his assigned living unit; and
- (k) Restraint or seclusion as a punishment or employed for the convenience of staff.

(13) Written policy shall prohibit Level I or Level II PRTF residents from administering disciplinary measures upon one another and shall prohibit persons other than professional or direct-care staff from administering disciplinary measures to residents.

(14)(a) Written rules of Level I or Level II PRTF resident conduct shall be developed in consultation with the professional and direct-care staff and be approved by the governing body.

(b) Residents shall participate in the development of the rules to a reasonable and appropriate extent.

(c) These rules shall be based on generally acceptable behavior for the resident population served.

(15) The application of disciplinary measures in a Level I or Level II PRTF shall relate to the violation of established rules.

Section 9.[8-] Resident Records. (1) A Level I or Level II PRTF shall:

- (a) Have written policies concerning resident records approved by the governing body; and
- (b) Maintain a written resident record on each resident, to be directly accessible to staff members caring for the resident.

(2) The Level I or Level II PRTF resident record shall contain at a minimum:

- (a) Basic identifying information;
- (b) Appropriate court orders or consent of appropriate family members or guardians for admission, evaluation, and treatment;
- (c) A provisional or admitting diagnosis which includes a physical diagnosis, if applicable, as well as a psychiatric diagnosis;
- (d) The report by the parent, guardian, or custodian of the patient's immunization status;
- (e) A psychosocial assessment of the resident and his or her family, including:

- 1. An evaluation of the effect of the family on the resident's condition and the effect of the resident's condition on the family; and
- 2. A summary of the resident's psychosocial needs.

(f) An evaluation of the resident's growth and development, including physical, emotional, cognitive, educational, and social development; and needs for play and daily activities;

(g) The resident's legal custody status, if applicable;

(h) The family's, guardian's, or custodian's expectations for, and involvement in, the assessment, treatment, and continuing care of the resident;

(i) Physical health assessment, including evaluations of the following:

- 1. Motor development and functioning;
- 2. Sensorimotor functioning;
- 3. Speech, hearing, and language functioning;
- 4. Visual functioning;~~and~~
- 5. Immunization status;and
- 6. Tuberculosis testing required by Sections 19 and 20 of this administrative regulation.

(j) In a Level II PRTF that opts to provide bedrooms with sleeping accommodations for two (2) residents, documentation of placement in a single occupancy bedroom if recommended by the multidisciplinary team. The basis for the team's recommendation for a single occupancy bedroom shall

be maintained in the record.

(3) The Level I or Level II PRTF resident record shall also include:

(a) Physician's notes which shall include an entry made at least weekly by the staff psychiatrist regarding the condition of the resident.

(b) Professional progress notes which shall be completed following each professional service except if the service is provided daily to groups of residents, when weekly summaries may be used. Professional progress notes shall be signed and dated by the:

1. Mental health professional who provided the service in a Level I PRTF; or

2. Qualified mental health professional who provided the service in a Level II PRTF.

(c)1. Direct-care progress notes which shall record implementation of all treatment and any unusual or significant events which occur for the resident.

2. Direct-care progress notes shall be completed at least by the end of each direct-care shift and summarized weekly.

3. Direct-care notes shall be signed and dated by the direct-care staff making the entry.

(d) Special clinical justifications for the use of~~special and~~ unusual treatment procedures, including emergency safety interventions, and reports.

(e) Discharge summary.

(f) If a patient dies, the resident record shall include a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician.

(g) Documentation that any serious occurrence involving the resident was reported to the Department for Medicaid Services and to Kentucky Protection and Advocacy, and that any resident death was reported to the Centers for Medicare and Medicaid Services (CMS) regional office.

(4) A Level I or Level II PRTF shall maintain confidentiality of resident records. Resident information shall be released only on written consent of the resident or his parent, guardian, or custodian or as otherwise authorized by law. The written consent shall contain the following information:

- (a) The name of the person, agency, or organization to which the information is to be disclosed;
- (b) The specific information to be disclosed;
- (c) The purpose of disclosure; and
- (d) The date the consent was signed and the signature of the individual witnessing the consent.

Section 10.[9-] Quality Assurance. (1) A Level I or Level II PRTF shall have an organized quality assurance program designed to enhance resident treatment and care through the ongoing objective assessment of important aspects of resident care and the correction of identified problems.

(2) A Level I or Level II PRTF shall prepare a written quality assurance plan designed to ensure that there is an ongoing quality assurance program that includes effective mechanisms for reviewing and evaluating resident care, and that provides for appropriate response to findings.

(3) A Level I or Level II PRTF shall record all incidents or accidents that present a direct or immediate threat to the health, safety or security of any resident or staff member. Examples of incidents to be recorded include the following: physical violence, fighting, absence without leave, use or possession of drugs or alcohol, or inappropriate sexual behavior. The record ~~shall~~should be kept on file and retained at the facility and shall be made available for inspection by the licensure agency.

(4)(a) A Level I or Level II PRTF shall report any serious occurrence involving a resident to the Department for Medicaid Services and to Kentucky Protection and Advocacy by no later than close of business the next business day after the serious occurrence.

(b) The report shall include:

- 1. The name of the resident involved in the serious occurrence;
- 2. A description of the occurrence; and
- 3. The name, street address, and telephone number of the facility.

**(5) A Level I or Level II PRTF shall report the death of any resident to the Centers for Medicare and Medicaid Services (CMS) regional office by no later than close of business the next business day after the resident's death.**

Section 11.~~[40.]~~ Admission Criteria. (1) A Level I or Level II PRTF shall have written admission criteria approved by the governing body and which are consistent with the facility's goals and objectives.

(2) Admission criteria shall be made available to referral sources and to parents, guardians, or custodians and shall include:

(a) Types of admission (crisis stabilization, long-term treatment);

(b) Age and sex of accepted;

(c) Criteria that preclude admission in a Level I or Level II PRTF;

(d) Clinical needs and problems typically addressed by the facility's programs and services;

(e) Criteria for discharge; and

(f) Any preplacement requirements of the resident, his or her parents, guardians, custodians, or the placing agency; **and**

**(g) In a Level II PRTF that opts to provide bedrooms with sleeping accommodations for two (2) residents, the facility shall:**

**1. Place each newly admitted resident in a single occupancy bedroom until completion of the comprehensive treatment plan of care, which shall be completed within ten (10) calendar days of admission pursuant to Section 12(4)(c) of this administrative regulation;**

**2. Maintain a resident in a single occupancy bedroom if recommended in the comprehensive treatment plan of care; and**

**3. Provide notification and general information to each Level II resident's parent, guardian, or custodian about the installation of the electronic surveillance system required by 902 KAR 20:330, Section 6(3)(d) if the resident is placed in a bedroom shared with another resident.**

(3) Pursuant to 42 C.F.R. 483.356, at admission, a facility shall:

(a) Inform both the incoming resident and the resident's parent or legal guardian of the facility's policy regarding the use of restraint or seclusion during an emergency safety situation that may occur while the resident is in the program;

(b) Communicate its restraint and seclusion policy in a language that the resident, or his or her parent or legal guardian understands (including American Sign Language, if appropriate) and if necessary, the facility shall provide interpreters or translators;

(c) Obtain an acknowledgment, in writing, from the resident's parent or legal guardian that he or she has been informed of the facility's policy on the use of restraint or seclusion during an emergency safety situation. Staff shall file this acknowledgment in the resident's record; and

(d) Provide a copy of the facility policy to the resident's parent or legal guardian. The facility's policy shall provide contact information, including the phone number and mailing address for Kentucky Protection and Advocacy.

**(4) Age limits.**

~~[(3)]~~(a) Residents admitted to a Level I PRTF shall have obtained age six (6), but not attained age eighteen (18).

(b) Residents in a Level I PRTF may remain in care until age twenty-one (21) if admitted by their 18th birthday.

(c) Pursuant to KRS 216B.450(5)(b), a Level II PRTF may provide inpatient psychiatric residential treatment and habilitation to persons who are age four (4) to twenty-one (21) years.

**(d)1.** Admission criteria related to age at admission shall be determined by the age grouping of children currently in residence and shall reflect a range no greater than five (5) years in a living unit for residents six (6) years of age and older.

**2. If a Level II PRTF admits residents who are four (4) or five (5) years of age, the age range shall not be more than three (3) years in the living unit.**

**(5)[(4)]** Children and adolescents who are a danger to self or others for whom the facility is unable to develop a risk-management plan shall not be admitted to a Level I PRTF.

(6)(a) Except for paragraph (b) of this subsection, a Level II PRTF shall not refuse to admit a patient who meets the medical necessity criteria and facility criteria for Level II facility services pursuant to KRS 216B.457(2).

(b) A Level II PRTF shall refuse to admit a patient if the admission exceeds the facility's licensed bed capacity.

Section 12~~[44.]~~ Resident Management. (1) Intake.

(a) A Level I and Level II PRTF shall have written policies and procedures approved by the facility administration~~(governing body)~~ for the intake process which addresses at a minimum the following:

1. Referral, records, and statistical data to be kept regarding applicants for residence;

2. Criteria for determining the eligibility of individuals for admission;

3. Methods used in the intake process which shall be based on the services provided by the facility and the needs of residents; and

4. Procurement of appropriate consent forms. This may include the release of educational and medical records.

(b) The intake process shall be designed to provide at least the following information:

1. Identification of agencies who have been involved in the treatment of the resident in the community and the anticipated extent of involvement of those agencies during and after the resident's stay in the facility;

2. Legal, custody and visitation orders; and

3. Proposed discharge plan and anticipated length of stay.

(c) The intake process shall include an orientation for the parent, guardian, or custodian as appropriate and the resident which includes the following:

1. The rights and responsibilities of residents, including the rules governing resident conduct and the types of infractions that can result in disciplinary action or discharge from the facility;

2. Rights, responsibilities, and expectations of the parent, guardian, or custodian; and

3. Preparation of the staff and residents of the facility for the new resident.

(d) Upon admission each resident of school age shall have been certified or be referred for assessment as a child with a disability pursuant to 20 U.S.C. 1400.

(2) Assessment.

(a) A complete evaluation and assessment shall be performed for each resident which includes at least physical, emotional, behavioral, social, recreational, educational, legal, vocational, and nutritional needs.

(b) An initial health screening for illness, injury, and communicable disease or other immediate needs shall be conducted within twenty-four (24) hours after admission by a nurse.

(c) A physician, nurse practitioner, or physician's assistant shall conduct a physical examination of each resident within fourteen (14) days after admission. Communication to schedule the physical examination of each resident shall be initiated within twenty-four (24) hours after admission. The physical examination shall include at least evaluations of the following:

1. Motor development and functioning;

2. Sensorimotor functioning;

3. Speech, hearing, and language functioning;

4. Visual functioning; and

5. Immunization status. If a resident's immunization is not complete as defined in the report of the Committee on Infectious Diseases of the American Academy of Pediatrics, the facility shall be responsible for its completion and shall begin to complete any immunizations which are outside of the set periodicity schedule within thirty (30) days of admission or the physical examination, whichever is later.

(d) If the resident has had a complete physical examination by a qualified physician, nurse practitioner, or physician's assistant within the previous three (3) months which includes the requirements of paragraph (c) of this subsection of this section and if the facility obtains complete copies of the record, the physician, nurse practitioner, or physician's assistant may determine after reviewing the records and assessing the resident's physical health that a complete physical examination is not required. If that determination

is made, the examination performed in the previous three (3) months may be used to meet the requirement for a physical examination in paragraph (c) of this section.

(e) Facilities shall have all the necessary diagnostic tools and personnel available or have written agreements with another organization to provide physical health assessments, including electroencephalographic equipment, a qualified technician trained in dealing with children and adolescents, and a properly qualified physician to interpret electroencephalographic tracing of children and adolescents.

(f) An emotional and behavioral assessment of each resident that includes an examination by a psychiatrist shall be completed and entered in the resident's record. The emotional and behavioral assessment shall include the following:

1. A history of previous emotional, behavioral, and substance abuse problems and treatment;
2. The resident's current emotional and behavioral functioning;
3. A direct psychiatric evaluation;
4. If indicated, psychological assessments, including intellectual, projective, and personality testing;
5. If indicated, other functional evaluations of language, self-care, and social-affective and visual-motor functioning; and
6. An evaluation of the developmental age factors of the resident.

(g) The facility shall have an assessment procedure for the early detection of mental health problems that are life threatening, are indicative of severe personality disorganization or deterioration, or may seriously affect the treatment or rehabilitation process.

(h) A social assessment of each resident shall be undertaken and include:

1. Environment and home;
2. Religion;
3. Childhood history;
4. Financial status;
5. The social, peer-group, and environmental setting from which the resident comes; and
6. The resident's family circumstances, including the constellation of the family group; the current living situation; and social, ethnic, cultural, emotional, and health factors, including drug and alcohol use.

(i) The social assessment shall include a determination of the need for participation of family members or significant others in the resident's treatment.

(j) An activities assessment of each resident shall include information relating to the individual's current skills, talents, aptitudes, and interest.

(k) An assessment shall be performed to evaluate the resident's potential for involvement in community activity, organizations, and events.

(l) For adolescents age fourteen (14)~~sixteen (16)~~ and older, a vocational assessment of the resident shall be done which includes the following:

1. Vocational history;
2. Education history, including academic and vocational training; and
3. A preliminary discussion, between the resident and the staff member doing the assessment, concerning the resident's past experiences with an attitude toward work, present motivations or areas of interest, and possibilities for future education, training, and employment.

(m) If appropriate, a legal assessment of the resident shall be undertaken and shall include the following:

1. A legal history; and
2. A preliminary discussion to determine the extent to which the legal situation will influence his progress in treatment and the urgency of the legal situation.

(3) Level I treatment plans.

(a)1. Within seventy-two (72) hours following admission, a mental health professional shall develop an initial treatment plan that is based at least on an assessment of the resident's presenting problems, physical health, and emotional and behavioral status.

2. Appropriate therapeutic efforts shall begin before a master treatment plan is finalized.

(b) A ~~comprehensive~~master treatment plan of care shall be developed by a multidisciplinary team conference in conformity with 42 C.F.R. 441.156 within ten (10) days of admission for any resident remaining in treatment. It shall be based on the comprehensive assessment of the resident's needs completed pursuant to subsection (2) of this section, include a substantiated diagnosis and the short-term and long-range treatment needs, and address the specific treatment modalities required to meet the resident's needs.

1. The treatment plan of care shall contain specific and measurable goals for the resident to achieve.

2. The treatment plan of care shall describe the services, activities, and programs to be provided to the resident, and shall specify staff members assigned to work with the resident and the time or frequency for each treatment procedure.

3. The treatment plan of care shall specify criteria to be met for termination of treatment.

4. The treatment plan of care shall include any referrals necessary for services not provided directly by the facility.

5. The resident shall participate to the maximum extent feasible in the development of his or her treatment plan of care, and the participation shall be documented in the resident's record.

6.a. A specific plan for involving the resident's family or significant others shall be included in the treatment plan of care.

b. The parent, guardian, or custodian shall be given the opportunity to participate in the multidisciplinary treatment plan conference if feasible and shall be given a copy of the resident's ~~comprehensive~~master treatment plan.

c. The ~~comprehensive~~master treatment plan of care shall identify the mental health professional who is responsible for coordinating and facilitating the family's involvement throughout treatment.

7. The treatment plan of care shall be reviewed and updated through multidisciplinary team conferences as clinically indicated and at least ~~within~~, thirty (30) days following the first ten (10) days of treatment. **The treatment plan of care shall be reviewed and updated every thirty (30) days thereafter and updated every sixty (60) days or earlier if clinically indicated.**

8. Following one (1) year of continuous treatment, the review and update may be conducted at three (3) month intervals.

(c) The ~~comprehensive~~master treatment plan and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it.

(4) Level II PRTF treatment plans.

(a)1. Pursuant to KRS 216B.457(13), a Level II PRTF shall develop and implement an initial treatment plan of care for each resident.

2. The initial plan of care shall be:

a. Based on initial history and ongoing assessment of the resident's needs and strengths, with an emphasis on active treatment, transition planning, and after care services; and

b. Completed within seventy-two (72) hours of admission.

(b) Appropriate therapeutic efforts shall begin before a comprehensive treatment plan of care is finalized.

(c)1. A comprehensive treatment plan of care shall be developed by a multidisciplinary team conference in conformity with 42 C.F.R. 441.156.

2. Pursuant to KRS 216B.457(14), the comprehensive treatment plan of care shall be:

a. Based on initial history and ongoing assessment of the resident's needs and strengths, with an emphasis on active treatment, transition planning, and after care services; and

b. Completed within ten (10) calendar days of admission.

**c. In a Level II PRTF that opts to provide bedrooms with sleeping accommodations for two (2) residents, the comprehensive treatment plan of care shall document whether the facility's multidisciplinary team recommends placement of the resident in a private bedroom or in a double occupancy bedroom with another resident.**

3. The comprehensive treatment plan of care shall contain specific and measurable goals for the resident to achieve.

4. The comprehensive treatment plan of care shall describe the services, activities, and programs to be provided to the resident, and shall specify staff members assigned to work with the resident

and the time or frequency for each treatment procedure.

5. The resident shall participate to the maximum extent feasible in the development of his or her treatment plan of care, and the participation shall be documented in the resident's record.

6.a. A specific plan for involving the resident's family or significant others shall be included in the comprehensive treatment plan of care.

b. The parent, guardian, or custodian shall be given the opportunity to participate in the multidisciplinary treatment plan conference if feasible and shall be given a copy of the resident's comprehensive treatment plan.

c. The comprehensive treatment plan of care shall identify the mental health professional who is responsible for coordinating and facilitating the family's involvement throughout treatment.

(d) Pursuant to KRS 216B.457(15), the comprehensive treatment plan of care shall be reviewed at least every thirty (30) days following the first ten (10) days of treatment and shall include the following documentation:

1. Dated signatures of appropriate staff, parent, guardian, legal custodian or conservator;

2. An assessment of progress toward each treatment goal and objective with revisions as indicated; and

3. A statement of justification for the level of services needed, including suitability for treatment in a less-restrictive environment and continued services.

(5) Level I and Level II PRTF progress notes.

(a) Progress notes shall be entered in the resident's records, be used as a basis for reviewing the treatment plan, signed and dated by the individual making the entry and shall include the following:

1. Documentation of implementation of the treatment plan;
2. Chronological documentation of all treatment provided to the resident and documentation of the resident's clinical course; and
3. Descriptions of each change in each of the resident's conditions.

(b) All entries involving subjective interpretation of the resident's progress shall be supplemented with a description of the actual behavior observed.

(c) Efforts shall be made to secure written progress reports for residents receiving services from outside sources and, if available, to include them in the resident record.

(d) The resident's progress and current status in meeting the goals and objectives of his or her treatment plan shall be regularly recorded in the resident record.

(6)[(5)] Discharge planning. A Level I and Level II PRTF shall have written policies and procedures for discharge of residents.

(a)1. Discharge planning shall begin at admission and be documented in the resident's record.

2. At least ninety (90) days prior to the planned discharge of a resident from the facility, or within ten (10) days after admission if the anticipated length of stay is under ninety (90) days, the multidisciplinary team shall formulate a discharge and aftercare plan.

3. This plan shall be maintained in the resident's record and reviewed and updated with the comprehensive[master] treatment plan.

(b) All discharge recommendations shall be determined through a conference, including the appropriate facility staff, the resident, the resident's parents, guardian, or custodian and, if indicated, the representative of the agency to whom the resident may be referred for any aftercare service, and the affected local school districts. All aftercare plans shall delineate those parties responsible for the provision of aftercare services.

(c) If the aftercare plan involves placement of the resident in another licensed program following discharge, facility staff shall share resident information with representatives of the aftercare program provider if authorized by written consent of the parent, guardian, or custodian.

(d) A Level I facility deciding to release a resident on an unplanned basis shall:

1. Have reached the decision to release at a multidisciplinary team conference chaired by the clinical director that determined, in writing, that services available through the facility cannot meet the needs of the resident;

2. Provide at least ninety-six (96) hours notice to the resident's

parent, guardian, or custodian and the agency which will be providing aftercare services. If authorized by written consent of the parent, guardian, or custodian, the facility shall provide to the receiving agency copies of the resident's records and discharge summary; and

3. Consult with the receiving agency in situations involving placement for the purpose of ensuring that the placement reasonably meets the needs of the resident.

(e) Within fourteen (14) days of a resident's discharge from the facility, the facility shall compile and complete a written discharge summary for inclusion in the resident's record. The discharge summary shall include:

1. Name, address, phone number, and relationship of the person to whom the resident was released;
2. Description of circumstances leading to admission of the resident to the facility;
3. Significant problems of the resident;
4. Clinical course of the resident's treatment;
5. Assessment of remaining needs of the resident and alternative services recommended to meet those needs;
6. Special clinical management requirements including psychotropic drugs;
7. Brief descriptive overview of the aftercare plan designed for the resident; and
8. Circumstances leading to the unplanned or emergency discharge of the resident, if applicable.

Section 13.[42.] Services. A Level I and Level II PRTF shall provide the following services in a manner which takes into account and addresses the social life; emotional, cognitive, and physical growth and development; and the educational needs of the resident. Services shall include the opportunity for the resident to participate in community activities, organizations and events and shall provide a normalized environment for the resident.

(1) Level I and Level II mental health services.

(a) Mental health assessments and evaluations shall be provided as required in Section 12[44] of this administrative regulation.

(b) The mental health services available through the Level I or Level II PRTF shall include the services listed below. These mental health services shall be provided by staff of the Level I or Level II PRTF:

1. a. Case coordination services to assure the full integration of all services provided to each resident.

b. Case coordination activities shall include monitoring the resident's daily functioning to assure the continuity of service in accordance with the resident's treatment plan and ensuring that all staff responsible for the care and delivery of services actively participate in the development and implementation of the resident's treatment plan.

2.a. Planned on-site[verbal] therapies including[formal] individual, family, and group therapies as indicated by the comprehensive treatment plan.

b. These therapies shall include psychotherapy, interventions, or[and other] face-to-face[verbal] contacts, which may be made verbally or using assistive communication, between staff and the resident[which are planned] to enhance the resident's psychological and social functioning as well as to facilitate the resident's integration into a family unit.

c.[Verbal] Contacts that are incidental to other activities are excluded from this service.

3.a. Task and skill training to enhance a resident's age appropriate skills necessary to facilitate the resident's ability to care for himself or herself, and to function effectively in community settings.

b. Task and skill training activities shall include homemaking, housekeeping, personal hygiene, budgeting, shopping, and the use of community resources.

(2) Level I and Level II physical health services.

(a) The physical health services available through the Level I or Level II PRTF facility shall include the services listed below. Physical health services may be provided directly by the facility or may be provided by written agreement.

1. Assessments and evaluations as required in Section 12[44] of this administrative regulation;

2. Diagnosis, treatment, and consultation for acute or chronic

illnesses occurring during the resident's stay at the facility or for problems identified during an evaluation;

3. Preventive health care services to include periodic assessments in accordance with the periodicity schedule established by the American Academy of Pediatrics;

4. A dental examination within six (6) months of admission, periodic assessments in accordance with the periodicity schedule established by the American Dental Association, and treatment as needed;

5. Health and sex education; and

6. An ongoing immunization program.

(b) If physical health services are provided by written agreement with a provider of services other than the facility, the written agreement shall, at a minimum, address:

1. Referral of residents;

2. Qualifications of staff providing services;

3. Exchange of clinical information; and

4. Financial arrangements.

(c) A Level I or Level II PRTF shall not admit a resident who has a communicable disease or acute illness requiring treatment in an acute care inpatient setting

(3) Level I and Level II dietary services.

(a) A Level I or Level II PRTF shall have written policies and procedures approved by the governing body for the provision of dietetic services for staff and residents which may be provided directly by the facility staff or through written contractual agreement.

(b) Adequate staff, space, equipment, and supplies shall be provided for safe sanitary operation of the dietetic service, the safe and sanitary handling and distribution of food, the care and cleaning of equipment and kitchen area, and the washing of dishes.

(c) The nutritional aspects of resident's care shall be planned, reviewed, and periodically evaluated by a qualified dietician registered by the Commission on Dietetic Registration and employed by the facility as a staff member or consultant.

(d) The food shall be served to residents and staff in a common eating place and:

1. Shall account for the special food needs and tastes of residents;

2. Shall not be withheld as punishment; and

3. Shall provide for special dietary need of residents such as those relating to problems, such as diabetes and allergies.

(e) Residents shall participate in the preparation and serving of food as appropriate.

(f) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. The facility shall arrange for and make provision for between-meal and unscheduled snacks.

(g) Except for school lunches and meals at restaurants, all members of a living unit shall be provided their meals together as a therapeutic function of the living unit.

(4) Level I and Level II emergency services.

(a) A Level I or Level II PRTF shall provide for the prompt notification of the resident's parents, guardian, or custodian in case of serious illness, injury, surgery, emergency safety intervention, elopement, or death.

~~(b) The facility shall provide or arrange for the training of all direct care and professional staff in first aid and CPR.~~

~~(e)~~ 1. All staff shall be knowledgeable of a written plan and procedure for meeting potential disasters and emergencies such as fires or severe weather.

2. The plan shall be posted.

3. Staff shall be trained in properly reporting a fire, extinguishing a small fire, and in evacuation from the building.

4. Fire drills shall be practiced in accordance with state fire administrative regulations.

(d) The facility shall have written procedures to be followed by staff if a psychiatric, medical, or dental emergency of a resident occurs that specifies:

1. Notification of designated member of the facility's chain of command;

2. Designation of staff person who shall decide to refer resident to outside treatment resources;

3. Notification of resident's parent, guardian, or custodian;

4. Transportation to be used;

5. Staff member to accompany resident;

6. Necessary consent and referral forms to accompany resident; and

7. Name, location, and telephone of designated treatment resources.

(e) The facility shall have designated treatment resources who shall have agreed to accept a resident for emergency treatment. At a minimum the resources shall include:

1. Licensed physician and an alternate designee;

2. Licensed dentist and an alternate designee;

3. Licensed hospital; and

4. Licensed hospital with an accredited psychiatric unit.

(5) Level I and Level II pharmacy services. A Level I or Level II PRTF shall have written policies and procedures approved by the governing body for proper management of pharmaceuticals that are consistent with the following requirements:

(a) 1. Medications shall be administered by a registered nurse, physician, or dentist, except if administered by a licensed practical nurse, certified medication aide, or direct care staff under the supervision of a registered nurse.

2. Direct care staff who administer medications shall have successfully completed a medicine administration course approved by the Kentucky Board of Nursing;

(b) Medications shall not be given without a written order signed by a physician, or dentist if applicable, or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), ~~or~~ therapeutically-certified optometrist as authorized in KRS 320.240(14), or physician assistant as authorized by KRS 311.858. Telephone orders for medications shall be given only to licensed nurses or a pharmacist and signed by ~~a~~ the physician, dentist, advanced registered nurse practitioner, ~~or~~ therapeutically-certified optometrist, or physician assistant within seventy-two (72) [twenty-four (24)] hours from the time the order is given;

~~(c) [Psychotropic] Medications shall be prescribed only when clinically indicated [as one (1) facet of a program of therapy].~~ The facility shall ensure that no ~~stimulant or psychotropic~~ medication is administered solely for the purpose of program management or control, and that no medication is prescribed for the purposes of experimentation or research;

(d) All medications shall require "stop orders";

(e) All prescriptions shall be reevaluated by the prescriber prior to its renewal;

(f) There shall be a systematic method for prescribing, ordering, receipting, storing, dispensing, administering, distributing and accounting for all medications;

(g) The facility shall provide maximum security storage of and accountability for all legend medications, syringes, and needles;

(h) Self-administration of medication shall be permitted only when specifically ordered by the responsible physician and supervised by a member of the professional staff or a mental health associate. Drugs to be self-administered shall be stored in a secured area and be made available to the resident at the time of administration;

(i) Residents permitted to self-administer drugs shall be counseled regarding the indications for which the drugs are to be used, the primary side effects, and the physical dosage forms which are to be administered;

(j) Drugs brought into the facility by residents shall not be administered unless they have been identified and unless written orders to administer these specific drugs are given by the responsible physician. Otherwise these drugs shall be packaged, sealed, and stored, and, if approved by the responsible physician, returned to the resident, parent, guardian, or custodian at the time of discharge.

(6) Level I and Level II education and vocational services.

(a) Educational and vocational services available through a PRTF shall include the minimum requirements of Kentucky Revised Statutes and federal laws and regulations regarding regular education, vocational education, and special education as appropriate to meet the needs of the residents.

1. Educational services may be provided by:

a. The facility;

b. The local school district in which the facility is located; or

c. A nonpublic school program which is specially accredited and approved by the Kentucky Department of Education to provide special education services to students with disabilities.

2. If the educational services are provided by the facility, the school program shall be specially accredited and approved by the Kentucky Department of Education to provide special education services to students with disabilities.

3. Educational services provided by a local school district may be provided within the facility or within the local school district.

4. The facility's multidisciplinary team shall make a recommendation concerning the delivery site of educational services provided by a local school district that is based on least restrictive environment determinations for individual residents.

5. Education services approved by the Department of Education shall be available either on the same site or in close physical proximity to the PRTF. ~~[If Level II facility beds are located in a separate part of a psychiatric or acute care hospital, the Level II residents shall not be educated in the same classroom as children or youth who are patients of the hospital.]~~

(b) If the education services are not provided directly by the facility, there shall be a written plan for the provision of education services. The education provider shall be a state education department-approved program. The written plan shall, at a minimum, address:

1. Qualifications of staff providing educational services;

2. Participation of educational and vocational staff in the plan for the provision of education services~~[treatment planning process]~~;

3. Access by staff of the facility to educational and vocational programs and records; and

4. Financial and service arrangements.

(c) The facility shall ensure that residents have opportunities to be educated in the least restrictive environment consistent with the treatment needs of the resident as determined by the multidisciplinary team and reflected in the resident's comprehensive~~[master]~~ treatment plan.

(d) Upon admission each resident of school age shall have been certified or be referred for assessment as a child with a disability pursuant to 20 U.S.C. 1400.

(e) The facility shall ensure that education services are developed and implemented with input from the child's education staff in conjunction with the comprehensive~~[master]~~ treatment plan and meet the following requirements:

1. Each resident's comprehensive~~[master]~~ treatment plan shall include formal academic goals for remediation and continuing education.

2.a. Each resident with a disability who is eligible for special education services~~[to the handicapped]~~ shall have treatment activities developed by the multidisciplinary team, which may be incorporated into the individualized education~~[treatment]~~ plan developed by the local school district.

b. The multidisciplinary team shall develop treatment activities which extend into the classroom as appropriate.

c. The program director or designee shall request an invitation to attend all individualized education~~[treatment]~~ plan or Admission and Release Committee meetings.

d. If allowed, the program director or designee shall attend all individualized education~~[treatment]~~ plan or Admission and Release Committee meetings.

3. To avoid unnecessary duplication and make maximum use of resources, the services provided by the education and treatment components for children with disabilities pursuant to 20 U.S.C. 1400 shall be developed with the opportunity for input from both parties.

(f) 1. The facility shall provide or arrange for vocational services for residents, as is age appropriate and is in accordance with the master treatment plan.

2. The services shall be planned, implemented and supervised by a vocational counselor or appropriate therapist who may be a full- or part-time employee of the facility or a consultant.

(g) Residents may be permitted to accumulate earnings in a bank account established with the resident by the facility.

(7) Level I or Level II PRTF activity services.

(a) A daily schedule of planned recreational activities shall be prepared for the approval of the clinical director prior to implemen-

tation of the schedule.

1. The schedule shall be for normal waking hours that residents are not in school, or in active treatment.

2. The schedule shall include a full range of activities which may include~~[including]~~ physical recreation, team sports, art, and music; attendance at recreational and cultural events in the community if appropriate; and individualized, directed activities like reading and crafts.

3. Nondirected leisure time shall be limited to two (2) one-half (1/2) hour periods on school days and three (3) one-half (1/2) hour periods on nonschool days.

4. The activity schedule shall identify the professional or direct-care staff who will lead and support each activity.

5. Changes made to the schedule as the schedule is implemented shall be indicated on a copy of each daily schedule maintained as a permanent record by the clinical director.

(b) Appropriate time, space, and equipment shall be provided by the facility for leisure activity and free play.

(c) The facility shall provide the means of observing holidays and personal milestones in keeping with the cultural and religious background of the residents.

(8) Speech, language, and hearing services. A Level I or Level II PRTF shall provide or arrange for speech, language, and hearing services to meet the identified needs of residents. These services shall be provided by the facility or through written agreement with a qualified speech-language and hearing clinician. The written agreement shall, at a minimum, address:

(a) Referral of residents;

(b) Qualifications of staff providing services;

(c) Exchange of clinical information; and

(d) Financial arrangements.

Section 14. Use of Emergency Safety Interventions in a Level I or Level II PRTF. (1) Pursuant to 42 C.F.R. 483.356(a)(3), restraint or seclusion shall not result in harm or injury to the resident and shall be used only:

(a) To ensure the safety of the resident or others during an emergency safety situation; and

(b) Until the emergency safety situation has ceased and the resident's safety and the safety of others can be ensured, even if the restraint or seclusion order has not expired.

[13. Special Treatment Procedures. (1) Special treatment procedures include procedures such as restraint or seclusion which may have abuse potential or be life threatening. Special treatment shall be used only as a means to prevent a resident from injuring himself, herself, or others.]

(2)(a) The use of mechanical restraint shall be prohibited in a Level I or Level II PRTF.

(b) Residents of a Level I or Level II PRTF shall not be held in a prone~~[or supine]~~ position during restraint. A Level I or Level II PRTF may use a supine hold:

1. As a last resort if other less restrictive interventions have proven to be ineffective; and

2. Only by staff who are trained to identify risks associated with positional, compression, or restraint asphyxiation, and who monitor to ensure that the resident's breathing is not impaired.

(3) Emergency safety interventions~~[Special treatment procedures]~~ shall not be used as a means of coercion, punishment,~~[or as a] convenience, or retaliation~~~~[of staff].~~

(4) Orders for restraint or seclusion shall be:

(a) By a physician or other licensed Practitioner ~~[Special treatment procedures may only be:~~

~~(a) Ordered by a trained, clinically privileged staff person] acting within his or her scope of practice who is trained in the use of emergency safety interventions; [and]~~

~~(b) Carried out by trained staff;~~

~~(c) If the residents' treatment team physician is available, only he or she shall order restraint or seclusion; and~~

~~(d) A physician or other licensed Practitioner acting within his or her scope of practice who is trained in the use of emergency safety interventions shall order the least restrictive emergency safety intervention that is most likely to be effective in resolving the emergency safety situation based on consultation with staff.~~

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(5) A Level I and Level II PRTF shall have a written plan approved by the governing body for the use of emergency safety intervention~~[special treatment procedures]~~ which at a minimum shall meet the following requirements:

(a) Any use of an emergency safety intervention~~[special treatment procedures]~~ shall require clinical justification;

(b) A rationale and the clinical indications for the use of an emergency safety intervention~~[special treatment procedures]~~ shall be clearly stated in the resident's record for each occurrence. The rationale shall address the inadequacy of less restrictive intervention techniques;

(c) The plan shall specify the length of time for which a specific approval remains effective;

(d) The plan shall specify the length of time the emergency safety intervention~~[special treatment procedure]~~ may be utilized; and

(e) The plan shall specify when continued or repeated emergency safety interventions~~[special treatment procedures]~~ shall trigger multidisciplinary team review.

(6) If an emergency safety situation requires restraint or seclusion and a practitioner authorized to order restraint or seclusion is not available in a Level I or Level II PRTF, a verbal order for restraint and seclusion may be obtained and carried out under the following conditions:

(a) The verbal order shall be given by a licensed practitioner, as authorized by the facility, who is acting within his or her scope of practice and trained in the use of emergency safety interventions;

(b) The verbal order shall be received by a registered nurse or licensed practitioner, as authorized by the facility, who is acting within his or her scope of practice;

(c) The physician or ordering practitioner shall be immediately available, at least by telephone for consultation during the time that restraint or seclusion is being carried out; and

(d) The verbal order shall be countersigned by the physician or ordering practitioner within seven (7) days of date that the order was given, and included in the resident's record.

~~(7) For a nonemergency situation, restraint or seclusion may be carried out only after being ordered by:~~

~~(a) A resident's treating physician; or~~

~~(b) A practitioner acting within his or her scope of practice, if the resident's treating physician is not available. The practitioner shall:~~

~~1. Contact the resident's treating physician as soon as possible and inform him or her of the order for restraint or seclusion; and~~

~~2. Annotate the resident's record with date and time of the contact with the treating physician.~~

~~(8) An order for restraint or seclusion shall not exceed:~~

~~(a) The duration of the emergency safety situation;~~

~~(b) Four (4) hours for a resident eighteen (18) to twenty-one (21) years of age;~~

~~(c) Two (2) hours for a resident nine (9) to seventeen (17) years of age; or~~

~~(d) One (1) hour for a resident seven (7) to eight (8)~~under nine (9)~~ years of age; or~~

~~(e) Thirty (30) minutes for a child four (4) to six (6) years of age.~~

~~(8)(9) If an emergency safety situation exists beyond the time limit for the use of restraint or seclusion, a new order for restraint or seclusion shall be obtained.~~

~~(9)(40) A resident that is placed in restraint or seclusion shall receive a face-to-face evaluation to determine physical and psychological well being. The evaluation shall~~be conducted:

~~(a) Be conducted~~ by a licensed practitioner who is acting within his or her scope of practice and trained in the use of emergency safety intervention;

~~(b) Include the resident's physical and psychological status, resident's behavior, appropriateness of the intervention measures, and any complications resulting from the intervention~~authorized by the facility and acting within his or her scope of practice; and

~~(c) Be conducted~~(b) Within one (1) hour of restraint or seclusion being initiated.

(11) Each order for restraint or seclusion shall include:

(a) The name of the ordering physician or other licensed practitioner, acting within his or her scope of practice and trained in the

use of emergency safety interventions;

(b) The date and time the order was obtained; and

(c) The emergency safety intervention ordered, including the length of time for which the physician or other licensed practitioner authorized its use.

(12)(a) Staff shall document the emergency safety intervention in the resident's record.

(b) The documentation shall be completed by the end of the shift in which the intervention occurs.

(c) If the intervention does not end during the shift in which it began, documentation shall be completed during the shift in which it ends. Documentation shall include:

1. Each order for restraint or seclusion as described in subsection (11) of this section;

2. The time the emergency safety intervention actually began and ended;

3. The time and results of the evaluation required by subsection (9) of this section;

4. The emergency safety situation that required the resident to be restrained or put in seclusion; or

5. The name of staff involved in the emergency safety intervention.

(13)(44) Staff who implement emergency safety interventions~~[special treatment]~~ procedures shall:

(a) Have documented training in the proper use of the procedure used;

(b) Be certified in physical management by a nationally-recognized training program in which certification is obtained through skilled-out testing; and

(c) Receive annual training and recertification in crisis intervention and behavior management.

(14)(42) Staff authorized by a Level I or Level II PRTF shall:

(a) Be constantly, physically present with a resident being restrained;

(b) Monitor the physical and psychological well being of a resident being restrained, and monitor the safe use of restraint throughout the duration of the emergency safety intervention; and

(c) Document observations of, and actions taken for, a resident being restrained.

(15) Within one (1) hour of initiation~~[immediately]~~ after an incident of restraint or seclusion~~(13) After a restraint is removed from a resident~~, a physician or licensed practitioner~~[that is authorized by a PRTF and]~~ acting within his or her scope of practice and trained in the use of emergency safety interventions shall conduct a face-to-face evaluation of the resident's physical and psychological well-being.

(16)(44) Staff shall provide constant visual attention to a resident who is in seclusion, through physical presence or a window.

(17)(45) Staff authorized by a Level I or Level II PRTF shall:

(a) Monitor the physical and psychological well being of the resident;

(b) Ensure that a resident in seclusion is provided:

1. Regular meals;

2. Hydration;

3. Bathing; and

4. Use of the toilet; and

(c) Document observations of, and actions taken for, a resident in restraint every fifteen (15) minutes.

(18)(46) A procedure shall not be used at any time in a manner that causes undue physical discomfort, harm, or pain to a resident.

(19)(a) A Level I or Level II PRTF shall notify the parent, guardian, or custodian of the resident who has been restrained or placed in seclusion as soon as possible after the initiation of each emergency safety intervention.

(b) The facility shall document in the resident's record that the parent, guardian, or custodian has been notified of the emergency safety intervention, including the date and time of notification and the name of the staff person providing the notification.

(20)(a) Within twenty-four (24) hours after use of restraint or seclusion, staff involved in an emergency safety intervention and the resident shall have a face-to-face discussion.

(b) The discussion shall include all staff involved in the intervention except when the presence of a particular staff person may



jeopardize the well-being of the resident. The discussion may include other staff and the resident's parent, guardian, or custodian.

(21) Within twenty-four (24) hours after the use of restraint or seclusion, all staff involved in the emergency safety intervention, and appropriate supervisory and administrative staff, shall conduct a debriefing session that includes a review and discussion of:

(a) The emergency safety situation that required the intervention, including a discussion of the precipitating factors that led up to the intervention;

(b) Alternative techniques that might have prevented the use of the restraint or seclusion;

(c) The procedures, if any, that staff are to implement to prevent any recurrence of the use of restraint or seclusion; and

(d) The outcome of the intervention, including any injuries that may have resulted from the use of restraint or seclusion.

(22) Application of time out.

(a) A resident in time-out shall not be physically prevented from leaving the time out area.

(b) Time out may take place away from the area of activity or from other residents.

(c) Staff shall monitor the resident while he or she is in time out.

(23)(47) A Level I or Level II PRTF shall not use extraordinary risk procedures, including ~~but not limited to,~~ experimental treatment modalities, psychosurgery, aversive conditioning, electroconvulsive therapies, behavior modification procedures that use painful stimuli, unusual medications, and investigational and experimental drugs.

(24)(23)(48) Unusual treatment shall require the informed consent of the resident and parent, guardian, or custodian prior to the provision of unusual treatment as follows:

(a) The proposed unusual treatment shall be reviewed and interpreted by the child's psychiatrist addressing the rationale for use, methods to be used, specified time to be used, who will provide the treatment, and the methods that will be used to evaluate the efficacy of the treatment.

(b) The potential risks, side effects, and benefits of the proposed unusual treatment shall be explained, verbally and in writing, to the resident and the parent, guardian, or custodian prior to their granting approval for the unusual treatment. The approval shall be given in writing prior to implementation of the treatment.

(25)(24)(49) The clinical director or designee shall review all uses of unusual treatment procedures, including emergency safety interventions~~[special treatment procedures]~~ on a daily basis. The daily review shall include an evaluation for the possibility of unusual or unwarranted patterns of use.

Section 15.[44-] Housekeeping Services. (1) A Level I and Level II PRTF shall have policies and procedures for and services which maintain a clean, safe, and hygienic environment for residents and facility personnel. Policies and procedures shall include guidelines for at least the following:

(a) The use, cleaning, and care of equipment;

(b) Assessing the proper use of housekeeping and cleaning supplies;

(c) Evaluating the effectiveness of cleaning; and

(d) The role of the facility staff in maintaining a clean environment.

(2) A laundry service shall be provided by a Level I or Level II PRTF or through contractual agreement.

(3) Pest control shall be provided by a Level I or Level II PRTF or through contractual agreement.

Section 16.[45-] Infection Control. (1) Because infections acquired in a Level I or Level II PRTF or brought into a Level I or Level II PRTF from the community are potential hazards for all persons having contact with the facility, there shall be an infection control program developed to prevent, identify, and control infections.

(2) Written policies and procedures pertaining to the operation of the infection control program shall be established, reviewed at least annually, and revised as necessary.

(3) A practical system shall be developed for reporting, evaluating, and maintaining records of infections among residents and

personnel.

(4) The system shall include assignment of responsibility for the ongoing collection and analysis of data, as well as for the implementation of required follow-up actions.

(5) Corrective actions shall be taken on the basis of records and reports of infections and infection potentials among residents and personnel and shall be documented.

(6) All new employees shall be instructed in the importance of infection control and personal hygiene and in their responsibility in the infection control program.

(7) A Level I or Level II PRTF shall document that in-service education in infection prevention and control is provided to all services and program components.

Section 18. Admission of Residents under Treatment for Pulmonary Tuberculosis Disease. (1) A Level I or Level II PRTF shall not admit a person under medical treatment for pulmonary tuberculosis disease unless the person is declared noninfectious by a licensed physician in conjunction with the local or state health department.

(2) Documentation of noninfectious status shall include:

(a) Documented TB disease treatment with multi-drug therapy for at least two (2) weeks;

(b) Documentation of clinical improvement on therapy;

(c) Three (3) consecutive sputum smears negative for acid-fast bacilli within the one (1) month period prior to admission; or

(d) Three (3) negative sputum cultures for TB.

Section 19. Tuberculin Skin Tests or BAMTs of Residents. (1) For residents entering a facility, a TST or BAMT shall not be required if one (1) of the following is documented:

(a) A previously documented TST has shown ten (10) or more millimeters of induration;

(b) A previously documented TST has shown five (5) or more millimeters of induration for a resident who has medical reasons (HIV-infected persons, immunosuppression, or recent contact with a person with active TB disease) for his or her TST result to be interpreted as positive;

(c) A positive BAMT;

(d) The resident is currently receiving or has completed treatment of LTBI with nine (9) months of isoniazid or four (4) months of rifampin, or has completed a course of multiple-drug therapy for active TB disease; or

(e) The resident can document that he or she has had a TST or BAMT within three (3) months prior to admission and has previously been in a serial testing program at a medical facility.

(2)(a) If a resident does not meet the criteria of subsection (1) of this section, a TST or a BAMT shall be required upon admission to the Level I or Level II facility.

(b)1. A TST is preferred for residents less than five (5) years of age.

2. A TST result of five (5) or more millimeters of induration may be positive for those residents who have medical reasons (HIV-infected persons, immunosuppression, or recent contact with a person with active TB disease) for his or her TST result to be interpreted as positive.

3. For a resident without medical reasons as identified in paragraph 2. of this subsection whose initial TST shows less than ten (10) millimeters of induration, two-step TSTs shall be required for:

a. A resident age fourteen (14) years and older; or

b. A resident expected to stay longer than twelve (12) months unless the resident is able to document that he or she has had a TST within one (1) year prior to initial testing upon admission to the facility.

(3)(a) The TST result of each resident shall be documented through recording of the date and millimeters of induration of the most recent skin test in the medical record.

(b) The medical record shall be labeled in a conspicuous manner (e.g. Problem Summary or Care Plan) with the notation "TST Positive" for each resident with a reaction of ten (10) or more millimeters of induration and for each resident with a reaction of five (5) or more millimeters of induration who has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for that TST result to be interpreted as positive.

preted as positive.

(4)(a) If performed and the result is positive or negative, only one (1) BAMT result shall be required on admission.

(b) A second BAMT shall be performed if the BAMT result is borderline or indeterminate.

(c) If a resident has a positive BAMT, the medical record shall be labeled in a conspicuous manner (e.g. Problem Summary or Care Plan) with the notation "BAMT Positive."

Section 20. Medical Evaluations and Chest X-rays of Residents. (1) A resident shall receive a medical evaluation, **which may include** ~~including~~ an HIV test, if the resident is found at the time of admission to have a:

(a) TST of ten (10) or more millimeters of induration;

(b) TST result of five (5) or more millimeters of induration if the resident has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for that TST result to be interpreted as positive; or

(c) Positive BAMT.

(d) A chest x-ray shall be performed unless a chest x-ray done within two (2) months prior to admission showed no evidence of tuberculosis disease.

(2)(a) A residents with no clinical evidence of active TB disease upon evaluation by a licensed physician and a negative chest x-ray shall be offered treatment for LTBI unless there is a medical contraindication.

(b) A resident who refuses treatment for LTBI or who has a medical contraindication shall be monitored according to the requirements in Section 21 of this administrative regulation.

(3) A resident with an abnormal chest x-ray, consistent with TB disease:

(a) Shall be evaluated for active tuberculosis disease; and

(b) If the resident is diagnosed with active tuberculosis disease, transferred to a facility with an airborne infection isolation (All) room and started on multi-drug antituberculosis treatment that is administered by DOT.

Section 21. Monitoring of Residents with a Positive TST, a Positive BAMT, a TST Conversion, or a BAMT Conversion. (1) A resident shall be monitored for development of pulmonary symptoms, including cough, sputum production, or chest pain, if the resident has a:

(a) TST result with ten (10) or more millimeters of induration;

(b) TST result of five (5) or more millimeters of induration if the resident has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for that TST result to be interpreted as positive;

(c) Positive BAMT;

(d) TST conversion; or

(e) BAMT conversion.

(2) If pulmonary symptoms, including cough, sputum production, or chest pain, develop and persist for three (3) weeks or longer, the resident shall have a medical evaluation, a chest x-ray shall be taken, and three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Public Health, Frankfort, Kentucky, for tuberculosis culture and smear.

(3) A resident with suspected or active TB disease shall be transferred to a facility with an All room and started on multi-drug antituberculosis treatment that is administered by DOT.

Section 22. Monitoring of Residents with a Negative TST or a Negative BAMT who are Residents Longer than One (1) Year. (1) Annual testing shall be required on or before the anniversary of the resident's last TST or BAMT.

(2) A TST shall be preferred for residents ~~aged~~ less than five (5) years of age.

(3) If pulmonary symptoms develop and persist for three (3) weeks or more:

(a) The resident shall have a medical evaluation;

(b) The tuberculin skin test shall be repeated; and

(c) Three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Health Services, Frankfort, Kentucky for tuberculosis culture and smear; and

(d) A chest x-ray shall be taken.

(3) A resident with suspected or active TB disease shall be transferred to a facility with an All room and started on multi-drug antituberculosis treatment that is administered by DOT.

Section 23. Tuberculin Skin Tests or BAMTs for Staff. (1) The TST or BAMT status of all PRTF facility staff members who have direct contact with residents shall be documented in the employee's health record.

(2) A TST or BAMT shall be initiated on each new staff member who has direct contact with residents before or during the first week of employment, and the results shall be documented in the employee's health record within the first month of employment.

(3) A TST or BAMT shall not be required at the time of initial employment if the employee documents one of the following:

(a) A prior TST of ten (10) or more millimeters of induration;

(b) A prior TST of five (5) or more millimeters of induration if the employee has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive;

(c) A positive BAMT;

(d) A TST conversion;

(e) A BAMT conversion; or

(f) The employee is currently receiving or has completed treatment for LTBI.

(4)(a) If performed and the result is positive or negative, one (1) BAMT test result shall be required on initial employment.

(b) A second BAMT shall be performed if the BAMT result is borderline or indeterminate.

(5) A TST result of five (5) or more millimeters of induration may be positive for a new employee who has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive.

(6) A two-step TST shall be required for a new employee who does not have a medical reason as described in subsection (5) of this section and whose initial TST shows less than ten (10) millimeters of induration, unless the individual documents that he or she has had a TST within one (1) year prior to his or her current employment.

(e) A staff member who has never had a TST of ten (10) or more millimeters induration or a positive BAMT shall have a TST or BAMT annually on or before the anniversary of his or her last TST or BAMT.

Section 24. Medical Evaluations and Chest X-rays and Monitoring of Staff with a Positive TST, a Positive BAMT, a TST Conversion, or a BAMT Conversion. (1) At the time of initial employment testing or annual testing, a staff member who has direct contact with residents shall have a medical evaluation, **which may include** ~~an~~ ~~including a~~ HIV test, if the staff member is found to have a:

(a) TST of ten (10) or more millimeters induration

(b) TST result of five (5) or more millimeters of induration if the staff member has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive;

(c) Positive BAMT;

(d) TST conversion; or

(e) BAMT conversion..

(f) A chest x-ray shall be performed unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis disease.

(2)(a) A staff member with a negative chest x-ray shall be offered treatment for LTBI unless there is a medical contraindication.

(b) A staff member who refuses treatment for LTBI or who has a medical contraindication shall be monitored according to the requirements in Section 27 of this administrative regulation.

(3)(a) A staff member with an abnormal chest x-ray shall be evaluated for active tuberculosis disease, and three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Public Health, Frankfort, Kentucky, for tuberculosis culture and smear.

(b) A staff member shall remain off work until cleared as being noninfectious for TB by a licensed physician.

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(c) A staff member whose medical evaluation and laboratory tests are suspect for active tuberculosis disease shall be isolated (e.g. in an All room or in home isolation) and started on four (4) drug antituberculosis treatment that is administered by DOT.

(4)(a) A staff member under treatment for pulmonary tuberculosis disease may return to work in the facility after being declared noninfectious by a licensed physician in conjunction with the local or state health department.

(b) Documentation of noninfectious status shall include:

1. Documented TB disease treatment with multi-drug therapy for at least two (2) weeks;

2. Documentation of clinical improvement on therapy;

3. Three (3) consecutive sputum smears negative for acid-fast bacilli within the month prior to admission; or

4. Three (3) negative sputum cultures for TB.

Section 25. Responsibility for Screening and Monitoring Requirements. (1) The **program director or clinical director** of the facility shall be responsible for ensuring that all TSTs, BAMTs, chest x-rays and sputum samples submissions are done in accordance with Sections 18 through 27 of this administrative regulation.

(2) If a facility does not employ licensed professional staff with the technical training to carry out the screening and monitoring requirements, the **program director or clinical director** shall arrange for professional assistance from the local health department.

(3)(a) Dates of all TSTs or BAMTs and results, all chest x-ray reports and all sputum sample culture and smear results for residents shall be recorded as a permanent part of the resident's medical record and be summarized on the individual's transfer form when an interfacility transfer occurs.

(b) The TST or BAMT status of all staff members and any TB related chest x-ray reports shall be documented in the employee's health record.

Section 26. Reporting to Local Health Departments. (1) The following shall be reported to the local health department having jurisdiction by the **program director or clinical director** of the facility immediately upon becoming known:

(a) All residents and staff who have a TST of ten (10) millimeters or more induration;

(b) A TST result of five (5) or more millimeters of induration for all residents or staff who have medical reasons (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for their TST result to be interpreted as positive;

(c) A positive BAMT at the time of admission of a resident or employment of a staff member who has direct contact with residents;

(d) TST conversions or BAMT conversions on serial testing or identified in a contact investigation;

(e) Chest x-rays which are suspicious for TB disease;

(f) Sputum smears positive for acid-fast bacilli;

(g) Sputum cultures positive for Mycobacterium tuberculosis; or

(h) The initiation of multi-drug antituberculosis treatment.

Section 27. Treatment for LTBI. (1) A resident or staff member with a TST conversion or a BAMT conversion shall be considered to be recently infected with Mycobacterium tuberculosis.

(2) Recently infected persons shall have a medical evaluation, HIV test, and a chest x-ray.

(3)(a) Individuals who have no signs or symptoms of tuberculosis disease by medical evaluation or chest x-ray shall be offered treatment for LTBI with isoniazid for nine (9) months or rifampin for four (4) months, in collaboration with the local health department, unless medically contraindicated as determined by a licensed physician.

(b) Medications shall be administered to residents upon the written order of a physician and shall be given by DOPT.

(4)(a) If a resident or staff member refuses treatment for LTBI or has a medical contraindication, the individual shall be advised of the clinical symptoms of active TB disease, and have an interval medical history for clinical symptoms of active TB disease every six

(6) months during the two (2) years following conversion.

(b) A resident less than five (5) years of age who has a status change on admission to the facility or on annual testing shall be seen and monitored by a pediatrician.

(c) A resident or staff member who has a TST result of ten (10) millimeters or more induration or a positive BAMT at the time of admission of the resident or employment of the staff member, shall be offered treatment for LTBI.

(d) A resident or staff member who has a TST result of five (5) or more millimeters of induration at the time of admission or employment and who has medical reasons (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive shall be offered treatment for LTBI.

(e) If a resident or staff member refuses treatment for LTBI detected on admission or employment or has a medical contraindication, the individual shall be educated about the clinical symptoms of active TB disease, and have an interval medical history for symptoms of active TB disease every six (6) months during the two (2) years following admission or employment. The education shall be documented in either the resident's medical record or the employee's health record.

(5) A resident who stays longer than one (1) year in the facility or staff member who documents completion of treatment for LTBI shall:

(a) Be exempt from further requirements for TSTs or BAMTs; and

(b) Receive education on the symptoms of active TB disease during his or her annual tuberculosis risk assessment and any other monitoring in accordance with Section 21, Section 25, or this section of this administrative regulation.

MARY REINLE BEGLEY, Inspector General

JANINE MILLER, Secretary

APPROVED BY AGENCY: February 3, 2011

FILED WITH LRC: February 15, 2011 at 11 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax 502-564-7573.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mary Begley, Inspector General

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for licensure as a Level I or Level II psychiatric residential treatment facility.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum requirements for licensure as a Level I or Level II psychiatric residential treatment facility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities. This administrative regulation further conforms to the content of HB 231, passed during the 2010 Session of the General Assembly and codified at KRS 216B.457(21), by establishing requirements for the operation of Level II psychiatric residential treatment facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the Office of Inspector General with the authority to ensure that psychiatric residential treatment facilities provide adequate services to meet resident need and provide for resident safety.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing administrative regulation by establishing requirements for the operation of Level II psychiatric residential treatment facilities pursuant to HB 231, passed during the 2010 Session of the General Assembly.

(b) The necessity of the amendment to this administrative

regulation: This amendment is necessary for compliance with the amendments to KRS Chapter 216B enacted by the 2010 General Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.457(21) by establishing requirements for the operation of Level II psychiatric residential treatment facilities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will continue to provide the Office of Inspector General with the authority to ensure that psychiatric residential treatment facilities provide adequate services to meet resident need and provide for resident safety.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 21 licensed Level I psychiatric residential treatment facilities in Kentucky. This administrative regulation will enable entities to apply for licensure as a Level II psychiatric residential treatment facility.

(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: Under this amendment, an entity applying for licensure as a Level II psychiatric residential treatment facility shall:

Submit an application and licensure fee to the Office of Inspector General;

Not be licensed for more than 50 beds;

Be located in a separate part of a psychiatric hospital, separate part of an acute care hospital, in a completely detached building, or on the campus of a Level I psychiatric residential treatment facility if the Level II beds are located on a separate floor, in a separate wing, or in a separate building from the Level I facility;

Be accredited by the Joint Commission, Council on Accreditation of Services for Families and Children, or any other accrediting body with comparable standards;

Maintain written documentation related to the facility's administration and operation;

Have a governing body with overall authority and responsibility for the facility's operation;

Have a program director responsible for the administrative management of the facility;

Employ a sufficient number of qualified mental health professionals to meet the treatment needs of residents and goals and objectives of the facility;

Designate one full time qualified mental health professional as the clinical director. (An individual may serve as both the clinical director and the program director);

Employ adequate direct-care staff to ensure the continuous provision of sufficient regular and emergency supervision of all residents 24 hours per day, and submit a staffing plan to the Cabinet in accordance with KRS 216B.457;

Ensure that staff submit to annual in-service training requirements;

Comply with the employee background check requirements of KRS 216B.457;

Provide each resident and the resident's parent, guardian, or custodian with a description of the resident's rights;

Maintain resident records;

Have an organized quality assurance program;

Maintain written admission criteria;

Maintain written policies and procedures related to the facility's intake process;

Perform timely evaluations and assessments for each resident;

Develop and implement each resident's plan of care;

Ensure the provision of mental health services, physical health services, dietary services, emergency services, pharmacy services, educational and vocational services, recreational activities, and speech, language, and hearing services;

Comply with requirements related to the use of restraints and seclusion;

Maintain a clean, safe, and hygienic environment;

Maintain an infection control program; and

Comply with requirements for tuberculosis skin testing of staff and residents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial and annual fee for licensure as a Level I psychiatric residential treatment facility remains \$270, as established in this administrative regulation and in 902 KAR 20:008. The initial and annual fee for licensure as a Level II psychiatric residential treatment facility with 9 or fewer beds will be \$270. The initial and annual fee for licensure as a Level II psychiatric residential treatment facility with 9 to 50 beds will be \$270, plus \$10 for each bed beyond the ninth bed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An entity that demonstrates compliance with this administrative regulation and 902 KAR 20:330 will be approved for licensure as a Level I or Level II psychiatric residential treatment facility.

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

(a) Initially: The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

(b) On a continuing basis: The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from licensure fees collected from psychiatric residential treatment facilities and state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The initial and annual fee for licensure as a Level I psychiatric residential treatment facility remains \$270, as established in this administrative regulation and in 902 KAR 20:008. The initial and annual fee for licensure as a Level II psychiatric residential treatment facility with 9 or fewer beds will be \$270. The initial and annual fee for licensure as a Level II psychiatric residential treatment facility with 9 to 50 beds will be \$270, plus \$10 for each bed beyond the ninth bed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes an initial and annual fee for licensure as a Level II psychiatric treatment facility.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation relates to the licensure of Level I and Level II psychiatric residential treatment facilities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.457(21)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment establishes an initial and annual fee of \$270 for licensure as a Level II psychiatric residential treatment facility with 9 or fewer beds. This amendment also establishes an initial and annual fee for licensure as a Level II psychiatric residential treatment facility with 9 to 50 beds as \$270, plus \$10 for each bed beyond the

ninth bed. The Cabinet will collect the applicable licensure fee amount from entities applying for licensure as Level II psychiatric residential treatment facilities during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Cabinet will collect an annual licensure fee based on the Level II facility's number of beds during subsequent years.

(c) How much will it cost to administer this program for the first year? The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

# CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amended After Comments)

## 902 KAR 20:330. Psychiatric residential treatment facilities.

RELATES TO: KRS 216B.010-216B.130, 216B.450-216B.459, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 216B.457(21)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 mandate that the Kentucky Cabinet for Health and Family Services regulate health facilities and services. This administrative regulation establishes physical plant requirements for Level I and Level II psychiatric residential treatment facilities (PRTF). This administrative regulation allows existing facilities or residential units, with modifications, to be licensed as a Level I PRTF facility ~~in this category of health care~~.

Section 1. Definitions. (1) "Certificate of need" is defined by KRS 216B.015(8).

(2) "Licensure agency" means the Cabinet for Health and Family Services, Office of the Inspector General.

(3) "Living unit" means:

(a) The area within a single building that is supplied by a Level I ~~the~~ facility for daily living and therapeutic interaction of no more than nine (9) residents; or

(b) The area within a Level II facility that is designated for daily living and therapeutic interaction of no more than twelve (12) residents.

(4) "Psychiatric residential treatment facility" or "PRTF" is defined by KRS 216B.450(5) as a Level I facility or a Level II facility.

Section 2. Preparation and Approval of Plans and Specifications for a Level I or a Level II PRTF. After receipt of the applicant for license has received a certificate of need, if required under KRS Chapter 216B, and before initiation of new construction or renovation, or prior to making a change in function of a facility, the following process shall be followed:

(1) ~~Before initiation of new construction or alterations to an existing building,~~ The licensee or applicant shall submit plans in sufficient detail to show compliance with ~~Section 3 of~~ this administrative regulation to the licensure agency for approval.

(2) Architectural, mechanical, and electrical drawings shall bear either the seal of a professional engineer registered in the Commonwealth of Kentucky or an architect registered in the Commonwealth of Kentucky.

(3) Drawings shall not exceed thirty-six (36) inches by forty-six (46) inches when trimmed.

(4) A copy of the narrative program for a project shall be pro-

vided to the licensure agency by the applicant or licensee and shall describe the functional space requirements, staffing patterns, departmental relationships, and organizational plans relating to the fulfillment of the mission and objectives of the facility.

(5) Plans and specifications shall be approved by the licensure agency prior to commencement of construction of a new building, renovation ~~or alterations~~ of an existing facility, or making a change in function of a facility.

~~(6) Building.~~

~~(5)~~ Plans and specifications in specific detail as required by the Kentucky Building Code, 815 KAR 7:120, shall be submitted together with architectural or engineering stamps as required by KRS Chapters 322 and 323, to the Department ~~Office~~ of Housing, Buildings and Construction for determining compliance with the Kentucky Building Code. Plans and specifications shall be approved by the Department ~~Office~~ of Housing, Buildings and Construction, and local building permits shall be obtained prior to commencement of construction.

(6) Representatives of the Cabinet for Health and Family Services shall have access at all reasonable times to the work wherever it is in preparation or progress.

Section 3. Level I and Level II PRTF: Compliance with Building Codes, Ordinances, and Administrative Regulations.

(1) A PRTF shall be in compliance with building codes, ordinances, and administrative regulations which are enforced by city, county, or state jurisdictions.

(2) The following requirements shall apply when a PRTF is constructed, modified, or renovated:

(a) Fire safety pursuant to 815 KAR 10:060.

(b) Plumbing pursuant to 815 KAR 20:010 through 20:195.

(c) Elevators pursuant to 815 KAR 4:010 through 4:025.

(d) Building accessibility by persons with disabilities pursuant to 28 C.F.R. Part 36.

(3) New construction, modification, or renovation shall be approved by the Department ~~Office~~ of Housing, Buildings and Construction prior to occupancy. ~~[(4) A facility shall have current approval from the Office of Housing, Buildings and Construction prior to initial licensure and annual relicensure.]~~

Section 4. Level I and Level II PRTF: Facility Requirements and Special Conditions. (1) A facility shall be accessible to and usable by persons with disabilities in compliance with the provisions of the Americans With Disabilities Act, 42 U.S.C. 12101 et seq.

(2) Access to a facility shall be by means of a paved or gravel roadway that is open, free from obstruction, and in good repair.

~~(3) [A copy of the narrative program for a project shall be provided to the licensure agency by the applicant or licensee and shall describe the functional space requirements, staffing patterns, departmental relationships, and organizational plans relating to the fulfillment of the mission and objectives of the facility.]~~

~~(4) The building structure and overall physical environment, including the number and type of diagnostic, clinical, and administrative rooms, educational facilities if applicable, and recreational space shall:~~

~~(a) Be sufficient to meet the needs of the patient census and specialized program needs of the residents as described in the facility's narrative program document; and~~

~~(b) Ensure a secure environment for residents.~~

Section 5. Living Unit for a Level I PRTF. A living unit shall be located within a single building and shall comply with the requirements in this section:

(1) Bedrooms.

(a) A bedroom shall not be used for sleeping accommodations for more than two (2) residents.

(b) A bedroom shall be equipped with a bed for each resident that shall:

1. Be at least thirty-six (36) inches wide and sixty (60) inches long;

2. Accommodate the resident's size;

3. a. For proposals which entail renovation of an existing facility, demonstrated that beds are ~~Be~~ positioned to allow at

least three (3) feet of free space between beds and four (4) feet of free space extending directly away from the foot of the bed;

**b. For new construction, ensure that each:**

**1. Single occupancy bedroom have a minimum floor area of 100 square feet, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules; and**

**2. Semi-private bedroom used for sleeping accommodations for two (2) residents have a minimum floor area of eighty (80) square feet per bed, excluding of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules; and**

4. Be located sufficient distance from radiators, heat outlets, and drafts to avoid discomfort.

(c) A resident's bed shall be equipped with:

1. A support mechanism and a clean mattress;

2. A mattress cover with rubber or impervious sheets, if necessary;

3. Two (2) sheets, a pillow, and bed covering of sufficient quality to maintain resident comfort.

(d) Separate sleeping quarters shall be maintained for male and female residents.

(e) A resident shall not be housed in a room, detached building, or other enclosure which has not been inspected and approved for occupancy by the licensure agency and the Department[Office] of Housing, Buildings and Construction.

(f) A bedroom shall not be located more than sixty (60) feet from a duty station, and the egress doorway shall be visible to the duty station at all times.

(g) A room shall not be used as a resident bedroom if the access is through another resident's bedroom.

(2) Bathrooms.

**(a) 1. Proposals which entail renovation of an existing facility shall demonstrate that each living unit of a Level I facility shall have at least one (1) wash basin with hot and cold water, one (1) flush toilet, and one (1) bath or shower with hot and cold water for every five (5) residents residing within the living unit.**

**2. For new construction, each living unit in a Level I facility shall have at least one (1) wash basin with hot and cold water, one (1) flush toilet, and one (1) bath or shower with hot and cold water for every four (4) residents or fraction thereof residing within the living unit.**

(b) Separate toileting, bathing, and showering facilities shall be maintained and be available for each sex.

(c) Each bathroom shall have a wastebasket and an adequate supply of toilet paper, towels, and soap.

(d) If more than one (1) toilet is required or available in the same room, each shall be partitioned for privacy and shall include a door capable of remaining closed.

(e) Bathing and showering facilities shall have enclosures or screens for individual privacy. Shower heads shall be of institutional safety type.

(f) At least one (1) bathing facility shall have space that is accessible to a resident who uses a wheelchair. The wheelchair-accessible bathing facility may serve both sexes, and the facility shall provide staff to assist residents during bathing and showering.

(g) Each bathroom shall contain at least one (1) nondistorting mirror secured to the wall at a height which shall accommodate individuals with disabilities and other residents.

(h) A bathroom shall not be constructed in such a way as to require a resident to pass through another resident's bedroom for access. The bathroom shall have only one (1) door.

(3) A resident's wardrobe or closet shall have minimum dimensions of one (1) foot and ten (10) inches deep by one (1) foot and eight (8) inches wide with full-length hanging space including clothes rod and shelf. Additional areas shall be provided for storage of a resident's winter coats, raincoats, and other bulky articles of clothing and shall be locked and under staff control.

(4) Each resident shall have a chair and desk with minimum dimensions of one (1) foot and six (6) inches deep by three (3) feet wide by two (2) feet high.

(5) Windows accessible to the outside shall be secure and shall prevent unauthorized egress and ingress. Safety features shall be included on windows to ensure glass and glass fragments do not constitute a safety hazard.

(6) If a staff call system is available, provisions shall be made

to permit removal of call buttons or use of blank plates if appropriately documented in a resident's treatment plan.

(7) Living, dining, and recreation.

(a) The total area provided for living and recreation shall not be less than forty (40) square feet per resident;

(b) The total area provided for dining shall not be less than fifteen (15) square feet per resident.

(c) The living area shall include comfortable seating for at least ten (10) persons.

(d) Indoor recreation equipment shall be available and appropriate for the ages served and shall be maintained in good condition;

(e) Enclosed storage shall be provided for recreational equipment and supplies;

(f) The facility shall provide space for outdoor recreation activities for residents. The outdoor area shall be free from litter, glass, and other objects which pose a safety hazard; and

(g) Outdoor recreation equipment in good condition and appropriate for the ages of the residents shall be provided and maintained.

(8) Each service area shall include a duty station and medicine dispensing area.

(a) A duty station shall be constructed to include adequate space for charting and for conducting all other aspects of a patient's care.

(b) Provision shall be made for twenty-four (24) hour distribution of medicine to residents. This may be from a medicine preparation room or unit, a self-contained medicine dispensing unit, or by another approved system.

1. Medication shall be kept in a locked storage area, a secure, self-contained dispensing unit, or other system capable of maintaining secure and controlled storage.

2. The medication dispensing area shall be under the treatment staff's visual control and shall contain a work counter, refrigerator, sink and locked storage for biologicals and drugs.

3. The medication dispensing unit may be located at the duty station, in a clean workroom, or in an alcove under direct control of the treatment or pharmacy staff.

4. All controlled substances shall be maintained by staff under double lock.

(c) A dedicated linen storage area shall be available and shall be used for storing clean linens.

(9) The living unit shall have at least one (1) operable food preparation area with sink, stove, and refrigerator, unless a kitchen is directly available within the same building as the living unit.

Section 6. Living Unit for a Level II PRTF. (1) A living unit in a Level II PRTF shall:

(a) Accommodate a maximum of twelve (12) residents; and

(b) Serve one (1) gender.

(2) Environment.

(a) A Level II PRTF shall avoid hidden alcoves or blind areas.

(b) A Level II PRTF shall:

1. Be designed to prevent elopement;

2. Be designed to contain residents in the living unit until clinical staff are able to escort the resident or residents to an adjacent compartment or an exit stair;

3. Be designed to prevent contraband smuggling; and

4. Include provisions for monitoring and controlling visitor access and egress.

(c) Openings in the perimeter security system, including windows or doors, shall be controlled by locks, which may be manual, electric, or magnetic.

(3) Bedrooms.

(a) A bedroom shall not be used for sleeping accommodations for more than two (2) residents[one (1) resident].

(b) A bedroom shall be equipped with a bed that shall:

1. Be at least thirty-six (36) inches wide and sixty (60) inches long;

2. Accommodate the resident's size; and

3. Be located sufficient distance from radiators, heat outlets, and drafts to avoid discomfort.

(c) A resident's bed shall be equipped with:  
1. A support mechanism and a clean mattress;  
2. A mattress cover with rubber or impervious sheets, if necessary;

3. Two (2) sheets, a pillow, and bed covering of sufficient quality to maintain resident comfort.

(d)1. A single occupancy resident room shall have a minimum clear floor area of 100 square feet, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules.

2. A bedroom used for sleeping accommodations for two (2) residents shall:

a. For projects which entail the renovation of an existing licensed health facility, ensure that each bed is positioned to allow at least four (4) feet of free space between beds and four (4) feet of free space extending directly away from the foot of the bed;

b. In new construction, ensure that the bedroom have a minimum floor area of eighty (80) square feet per bed, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves or vestibules; and

c. Be equipped with an electronic surveillance system that is used to monitor residents, thereby alerting Level II PRTF personnel at the exact time any situation occurs which may threaten the safety of either or both residents sharing the bedroom. The surveillance system shall:

(i) Be operational on a twenty-four (24) hour, seven (7) day a week basis;

(ii) Be under the operation and direction of the Level II PRTF's clinical director;

(iii) Have the capacity to alert PRTF personnel by means of an alarm system if one resident leaves his or her bed without requesting permission; and

(iv) Not be placed in a bathing or toilet room.

(e) A resident shall not be housed in a room, detached building, or other enclosure which has not been inspected and approved for occupancy by the licensure agency and the Department of Housing, Buildings and Construction.

(f) A bedroom shall not be located more than sixty (60) feet from a duty station, and the egress doorway shall be visible to the duty station at all times.

(g) A room shall not be used as a resident bedroom if the access is through another resident's bedroom.

(h) Each resident room shall have a chair and desk with minimum dimensions of one (1) foot and six (6) inches deep by three (3) feet wide by two (2) feet high.

(4) Resident storage.

(a) Each resident shall have within his or her room a separate wardrobe, locker, or closet for storing personal effects.

(b) Shelves for folded garments shall be used.

(c) Adequate storage shall be available for a daily change of clothes for seven (7) days.

(d) An area separate from the resident's wardrobe, locker, or closet shall be provided for storage of winter coats, raincoats, and other bulky articles of clothing, and shall be locked and under staff control.

(5) Shared bathing and toilet facilities.

(a)1. For projects which entail the renovation of an existing licensed health facility, a bathtub or shower and a toilet shall be provided for each six (6) residents or fraction thereof.

2. For new construction, a bathtub or shower and a toilet shall be provided for every four (4) residents or fraction thereof [five (5) or fewer residents].

(b) Each shower or bathing room shall have a toilet.

(c) Bathing facilities shall be designed and located for resident convenience and privacy.

(d) Separate bathing and showering facilities shall be maintained and be available for each sex.

(e) Each bathing facility shall have a wastebasket, an adequate supply of toilet paper, and meet the hand drying provisions established in subsection (10) of this section.

(f) If more than one (1) toilet is available in the same bathing room, each shall be partitioned for privacy and shall include a door capable of remaining closed.

(g) Bathing and showering facilities shall have enclosures or

screens for individual privacy. Shower heads shall be of institutional safety type.

(h) At least one (1) bathing facility shall have space that is accessible to a resident who uses a wheelchair. The wheelchair-accessible bathing facility may serve both sexes, and the facility shall provide staff to assist residents during bathing and showering.

(i) Each bathing facility shall contain at least one (1) nondistorting mirror secured to the wall at a height which shall accommodate individuals with disabilities and other residents.

(j) A bathing facility shall not be constructed in such a way as to require a resident to pass through another resident's bedroom for access. The bathing facility shall have only one (1) door.

(k) If indicated in a resident safety risk assessment, toilet room doors shall be equipped with keyed locks that allow staff to control access to the toilet room.

(l) The door to the toilet room shall swing outward or be double-acting.

(m) Each entry door into a resident toilet room shall:

1. Be ADA (Americans with Disabilities Act ) or ANSI (American National Standards Institute) compliant; and

2. Shall provide space for staff to transfer residents to the toilet using portable mechanical lifting equipment.

(n) Thresholds in toilet rooms that are ADA or ANSI-compliant shall be designed to facilitate use and prevent tipping of wheelchairs or other portable wheeled equipment by residents and staff.

(6) If a staff call system is available, provisions shall be made to permit removal of call buttons or use of blank plates if appropriately documented in a resident's treatment plan.

(7) Bathing facility hardware and accessories.

(a) Special design considerations for injury and suicide prevention shall be given to shower, bath, toilet, and sink hardware and accessories, including grab bars and toilet paper holders.

(b) ADA or ANSI-compliant grab bars shall be required in ten (10) percent of the toilet rooms. The space between the bar and the wall shall be filled to prevent a cord being tied around it.

(c) Grab bars in resident toilet rooms for fully ambulatory residents shall be removable.

(d) Bars, including those that are part of fixtures which may include soap dishes, shall be sufficiently anchored to sustain a concentrated load of 250 pounds.

(e) The following shall not be permitted:

1. Towel bars;

2. Shower curtain rods; and

3. Lever handles, unless a specifically designed anti-ligature lever handle is used.

(8) Sprinkler heads and other protrusions.

(a) In unsupervised resident areas, sprinkler heads shall be recessed or of a design to minimize resident access.

(b) In resident bedrooms and bathrooms, lighting fixtures, sprinkler heads, electrical outlets, and other appurtenances shall be of the tamper-resistant type.

(9) Hand-washing stations.

(a) General hand-washing stations used by staff, residents, and food handlers shall be trimmed with valves which may be operated without hands.

(b) Single-lever or wrist blade devices shall be permitted. Blade handles shall be at least four (4) inches.

(c)1. Sensor-regulated water fixtures shall meet user need for temperature and length of time the water flows.

2. Electronic faucets shall be capable of functioning during loss of normal power.

3. Sensor-regulated faucets with manual temperature control shall be permitted.

(10) Provisions for hand drying.

(a) Hand-washing stations shall include a hand-drying device that does not require hands to contact the dispenser and may include:

1. Paper or cloth units enclosed to protect against dust or soil, and to ensure single-unit dispensing;

2. Hot air dryers if installation eliminates possible contamination by recirculation of air.

(b) Hand-washing stations shall include liquid or foam soap dispensers.

(11) Ceilings.

- (a) Ceilings shall be monolithic.
- (b) Ceiling systems of lay-in ceiling tile design shall not be permitted.
- (c) In resident bathrooms:
  1. The ceiling shall be secured from access; and
  2. Plumbing, piping, duct-work, or other potentially hazardous elements shall be concealed above a ceiling.
- (d) In resident bedrooms and bathrooms, ceiling access panels shall be secured.
- (e) In resident bedrooms and bathrooms, ventilation grilles shall be:
  1. Secured and shall have small perforations to eliminate their use as a tie-off point; or
  2. Shall be of sufficient height to prevent resident access.
- (12) Doors and door hardware.
  - (a) Door openings for resident use shall have a minimum clear width of two (2) feet ten (10) inches.
  - (b) Doors for private resident bathrooms or shower areas shall swing out to allow for staff emergency access.
  - (c) 1. Door closers shall be avoided unless required.
  - 2. Door closer devices, if required on the resident room door, shall be mounted on the public side of the door. The door closer shall be within view of a staff workstation.
  - (d) Door hinges shall be designed to minimize points for hanging and may include cut hinge type.
  - (e) Door lever handles. Except for specifically designed anti-ligature hardware, door lever handles shall point downward when in the latched or unlatched position.
  - (f) Door hardware shall have tamper-resistant fasteners.
- (13) Windows.
  - (a) Each resident room shall have one (1) window.
  - (b) The minimum net glazing area shall be no less than eight (8) percent of the floor area of the resident's room.
  - (c) If an operable window is provided in a resident's room, operation of the window shall be restricted to inhibit possible escape or suicide.
  - (d) Windows shall be designed to limit the opportunities for residents to seriously harm themselves or others.
  - (e) Glazing (interior and exterior), borrowed lights, and glass mirrors shall be fabricated with laminated safety glass or protected by polycarbonate, laminate, or safety screens.
  - (g) Insect screens. Windows and outdoor doors that are frequently left open shall be equipped with insect screens.
- (14) Furnishings.
  - (a) Furniture shall be constructed to withstand physical abuse.
  - (b) Drawer pulls shall be of the recessed type.
- (15) Living, dining, and recreation.
  - (a) The total area provided for living and recreation shall not be less than forty (40) square feet per resident;
  - (b) 1. The total area provided for dining shall not be less than fifteen (15) square feet per resident.
  - 2. Each living unit shall have a dining area within the unit or adjacent to the unit. A dining area may be shared by two (2) living units if each unit:
    - a. Is adjacent to the dining area; and
    - b. Staggers meals so that the residents of both units do not dine together at the same time in the dining area.
  - (c) The living area:
    1. Shall include comfortable seating for at least twelve (12) persons; and
    2. Not be shared with another living unit within the same building.
  - (d) Indoor recreation equipment shall be available and appropriate for the ages served and shall be maintained in good condition;
  - (e) Enclosed storage shall be provided for recreational equipment and supplies;
  - (f) The facility shall provide space for outdoor recreation activities for residents. The outdoor area shall be free from litter, glass, and other objects which pose a safety hazard; and
  - (g) Outdoor recreation equipment in good condition and appropriate for the ages of the residents shall be provided and maintained.
  - (h) A gymnasium or recreation area used by a Level II

**PRTF may be shared with a psychiatric hospital or Level I PRTF located within the same building or on the same campus.**

- (16) Each service area shall include a duty station and medicine dispensing area.
  - (a) A duty station shall be constructed to include adequate space for charting and for conducting all other aspects of a residents' care.
  - (b) Provision shall be made for twenty-four (24) hour distribution of medicine to residents. This may be from a medicine preparation room or unit, a self-contained medicine dispensing unit, or by another approved system.
    1. Medication shall be kept in a locked storage area, a secure, self-contained dispensing unit, or other system capable of maintaining secure and controlled storage.
    2. The medication dispensing area shall be under the treatment staff's visual control and shall contain a work counter, refrigerator, sink and locked storage for biologicals and drugs.
    3. The medication dispensing unit may be located at the duty station, in a clean workroom, or in an alcove under direct control of the treatment or pharmacy staff.
  - (c) A dedicated linen storage area shall be available and shall be used for storing clean linens.
- (17) The living unit shall have at least one (1) operable food preparation area with sink, stove, and refrigerator, unless a kitchen is directly available within the same building as the living unit.

**Section 7. Classroom Requirements for Level II PRTF Facilities.** (1) A Level II PRTF shall have classroom space to accommodate the residents' needs.

- (2) A classroom capacity shall not exceed twelve (12) students.

**Section 8. Kitchen Area for Level I and Level II PRTF Facilities.**

- (1) If a commercial service is used or if meals are provided by an adjacent facility, dietary areas and equipment shall ensure sanitary, efficient and safe storage, processing, and handling of food products.
- (2) If meals are prepared on site, the facility shall have a food service area large enough to accommodate residents and staff, and which shall be capable of maintaining a three (3) day supply of refrigerated and dry foods.
- (3) The kitchen area shall include a janitor's closet with sufficient space for storage of housekeeping supplies and equipment and shall include a locked area for hazardous materials.

**Section 9.[7-] Administration Area for Level I and Level II PRTF Facilities.** Sufficient space shall be available for administrative operations.

**Section 10.[8-] Consultation and Visitation Rooms for Level I and Level II PRTF Facilities.** Professional consultation rooms shall be available for interview, examination, treatment, and visitation. These rooms shall afford privacy for the resident.

**Section 11.[9-] Pharmacy or Drug Area for Level I and Level II PRTF Facilities.** Adequate facilities shall be available to accommodate the safe storage and handling of pharmaceuticals including double locking of controlled substances and refrigeration for biologicals and drugs which require refrigeration.

**Section 12. Level I PRTF: Requirements for Rooms Designated for Seclusion[10- Seclusion Room].** (1) If a [seclusion] room designated for seclusion is provided by a Level I PRTF, it shall be:

- (a) Completely padded and constructed to minimize the possibility of a resident's hiding, escape, injury, or suicide and shall not include fixtures, hardware, furniture, receptacles, switches, or other items that may present a risk to a secluded resident; and
- (b) Used only for short-term occupancy by a resident who may have become violent or suicidal.
- (2) The [A seclusion room] door to a seclusion room shall swing outward and shall have provisions for constant staff observation while maintaining privacy.

**Section 13. Level II PRTF: Requirements for Rooms Designat-**



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ed for Seclusion. (1) Each living unit shall have one (1) room designated for seclusion.

(2) The room designated for seclusion shall:

(a) Be constructed to minimize the possibility of a resident's hiding, escape, injury, or suicide and shall not include fixtures, hardware, furniture, receptacles, switches, or other items that may present a risk to a secluded resident;

(b) Have a minimum clear floor area of sixty (60) square feet with a minimum wall length of seven (7) feet and a maximum wall length of eleven (11) feet;

(c) Not contain outside corners or edges; and

(d) **1. For new construction**, be accessed by an anteroom or vestibule that provides access to a toilet room. The door openings to the anteroom and the toilet room shall have a minimum clear width of three (3) feet eight (8) inches.

**2. If a proposal entails renovation of an existing licensed health facility:**

**a. An anteroom adjoining a seclusion room shall not be required; and**

**b. A toilet room used to accommodate a resident placed in the seclusion room:**

**(i) May be located within forty (40) feet of the seclusion room; and**

**(ii) Shall not be located in an area which would require the resident in seclusion to walk through a living, dining, or recreation area to access the toilet room.**

(3) The walls, ceiling, and floor of the room designated for seclusion shall be designed to withstand direct and forceful impact.

(4) The entrance door to the room designated for seclusion shall swing out.

(5) Door openings shall be a minimum clear width of three (3) feet eight (8) inches and shall permit staff observation of the resident through a vision panel, while maintaining provisions for resident privacy.

(6) Minimum ceiling height shall be eight (8) feet.

(7) Electrical switches and receptacles shall be prohibited within the room designated for seclusion.

**(8) Lighting fixtures within the seclusion room shall be tamper-resistant and designated to prevent injury to the resident.**

Section 14. [44.] Storage and Service Areas for Level I and Level II PRTF Facilities. (1) Sufficient storage space shall be provided.

(2) Engineering service and equipment areas shall be provided and shall include:

(a) Storage room for housekeeping equipment that cannot be accommodated by a janitor's closet or other storage area; and

(b) Refuse area located in an area convenient to the service entrance for holding trash prior to disposal.

Section 15. [42.] Details and Finishes for Level I and Level II PRTF Facilities. The facility shall be constructed and maintained to minimize risk to occupants, staff, and visitors, and shall comply with the following requirements:

(1) Details.

(a) All doors opening onto corridors shall be swing-type except elevator doors.

(b) All doors to a resident's bathroom toilet shall swing outward or shall be equipped with hardware that permits immediate access in case of emergency.

(c) Thresholds and expansion joint covers shall be flush with the floor.

~~(d) [A towel rack or dispenser shall be provided at all lavatories and sinks used for hand washing.]~~

~~(e) [Ceiling height shall not be less than seven (7) feet and six (6) inches, and shall be no less than eight (8) feet in the room designated as the seclusion room in a Level II PRTF facility.]~~

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(c) Thresholds and expansion joint covers shall be flush with the floor.

~~(d) [A towel rack or dispenser shall be provided at all lavatories and sinks used for hand washing.]~~

~~(e) [Ceiling height shall not be less than seven (7) feet and six (6) inches, and shall be no less than eight (8) feet in the room designated as the seclusion room in Level II PRTF facility.]~~

(2) Finishes.

(a) Floors shall be easily cleanable and shall have wear resistance appropriate for the location involved. Floors in kitchen and related spaces shall be waterproof and grease-proof. Floors shall have a nonslip finish in all areas that are subject to moisture.

(b) Adjacent dissimilar floor materials shall be flush with each other to provide an even transition.

(c) Walls shall be washable and kept clean and shall be moisture-proof in areas that are adjacent to plumbing fixtures. Wall bases in dietary areas shall be free of spaces that can harbor insects.

(d) Ceilings shall be washable and kept clean and in good repair.

(e) Rooms containing heat-producing equipment such as laundries and food preparation areas shall be insulated and ventilated to prevent any floor surface from exceeding a temperature of ten (10) degrees Fahrenheit above the ambient room temperature.

Section 16. [43.] Construction for Level I and Level II PRTF Facilities. (1) Foundations shall rest on natural solid ground if a satisfactory soil is available at reasonable depths.

(2) Proper soil bearing values shall be established in accordance with recognized standards.

(3) If solid ground is not encountered at practical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement.

Section 17. [44.] Mechanical Requirements for Level I and Level II PRTF facilities. (1) Steam and hot water systems. If boilers are provided in residential treatment facilities the design and installation shall comply with 815 KAR 15:010 through 15:080.

(2) Temperature.

(a) A minimum temperature of sixty-eight (68) degrees Fahrenheit shall be provided in occupied areas during winter.

(b) A maximum temperature of eighty-five (85) degrees Fahrenheit shall be provided in occupied areas during summer.

(3) Plumbing and piping systems.

(a) All showers and bathtubs shall be equipped with a temperature-limiting device at the point of source or point of use which controls hot water at a maximum temperature of 120 degrees Fahrenheit.

(b) Fixtures used in the dietary area, the clean work room and medi/prep area shall be trimmed with valves which can be operated without the use of hands.

(c) If valves are equipped with blade handle controls, the controls shall be approximately four (4) inches in length.

(d) Fixtures shall be installed to provide adequate side clearance for proper use of the blade handles.

(4) Water supply systems.

(a) A water supply system shall be designed to supply water to the fixtures and equipment on the upper floors at a minimum pressure of fifteen (15) pounds per square inch during maximum demand periods.

(b) An operable valve shall be installed at each water service main, branch main, riser, and branch to a group of fixtures. Stop valves shall be installed at each fixture.

(c) Insulation shall be maintained on hot, cold and chilled water piping and waste piping on which condensation may occur. Insulation of cold and chilled water lines shall include an exterior barrier.

(d) Backflow preventers (vacuum breakers) shall be installed on hose bibs and on all fixtures onto which hoses or tubing can be attached.

(e) Hot water distribution systems shall be arranged to provide hot water at each fixture.

(f) Piping over food preparation centers, food serving facilities, food storage areas, and other critical areas shall be kept to a minimum and shall not be exposed. Special precautions shall be taken to protect these areas from possible leakage of, or condensation from overhead piping systems.

(5) Hot water heaters and tanks.

(a) Hot water heating equipment shall have sufficient capacity to supply the water at the temperature and amounts indicated below:

Gal/hr/bed	6 1/2
Temperature (Degrees Fahrenheit)	100-120

(b) A storage tank shall be provided and shall be fabricated of corrosion-resistant metal or have a noncorrosive lining.

(6) Prior to licensure, all plumbing specifications shall be approved by the Kentucky Division of Plumbing, Department~~Office~~ of Housing, Buildings and Construction.

Section 18.~~45~~ Electrical Requirements for Level I and Level II PRTF Facilities. (1) Electrical requirements of the Kentucky Building Code shall apply.

(2) The wiring in each PRTF shall be inspected by a certified electrical inspector and a certificate of approval shall be issued to the facility prior to occupancy; except, the wiring in existing buildings shall be approved by a certified electrical inspector only if the building has not been previously so approved for health care occupancy or if the State Fire Marshal finds that a hazardous condition exists.

(3) All breakers and switches shall be indexed.

(4) Spaces occupied by people, machinery, and equipment within buildings, the corresponding approaches, and parking lots shall have electric lighting.

(5) Residents' bedrooms shall have general lighting, a night light, and, if appropriate, a reading light.

(6) A resident's bedroom shall have duplex receptacles as follows:

(a) One (1) side of the head of each bed; receptacles for luminaires, television and motorized beds, if used, and one (1) receptacle on another wall.

(b) Receptacles shall be of a safety type or protected with five (5) milliampere ground fault interrupters.

(7) Duplex receptacles for general use shall be installed approximately fifty (50) feet apart in all corridors and within twenty-five (25) feet of ends of corridors. Receptacles shall be of a safety type or protected with five (5) milliampere ground fault interrupters.

MARY REINLE BEGLEY, Inspector General

JANINE MILLER, Secretary

APPROVED BY AGENCY: February 14, 2011

FILED WITH LRC: February 15, 2011 at 11 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure standards for psychiatric residential treatment facility physical plant requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum licensure

standards for psychiatric residential treatment facility physical plant requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing licensure physical plant requirements to ensure safe, adequate, and efficient health facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing the Office of Inspector General with authority to ensure that psychiatric residential treatment facilities provide adequate and safe physical plants to meet resident need.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing administrative regulation by establishing physical plant requirements for Level II psychiatric residential treatment facilities.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for compliance with the amendments to KRS Chapter 216B enacted by the 2010 General Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.457(21) by establishing physical plant requirements for Level II psychiatric residential treatment facilities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will continue to provide the Office of Inspector General with the authority to ensure that psychiatric residential treatment facilities provide adequate services to meet resident need and provide for resident safety.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 21 licensed Level I psychiatric residential treatment facilities in Kentucky. This administrative regulation will enable entities to apply for licensure as a Level II psychiatric residential treatment facility.

(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: Under this amendment, an entity applying for licensure as a Level II psychiatric residential treatment facility shall:

Submit plans and specifications to the Office of Inspector General for approval prior to initiation of new construction or renovation, or prior to making a change in function of a facility;

Comply with applicable building codes, ordinances, and administrative regulations;

Provide a living unit designated for daily living and therapeutic interaction of no more than 12 residents;

Ensure that the environment of the facility's living unit is configured to accommodate this administrative regulation's requirements for safety and security;

Provide bedrooms that are not used for sleeping accommodations for more than one resident;

Have bathing and toilet facilities for each five or fewer residents; and

Adhere to this administrative regulation's requirements related to bedrooms, bathing facilities, ceilings, doors and hardware, windows, furnishings, living and recreational areas, the nursing station and medicine dispensing area, food preparation area, classroom requirements, consultation and visitation rooms, storage of pharmaceuticals, rooms designated for seclusion if provided by the facility, storage space, details and finishes, construction, water systems, and electrical requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Facilities do not incur additional costs for compliance with the physical plant requirements of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): An entity that demonstrates compliance with the physical plant requirements of administrative regulation and the operation and service requirements of 902 KAR 20:320 will be approved for licensure as a Level I or Level II psychiatric residential treatment facility.

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

(a) Initially: The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

(b) On a continuing basis: The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from licensure fees collected from psychiatric residential treatment facilities under 902 KAR 20:320 and state general funds.

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

(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.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation relates to the physical plant requirements for Level I and Level II psychiatric residential treatment facilities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.457(21)

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 relates to the physical plant requirements for Level I and Level II psychiatric residential treatment facilities and therefore does not generate revenue for state government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation relates to the physical plant requirements for Level I and Level II psychiatric residential treatment facilities and therefore does not generate revenue for state government.

(c) How much will it cost to administer this program for the first year? The cost of implementing this administrative regulation is expected to be absorbable.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing this administrative regulation is expected to be absorbable.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, FEBRUARY 15, 2011

COUNCIL ON POSTSECONDARY EDUCATION  
(Amendment)

13 KAR 2:060. Degree program approval; equal opportunity goals.

RELATES TO: KRS 164.001, 164.020

STATUTORY AUTHORITY: KRS 164.020(19)(48)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

164.020(19) requires the Council on Postsecondary Education to postpone the approval of new academic programs for those institutions who fail to meet equal opportunity goals established by an institution and approved by the council. The statute further requires that institutions be able to secure a temporary waiver, if an institution has made substantial progress toward meeting goals. This administrative regulation sets out the process for goal setting, measurement of progress, and how to secure a temporary waiver. [Responsibility for the development of a system-wide equal opportunity plan is assigned to the Council on Postsecondary Education pursuant to KRS 164.020(18). The statute connects an institution's eligibility for new academic programs to its performance in implementing equal opportunity objectives. The Council on Postsecondary Education approves the offering of academic programs at each state-supported postsecondary education institution pursuant to KRS 164.020(14) but an institution's eligibility for new academic programs is limited by the requirement of KRS 164.020(18) that an institution meet its equal opportunity objectives. The statute does grant the Council on Postsecondary Education authority to grant a temporary waiver if an institution demonstrates progress in meeting equal opportunity objectives. This administrative regulation establishes the criteria used to determine an institution's compliance with equal opportunity objectives, and for the granting of a temporary waiver to a state-supported postsecondary education institution which has not met its objectives].

Section 1. Definitions. (1) "Continuous progress" means that an institution shows an increase in the number of students or employees over the previous year for a category.

(2) "Council" is defined by KRS 164.001(7).

(3) "Diversity Policy" means the Kentucky Public Postsecondary Education Diversity Policy and Framework for Institution Diversity.

(4) "Institution" ["Goal" or "objective" means a flexible target in enrollment, retention, graduation or employment developed by the Council on Postsecondary Education and the state-supported postsecondary education institutions and included in the Kentucky Plan.

(4) "Kentucky Plan" means the "Kentucky Plan for Equal Opportunities" which is a five (5)-year plan developed by the Council on Postsecondary Education.

(5) "State-supported institution" means a state-supported postsecondary education [an] institution listed in KRS 164.001(17).

(5) "Institution Diversity Plan" means a plan developed by an institution in conjunction with the Council on Postsecondary Education to achieve diversity in student enrollment, to eliminate gaps in retention and graduation rates, and to achieve workforce diversity [within the postsecondary education system as defined by KRS 164.001(15)].

Section 2. Creation of Institution Diversity Plan[Scope]. (1) The Council on Postsecondary Education shall maintain the Kentucky Public Postsecondary Education Diversity Policy and Framework for Institution Diversity Plan Development to provide a framework and guidelines to assist an institution in developing an institution diversity plan [a Kentucky Plan for Equal Opportunities to assist in ensuring equal opportunity of access to higher education for all citizens of Kentucky. The Kentucky Plan establishes flexible objectives for each state-supported postsecondary education institution in broad categories of student enrollment, retention, graduation and employment of African-Americans].

(2) A four (4) year institution shall develop an institution diversity plan that includes goals for these areas of interest:

(a) Student enrollment:

1. Undergraduate;

2. Graduate students at the four (4) year institutions;

(b) Student success including:

1. First year to second year retention of undergraduate students;

2. Second year to third year retention of undergraduate students;

3. Associate and baccalaureate degrees and credentials awarded; and

4. Graduation rates for undergraduate students;

(c) Achievement gap closure for undergraduate students including:

1. First year to second year retention rate;

2. Second year to third year retention rate; and

3. Graduation rate.

(d) An institution shall include a workforce diversity component in its institution diversity plan using these employment categories:

1. Executive managerial;

2. Faculty;

3. Other professional;

4. Secretarial/clerical;

5. Technical/paraprofessional;

6. Skilled crafts; and

7. Service/maintenance.

(e) An institution shall develop a campus climate component in its institution diversity plan including:

1. Creation of a campus environment team;

2. A comprehensive report on strategies and best practices implemented; and

3. A review of the effectiveness of employment, retention, and promotion policies.

(3) An institution, in developing an institution diversity plan, shall consider the institution's service region or statewide demographic data. This provision shall not apply to Kentucky State University.

(4) An institution, in developing goals for areas of interest in Section 2(2) of this administrative regulation, shall reference the racial and ethnic groups listed in the U. S. Census and the U. S. Department of Education's Integrated Postsecondary Education Database System (IPEDS) [Five (5) categories of African-American, resident students are included in the Kentucky Plan and in Section 3 of this administrative regulation with objectives established and measured for each category:

(a) Undergraduate enrollment;

(b) Retention of first-year undergraduate enrollment;

(c) Retention of total undergraduate enrollment;

(d) Award of baccalaureate degrees; and

(e) Graduate enrollment.

(3) Seven (7) categories of African-American employment are included in the Kentucky Plan.

(a) Objectives are established and measured for three (3) of these categories in the Kentucky Plan and in Section 4 of this administrative regulation:

1. Executive, administrative and managerial;

2. Faculty; and

3. Professional nonfaculty.

(b) The four (4) categories of African-American employment included in the Kentucky Plan that are not measured are:

1. Secretarial/clerical;

2. Technical/paraprofessional;

3. Skilled crafts; and

4. Service/maintenance.

(4) The Kentucky Plan includes enhancement provisions for Kentucky State University including the following categories which shall be reported on by the university:

(a) Identification by the university, subject to agreement by the council, of new and continuing academic programs which promote and build on the university's strength as a historically black institution;

(b) Evidence of marketing or showcasing programs which are developed and implemented as part of paragraph (a) of this sub-

section:

(c) Evidence of funding by the university of programs identified in paragraph (a) of this subsection including identification of private funding; and

(d) Identification of quality assurance assessment activities for programs identified in paragraph (a) of this subsection.

(5) The council may substitute objectives contained in subsection (4) of this section for objectives contained in Sections 3 and 4 of this administrative regulation based on a plan submitted by Kentucky State University, reviewed by the Committee on Equal Opportunities, and approved by the council.

(6) The Council on Postsecondary Education shall evaluate institutional progress in implementing the flexible objectives established in the Kentucky Plan in order to determine:

(a) An institution's automatic eligibility for a new academic program; or

(b) An institution's eligibility for a waiver[.

Section 3. Measurement Of An Institution's Performance In Demonstrating Continuous Progress, and Automatic Eligibility For New Academic Programs. (1)(a) A four (4) year institution shall demonstrate continuous progress or meet the goals established for the eight (8) areas of interest described in Section 2(2)(a), (b)1., 2., and 3., and (d)1., 2., and 3.; or

(b) The Kentucky Community and Technical College System (KCTCS) shall demonstrate continuous progress or meet the goals established for the seven (7) areas of interest described in Section 2(2)(a)1., (b)1., 2., and 3., and (d)1., 2., and 3.

(2) An institution shall submit a written report annually to the Council or its designee describing the institution's progress in meeting goals set forth in the Institution Diversity Plan, and describing whether an institution has demonstrated continuous progress in the areas of interest described in Section 2(2) of this administrative regulation.

(3) To be automatically eligible for new academic programs:

(a) A four (4) year institution shall meet the goal or demonstrate continuous progress in six (6) of the eight (8) areas of interest or meet the goal listed in Section 2 of this administrative regulation; or

(b) A community college shall meet the goal or demonstrate continuous progress in five (5) of the seven (7) areas of interest listed in Section 2 of this administrative regulation and selected by the Kentucky Community and Technical College System.

(4) For the campus climate component, an institution shall demonstrate continuous progress by completing a report addressing the issues described in Section 2(2)(e) of this administrative regulation. [Enrollment, Retention and Graduation Objectives.

(1)(a) An institution's objective for the enrollment of undergraduate, Kentucky resident African-American students shall be the percentage of African-American high school graduates within the institution's market area.

(b) The market area shall be the geographic area of Kentucky contributing ninety (90) percent of the entering Kentucky resident undergraduate enrollment at an institution as measured by the base year of the Kentucky Plan.

(2)(a) Except as provided in paragraph (b) of this subsection, an institution's objective for retention of first-year undergraduate Kentucky resident African-American students shall be equal to the institution's retention rate for first-year undergraduate Kentucky resident white students as measured by the base year of the Kentucky Plan.

(b) The community colleges shall be exempt from the requirement established in paragraph (a) of this subsection.

(3)(a) Except as provided in paragraph (b) of this subsection, an institution's objective for the retention of total undergraduate Kentucky resident African-American undergraduate students shall be equal to the institution's retention rate for all Kentucky resident white undergraduate students as measured by the base year of the Kentucky Plan.

(b) The community colleges shall be exempt from the requirement established in paragraph (a) of this subsection.

(4)(a) Except as provided in paragraphs (b) and (c) of this subsection, an institution's objective for the awarding of baccalaureate degrees to Kentucky resident African-American students shall be

equal to the institution's rate for awarding baccalaureate degrees to Kentucky resident white students.

(b) For Kentucky State University, the institution's objective shall be that the rate of award of baccalaureate degrees to Kentucky resident white students be equal to that of Kentucky resident African-American students as measured by the base year of the Kentucky Plan.

(c) The community colleges shall be exempt from the requirements established in paragraphs (a) and (b) of this subsection.

(5)(a) Except as provided in paragraph (b) of this subsection, an institution's objective for the enrollment of Kentucky resident African-American graduate students shall be the same proportion as the institution's percentage of enrollment of Kentucky resident white graduate students expressed as a proportion of total resident white undergraduate degrees awarded.

(b) Kentucky State University and the community colleges shall be exempt from the requirement established in paragraph (a) of this subsection.

Section 4. Employment Objectives. (1) Pursuant to Section 2(3) of this administrative regulation, the Kentucky Plan provides for the measurement and evaluation of each of the three (3) following categories of employment:

(a) Executive, administrative, and managerial;

(b) Faculty; and

(c) Professional nonfaculty.

(2) Employment objectives for an institution shall be based on an institution's plan developed in compliance with the U.S. Department of Labor or the U.S. Department of Education as appropriate for that institution.

Section 5. Evaluation of Annual Progress. (1) Progress toward achievement of an objective shall be measured annually for the purpose of determining an institution's eligibility to submit a request for a new academic program or for a waiver.

(2) An institution shall have met its annual plan implementation objective for undergraduate enrollment if the following conditions have been fulfilled:

(a) For Kentucky State University:

1. The university maintains the current level of Kentucky resident African-Americans as a percentage of total enrollment; and

2. The university increases the number of entering Kentucky resident freshmen with ACT scores at or above the statewide average.

(b) For all other institutions:

1. Enrollment of African-American students within the system of state supported higher education is .073 percent or greater excluding African-American students enrolled at Kentucky State University; and

2. An institution's enrollment of Kentucky resident African-American students is greater than the actual enrollment of African-American students in the prior year.

(3) An institution shall have met its annual plan implementation objectives for:

(a) Retention of first-year undergraduate students;

(b) Retention of total undergraduate students;

(c) Award of baccalaureate degrees;

(d) Enrollment of graduate students; and

(e) In employment of African-Americans by demonstrating continuous progress each year in each category or by meeting the plan objectives in each category. The council may, upon request by an institution, determine that an employment category has too few positions in order to evaluate continuous progress, and may indicate that the institution has met its annual implementation plan objectives for the year.

Section 6. Automatic Eligibility. (1) An institution shall be eligible for the consideration of a new academic program if:

(a) For Kentucky State University, the institution exhibits continuous progress:

1. In five (5) of seven (7) annual plan implementation objectives established in Sections 3 and 4 of this administrative regulation; or

2. As required by Section 2(4) of this administrative regulation, if substituted by the council in accordance with Section 2(5) of this administrative regulation;

(b) For a community college, the institution exhibits continuous

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progress in three (3) of four (4) annual plan implementation objectives established in Sections 3 and 4 of this administrative regulation; and

(c) For other institutions, an institution exhibits continuous progress in six (6) of the eight (8) annual plan implementation objectives established in Sections 3 and 4 of this administrative regulation.

(2) Automatic eligibility for a new academic program shall be for the calendar year immediately following the certification of eligibility.

(3) Certification of automatic eligibility and for a quantitative or qualitative waiver shall occur prior to the end of each calendar year and shall be reported to the Council on Postsecondary Education and the Committee on Equal Opportunities.]

Section 4.[7-]. Waivers. (1) If an institution is not automatically eligible under Section 3[6] of this administrative regulation [and is eligible for a quantitative or qualitative waiver,] the institution may request a one (1) year waiver [which shall be either:

(a) Quantitative; or

(b) Qualitative].

(2) A waiver request by an institution shall include a resolution submitted to the Council on Postsecondary Education approved by the institution's governing board describing [and shall include either a quantitative or qualitative assessment, as appropriate, of] the institution's efforts to achieve the institution's diversity goals [objectives as set forth in the Kentucky Plan].

(3) A four (4) year [An] institution shall be eligible to receive a [quantitative] waiver if:

(a) A the institution demonstrates continuous progress or meets the goals in five (5) of the eight (8) areas of interest listed in Section 2(2) of the this administrative regulation; or

(b) Where an institution demonstrates continuous progress or meets the goals in less than five (5) of the areas of interest shows in a written report that:

1. Outstanding efforts to achieve diversity were attempted which have not yet proven to be successful; or

2. Extraordinary circumstances precluded success; and

3. How the institution's revised plans for recruitment and retention of a diverse student body, and workforce diversity show promise of future success.

(4) A community college shall be eligible for a waiver if:

(a) The community college demonstrates continuous progress or meets the goals in four (4) of the seven (7) areas of interest listed in Section 2(2) of the this administrative regulation; or

(b) Where a community college has achieved continuous progress or meets the goals in less than four (4) of the areas of interest, the community college shows in a written report that:

1. Outstanding efforts to achieve diversity were attempted which have not yet proven to be successful; or

2. Extraordinary circumstances precluded success; and

3. How the institution's revised plans for recruitment and retention of a diverse student body, and workforce diversity show promise of future success.

(5)]:

(a) For Kentucky State University, the institution exhibits continuous progress:

1. In four (4) of seven (7) annual plan implementation objectives established in Sections 3 and 4 of this administrative regulation; or

2. As required by Section 2(4) of this administrative regulation, if substituted by the council in accordance with Section 2(5) of this administrative regulation;

(b) For a community college, an institution exhibits continuous progress in two (2) of four (4) objectives established in Sections 3 and 4 of this administrative regulation;

(c) For an institution other than Kentucky State University or a community college, if an institution exhibits continuous progress in five (5) of eight (8) annual plan implementation objectives established in Sections 3 and 4 of this administrative regulation.

A qualitative waiver may be approved for the institution failing to meet annual objectives if an institution can demonstrate:

(a) 1. a. Outstanding efforts that were attempted which have not yet proven to be successful; or

2. Extraordinary circumstances that precluded success; and

3. (b) How the institution's revised plans for recruitment and retention of African-American students or employees show promise of future success.

(5) The written request for a qualitative waiver shall include specific and quantifiable aspects of the institution's efforts to meet equal opportunity objectives including:

(a) Commitment of funds to equal opportunity related activities;

(b) Financial aid distribution;

(c) Student services activities;

(d) High school visitations and results;

(e) Academic support services;

(f) Number of interviews granted to African-American applicants for a position;

(g) Offers of employment made that are accepted or rejected;

(h) Utilization of funds to stimulate a unit to improve its employment data;

(i) Special actions for a unit within an institution if additional efforts are required; and

(j) An evaluation of long-range data trends for those objectives that fell below expectations.

(6) An institution's written request for a [qualitative] waiver shall be reviewed by the Council on Postsecondary Education's Committee on Equal Opportunity which shall make a recommendation to the council on whether to grant a [qualitative] waiver.

(6) [(7) The council shall consider an institution's request for a qualitative waiver at a subsequent meeting of the council:

(a) Following submission of the information by the institution in support of its request; and

(b) After a recommendation is forwarded from the Committee on Equal Opportunities.

(8) An institution shall not be eligible for a waiver in consecutive years.

Section 5. Action Following Receipt of Institution Report. The council, or its designee shall upon receipt of an institution's annual report described in Section 3(2) of this administrative regulation:

(1) Review the report in public session;

(2) Recommend, as appropriate, that an institution modify its diversity plan goals; or

(3) Recommend, as appropriate, that an institution modify strategies and activities to better ensure success in meeting goals. [Regardless of the type of waiver.

(9) (a) Except as provided in paragraph (b) of this subsection, an institution that has received a quantitative or qualitative waiver shall submit a new academic program under the waiver provision in the calendar year for which the waiver is granted. An institution's request for a new academic program, advanced under authority of an approved waiver, shall be considered at the next regularly scheduled meeting of the council after an institution has submitted a complete program application.

(b) If the council postpones or delays action on an academic program approval, it may extend the period of consideration of a new academic program.]

Section 6. [8-]. Incorporation by Reference. The Kentucky Public Postsecondary Education Diversity Policy and Framework for Institution Diversity Plan Development [(4) "The 1997-2002 Kentucky Plan for Equal Opportunities in Postsecondary Education", Council on Postsecondary Education,] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, **subject to applicable copyright law**, at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PAUL E. PATTON, Chair

DENNIS L. TAULBEE, General Counsel

APPROVED BY AGENCY: February 3, 2011

FILED WITH LRC: February 11, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2011 at 10:30 a.m. at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Ken-

tucky 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five work-days prior to the hearing, of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments will be accepted until March 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Sherron Jackson, Associate Vice President, Council on Postsecondary Education, 1024 Capital Center Dr. Suite 320, Frankfort, Kentucky 40601, phone (502) 573-1555 ext. 224, fax (502) 573-1535, email sherron.jackson@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sherron Jackson

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets out the requirements for institutions in regard to equal opportunity goals, and establishes the basis for compliance with KRS 164.020(19).

(b) The necessity of this administrative regulation: This administrative regulation because KRS 164.020(19) requires that the Council on Postsecondary Education not approve new academic programs for institutions that fail to meet equal opportunity goals. The statute requires implementation to be through an administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms explicitly to the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The public postsecondary education institutions need information on how the Council on Postsecondary Education will implement KRS 164.020(19) and how they can continue to be eligible to receive approval for new academic programs.

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

(a) How the amendment will change this existing administrative regulation: The Commonwealth of Kentucky has been released from the requirements of a U. S. Department of Education finding that it maintained the vestiges of a de jure segregated system of higher education. The current administrative regulation was designed to assist the Council with its oversight of the required state-wide remedial plan. Now that the Commonwealth has been released by the U. S. Department of Education from further remedial action, the administrative regulation needs to be updated to recognize the standard for equal opportunity goals, a diversity-based effort.

(b) The necessity of the amendment to this administrative regulation: The Commonwealth of Kentucky has been released by the U. S. Department of Education from further remedial efforts in regard to equal opportunity. The administrative regulation needs to be altered to accommodate a diversity-based standard.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms exactly to the authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The public postsecondary education institutions need information on how the Council on Postsecondary Education will implement KRS 164.020(19) and how they can continue to be eligible to receive approval for new academic programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Eight state-supported postsecondary education institutions and the Kentucky Community and Technical College System (KCTCS) are affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative

regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Institutions, by Council policy, are required to develop and implement a campus diversity plan that contains measurable goals. The administrative regulation provides for a means of determining whether an institution qualifies each year for new academic programs.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs are anticipated as a result of the change in the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question 3: the institutions will be in compliance with state law and will be able to develop new academic programs.

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

(a) Initially: Some of the affected institutions currently receive funds that can be applied to the implementation of this regulation. The Council does not anticipate requesting additional state funds to assist in the implementation of this regulation.

(b) On a continuing basis: See (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Institutions have general fund appropriations to assist with implementation of this regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Tiering is not appropriate in these circumstances.

#### 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-supported colleges and universities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.020(19)

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

(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? Institutions have previously received appropriations to implement equal opportunity activities; the Council does not anticipate requesting new funds.

(d) How much will it cost to administer this program for subsequent years? See 4.(c) above.

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

Revenues (+/-): This is a revenue neutral proposal.

Expenditures (+/-):

Other Explanation: N/A

KENTUCKY STATE BOARD OF ELECTIONS  
(Amendment)

**31 KAR 5:010. Use of the federal write-in absentee ballot in elections for federal office.[Absentee voting for military and overseas citizens for runoff primary elections.]**

RELATES TO: KRS 116.055, 117.079, 117.085, 118.025, 118.245, 42 U.S.C. 1973ff-2

STATUTORY AUTHORITY: KRS 117.079, 42 U.S.C. 1973ff-2

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

Section 1. Definitions. (1) "Absent overseas voter" means a resident of Kentucky who is eligible and registered to vote and is a:

(2) "FWAB" means the Federal Write-in Absentee Ballot developed by the Federal Voting Assistance Program. (a) Military personnel serving on active duty outside the United States; or

(b) Other resident of Kentucky residing outside the United States.

Section 2. Any absent overseas voter may cast a ballot by use of the FWAB in any primary, regular, or special election for federal office as long as the voter has made or attempts to make timely application for, and does not receive the state absentee ballot in time to cast a ballot for the election. Any county board of elections that receives a voted FWAB shall assume that the absent overseas voter has made or attempted to make timely application for a state absentee ballot.

Section 3. A FWAB received by the county board of elections shall not be counted if the ballot is submitted from any location in the United States.

Section 4. Completing the FWAB. (1) In completing the FWAB:

(a) The absent overseas voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party, in which case the ballot shall be counted for the candidate of that political party.

(b) In the case of the offices of President and Vice President, a vote for a named candidate or a vote by writing in the name of a political party shall be counted as a vote for the electors supporting the candidate named.

(c) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of the ballot if the intention of the voter can be ascertained.

(d) The requirements of 31 KAR 6:030 are suspended for the purposes of this administrative regulation. [Military personnel serving on active duty outside of the United States and other residents of Kentucky residing outside of the United States who were eligible to vote in the primary election, pursuant to KRS 116.055, may vote in a runoff primary election held pursuant to KRS 118.025, by means of the Federal Write-In Absentee Ballot.

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

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

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

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

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

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

(2) The voter shall:

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

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

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

(d) Return the Federal Write-In Absentee Ballot by mailing it to the county clerk in either of the following:

1. A Federal Write-In Absentee Ballot security envelope, which contains an inner envelope; or

2. If security envelopes are not available, two (2) plain envelopes which contain all of the information on the Federal Write-In Absentee Ballot security envelope may be substituted.

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

Section 3. The county clerk shall send by mail or facsimile machine, not later than the close of business hours seven (7) days before the election, the "Notice and Instructions for Voting in Primary Runoff Election for Military and Kentucky Residents Residing Outside of the United States", SBE 48E, to each voter who has timely submitted an absentee ballot application prior to the primary election in order to provide notice and instructions to voters who are military personnel and Kentucky residents residing outside of the United States of the procedures to follow for voting in a runoff primary election.

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

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

Section 5. Receipt Of State Ballot Overrides FWAB. (1) An absent overseas voter who submits a FWAB and subsequently receives a state absentee ballot may submit the state absentee ballot.

(2) The county board of elections shall not unseal or count the FWAB if the county clerk receives a valid and voted state ballot by 6:00 p.m., prevailing time, on election day.

(3) The county clerk shall mark on the outer envelope of the sealed FWAB the words, "Cancelled because state ballot received."

Section 6. Prohibiting Refusal To Accept Ballot For Failure To Meet Certain Requirements. (1) A county board of elections shall not refuse to accept and process any otherwise valid FWAB submitted in any manner by an absent overseas voter solely on the basis of the following:

(a) Notarization requirements;

(b) Restrictions on paper type, including weight and size; and

(c) Restrictions on envelope type, including weight and size.

Section 7. [5.] Incorporation by Reference. (1) [The following material is incorporated by reference:

(a)] "Federal Write-In Absentee Ballot", Standard Form 186A, October 2005 edition, is incorporated by reference. [40-2005; and

(b) "Notice and Instructions for Voting in Primary Runoff Election for Military and Kentucky Residents Residing Outside of the



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United States", SBE 48E, June 2007 edition.]

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

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

HON. TREY GRAYSON, Chair

HON. JACK CONWAY, Attorney General

APPROVED BY AGENCY: January 18, 2011

FILED WITH LRC: February 1, 2011 at 3 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on March 21, 2011, at 10 a.m. local time at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by March 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 the date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. The Military and Overseas Voter Empowerment Act of 2009 (MOVE), P.L. 111-84, codified at 42 U.S.C. 1973ff-2(a-f), requires that states permit military and overseas voters to use the Federal Write-in Absentee Ballot in all special, primary, and run-off elections, as well as general elections, for federal office. This administrative regulation establishes procedures for the county clerk to receive and the county board of elections to count Federal Write-in Absentee Ballots submitted by absent military and overseas voters.

(b) The necessity of this administrative regulation: This regulation is necessary to further the aims of the UOCAVA, MOVE, KRS 117.079, and 117.085, to preserve the absentee voting rights of military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.079 authorizes the Board to promulgate administrative regulations governing the absentee voting process for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States and this administrative regulation provides an alternative method for the named voters to vote by the Federal Write-in Absentee Ballot in accordance with MOVE.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides an alternate method for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States to vote. Such persons may have little notice of their location on election day or during the days of absentee voting and the regular delays in the mail service make it impractical to follow the normal methods for

absentee voting or to receive a state absentee ballot. The Federal Write-in Absentee Ballot gives these voters another method by which to timely cast a ballot.

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

(a) How the amendment will change the existing administrative regulation: The prior administrative regulation provided a method for military and overseas voters to vote in a potential run-off primary election for Governor. The 2008 General Assembly repealed the run-off primary election laws. This amendment removes the language referring to a run-off primary election and provides an alternate method for absentee military and overseas voters to cast a ballot required by MOVE.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove any references to a run-off primary election and to meet the requirements of the MOVE Act.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by removing references to the run-off primary election for Governor and provides a process by which military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States may vote by use of the Federal Write-in Absentee Ballot as required by MOVE.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide a viable alternative by which military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States can vote by absentee ballot.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All eligible voters who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States and all county clerks and county boards of elections.

(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 county clerks will have to accept the Federal Write-in Absentee Ballot from voters. Voters will need to get access to the Federal Write-in Absentee Ballot, which they may do on the internet, from a U.S. Embassy, or from a military voting assistance officer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not costs associated with the implementation of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The voters will have an alternate method to cast an absentee ballot when the state absentee ballot is delayed or not received by the voter. The county clerks and county boards of elections will have a process by which to accept and count the Federal Write-in Absentee Ballot.

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

(a) Initially: There are not costs associated with this administrative regulation. The Federal Voting Assistance Program develops and prints the Federal Write-in Absentee Ballot and the voters may freely access this form online. The counties will bear no costs associated with accepting these ballots.

(b) On a continuing basis: There are not costs associated with this administrative regulation. The Federal Voting Assistance Program will continue to be responsible for developing and printing the Federal Write-in Absentee Ballot and the voters may freely access this form online. The counties will bear no costs associated with accepting these ballots.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: There are no costs associated with this administrative regulation on the state or local level.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are or will be established by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all citizens.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All county clerks and county boards of elections.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: 42 U.S.C. 1973ff-2 and KRS 117.079.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no costs associated with this administrative regulation. The Federal Voting Assistance Program develops and prints the Federal Write-in Absentee Ballot and the voters may freely access this form online, at a U.S. Embassy, or through a voting assistance officer. The counties will bear no costs associated with accepting these ballots.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this administrative regulation. The Federal Voting Assistance Program develops and prints the Federal Write-in Absentee Ballot and the voters may freely access this form online, at a U.S. Embassy, or through a voting assistance officer. The counties will bear no costs associated with accepting these ballots.

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

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other: None

Explanation: None

### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 1973ff-2, the Military and Overseas Voter Empowerment Act.

(2) State compliance standards: KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General.

(3) Minimum or uniform standards contained in the federal mandate: This administrative regulation implements procedures for Kentucky counties to follow when accepting the Federal Write-in

Absentee Ballot submitted by absent military and overseas voters and provides an alternate method by which absent uniformed services voters and overseas voters may cast a ballot.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

### KENTUCKY REGISTRY OF ELECTION FINANCE (Amendment)

**32 KAR 2:130. Monetary contributions made in a format other than cash, and refunds.**~~[Cash contributions, cashier's checks, and money orders.]~~

RELATES TO: KRS 121.150 ~~[KRS 121.150(4)]~~

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) authorizes the Registry to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. This administrative regulation establishes requirements for monetary contributions made in a format other than by cash, and refunds of contributions.~~[KRS 121.150(4) prohibits a candidate, committee, or contributing organization, or anyone on their behalf, from accepting a cash contribution in excess of \$100. However, that statute does not clearly indicate whether the limitation applies per election, per candidate, or per contribution. Also, KRS Chapter 121 contains no definition of "cashier's check" which creates the potential for a cashier's check which bears no identification of the payor to be utilized as a means of circumventing campaign contribution limits. It is therefore necessary to promulgate this administrative regulation to clarify the application of KRS 121.150(4).]~~

Section 1. (1) If a candidate, slate of candidates, committee, or anyone on their behalf receives a contribution prohibited by the provisions of KRS 121.150, the candidate, slate of candidates, or committee shall have thirty (30) days from the date the contribution is deposited in the campaign account to refund the contribution. A refund made in compliance with subsection (1) of this section shall constitute compliance with the provisions of KRS 121.150. All contributions not otherwise refunded in accordance with subsection (1) of this section shall be considered accepted by the candidate, slate of candidates, or committee, as applicable.~~[The limitation on cash contributions contained in KRS 121.150(4) shall be applied per contributor for each candidate in each primary, special, and regular election.]~~

Section 2. A candidate, slates of candidates, campaign committee,~~[ or contributing organization,]~~ or a person acting on their behalf, shall not accept a monetary contribution in any format~~[a cashier's check or money order]~~ in excess of the maximum cash contribution limit contained in KRS 121.150(4) unless the contribution generates a paper or electronic record that~~[instrument]~~ clearly identifies both the payor and payee.~~[A contribution made by cashier's check or money order which identifies the payor and payee shall be treated as a contribution made by check for purposes of the contribution limits contained in KRS 121.150.]~~

CRAIG C. DILGER, Chairman

APPROVED BY AGENCY: January 31, 2011

FILED WITH LRC: February 7, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2011 at 9:00 a.m. Eastern Time at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing

is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Emily Dennis, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Dennis, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 32 KAR 2:130 to bring it in conformity with current law and to provide candidates, slates of candidates, and committees with guidelines for compliance with KRS 121.150.

(b) The necessity of this administrative regulation: KRS 121.120(1)(g) requires the Registry to promulgate administrative regulations to carry out the provisions of KRS Chapter 121. Amendment to 32 KAR 2:130 is necessary due to changes in KRS 121.150 and technological advances that have resulted in new formats for contributors to securely transfer funds to campaign accounts, for which due diligence review of the contribution prior to deposit in the campaign account by the candidate, slate of candidates, or committee, is not available.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g), as it promulgates an administrative regulation to carry out the provisions of Chapter 121 by providing guidelines for compliance with KRS 121.150 to the regulated community.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the contribution limits set forth in KRS 121.150 by the Registry by providing the regulated community with guidelines for compliance.

(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 substantially updates the existing administrative regulation to conform with KRS 121.150 in its current form. The amendment provides useful compliance guidelines for the regulated community. The amendment clarifies that all contributions in any format exceeding fifty (50) dollars must be accompanied with a record, in either electronic or paper format, identifying the payor and payee. The amendment further clarifies that any contribution received may be refunded within thirty (30) days of deposit in the campaign account. This standard for refund of a contribution in lieu of acceptance is necessary because the term "accept" is not defined in existing law.

(b) The necessity of the amendment to this administrative regulation: Amendment to the administrative regulation is necessary to bring the regulation into conformity with KRS 121.150 in its present form and to provide a uniform standard for refund of a prohibited contribution that may have been deposited in a campaign account but the campaign does not wish to accept.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121.

(d) How the amendment will assist in the effective administration of the statutes: Statewide candidates, slates of candidates, committees, or anyone working on behalf of these regulated entities who accept monetary contributions in any format other than cash will have notice of what information is required for contributions exceeding fifty (50) dollars. Statewide candidates, slates of candidates, committees and anyone working on behalf of these regulated entities will also have a uniform standard for refunding a

contribution in lieu of acceptance. These amendments will greatly assist the regulated community as the formats in which campaign contributions may be made have evolved with technology, making it practically impossible for campaign staff to review every contribution prior to deposit in a campaign account.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All candidates, slates of candidates, and committees required to file reports with the Registry will be affected by this administrative regulation. However, this regulation does not create new requirements.

(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 will be required of the regulated entities. This amendment sets forth compliance and due diligence guidelines that will assist candidates, slates of candidates, and committees in the effective administration of campaign accounts.

(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 regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will greatly benefit due to the establishment of these uniform rules for acceptance of contributions exceeding fifty (50) dollars and the thirty (30) day time period for refund of contributions received in lieu of acceptance.

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

(a) Initially: No additional costs are anticipated to implement this administrative regulation.

(b) On a continuing basis: No costs are anticipated 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: Registry budget funding will be used for implementation and enforcement.

(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 establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all candidates, slates of candidates, and committee.

#### 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? Commonwealth of Kentucky - General Government – Registry of Election Finance

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.120(1)(g), 121.120(4)(k), and 121.150

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

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

will be generated as a result of this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated in the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated in subsequent years.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: N/A

**FINANCE AND ADMINISTRATION CABINET**  
**Department of Revenue**  
**(Amendment)**

**103 KAR 3:010. General administrative forms manual.**

RELATES TO: KRS 42.470, 61.870-61.884, 64.012, 131.010(9), 131.020, 131.030, 131.041, 131.051, 131.061, 131.081, 131.081(2), (9), (15), 131.110, 131.130, 131.130(3), (10), (11), 131.150, 131.155, 131.170, 131.181, 131.183, 131.190, 131.190(1), 131.240, 131.340, 131.500, 131.500(1), (2), (3), (9), (10), 131.510(1), (2)(a), (2)(b), 131.530, 131.540, 132.020, 132.130-132.160, 132.180, 132.190, 132.200, 132.220, 132.227, 132.230, 132.260, 132.270, 132.290, 132.310, 132.320, 132.450, 132.487, 132.510, 132.820, 132.990, 133.045, 133.110, 133.120, 133.130, 133.240, 134.020, 134.390, 134.420, 134.430, 134.440, 134.500, 134.580(4), 134.590, 134.800, 134.805, 134.810, 134.815, 134.820, 134.825, 134.830, 135.010, 135.020, 135.050, 136.020, 136.050, 136.070, 136.071, 136.0704, 136.090, 136.100, 136.115-136.180, 136.1873, 136.310, 136.320, 136.330, 136.335, 136.377, 136.392, 136.545, 136.575, 136.600-136.660, 137.130, 137.160, 138.448, 138.885, 139.185, 139.200, 139.240, 139.330, 139.390, 139.550, 141.0401(5), 141.0401(6), 141.050(4), 141.210, 141.235, 141.340(2), 142.010, 142.050, 142.321, 142.327, 142.357, 143.030(1), 143.037, 143.040, 143.050, 143.060(1), 143.085, 143.990, 143A.010, 143A.030, 143A.035, 143A.037, 143A.080, 143A.090, 143A.100(1), 143A.991, 154.22-050, 154.22-060, 154.22-070, 154.23-010, 154.24-110, 154.24-130, 154.26-090, 154.28-090, 154.34-010, 155.170, 160.613-160.617, 160.6154(3), 205.745, 209.160, 224.01-310(1), 234.321, 234.370, 243.710, 243.720, 243.730, 243.850, 243.884, 248.756(2), 299.530, 304.4-030, 304.11-050, 304.49-220, 351.175, 395.470(3), 413.120

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

Section 1. Administrative - Required Forms. (1) Revenue Form 10A001, "Request to Inspect Public Records", shall be completed by the public to request access to public records specified on the form.

(2) Revenue Form 10A020, "Waiver of Appeal Rights", shall be completed by a taxpayer to reopen an audit that has become final if the taxpayer has failed to timely file a protest with the Department of Revenue.

(3) Revenue Form 10A070, "Authorization Agreement for Electronic Funds Transfer", shall be completed by taxpayers to authorize the Department of Revenue to move funds by electronic means from taxpayer accounts to the Department of Revenue as payment

for taxes.

(4) Revenue Form 10A071, "EFT Bank Change", shall be completed by taxpayers who are registered as EFT ACH Debit filers to notify the department of a bank account change.

(5) Revenue Form 10A100, "Kentucky Tax Registration Application", shall be used by taxpayers to voluntarily apply for tax registration of the following account[taxes]:

(a) Employer's Kentucky withholding tax;

(b) Corporation income tax;

(c) Sales and use tax;

(d) Consumer's use tax;

(e) Motor vehicle tire fee;

(f) Transient room tax;

(g) Limited liability entity tax;

(h) Utility Gross Receipts License tax;

(i) Telecommunications tax;

(j) ~~and~~

(~~h~~) Coal severance and processing tax; and

(k) Coal Seller/Purchaser Certificate ID Number. The application provides the department the necessary information to properly register the taxpayer for all applicable tax accounts, including information such as, the legal business name, federal employer identification number (FEIN), address and other demographic information for the business; as well as the responsible party(ies) information including full name, social security number and residential address of the responsible party(ies).

(6) Revenue Form 10A100-CS, "Kentucky Tax Registration Application", shall be sent by the department's Division of Registration and Data Integrity[registration-compliance section] to non-compliant taxpayers for the taxpayers to use to apply for tax registration of the following account[taxes]:

(a) Employer's Kentucky withholding tax;

(b) Corporation income tax;

(c) Sales and use tax;

(d) Consumer's use tax;

(e) Motor vehicle tire fee;

(f) Transient room tax;

(g) Limited liability entity tax;

(h) Utility Gross Receipts License tax;

(i) ~~and~~

(~~h~~) Coal severance and processing tax; and

(k) Coal Seller/Purchaser Certificate ID Number. The application provides the department the necessary information to properly register the taxpayer for all applicable tax accounts, including such information as, the legal business name, federal employer identification number (FEIN), address and other demographic information for the business; as well as the responsible party(ies) information including full name, social security number and residential address of the responsible party(ies).

(7) Revenue Form 10A100-I, "Instructions for Kentucky Tax Registration Application", shall provide instructions for the proper completion of Revenue Form 10A100, "Kentucky Tax Registration Application", which is used to apply for employer's Kentucky withholding, corporation income, sales and use, consumer's use, motor vehicle tire fee, transient room, limited liability entity, utility gross receipts license, telecommunication, and coal severance and processing tax accounts and the coal seller/purchaser certificate ID number.

(8) Revenue Form 10A100-CS(I), "Instructions for Kentucky Tax Registration Application", shall provide instructions for the proper completion of Revenue Form 10A100-CS, "Kentucky Tax Registration Application", which is used to apply for employer's Kentucky withholding, corporation income, sales and use, consumer's use, motor vehicle tire fee, transient room, limited liability entity, utility gross receipts license, telecommunications, and coal severance and processing tax accounts and the coal seller/purchaser certificate ID number.

(9) Revenue Form 10A104, "Update or Cancellation of Kentucky Tax Account(s)", shall be used by the taxpayer to update business information or to cancel accounts for the following taxes:

(a) Employer's Kentucky withholding tax;

(b) Corporation income tax;

(c) Sales and use tax;

(d) Consumer's use tax;

- (e) Motor vehicle tire fee;
- (f) Transient room tax;
- (g) Limited liability entity tax;
- (h) Utility Gross Receipts License tax;
- (i) Telecommunications tax; and
- (j) Coal severance and processing tax. The update form provides the department the necessary information to properly update and maintain demographic information of the business for all applicable tax accounts, including information such as, the legal business name, federal employer identification number (FEIN), address and other demographic information for the business; as well as the responsible party(ies) information including full name, social security number and residential address of the responsible party(ies).

(10) Revenue Form 10A104-I, "Instructions Update or Cancellation of Kentucky Tax Account(s)", shall provide instructions for the proper completion of Revenue Form 10A104.

(11) Revenue Form 10A106, "Appointment of Taxpayer Administrator and Authorized Users for Kentucky Online Tax", shall be used to establish a taxpayer administrator and authorized users for use of the Kentucky Online Tax System.

(12)(99) Revenue Form 10F060, "Electronic Funds Transfer Program: ACH Credit Guide", shall provide information on the specific requirements of the Department of Revenue's Credit Method of tax remittance for the Electronic Funds Transfer Program.

(13)(40) Revenue Form 10F061, "Electronic Funds Transfer Program: Debit Guide", shall provide instructions to the taxpayer on how to authorize the Department of Revenue to electronically debit a taxpayer controlled account in an Automated Clearing House participating financial institution for the amount which the taxpayer reports to the state's data collection service.

(14)(44) Revenue Form 10F100, "Your Rights As a Kentucky Taxpayer", shall provide the public with information describing taxpayer rights provided by KRS Chapters 131, 133 and 134.

(15)(42) Revenue Form 12A012, "Receipt of Seized Property", shall be presented for execution to the taxpayer receiving returned property from the Kentucky Department of Revenue that was previously seized for failure to pay taxes in order to establish documentation that the property was returned to the taxpayer.

(16)(43) Revenue Form 12A018, "Kentucky Department of Revenue Offer in Settlement Application", shall be presented for execution to persons requesting to settle their tax liabilities for less than the delinquent tax liability based upon doubt as to collectability or doubt as to liability.

(17)(44) Revenue Form 12A104, "Notice of Seizure", shall be presented to the owner or officer of the entity from which the Kentucky Department of Revenue is seizing property for failure to pay taxes owed to the Commonwealth.

(18)(45) Revenue Form 12A107, "Notice of Sale", shall be presented to the owner of seized property, the newspaper with the highest circulation for that area, and posted at the courthouse, at three (3) other public places within the county, and where the seizure was made, for the purpose of notifying the property owner, and advertising to the public the sale of the seized property.

(19)(46) Revenue Form 12A109-1, "Release of Bank Levy", shall be presented to the bank on which the levy was served for the purpose of releasing the seized property.

(20)(47) Revenue Form 12A109-2, "Release of Levy", shall be presented to the party on which the levy was served for the purpose of releasing the seized property.

(21)(48) Revenue Form 12A109-3, "Release of Levy", shall be presented to the party on which the levy was served for the purpose of releasing the seized property related to child support.

(22)(49) Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", shall be presented to an employer for the purpose of releasing a wage levy.

(23)(20) Revenue Form 12A110-1, "Release of Levy on Wages, Salary, and Other Income", shall be presented to an employer for the purpose of releasing a wage levy related to child support.

(24)(24) Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", shall be presented to anyone who makes a proper application for a lien release on a specific piece of property if the Department of Revenue's lien attaches no equity or if the equity that the lien encumbers is paid to the Department of Revenue.

(25)(22) Revenue Form 12A501, "Certificate of Subordination of Kentucky Finance and Administration Tax Lien", shall be presented to anyone who makes proper application requesting that the Department of Revenue subordinate its lien position to a new mortgage and demonstrates that the subordination is in the Commonwealth's best interest.

(26)(23) Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Tax Lien", shall be presented to anyone who requests to have the Department of Revenue subordinate its lien position to a new mortgage.

(27)(24) Revenue Form 12A503, "Application for Specific Lien Release", shall be presented to anyone who requests that the Department of Revenue release its tax lien so that a specific piece of property can be sold.

(28)(25) Revenue Form 12A504, "Personal Assessment of Corporate Officer or LLC Manager", shall be presented to a corporate officer for the purpose of establishing responsibility of payment of trust taxes owed to the Commonwealth.

(29)(26) Revenue Form 12A505, "Waiver Extending Statutory Period of Assessment of Corporate Officer or LLC Manager", shall be presented to the corporate officers or LLC managers for the purpose of entering into a payment agreement to pay the trust taxes owed to the Commonwealth, and the terms of the payment agreement shall extend past the statutory period for assessing responsible corporate officers or LLC managers.

(30)(27) Revenue Form 12A506, "Waiver Extending Statutory Period for Collection", shall be presented to the taxpayer for the purpose of extending the period in which the liability can be collected.

(31)(28) Revenue Form 12A507, "Table for Figuring the Amount Exempt From Levy on Wages, Salary, and Other Income", shall be presented to employers with a wage levy on an employee for the purpose of calculating the dollar amount of wages due to the employee.

(32)(29) Revenue Form 12A508-1, "Notice of Tax Due", shall be presented for the purpose of assessing an officer of a corporation who is personally liable for trust taxes owed to the Commonwealth.

(33)(30) Revenue Form 12A508-2, "Notice of Tax Due", shall be presented for the purpose of assessing an officer of a corporation who is personally liable for Gasoline and Special Fuels taxes owed to the Commonwealth.

(34)(34) Revenue Form 12A508-3, "Notice of Tax Due", shall be presented for the purpose of assessing a manager or partner of a limited liability company who is personally liable for trust taxes owed to the Commonwealth.

(35)(32) Revenue Form 12A508-4, "Notice of Tax Due", shall be presented for the purpose of assessing a manager or partner of a limited liability company who is personally liable for Gasoline and Special Fuels taxes owed to the Commonwealth.

(36)(33) Revenue Form 12A514, "Questionnaire for Persons Relative to a Notice of Assessment", shall be presented to an officer of a corporation for the purpose of resolving responsibility of the trust taxes owed to the Commonwealth.

(37)(34) Revenue Form 12A517, "Notice of Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(38)(35) Revenue Form 12A517-1, "Notice of Child Support Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(39)(36) Revenue Form 12A518, "Certificate of Release of Lien", shall be presented to the county clerk and to the taxpayer against whom the tax lien is filed for the purpose of releasing the lien and notifying the taxpayer of the release.

(40)(37) Revenue Form 12A518-1, "Certificate of Release of Child Support Lien", shall be presented to the county clerk and to the taxpayer against whom the child support lien is filed for the purpose of releasing the lien and notifying the obligor of the release.

(41)(38) Revenue Form 12A638, "Statement of Financial

Condition for Individuals", shall be presented to individuals requesting to make payments or settle their tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(42)(39) Revenue Form 12A638(I), "Instructions for Completing Statement of Financial Condition for Individuals", shall provide instructions for completing Revenue Form 12A638.

(43)(40) Revenue Form 12A639, "Statement of Financial Condition for Businesses", shall be presented to business owners requesting to make payments or settle a tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(44)(41) Revenue Form 12A639(I), "Instructions for Completing Statement of Financial Condition for Businesses", shall provide instructions for completing Revenue Form 12A639.

(45)(42) Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", shall be presented to employers for the purpose of levying wages from an employee who owes taxes to the Kentucky Department of Revenue.

(46)(43) Revenue Form 12B019-1, "Notice of Levy on Wages, Salary, and Other Income", shall be presented to employers for the purpose of levying wages from an employee who owes child support.

(47)(44) Revenue Form 12B020, "Notice of Levy", shall be presented to banks for the purpose of levying bank accounts of taxpayers who owe taxes to the Kentucky Department of Revenue.

(48)(45) Revenue Form 12B020-2, "Notice of Levy", shall be presented to banks for the purpose of levying bank accounts of obligors who owe child support.

(49)(46) Revenue Form 21A020, "Request for Copy of Tax Refund Check", shall be completed and submitted to the Department of Revenue in order to obtain a copy of a cashed refund check.

(50)(47) Revenue Form 30A005, "Temporary Vendor's Sales Tax Permit", shall be presented to temporary and transient vendors who do not have a permanent place of business for the purpose of remitting tax on a non-permit on-permit basis, as required by 103 KAR 25:060.

(51)(48) Revenue Form 30A006, "Temporary Vendor Sales and Use Tax Return/Processing Document", shall be used to register temporary vendors who do business in the Commonwealth of Kentucky.

(52)(49) Revenue Form 30A872, "Record of Money Receipt Issued", shall be used by Department of Revenue field personnel to provide written documentation of acceptance of cash payments.

(53)(50) Revenue Form 31A001, "Vendor Contact Authorization", shall be used by a Department of Revenue representative to obtain permission from a taxpayer to contact his vendors concerning the issuance of exemption certificates.

(54)(51) Revenue Form 31A004, "Auditor Record of Money Receipt Issued", shall be used by the auditor to acknowledge payment from taxpayers of taxes determined to be tentatively due at the time of an audit.

(55)(52) Revenue Form 31A011-ASH, "Taxpayer Data Questionnaire", shall be used by auditors at the Ashland Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(56)(53) Revenue Form 31A011-BG, "Taxpayer Data Questionnaire", shall be used by auditors at the Bowling Green Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(57)(54) Revenue Form 31A011-CKY, "Taxpayer Data Questionnaire", shall be used by auditors at the Central Kentucky Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(58)(55) Revenue Form 31A011-COR, "Taxpayer Data Questionnaire", shall be used by auditors at the Corbin Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(59)(56) Revenue Form 31A011-HOP, "Taxpayer Data Questionnaire", shall be used by auditors at the Hopkinsville Taxpayer Service Center to gather information regarding a taxpayer's capa-

bility to provide electronic data as requested under KRS 131.240.

(60)(57) Revenue Form 31A011-LOU, "Taxpayer Data Questionnaire", shall be used by auditors at the Louisville Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(61)(58) Revenue Form 31A011-NKY, "Taxpayer Data Questionnaire", shall be used by auditors at the Northern Kentucky Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(62)(59) Revenue Form 31A011-OWEN, "Taxpayer Data Questionnaire", shall be used by auditors at the Owensboro Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(63)(60) Revenue Form 31A011-PAD, "Taxpayer Data Questionnaire", shall be used by auditors at the Paducah Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(64)(61) Revenue Form 31A011-PIKE, "Taxpayer Data Questionnaire", shall be used by auditors at the Pikeville Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(65)(62) Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Ohio and Indiana.

(66)(63) Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Virginia and West Virginia.

(67)(64) Revenue Form 31A020, "Office of Field Operations Request for Copy of Tax Return(s)", shall be used by Department of Revenue representatives to obtain permission from a taxpayer to release tax returns.

(68)(65) Revenue Form 31A050, "Electronic Transmittal Authorization", shall be used by auditors to seek permission from a taxpayer to transmit audit results electronically.

(69)(66) Revenue Form 31A115, "Agreement Fixing Test Periods", shall be used by auditors to establish certain test periods when conducting an audit.

(70)(67) Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain sales, use or severance tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(71)(68) Revenue Form 31A150, "Agreement Fixing Period of Limitation Upon Assessment of Utility Gross Receipts License Tax", shall be used by auditors to establish taxable periods to be held open for audit and date of assessment.

(72)(69) Revenue Form 31A685, "Authorization to Examine Bank Records", shall be used by the Department of Revenue to obtain permission from a taxpayer to examine records in connection with transactions at the taxpayer's bank.

(73)(70) Revenue Form 31A725, "Statute of Limitations Agreement", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain income tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(74)(71) Revenue Form 31F006, "Southeastern States Information Exchange Program", shall be used to provide information to taxpayers concerning the information exchange program between the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Virginia, and West Virginia.

(75)(72) Revenue Form 31F010, "Kentucky's Computer Assisted Audit Program Brochure", shall be used as instructions for taxpayers who submit tax records in an electronic format.

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Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Revenue Form 10A001, "Request to Inspect Public Records", February 1997;

(b) Revenue Form 10A020, "Waiver of Appeal Rights", January 2001;

(c) Revenue Form 10A070, "Authorization Agreement for Electronic Funds Transfer", January 2008;

(d) Revenue Form 10A071, "EFT Bank Change", June[-] 2009;

(e) Revenue Form 10A100, "Kentucky Tax Registration Application", July 2010~~[April 2009]~~;

(f) Revenue Form 10A100-CS, "Kentucky Tax Registration Application", July 2010~~[April 2009]~~;

(g) Revenue Form 10A100-I, "Instructions for Kentucky Tax Registration Application", January 2011~~[April 2009]~~;

(h) Revenue Form 10A100-CS(I), "Instructions for Kentucky Tax Registration Application", January 2011;

(i) Revenue Form 10A104, "Update of Cancellation of Kentucky Tax Account(s)", July 2010;

(j) Revenue Form 10A104-I, "Instructions for Update or Cancellation of Kentucky Tax Account(s)", July 2010;

(k) Revenue Form 10A106, "Appointment of Taxpayer Administrator and Authorized Users for Kentucky Online Tax System", May 2010~~[April 2009]~~;

(l)~~[(k)]~~ Revenue Form 10F060, "Electronic Funds Transfer Program: ACH Credit Guide", April 2006;

(m)~~[(l)]~~ Revenue Form 10F061, "Electronic Funds Transfer Program: Debit Guide", December 2008;

(n)~~[(k)]~~ Revenue Form 10F100, "Your Rights as a Kentucky Taxpayer", October 2010~~[September 2008]~~;

(o)~~[(h)]~~ Revenue Form 12A012, "Receipt of Seized Property", November 2006;

(p)~~[(m)]~~ Revenue Form 12A018, "Kentucky Department of Revenue Offer in Settlement Application", March 2009;

(q)~~[(n)]~~ Revenue Form 12A104, "Notice of Seizure", October 1982;

(r)~~[(e)]~~ Revenue Form 12A107, "Notice of Sale", January 2000;

(s)~~[(p)]~~ Revenue Form 12A109-1, "Release of Bank Levy", September 2004;

(t)~~[(q)]~~ Revenue Form 12A109-2, "Release of Levy", January 2000;

(u)~~[(r)]~~ Revenue Form 12A109-3, "Release of Levy", January 2008;

(v)~~[(e)]~~ Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", September 2004;

(w)~~[(t)]~~ Revenue Form 12A110-1, "Release of Levy on Wages, Salary, and Other Income", January 2008;

(x)~~[(u)]~~ Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", June 2006;

(y)~~[(v)]~~ Revenue Form 12A501, "Certificate of Subordination of Kentucky Finance and Administration Tax Lien", June 2006;

(z)~~[(w)]~~ Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Tax Lien", October 2006;

(aa)~~[(x)]~~ Revenue Form 12A503, "Application for Specific Lien Release", October 2006;

(bb)~~[(y)]~~ Revenue Form 12A504, "Personal Assessment of Corporate Officer or LLC Manager", June 2003;

(cc)~~[(z)]~~ Revenue Form 12A505, "Waiver Extending Statutory Period of Assessment of Corporate Officer or LLC Manager", June 2003;

(dd)~~[(aa)]~~ Revenue Form 12A506, "Waiver Extending Statutory Period for Collection", June 2003;

(ee)~~[(bb)]~~ Revenue Form 12A507, "Table for Figuring the Amount Exempt from Levy on Wages, Salary, and Other Income", November 2006;

(ff)~~[(cc)]~~ Revenue Form 12A508-1, "Notice of Tax Due", January 2008;

(gg)~~[(dd)]~~ Revenue Form 12A508-2, "Notice of Tax Due", January 2008;

(hh)~~[(ee)]~~ Revenue Form 12A508-3, "Notice of Tax Due", November 2008;

(ii)~~[(ff)]~~ Revenue Form 12A508-4, "Notice of Tax Due", November 2008;

(jj)~~[(gg)]~~ Revenue Form 12A514, "Questionnaire for Persons

Relative to a Notice of Assessment", August, 1996;

(kk)~~[(hh)]~~ Revenue Form 12A517, "Notice of Lien", November 2008;

(ll)~~[(i)]~~ Revenue Form 12A517-1, "Notice of Child Support Lien", November 2008;

(mm)~~[(jj)]~~ Revenue Form 12A518, "Certificate of Release of Lien", November 2008;

(nn)~~[(kk)]~~ Revenue Form 12A518-1, "Certificate of Release of Child Support Lien", January 2008;

(oo)~~[(ll)]~~ Revenue Form 12A638, "Statement of Financial Condition for Individuals", July 2004;

(pp)~~[(mm)]~~ Revenue Form 12A639, "Statement of Financial Condition for Businesses", August 2004;

(qq)~~[(nn)]~~ Revenue Form 12A639(I), "Instructions for Completing Statement of Financial Condition for Businesses", August 2004;

(rr)~~[(pp)]~~ Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", September 2004;

(ss)~~[(qq)]~~ Revenue Form 12B019-1, "Notice of Levy on Wages, Salary, and Other Income", January 2008;

(tt)~~[(rr)]~~ Revenue Form 12B020, "Notice of Levy", September 2004;

(uu)~~[(ss)]~~ Revenue Form 12B020-2, "Notice of Levy", January 2008;

(vv)~~[(tt)]~~ Revenue Form 21A020, "Request for Copy of Tax Refund Check", October 2006;

(ww)~~[(uu)]~~ Revenue Form 30A005, "Temporary Vendor's Sales Tax Permit", September 1998;

(xx)~~[(vv)]~~ Revenue Form 30A006, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2006;

(yy)~~[(ww)]~~ Revenue Form 30A872, "Record of Money Receipt Issued", February 2008;

(zz)~~[(xx)]~~ Revenue Form 31A001, "Vendor Contact Authorization", July 2006;

(aaa)~~[(yy)]~~ Revenue Form 31A004, "Auditor Record of Money Receipt Issued", July 2006;

(bbb)~~[(zz)]~~ Revenue Form 31A011-ASH, "Taxpayer Data Questionnaire", March 2009;

(ccc)~~[(aaa)]~~ Revenue Form 31A011-BG, "Taxpayer Data Questionnaire", March 2009;

(ddd)~~[(bbb)]~~ Revenue Form 31A011-CKY, "Taxpayer Data Questionnaire", March 2009;

(eee)~~[(ccc)]~~ Revenue Form 31A011-COR, "Taxpayer Data Questionnaire", March 2009;

(fff)~~[(ddd)]~~ Revenue Form 31A011-HOP, "Taxpayer Data Questionnaire", March 2009;

(ggg)~~[(eee)]~~ Revenue Form 31A011-LOU, "Taxpayer Data Questionnaire", March 2009;

(hhh)~~[(fff)]~~ Revenue Form 31A011-NKY, "Taxpayer Data Questionnaire", March 2009;

(iii)~~[(ggg)]~~ Revenue Form 31A011-OWEN, "Taxpayer Data Questionnaire", March 2009;

(jjj)~~[(hhh)]~~ Revenue Form 31A011-PAD, "Taxpayer Data Questionnaire", March 2009;

(kkk)~~[(iii)]~~ Revenue Form 31A011-PIKE, "Taxpayer Data Questionnaire", March 2009;

(lll)~~[(jjj)]~~ Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", July 2006;

(mmm)~~[(kkk)]~~ Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", July 2006;

(nnn)~~[(lll)]~~ Revenue Form 31A020, "Office of Field Operations Request for Copy of Tax Return(s)", July 2006;

(ooo)~~[(mmm)]~~ Revenue Form 31A050, "Electronic Transmittal Authorization", April 2008;

(ppp)~~[(nnn)]~~ Revenue Form 31A115, "Agreement Fixing Test Periods", April 2008;

(qqq)~~[(ooo)]~~ Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", July 2006;

(rrr)~~[(ppp)]~~ Revenue Form 31A150, "Agreement Fixing Period of Limitation Upon Assessment of Utility Gross Receipts License Tax", May 2008;

(sss)~~[(qqq)]~~ Revenue Form 31A685, "Authorization to Examine Bank Records", May 1985;

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(ttt)(~~rrr~~) Revenue Form 31A725, "Statute of Limitations Agreement", July 2006;

(uuu)(~~sss~~) Revenue Form 31F006, "Southeastern States Information Exchange Program", February 2005; and

(vvv)(~~ttt~~) Revenue Form 31F010, "Kentucky's Computer Assisted Audit Program Brochure", ~~May 2010~~ June 2006.

(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 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGNECY: February 3, 2011

FILED WITH LRC: February 7, 2011 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 24th, 2011, from 10 a.m.-12 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 by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Department of Revenue to meet the requirements of KRS Chapter 13A.110 which requires that forms required to be submitted by a regulated entity shall be included in an administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the required revenue forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

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

(a) How the amendment will change this existing administrative regulation: This amendment corrects the existing regulation to add new or update existing Department of Revenue forms.

(b) The necessity of the amendment to this administrative regulation: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. Any addition of new forms or a change

to existing forms must result in an amendment of the associated regulation to keep it current.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of the tax laws.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide taxpayers with the current version of the forms listed herein.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky taxpayers and their representatives will be affected by the listing of all forms administered by the Department of Revenue in an administrative regulation. Local government will be affected to the extent they utilize forms administered by the Department of Revenue. The Department of Revenue will be affected to the extent that it administers the referenced forms.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions will have to be taken by the taxpayers or local governments to comply with this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Access to current forms and instructions will enable taxpayers to comply with tax laws.

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

(a) Initially: The Department of Revenue will not incur additional costs as the result of this regulation.

(b) On a continuing basis: The Department of Revenue will not incur additional costs as the result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because the requirements of this regulation apply to every taxpayer.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Revenue 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(3)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expenditures or revenue for the Commonwealth or local government agency.

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



fire departments, or school districts) for the first year? None.

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

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

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## FINANCE AND ADMINISTRATION CABINET

### Department of Revenue Office of Property Valuation (Amendment)

#### 103 KAR 3:030. Property and Severance Forms manual.

RELATES TO: KRS 42.470, 61.870-61.884, 131.020, 131.030, 131.041-131.081, 131.081(2), (9), (15), 131.110, 131.130, 131.130(3), 131.155, 131.181, 131.183, 131.190, 131.340, 131.500, 131.500(1), (2), (3), (10), 131.510(1), (2)(a), 131.540, 132.020, 132.130-132.180, 132.190, 132.200, 132.220-132.270, 132.290, 132.310, 132.320, 132.360, 132.450, 132.487, 132.510, 132.820, 132.825, 132.990, 133.045, 133.110, 133.120, 133.130, 133.240, 134.015, 134.119, 134.020, 134.122, 134.128, 134.129, 134.390, 134.420, 134.430, 134.440, 134.500, 134.590, 134.800, 134.805, 134.810, 134.815, 134.820, 134.825, 134.830, 135.010, 135.020, 135.050, 136.020, 136.050, 136.115-136.180, 136.1802-136.1806, 136.1873, 136.310, 136.320, 136.330, 136.335, 136.377, 136.545, 136.575, 136.600-136.660, 137.130, 137.160, 143.030(1), 143.037, 143.040, 143.050, 143.060(1), 143.085, 143.990, 143A.010, 143A.030, 143A.035, 143A.037, 143A.080, 143A.090, 143A.100(1), 143A.991, Ky. Const. Sec. 170

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the administration of Property and Severance Taxes by the Department of Revenue.

Section 1. Property Tax - Required Forms. (1) Revenue Form 61A200(P), "Property Tax Forms and Instructions for Public Service Companies ~~2011~~2049", shall be the packet of files and instructions relating to Revenue Form 61A200 for use by public service companies reporting company name, location and other pertinent filing information with the Department of Revenue.

(2) Revenue Form 61A200, "Public Service Company Property Tax Return for Year Ending December 31, ~~2010~~2099", shall be filed by public service companies reporting company name, location, and other pertinent filing information with the Department of Revenue.

(3) Revenue Form 61A200(A), "Report of Total Unit System and Kentucky Operations", shall be filed by public service companies with the Department of Revenue, reporting the System and Kentucky original cost, total depreciation and depreciated cost for all operating and nonoperating property types as of the end of the taxable year.

(4) Revenue Form 61A200(B), "Report of Kentucky Vehicles, Car Lines and Watercraft", shall be filed by public service companies with the Department of Revenue, reporting the assessed value of all Kentucky apportioned and regular licensed motor vehicles, railroad car lines and commercial watercraft as of the end of the year.

(5) Revenue Form 61A200(C), "Report of Total Unit Operations Balance Sheet", shall be filed by public service companies with the Department of Revenue, reporting a financial statement (balance

sheet) as of December 31 for the system operating unit including Kentucky.

(6) Revenue Form 61A200(D), "Report of Total Unit Operations Income Statement", shall be filed by public service companies with the Department of Revenue, reporting a financial statement (income statement) for twelve (12) months ending December 31 for the system operating unit including Kentucky.

(7) Revenue Form 61A200(E), "Filing Extension Application", shall be used by public service companies to request an extension of time to file the public service company tax return.

(8) Revenue Form 61A200(G), "Report of Capital Stocks", shall be filed by public service companies with the Department of Revenue, reporting an analysis of their capital stocks as of the end of the taxable year.

(9) Revenue Form 61A200(H), "Report of Funded Debt", shall be filed by public service companies with the Department of Revenue reporting an analysis of their debt as of the end of the taxable year.

(10) Revenue Form 61A200(I), "Business Summary by Taxing Jurisdiction", shall be filed by public service companies with the Department of Revenue, reporting a summary of the business activity within each taxing district.

(11) Revenue Form 61A200(J), "Property Summary by Taxing Jurisdiction, Operating and Nonoperating Property", shall be filed by public service companies with the Department of Revenue reporting a summary of the amount of operating and nonoperating property owned or leased in this state, by each county, city and special district.

(12) Revenue Form 61A200(K), "Operating Property Listing by Taxing Jurisdiction", shall be filed by public service companies with the Department of Revenue, reporting an inventory of the amount and kind of operating property, owned or leased, located in this state, for each county, city and special taxing district.

(13) Revenue Form 61A200(K2), "Nonoperating/Nonutility Property Listing by Taxing Jurisdiction", shall be filed by public service companies with the Department of Revenue reporting an inventory of the amount and kind of nonoperating property owned or leased, located in this state, for each county, city and special taxing district.

(14) Revenue Form 61A200(L), "Report of Allocation Factors, Operating and Noncarrier Property for All Interstate Companies", shall be filed by interstate, noncarrier, public service companies with the Department of Revenue, reporting property and business factors in total and for the state of Kentucky.

(15) Revenue Form 61A200(M), "Report of Property and Business Factors for Interstate Railroad and Sleeping Car Companies", shall be filed by interstate railroad and sleeping car companies with the Department of Revenue, reporting property and business factors in total and for the state of Kentucky.

(16) Revenue Form 61A200(N1), "Report of Operating Leased Real Property Located in Kentucky By Taxing District", shall be filed by public service companies with the Department of Revenue, reporting all leased real property and the terms of the lease by taxing district.

(17) Revenue Form 61A200(N2), "Report of Operating Leased Personal Property Located in Kentucky By Taxing District", shall be filed by public service companies with the Department of Revenue, reporting all leased personal property and the terms of the lease by taxing district.

(18) Revenue Form 61A200(N3), "Summary Report of System and Kentucky Operating Lease Payments", shall be filed by public service companies with the Department of Revenue reporting the annual operating lease payments paid during the calendar year.

(19) Revenue Form 61A200(O), "Railroad Private Car Mileage Report", shall be filed by railroad car line companies with the Department of Revenue reporting the name and address of the company and the mileage in Kentucky.

(20) Revenue Form 61A200(Q), "Supplemental Report of Operations for Contained and Residential Landfills", shall be filed by landfills with the Department of Revenue, reporting historic, current, and projected operational information.

(21) Revenue Form 61A200(R), "Report of Property Subject to the Pollution Control Tax Exemption", shall be filed by public service companies with the Department of Revenue, reporting certi-

fied pollution control equipment, the original cost and the net book value.

(22) Revenue Form 61A200(U), "Industrial Revenue Bond Property", shall be filed by a public service company to list real and tangible personal property purchased with an industrial revenue bond.

(23) Revenue Form 61A202, "~~2011~~[2040] Public Service Company Property Tax Return for Railroad Car Line", shall be filed by railroad car line companies with the Department of Revenue, classifying the railcars by type and reporting cost, age, and mileage for each railcar.

(24) Revenue Form 61A206(P), "Public Service Company Property Tax Forms and Instructions for Commercial Air Passenger and Air Freight Carriers ~~2011~~[2040]", shall be the packet of files and instructions relating to Revenue Form 61A206 for use by commercial air passenger and air freight carriers reporting company name, location, and other pertinent information with the Department of Revenue.

(25) Revenue Form 61A206, "Public Service Company Property Tax Return For Commercial Air Passenger and Air Freight Carriers", shall be filed by all commercial air passenger and air freight carriers reporting taxpayer name, location, and other pertinent information with the Department of Revenue.

(26) Revenue Form 61A206(A), "Filing Extension Application for Public Service Company Property Tax Return", shall be used by commercial air passenger and air freight carriers to request an extension of time to file the commercial air passenger and air freight carriers tax return.

(27) Revenue Form 61A206(B), "Report of Kentucky Registered and Licensed Motor Vehicles", shall be filed by commercial air passenger and air freight carriers to report vehicles, both owned and leased, registered within the state of Kentucky as of December 31.

(28) Revenue Form 61A206(C), "Report of Financial Operations for Commercial Air Passenger and Air Freight Carriers", shall be used by all commercial, passenger, or cargo airlines conducting business in Kentucky to provide the Department of Revenue with year-end financial statements, a complete annual report, and a complete 10K report (FCC annual report) for the twelve (12) month period ending December 31.

(29) Revenue Form 61A206(D-1), "Report of System Aircraft Fleet", shall be filed by commercial air passenger and air freight carriers providing a complete listing of fleet aircraft owned and capital-leased as of December 31.

(30) Revenue Form 61A206(D-2), "Report of System Aircraft Fleet", shall be filed by commercial air passenger and air freight carriers providing a complete listing of operating leased fleet aircraft.

(31) Revenue Form 61A206(D-3), "Report of System Aircraft Fleet", shall be filed by all commercial air passenger and air freight carriers providing a complete listing of all fleet managed aircraft and aircraft held for resale or nonoperating.

(32) Revenue Form 61A206(E), "Report of Kentucky Flight Statistics By Airport", shall be filed by all commercial air passenger and air freight carriers providing a listing of all arrivals, departures, and ground time at all Kentucky airports and heliports.

(33) Revenue Form 61A206(F), "Report of System and Kentucky Allocation Factors", shall be filed by all commercial air passenger and air freight carriers listing property factors and business factors.

(34) Revenue Form 61A206(G), "Report of Funded Debt", shall be filed by all commercial air passenger and air freight carriers listing all debt obligations, both long term and short term, by class and obligation.

(35) Revenue Form 61A206(H), "Report of Operating Leased Real Property Located in Kentucky By Taxing District", shall be filed by all commercial air passenger and air freight carriers listing all real property in Kentucky leased on an operating lease basis.

(36) Revenue Form 61A206(I), "Report of Operating Leased Personal Property Located in Kentucky By Taxing District", shall be filed by all commercial air passenger and air freight carriers listing all personal property in Kentucky leased on an operating lease basis.

(37) Revenue Form 61A206(J), "Summary Report of System

and Kentucky Operating Lease Payments", shall be filed by all commercial air passenger and air freight carriers listing all annual operating lease payments.

(38) Revenue Form 61A206(K), "Report of Owned Real Property Located in Kentucky By Taxing District", shall be filed by all commercial air passenger and air freight carriers listing all real property owned in Kentucky.

(39) Revenue Form 61A206(L), "Report of Owned Personal Property Located in Kentucky By Taxing District", shall be filed by all commercial air passenger and air freight carriers listing all personal property owned in Kentucky.

(40) Revenue Form 61A206(M), "Summary Report of Total System and Kentucky Operations", shall be filed by all commercial air passenger and air freight carriers listing all real and personal property owned and leased, providing the original cost, depreciation, and depreciated cost values.

(41) Revenue Form 61A206(N), "Industrial Revenue Bond Property", shall be filed by all commercial air passenger and air freight carriers listing real and tangible property purchased with an industrial revenue bond.

(42) Revenue Form 61A206(O), "Public Service Company Sales", shall be filed by commercial air passenger and air freight carriers listing any assets bought or sold during the year.

(43) Revenue Form 61A207(P), "Commercial Watercraft Personal Property Tax Return 2010", shall be the packet of files and instructions relating to Revenue Form 61A207 for use by commercial watercraft owners both resident and nonresident, reporting the watercraft's book value, original cost and total and Kentucky route mileage with the Department of Revenue.

(44) Revenue Form 61A207, "~~2011~~[2040] Commercial Watercraft Personal Property Tax Return", shall be filed by all commercial watercraft owners, both resident and nonresident, reporting the watercraft's book value, original cost, and total and Kentucky route mileage with the Department of Revenue.

(45) Revenue Form 61A207(A), "Report of Owned Vessels in Your Possession", shall be filed with the Department of Revenue, reporting all owned vessels (both available and operating) in their fleet as of January 1, ~~2011~~[2040].

(46) Revenue Form 61A207(B), "Report of Owned Vessels - in Possession of Others", shall be filed with the Department of Revenue, reporting all owned vessels that are in possession of other persons, companies, corporations, operators, or charterers as of January 1, ~~2011~~[2040].

(47) Revenue Form 61A207(C), "Report of Nonowned Vessels in Your Possession", shall be filed with the Department of Revenue, reporting all nonowned vessels (both available and operating) in their fleet as of January 1, ~~2011~~[2040].

(48) Revenue Form 61A207(D), "Commercial Watercraft Valuation Worksheet", shall be filed with the Department of Revenue, reporting the original cost, cost of rebuilds and the cost of major improvements of all owned and nonowned vessels.

(49) Revenue Form 61A207(E), "Report of Kentucky Route Miles", shall be filed with the Department of Revenue reporting the system route miles traveled on Kentucky waterways.

(50) Revenue Form 61A207(F), "Report of System Route Miles", shall be filed with the Department of Revenue reporting the system route miles traveled on United States waterways.

(51) Revenue Form 61A209, "Public Service Company Sales", shall be filed by public service companies with the Department of Revenue, reporting any full or partial sale or purchase of assets of the public service company.

(52) Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Situs", shall be filed by public service companies with the Department of Revenue reporting all motor vehicles owned or leased within Kentucky.

(53) Revenue Form 61A211(I), "Instructions Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Situs", shall provide instructions for completing Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Situs".

(54) Revenue Form 61A230, "Notice of Assessment", shall be sent by the Department of Revenue to the taxpayer notifying him of the final assessment of the public service company property.

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(55) Revenue Form 61A240, "Notice of Assessment", shall be sent by the Department of Revenue to the taxpayer notifying him of a tentative assessment of the public service company property. This notice shall inform the taxpayer of the protest period.

(56) Revenue Form 61A250, "Notice of Assessment", shall be sent by the Department of Revenue to the taxpayer notifying the taxpayer of his claim of assessed value on public service company property.

(57) Revenue Form 61A255, "Public Service Company Property Tax Statement", shall be used by the counties, schools and special districts to bill public service companies for local property taxes.

(58) Revenue Form 61A255(I), "Instructions for 61A255, Public Service Company Property Tax Statement", shall provide instructions for completing Revenue Form 61A255, "Public Service Company Property Tax Statement".

(59) Revenue Form 61A500(P), "2011[2040] Personal Property Tax Forms and Instructions for Communications Service Providers and Multi-channel Video Programming Service Providers", shall be the packet of files and instructions relating to Revenue Form 61A500 for use by telecommunication, satellite, and cable television companies, reporting all tangible personal property with the Department of Revenue.

(60) Revenue Form 61A500, "2011[2040] Tangible Personal Property Tax Return for Communication Service Providers and Multichannel Video Program Service Providers", shall be filed by telecommunications, satellite, and cable television companies, reporting all tangible personal property with the Department of Revenue.

(61) Revenue Form 61A500(H), "Report of Total Personal Tangible Property in Kentucky", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, summarizing the Kentucky original cost, depreciation, and net book value of each class of tangible personal property.

(62) Revenue Form 61A500(I), "Summary of Gross Personal Tangible Property Listing by Taxing District", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, summarizing the Kentucky Original Cost by taxing jurisdiction.

(63) Revenue Form 61A500(J), "Summary of Reported Personal Tangible Property Listing by Taxing District", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, summarizing the Kentucky reported value by taxing jurisdiction.

(64) Revenue Form 61A500(K), "Personal Tangible Property Listing by Taxing District", shall be filed by telecommunication, satellite and cable television companies with the Department of Revenue and shall contain an inventory of the amount and kind of personal property owned and located in Kentucky by taxing jurisdiction.

(65) Revenue Form 61A507, "Nonresident Watercraft Property Tax Statement", shall be used by county clerks and local tax jurisdictions to bill assessments of nonresident watercraft personal property.

(66) Revenue Form 61A508, "Annual Report of Distilled Spirits in Bonded Warehouse", shall be filed by distilleries with the Department of Revenue to report inventory as of January 1.

(67) Revenue Form 61A508-S1, "Schedule 1 Department of Property Valuation Cost of Production Schedule", shall be filed by distilleries with the Department of Revenue, reporting the average cost per gallon of production.

(68) Revenue Form 61A508-S2, "Schedule 2 Department of Property Valuation Storage Cost Schedule", shall be filed by distilleries with the Department of Revenue, reporting average per barrel storage cost.

(69) Revenue Form 61A508-S3, "Schedule 3 Schedule of Bulk Sales", shall be filed by distilleries with the Department of Revenue, reporting the date of the sale or purchase, the number of barrels, age, and the price.

(70) Revenue Form 61A508-S4, "Schedule 4", shall be filed by distilleries with the Department of Revenue, reporting the fair cash value of bulk inventory summarized on Form 61A508.

(71) Revenue Form 61A508-S5, "Schedule 5", shall be filed by distilleries with the Department of Revenue, reporting the fair cash

values of case goods summarized on Form 61A508.

(72) Revenue Form 61A509, "Distilled Spirits or Telecoms Property Tax Statement", shall be used by county clerks and local tax jurisdictions to bill assessments of distilled spirits and telecom personal property.

(73) Revenue Form 61F007, "Notification Protesting Your Commercial Watercraft Assessment", shall inform taxpayers of the protest procedures on Commercial Watercraft assessments.

(74) Revenue Form 61F008, "Notification Protesting Your Assessment", shall inform taxpayers of the protest procedures on Railroad Car Line assessments.

(75) Revenue Form 61F009, "Notification Protesting Your Assessment", shall inform taxpayers of the protest procedures on Public Service Company Property Tax assessments.

(76) Revenue Form 61F010, "Property Value Assessments for Public Service and Centrally Assessed Companies-Assessment of Distilled Spirits in Bonded Warehouses", shall inform taxpayers of the protest procedures on Distilled Spirits assessments.

(77) Revenue Form 62A007, "Motor Vehicle Tax and/or Registration Renewal Notice", shall be issued by the Department of Revenue to notify motor vehicle owners of their ad valorem property tax liabilities and registration renewal deadline.

(78) Revenue Form 62A007S, "Motor Vehicle/Boat Property Tax Notice - Second Notice", shall be issued by the Department of Revenue to notify motor vehicle and boat owners of their delinquent ad valorem property tax liabilities.

(79) Revenue Form 62A008, "Motor Vehicle Tax Notice", shall be issued by the Department of Revenue to notify motor vehicle owners of their ad valorem property tax liabilities.

(80) Revenue Form 62A009, "Map Sales Invoice", shall be provided to the customer by the Department of Revenue as a receipt for payment of maps purchased.

(81) Revenue Form 62A010, "Notice for Boat Transfer", shall be issued to January 1 owners of boats transferred during the calendar year informing them of the ad valorem tax due on the transferred boat.

(82) Revenue Form 62A013, "Application for Assessment Moratorium Certificate", shall be filed by property owners seeking an assessment moratorium on qualifying existing property undergoing repair, rehabilitation or restoration. The form shall be filed with the proper administering agency of the county in which the property is located, thirty (30) days prior to restoration or repair.

(83) Revenue Form 62A015, "2011[2040] Motor Vehicle and Watercraft Property Tax Rate Certification", shall be submitted annually to the Department of Revenue by motor vehicle and watercraft taxing jurisdictions to certify the rates established by the taxing jurisdiction for motor vehicles and watercraft.

(84) Revenue Form 62A016, "Quietus", shall be issued by the Department of Revenue to certify that a county clerk is in good standing with regard to the conduct of ad valorem property tax collection duties.

(85) Revenue Form 62A017, "County Clerk's Claim for Calculation of Motor Vehicle and Boat Bills", shall be completed by the Department of Revenue and county clerk to certify the total number of motor vehicle and boat accounts for a given county and determine the county clerk's compensation for making tax bills.

(86) Revenue Form 62A020, "Intercounty Property Tax Collections", shall be completed by the Department of Revenue to list distributions of ad valorem property tax made to individual taxing jurisdictions.

(87) Revenue Form 62A023, "Application for Exemption from Property Taxation", shall be filed by organizations[~~other than institutions of religion~~] seeking a property tax exemption under Ky. Const. Sec. 170. This form shall be filed with the Department of Revenue.

(88) [~~Revenue Form 62A023-R, "Application for Exemption from Property Taxation for Religious Organizations", shall be filed by institutions of religion seeking a property tax exemption under Ky. Const. Sec. 170. This form shall be filed with the Department of Revenue.~~]

(89) Revenue Form 62A030, "Request for Reproduction of PVA Public Records and Contract for Commercial Users", shall be submitted to request copies of documents required to be retained by the PVA.

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~~(89)~~~~(90)~~ Revenue Form 62A044, "Affidavit for Correction/Exoneration of Motor Vehicle/Boat/Trailer Property Tax", shall be completed by the owner of a vehicle, boat, or trailer, at the property valuation administrator's office in order to correct owner or vehicle, boat, or trailer information in the ad valorem tax computer system. The PVA shall present the form to the county clerk when a tax refund is authorized.

~~(90)~~~~(94)~~ Revenue Form 62A200(P), "2010 Unmined Coal Property Tax Information Return", shall be the packet of files and instructions relating to Revenue Form 62A200 for use by owners or lessees of unmined minerals, reporting filer information with the Department of Revenue.

~~(91)~~~~(92)~~ Revenue Form 62A200, "2010 Unmined Coal Property Tax Information Return", shall be filed by owners or lessees of unmined minerals, reporting filer information with the Department of Revenue.

~~(92)~~~~(93)~~ Revenue Form 62A200, "Schedule A Fee Property Ownership", shall be filed by owners or lessees of unmined minerals with the Department of Revenue, reporting ownership information for each parcel or royalty information for each leased parcel.

~~(93)~~~~(94)~~ Revenue Form 62A200, "Schedule B Leased Property", shall be filed by all lessees and sublessees with the Department of Revenue, reporting ownership information for each parcel or royalty information for each leased parcel.

~~(94)~~~~(95)~~ Revenue Form 62A200, "Schedule C Property or Stock Transfers", shall be filed by both purchasers and sellers of unmined mineral property, with the Department of Revenue, reporting details of the transaction.

~~(95)~~~~(96)~~ Revenue Form 62A200, "Schedule D Lease Terminations, Transfers or Assignments", shall be filed by lessors or lessees of unmined minerals, with the Department of Revenue, reporting the parcel number, date lease was terminated and the seams assigned.

~~(96)~~~~(97)~~ Revenue Form 62A200, "Schedule E Farm Exception to Unmined Minerals Tax", shall be filed by surface owners, who own the mineral rights in their entirety and are engaged primarily in farming, to be excepted from the unmined minerals tax.

~~(97)~~~~(98)~~ Revenue Form 62A200, "Schedule F Geological Information by County", shall be filed by owners or lessees of unmined minerals, with the Department of Revenue, reporting exploration and analytical information.

~~(98)~~~~(99)~~ Revenue Form 62A302, "Request for Information for Local Board of Tax Appeals", shall be filed by taxpayers with the property valuation administrator, if appealing their assessment on real property.

~~(99)~~~~(400)~~ Revenue Form 62A304, "Property Valuation Administrator's Recapitulation of Real Property Tax Roll", shall be filed by the property valuation administrator by the first Monday in April, showing a recapitulation of property assessments by type of property and by taxing district. This form shall also be known as "first recap".

~~(100)~~~~(404)~~ Revenue Form 62A305, "Property Valuation Administrator's Summary of Real Property Tax Roll Changes (Since Recapitulation)", shall be filed by the property valuation administrator within six (6) days of the conclusion of the real property tax roll inspection period, showing all changes made since the submission of Revenue Form 62A304. This form shall also be known as "final recap" or "second recap".

~~(101)~~~~(402)~~ Revenue Form 62A307, "Property Owner Conference Record", shall be used by the property valuation administrator to document a property owner's appeal conference. The property owner or his representative shall be asked to sign the record and shall be given a copy of the record.

~~(102)~~~~(403)~~ Revenue Form 62A323, "Record of Additions and Deletions", shall be used by the PVA to report all real property additions and deletions for a particular assessment year.

~~(103)~~~~(404)~~ Revenue Form 62A329, "Annual Report of Domestic Life Insurance Companies", shall be filed by life insurance companies doing business in Kentucky, with the Department of Revenue, reporting the fair cash value of the company's intangible property, both taxable and exempt, and the aggregate amount.

~~(104)~~~~(405)~~ Revenue Form 62A350, "Application for Exemption Under the Homestead/Disability Amendment", shall be filed by property owners seeking an exemption from property taxes under

Ky. Const. Sec. 170. This application shall be filed with the property valuation administrator of the county in which the residential unit is located.

~~(105)~~~~(406)~~ Revenue Form 62A352, "Notice to Real Property Owner of Assessment by Property Valuation Administrator", shall be mailed to the property owner by the property valuation administrator notifying him of the assessment amount and of his appeal rights.

~~(106)~~~~(407)~~ Revenue Form 62A353, "Notice of Listing of Omitted Real Property", shall be mailed by the property valuation administrator to the property owner. This document shall notify the property owner that his omitted property has been listed and assessed and of his appeal rights.

~~(107)~~~~(408)~~ Revenue Form 62A354, "Notice to Property Owner of Final Decision of Board of Assessment Appeals", shall be sent from the Board of Assessment Appeals to the property owner to inform him of its ruling.

~~(108)~~~~(409)~~ Revenue Form 62A358, "Receipt for Transferring Delinquent Property Tax Bills From the Sheriff to the County Clerk", shall be signed by both the sheriff and county clerk to affirm the number and total amount of delinquent tax bills transferred from the sheriff to the county clerk.

(109) Revenue Form 62A358-S, "Supplemental Receipt to Document Timely Postmarked Payments Received after the Delinquent Transfer Date", shall be signed by both the sheriff and the county clerk to affirm payments received by the sheriff via mail and postmarked timely after the transfer date.

(110) Revenue Form 62A359, "Sheriff's Report of Real Property Tax Bills Transferred to the County Clerk", shall be used by the sheriffs to report delinquent real estate tax bills that were transferred from the sheriff to the county clerk's office.

(111) Revenue Form 62A360, "Order Correcting Erroneous Assessment", shall be issued to the collection agency (county sheriff or clerk) and taxpayer correcting an erroneous mineral property tax assessment.

(112) Revenue Form 62A362, "Sheriff's Report of Delinquent Personal Property Tax Bills Transferred to the County Clerk", shall be used by the sheriff to report delinquent personal property tax bills transferred from the sheriff to the county clerk's office.

(113) Revenue Form 62A363, "County Clerk's Claim for Preparing Tax Bills", shall be submitted by the county clerk in order to receive payment for each property tax bill prepared, with one-half (1/2) paid out of the county treasury and one-half (1/2) paid out of the State Treasury.

(114) Revenue Form 62A363-B, "County Clerk's Claim for Preparing Omitted Tax Bills", shall be submitted by the county clerk in order to receive payment of one (1) dollar for each omitted property tax bill prepared, with one-half (1/2) paid out of the county treasury and one-half (1/2) paid out of the State Treasury.

(115) Revenue Form 62A364, "County Clerk's Monthly Report of Omitted Assessments", shall be used by the county clerk to report omitted assessments made by the property valuation administrator.

(116) Revenue Form 62A365, "Nonresidency Affidavit", shall be filed as proof of nonresidency in Kentucky as of January 1, for ad valorem tax purposes.

(117) Revenue Form 62A366, "Order Correcting Erroneous Assessment", shall be filed by the property valuation administrator with the sheriff, to correct an error made in an assessment of property.

(118) Revenue Form 62A366-D, "Order Correcting Erroneous Delinquent Assessment", shall be filed by the property valuation administrator with the sheriff, to correct an error made in a delinquent assessment of property.

(119) Revenue Form 62A366R, "Exoneration Form for Property Tax Refund", shall be filed by a taxpayer for refunds of property tax.

(120) Revenue Form 62A367, "Authorization for Preparing Additional/Supplemental Property Tax Bills", shall be used by a property valuation administrator to prepare additional or supplemental tax bills.

(121) Revenue Form 62A367-A, "Instructions for Preparation of Additional/Supplemental Tax Bills and Official Receipt", shall be provided to assist the PVA with the preparation of additional or

supplemental tax bills.

(122) Revenue Form 62A368-A, "County Clerk's Monthly Report of Delinquent Tax Collections", shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for the 1997 tax year only.

(123) Revenue Form 62A368-B, "County Clerk's Monthly Report of Delinquent Tax Collections", shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for tax years after 1997.

(124) Revenue Form 62A369, "County Clerk's Monthly Report of Delinquent Tax Collections", shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for 1996 and earlier tax years.

(125) Revenue Form 62A369-A, "County Clerk's Monthly Report of Delinquent Tax Collections", shall be used by county clerks to report monthly to the Department of Revenue state commission from delinquent property tax collections.

(126) Revenue Form 62A370, "Kentucky Department of Revenue Certificate of Registration", shall be issued by the Department of Revenue to individuals, corporations or partnerships proving eligibility to purchase certificates of delinquency. This certificate shall be presented to the county clerk at the time certificates of delinquency are offered for sale.

(127) Revenue Form 62A370A, "Kentucky Department of Revenue Application for Certificate of Registration to Purchase Certificates of Delinquency", shall be submitted to the Department of Revenue by individuals, corporations or partnerships seeking to purchase certificates of delinquency offered for sale by the county clerk.

(128) Revenue Form 62A372, "Sheriff's List of Orders Correcting Erroneous Assessments", shall be used by the sheriff to report all exonerations made to the tax bills by the property valuation administrator.

(129) Revenue Form 62A372-A, "Certification", shall be used by the sheriff to affirm that the list of exonerations is accurate.

(130) Revenue Form 62A374, "County Clerk Certificate of Delinquency Sale Registration", shall be used by the county clerk to register third parties interested in purchasing certificates of delinquency offered for sale by the county clerk.

(131) Revenue Form 62A375, "Release of Certificate of Delinquency Assigned to a Third Party", shall be used by the county clerk to release the lien of a certificate of delinquency that has been refunded to a third party purchaser.

(132) Revenue Form 62A378, "Report of ~~Location of~~ Mobile Homes and Recreational Vehicles Not Registered in this State", shall be filed by every person providing rental space for mobile homes and ~~recreational vehicles not registered in Kentucky~~ ~~house trailers~~. This form shall be filed with the property valuation administrator of the county in which the park is located.

(133)~~(134)~~ Revenue Form 62A379, "Listing of Omitted Real Property", shall be used by a taxpayer to voluntarily list any property previously omitted from the tax roll or shall be used by a property valuation administrator to list any involuntarily omitted property.

(134) Revenue Form 62A380, "Notification of Updated Mailing Address from Sheriff to Property Valuation Administrator", shall be used by the sheriff to provide an updated address to the property valuation administrator in accordance with KRS 134.119(8).

(135)~~(132)~~ Revenue Form 62A384C, "Clay Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing clay property, reporting the owner's name and address, percent ownership, product tons, and royalty rate.

(136)~~(133)~~ Revenue Form 62A384C-(I), "Instructions to Complete Clay Property Tax Return for ~~2011~~~~[2010]~~ Tax Year", shall be used by owners and lessees of land containing mineable clay minerals to file Revenue Form 62A384C.

(137)~~(134)~~ Revenue Form 62A384-G, "Natural Gas Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing developed natural gas properties, reporting the location of the property, total yearly gas production, number of producing wells, and the total dollar value of production.

(138)~~(135)~~ Revenue Form 62A384-G/O(I) "Instructions for Gas and Oil Property Tax Returns", which is also referenced as "Gas/Oil", shall be provided to filers of gas and oil property tax returns instructing filers of the acceptable method of completing the

gas and oil property tax return.

(139)~~(136)~~ Revenue Form 62A384L, "Limestone, Sand and Gravel Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing limestone, sand or gravel properties reporting mineral location, type of mining and production in the last three (3) years.

(140)~~(137)~~ Revenue Form 62A384-O, "Oil Property Tax Return Lease Report", shall be filed with the Department of Revenue by all persons, corporations, businesses and partnerships owning, leasing or having knowledge of developed oil properties to report developed oil property in Kentucky.

(141)~~(138)~~ Revenue Form 62A385, "Sheriff's Official Receipt for Property Tax Bills", shall be used by sheriffs to acknowledge receipt of the county's property tax bills and to document the total tax amount to be collected for each taxing district.

(142)~~(139)~~ Revenue Form 62A385-A, "Sheriff's Receipt For Unpaid and Partially Paid Tax Bills", shall be used by incoming sheriffs to give receipt to the outgoing sheriff for the unpaid and partially paid tax bills outstanding when he assumes office.

(143)~~(140)~~ Revenue Form 62A393, "Sheriff's Property Tax Account Statement", shall be used by the Department of Revenue to conduct the annual property tax settlement with the sheriff.

(144)~~(141)~~ Revenue Form 62A393-A, "Incoming Sheriff's Property Tax Account Statement", shall be used by the Department of Revenue to conduct the property tax settlement with the incoming sheriff.

(145)~~(142)~~ Revenue Form 62A393-B, "Outgoing Sheriff's Property Tax Account Statement", shall be used by the Department of Revenue to conduct the property tax settlement with the outgoing sheriff.

(146)~~(143)~~ Revenue Form 62A394, "Sheriff's Monthly Report of Property Tax Collections", shall be used by sheriffs to report to the Department of Revenue property tax collections for the month.

(147)~~(144)~~ Revenue Form 62A394-MV, "County Clerk's Monthly Report of Motor Vehicle Property Tax Collections", shall be submitted by the county clerk to the Department of Revenue and local taxing jurisdictions to report ad valorem property tax collections for the month.

(148)~~(145)~~ Revenue Form 62A398, "Property Valuation Administrator's Bond", shall be completed by property valuation administrators evidencing surety with the Commonwealth and a local school board and affirming a commitment to fulfill the duties of the office.

(149)~~(146)~~ Revenue Form 62A500(P), "~~2011~~~~[2010]~~ Personal Property Tax Forms and Instructions", shall be the packet of files and instructions relating to Revenue Form 62A500 for use by owners or lessees of tangible personal property reporting taxpayer information, original cost of tangible property and reported value of tangible property with either the property valuation administrator of the county of taxable situs or with the Department of Revenue.

(150)~~(147)~~ Revenue Form 62A500, "~~2011~~~~[2010]~~ Tangible Personal Property Tax Return", shall be filed by owners or lessees of tangible personal property reporting taxpayer information, original cost of tangible property and reported value of tangible property with either the property valuation administrator of the county of taxable situs or with the Department of Revenue.

(151)~~(148)~~ Revenue Form 62A500-A, "~~2011~~~~[2010]~~ Tangible Personal Property Tax Return (Aircraft Assessments Only)", shall be filed by owners or lessees of aircraft not used for commercial purposes, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting the federal registration number, make and model, and taxpayer's value for each aircraft.

(152)~~(149)~~ Revenue Form 62A500-C, "Consignee Tangible Personal Property Tax Return", shall be filed by persons in possession of consigned inventory, that has not been reported on Revenue Form 62A500, with either the property valuation administrator of the county of taxable situs or the Department of Revenue, reporting consignor information and consigned inventory information.

(153)~~(150)~~ Revenue Form 62A500-L, "Lessee Tangible Personal Property Tax Return", shall be filed by lessees of tangible personal property who did not list the property on Revenue Form 62A500, with either the property valuation administrator of the

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county of taxable situs or with the Department of Revenue, reporting lessor information and equipment information.

~~(154)~~~~(454)~~ Revenue Form 62A500-M1, "Boat Dealer's Used Inventory Listing for Line 31 Tangible Personal Property Tax Return" shall be filed by boat dealers with the property valuation administrator of each county of taxable situs or with the Department of Revenue, containing a detailed listing of used boats held for sale by a licensed boat dealer.

~~(155)~~~~(452)~~ Revenue Form 62A500-S1, "Dealer's Inventory Listing for Line 34 Tangible Personal Property Tax Return", shall be filed by automobile dealers, dealers with new boat and marine equipment held under a floor plan or dealers with new farm machinery held under a floor plan with the property valuation administrator of each county of taxable situs or with the Department of Revenue, containing a detailed listing of property reported on line 34 of the Tangible Personal Property Tax Return.

~~(156)~~~~(453)~~ Revenue Form 62A500-W, "2011~~(2040)~~ Tangible Personal Property Tax Return (Documented Watercraft)", shall be filed by owners or lessees of documented vessels not used for commercial purposes, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting the coast guard number, make and model and taxpayer's value for each watercraft.

~~(157)~~~~(454)~~ Revenue Form 62A600, "Domestic Savings and Loan Tax Return", shall be filed with the Department of Revenue by savings and loans operating solely in Kentucky, reporting the balances in their capital accounts.

~~(158)~~~~(455)~~ Revenue Form 62A601, "Foreign Savings and Loan Tax Return", shall be filed with the Department of Revenue by foreign savings and loans authorized to do business in this state, reporting the balances in their capital accounts.

~~(159)~~~~(456)~~ Revenue Form 62A601-S2, "Schedule B, Computation of Exempt Securities", shall be filed with the Department of Revenue, by taxpayers filing Revenue Form 62A600 or 62A601, reporting the market value of U. S. government securities.

~~(160)~~~~(457)~~ Revenue Form 62A850, "Bank Deposits Tax Return", shall be filed with the Department of Revenue by financial institutions, reporting the amount of its deposits as of the preceding January 1.

~~(161)~~~~(458)~~ Revenue Form 62A862, "Certification of Tax Rate for Bank Deposits Franchise Tax", shall be filed by the local taxing district with the Department of Revenue to notify the Department of Revenue of the rate set on bank deposits.

~~(162)~~~~(459)~~ Revenue Form 62A863, "Financial Institutions Local Deposits Summary Report", shall be filed with the Department of Revenue, by financial institutions, reporting all deposits located within the state as of the preceding June 30, along with a copy of the most recent summary of deposits filed with the Federal Deposit Insurance Corporation.

~~(163)~~~~(460)~~ Revenue Form 62A863-A, "Schedule A, Summary of Net Deposits", shall be filed with the Department of Revenue, by financial institutions filing Revenue Form 62A863, to summarize deposits.

~~(164)~~~~(461)~~ Revenue Form 62A880, "Personal Property Assessment", shall be sent by the Department of Revenue to the owner of omitted personal property notifying him of the value assessed by the department as well as all applicable penalties and interest.

~~(165)~~~~(462)~~ Revenue Form 62B003, "Unmined Coal Notice of Tax Assessment", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in unmined coal property.

~~(166)~~~~(463)~~ Revenue Form 62B011, "Limestone, Sand, or Gravel Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in limestone, sand or gravel property.

~~(167)~~~~(464)~~ Revenue Form 62B012, "Oil Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in oil property.

~~(168)~~~~(465)~~ Revenue Form 62B013, "Clay Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in clay property.

~~(169)~~~~(466)~~ Revenue Form 62B015, "Gas Assessment Notice", shall be sent by the Department of Revenue to the taxpayer

notifying him of the value of his interest in gas property.

~~(170)~~~~(467)~~ Revenue Form 62F003, "Appeals Process for Real Property Assessments", shall be an informational brochure on the procedure to follow to appeal an assessment on real property.

~~(171)~~~~(468)~~ Revenue Form 62F015, "PVA Open Records Commercial Fee Guidelines", shall be used by the PVA to establish fees to be charged for the cost of reproduction, creation, or other acquisition of records.

~~(172)~~~~(469)~~ Revenue Form 62F031, "Appeal to Local Board of Assessment Appeals", shall be filed with the county clerk by any taxpayer who wishes to appeal his assessment on real property.

~~(173)~~~~(470)~~ Revenue Form 62F1341, "Exemptions Allowed for Savings and Loans, Savings Banks and Similar Institutions for Intangible Property Tax Purposes", shall inform taxpayers, subject to intangible property tax on the value of their capital stock, of those institutions which issue obligations that are exempt from state ad valorem taxation.

Section 2. Severance Taxes - Required Forms.(1) Revenue Form 10A100, "Kentucky Tax Registration Application", shall be filed by taxpayers with a coal severance and processing tax account listing taxpayer information including mine name and mining permit number.

(2) Revenue Form 55A004, "Coal Severance Tax Seller/Purchaser Certificate", shall be filed by the taxpayer to verify purchase coal deductions.

(3) Revenue Form 55A100, "Coal Severance Tax Return", shall be filed monthly by the taxpayer to report production and tax due.

(4) Revenue Form 55A100, "Part IV - Schedule of Purchased Coal", shall be used by the taxpayer to report coal purchased for processing and resale. "Part V - Schedule for Thin Seam Coal Tax Credit", shall be used by the taxpayer to apply for tax credit for underground mining of thin coal seams.

(5) Revenue Form 55A101, "Coal Severance Tax Return Instructions", shall be included with the coal tax return mailed to the taxpayer to assist in the completion of his return.

(6) Revenue Form 55A131, "Credit Memorandum", shall be used by the department to issue a credit to the taxpayer for an overpayment rather than a refund.

(7) Revenue Form 55A209, "Severance Tax Refund Application", shall be used by the taxpayer for the purpose of requesting a refund of tax overpaid.

(8) Revenue Form 56A001, "Application for Certificate of Registration Minerals and Natural Gas Tax", shall be used by persons dealing in minerals, natural gas or natural gas liquids who wish to register with the Department of Revenue to acquire an account number.

(9) Revenue Form 56A100, "Natural Gas and Natural Gas Liquids Tax Return", shall be used by registered natural gas and natural gas liquids taxpayers monthly to report production and tax due.

(10) Revenue Form 56A101, "Minerals Tax Return", shall be used by registered mineral taxpayers monthly to report production and tax due.

(11) Revenue Form 56A106, "Minerals Tax Certificate of Exemption", shall be used by mineral taxpayers to claim exemptions from minerals tax for minerals purchased for the maintenance of a privately maintained but publicly dedicated road.

(12) Revenue Form 56A107, "Schedule A, Allocation of Gross Value of Minerals Severed in Kentucky and Schedule B, Minerals Purchased from Others for Processing by Taxpayer", shall be used by mineral taxpayers to compute gross value of minerals to be allocated and to show the allocation by county of the gross value of minerals severed in Kentucky and also shall be used by a taxpayer for showing minerals that are purchased from others for processing by the taxpayer.

(13) Revenue Form 56A108, "Schedule A, Gross Value of Natural Gas Sold to Nonconsumers and Schedule B, Taxable Gross Value of Natural Gas and Natural Gas Liquids Extracted in Kentucky by Taxpayer - Allocation", shall be used by natural gas taxpayers to show details of all natural gas extracted in Kentucky and sold to nonconsumers and also shall be used by natural gas taxpayers to allocate the natural gas to the county or counties

where the natural gas or natural gas liquids were located prior to extraction.

(14) Revenue Form 56A109, "Schedule C, Natural Gas First Purchased by Taxpayer From Kentucky Producers", shall be used by natural gas taxpayers who are first purchasers of natural gas to show gross value by county or counties from which the natural gas was extracted.

(15) Revenue Form 56A110, "Minerals Tax Return Attachment, Schedule C, Computation of Clay Severed and Processed in Kentucky and Allocation of Tax Attributable to Clay", shall be used by mineral taxpayers that sever clay to compute tax due.

(16) Revenue Form 56A112, "Crude Petroleum Transporter's Monthly Report, Kentucky Oil Production Tax", shall be used by registered crude petroleum transporter's for reporting gross value and tax due.

(17) Revenue Form 56A113, "Minerals Tax Credit for Limestone Sold in Interstate Commerce", shall be used by mineral taxpayers for the purpose of determining the eligibility for the minerals tax credit.

(18) Revenue Form 56A114, "Crude Petroleum Transporter's Application for Registration", shall be used by crude petroleum transporters who wish to acquire an account number with the Kentucky Department of Revenue.

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

(a) Property tax - referenced material:

1. Revenue Form 61A200(P), "Property Tax Forms and Instructions for Public Service Companies 2011[2040]", August 2010[June 2009];

2. Revenue Form 61A200, "Public Service Company Property Tax Return for Year Ending December 31, 2010[2009]", August 2010[June 2009];

3. Revenue Form 61A200(A), "Report of Total Unit System and Kentucky Operations", August 2010[June 2009];

4. Revenue Form 61A200(B), "Report of Kentucky Vehicles, Car Lines and Watercraft", August 2010[June 2009];

5. Revenue Form 61A200(C), "Report of Total Unit Operations Balance Sheet", August 2010[June 2009];

6. Revenue Form 61A200(D), "Report of Total Unit Operations Income Statement", August 2010[June 2009];

7. Revenue Form 61A200(E), "Filing Extension Application", August 2010[June 2009];

8. Revenue Form 61A200(G), "Report of Capital Stocks", August 2010[June 2009];

9. Revenue Form 61A200(H), "Report of Funded Debt", August 2010[June 2009];

10. Revenue Form 61A200(I), "Business Summary by Taxing Jurisdiction", August 2010[June 2009];

11. Revenue Form 61A200(J), "Property Summary by Taxing Jurisdiction, Operating and Nonoperating Property", August 2010[November 2009];

12. Revenue Form 61A200(K), "Operating Property Listing by Taxing Jurisdiction", August 2010[June 2009];

13. Revenue Form 61A200(K2), "Nonoperating/Nonutility Property Listing by Taxing Jurisdiction", August 2010[June 2009];

14. Revenue Form 61A200(L), "Report of Allocation Factors, Operating and Noncarrier Property for all Interstate Companies", August 2010[June 2009];

15. Revenue Form 61A200(M), "Report of Property and Business Factors for Interstate Railroad and Sleeping Car Companies", August 2010[June 2009];

16. Revenue Form 61A200(N1), "Report of Operating Leased Real Property Located in Kentucky By Taxing District", August 2010[June 2009];

17. Revenue Form 61A200(N2), "Report of Operating Leased Personal Property Located in Kentucky By Taxing District", August 2010[June 2009];

18. Revenue Form 61A200(N3), "Summary Report of System and Kentucky Operating Lease Payments", August 2010[June 2009];

19. Revenue Form 61A200(O), "Railroad Private Car Mileage Report", August 2010[June 2009];

20. Revenue Form 61A200(Q), "Supplemental Report of Oper-

ations for Contained and Residential Landfills", August 2010[June 2009];

21. Revenue Form 61A200(R), "Report of Property Subject to the Pollution Control Tax Exemption", August 2010[June 2009];

22. Revenue Form 61A200(U), "Industrial Revenue Bond Property", August 2010[June 2009];

23. Revenue Form 61A202, "2010 Public Service Company Property Tax Return for Railroad Car Line", August 2010[June 2009];

24. Revenue Form 61A206(P), "Public Service Company Property Tax Forms and Instructions for Commercial Air Passenger and Air Freight Carriers 2011[2040]", August 2010[June 2009];

25. Revenue Form 61A206, "Public Service Company Property Tax Return For Commercial Air Passenger and Air Freight Carriers", August 2010[June 2009];

26. Revenue Form 61A206(A), "Filing Extension Application for Public Service Company Property Tax Return", August 2010[June 2009];

27. Revenue Form 61A206(B), "Report of Kentucky Registered and Licensed Motor Vehicles", August 2010[June 2009];

28. Revenue Form 61A206(C), "Report of Financial Operations for Commercial Air Passenger and Air Freight Carriers", August 2010[June 2009];

29. Revenue Form 61A206(D-1), "Report of System Aircraft Fleet", August 2010[June 2009];

30. Revenue Form 61A206(D-2), "Report of System Aircraft Fleet", August 2010[June 2009];

31. Revenue Form 61A206(D-3), "Report of System Aircraft Fleet", August 2010[June 2009];

32. Revenue Form 61A206(E), "Report of Kentucky Flight Statistics By Airport", August 2010[June 2009];

33. Revenue Form 61A206(F), "Report of System and Kentucky Allocation Factors", August 2010[June 2009];

34. Revenue Form 61A206(G), "Report of Funded Debt", August 2010[June 2009];

35. Revenue Form 61A206(H), "Report of Operating Leased Real Property Located in Kentucky By Taxing District", August 2010[June 2009];

36. Revenue Form 61A206(I), "Report of Operating Leased Personal Property Located in Kentucky By Taxing District", August 2010[June 2009];

37. Revenue Form 61A206(J), "Summary Report of System and Kentucky Operating Lease Payments", August 2010[June 2009];

38. Revenue Form 61A206(K), "Report of Owned Real Property Located in Kentucky By Taxing District", August 2010[June 2009];

39. Revenue Form 61A206(L), "Report of Owned Personal Property Located In Kentucky By Taxing District", August 2010[June 2009];

40. Revenue Form 61A206(M), "Summary Report of Total System and Kentucky Operations", August 2010[June 2009];

41. Revenue Form 61A206(N), "Industrial Revenue Bond Property", August 2010[June 2009];

42. Revenue Form 61A206(O), "Public Service Company Sales", August 2010[June 2009];

43. Revenue Form 61A207(P), "Commercial Watercraft Personal Property Tax Return 2011[2040]", November 2010[June 2009];

44. Revenue Form 61A207, "2011[2040] Commercial Watercraft Personal Property Tax Return", November 2010[2009];

45. Revenue Form 61A207(A), "Report of Owned Vessels in Your Possession", August 2010[November 2009];

46. Revenue Form 61A207(B), "Report of Owned Vessels - in Possession of Others", August 2010[November 2009];

47. Revenue Form 61A207(C), "Report of Nonowned Vessels in Your Possession", August 2010[November 2009];

48. Revenue Form 61A207(D), "Valuation Worksheet", November 2010[2009];

49. Revenue Form 61A207(E), "Report of Kentucky Route Miles", November 2010[2009];

50. Revenue Form 61A207(F), "Report of System Route Miles", November 2010[2009];

51. Revenue Form 61A209, "Public Service Company Sales",

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August 2010~~[June 2009]~~;

52. Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Situs", August 2010~~[June 2009]~~;

53. Revenue Form 61A211(I), "Instructions Public Service Company Schedule of Owned and/or Leased Motor Vehicle with Kentucky Situs", August 2010~~[June 2009]~~;

54. Revenue Form 61A230, "Notice of Assessment", February 2010;

55. Revenue Form 61A240, "Notice of Assessment", August 2008;

56. Revenue Form 61A250, "Notice of Assessment", August 2008;

57. Revenue Form 61A255, "Public Service Company Property Tax Statement", February 2011~~[July 2008]~~;

58. Revenue Form 61A255(I), "Instructions for 61A255, Public Service Company Property Tax Statement", July 2008;

59. Revenue Form 61A500(P), "2011~~[2010]~~ Personal Property Tax Forms and Instructions for Communications Service Providers and Multi-channel Video Programming Service Providers", November 2010~~[2009]~~;

60. Revenue Form 61A500, "2011~~[2010]~~ Tangible Personal Property Tax Return for Communication Service Providers and Multichannel Video Program Service Providers", November 2010~~[2009]~~;

61. Revenue Form 61A500(H), "Report of Total Personal Tangible Property in Kentucky", November 2010~~[2009]~~;

62. Revenue Form 61A500(I), "Summary of Gross Personal Tangible Property Listing by Taxing District", September 2010~~[October 2009]~~;

63. Revenue Form 61A500(J), "Summary of Reported Personal Tangible Property Listing by Taxing District", September 2010~~[October 2009]~~;

64. Revenue Form 61A500(K), "Personal Tangible Property Listing by Taxing District", November 2010~~[2009]~~;

65. Revenue Form 61A507, "Nonresident Watercraft Property Tax Statement", January 2006;

66. Revenue Form 61A508, "Annual Report of Distilled Spirits in Bonded Warehouse", August 2010~~[June 2009]~~;

67. Revenue Form 61A508-S1, "Schedule 1 Department of Property Valuation Cost of Production Schedule", August 2010~~[June 2009]~~;

68. Revenue Form 61A508-S2, "Schedule 2 Department of Property Valuation Storage Cost Schedule", August 2010~~[June 2009]~~;

69. Revenue Form 61A508-S3, "Schedule 3 Schedule of Bulk Sales", August 2010~~[June 2009]~~;

70. Revenue Form 61A508-S4, "Schedule 4", August 2010~~[June 2009]~~;

71. Revenue Form 61A508-S5, "Schedule 5", August 2010~~[June 2009]~~;

72. Revenue Form 61A509, "Distilled Spirits or Telecoms Property Tax Statement", May 2010~~[July 2008]~~;

73. Revenue Form 61F007, "Notification Protesting Your Commercial Watercraft Assessment", February 2010;

74. Revenue Form 61F008, "Notification Protesting Your Assessment", February 2010;

75. Revenue Form 61F009, "Notification Protesting Your Assessment", February 2010;

76. Revenue Form 61F010, "Property Value Assessments for Public Service and Centrally Assess Companies-Assessment of Distilled Spirits in Bonded Warehouses", February 2010;

77. Revenue Form 62A007, "Motor Vehicle Tax and/or Registration Renewal Notice", 2006;

78. Revenue Form 62A007S, "Motor Vehicle/Boat Property Tax Notice - Second Notice", 2006;

79. Revenue Form 62A008, "Motor Vehicle Tax Notice", 2006;

80. Revenue Form 62A009, "Map Sales Invoice", July 2006;

81. Revenue Form 62A010, "Notice for Boat Transfer", 2009;

82. Revenue Form 62A013, "Application for Assessment Moratorium Certificate", December 2009;

83. Revenue Form 62A015, "2011~~[2010]~~ Motor Vehicle and Watercraft Property Tax Rate Certification", 2010~~[2009]~~;

84. Revenue Form 62A016, "Quietus", 2009;

85. Revenue Form 62A017, "County Clerk's Claim for Calculation of Motor Vehicle and Boat Bills", 2009;

86. Revenue Form 62A020, "Intercounty Property Tax Collections", 2009;

87. Revenue Form 62A023, "Application for Exemption from Property Taxation", April 2010~~[December 2007]~~;

88. ~~[Revenue Form 62A023-R, "Application for Exemption from Property Taxation for Religious Organizations", December 2007];~~

89. Revenue Form 62A030, "Request for Reproduction of PVA Public Records and Contract for Commercial Users", February 2008;

89~~[90]~~. Revenue Form 62A044, "Affidavit for Correction/Exoneration of Motor Vehicle/Boat/Trailer Property Tax", February 2009;

90~~[91]~~. Revenue Form 62A200(P), "2011~~[2010]~~ Unmined Coal Property Tax Information Return", December 2010~~[2009]~~;

91~~[92]~~. Revenue Form 62A200, "2011~~[2010]~~ Unmined Coal Property Tax Information Return", December 2010~~[2009]~~;

92~~[93]~~. Revenue Form 62A200, "Schedule A Fee Property Ownership", December 2010~~[2009]~~;

93~~[94]~~. Revenue Form 62A200, "Schedule B Leased Property", December 2010~~[2009]~~;

94~~[95]~~. Revenue Form 62A200, "Schedule C Property or Stock Transfers", December 2010~~[2009]~~;

95~~[96]~~. Revenue Form 62A200, "Schedule D Lease Terminations, Transfers or Assignments", December 2010~~[2009]~~;

96~~[97]~~. Revenue Form 62A200, "Schedule E Farm Exception to Unmined Minerals Tax", December 2010~~[2009]~~;

97~~[98]~~. Revenue Form 62A200, "Schedule F Geological Information by County", December 2010~~[2009]~~;

98~~[99]~~. Revenue Form 62A302, "Request for Information for Local Board of Tax Appeals", September 2005;

99~~[100]~~. Revenue Form 62A304, "Property Valuation Administrator's Recapitulation of Real Property Tax Roll", December 2008;

100~~[101]~~. Revenue Form 62A305, "Property Valuation Administrator's Summary of Real Property Tax Roll Changes (Since Recapitulation)", December 2008;

101~~[102]~~. Revenue Form 62A307, "Property Owner Conference Record", September 2005;

102~~[103]~~. Revenue Form 62A323, "Record of Additions and Deletions", December 2008;

103~~[104]~~. Revenue Form 62A329, "Annual Report of Domestic Life Insurance Companies", August 2010~~[October 2008]~~;

104~~[105]~~. Revenue Form 62A350, "Application for Exemption Under the Homestead/Disability Amendment", October 2010~~[July 2008]~~;

105~~[106]~~. Revenue Form 62A352, "Notice to Real Property Owner of Assessment by Property Valuation Administrator", April 2005;

106~~[107]~~. Revenue Form 62A353, "Notice of Listing of Omitted Real Property", September 2005;

107~~[108]~~. Revenue Form 62A354, "Notice to Property Owner of Final Decision of Board of Assessment Appeals", August 2006;

108~~[109]~~. Revenue Form 62A358, "Receipt for Transferring Delinquent Property Tax Bills From the Sheriff to the County Clerk", December 2009;

109. Revenue Form 62A358-S, "Supplemental Receipt to Document Timely Postmarked Payments Received after the Delinquent Transfer Date", March 2010;

110. Revenue Form 62A359, "Sheriff's Report of Real Property Tax Bills Transferred to the County Clerk", December 2009;

111. Revenue Form 62A360, "Order Correcting Erroneous Assessment", January 2008;

112. Revenue Form 62A362, "Sheriff's Report of Delinquent Personal Property Tax Bills Transferred to the County Clerk", December 2009;

113. Revenue Form 62A363, "County Clerk's Claim for Preparing Tax Bills", December 2007;

114. Revenue Form 62A363-B, "County Clerk's Claim for Preparing Omitted Tax Bills", December 2007;

115. Revenue Form 62A364, "County Clerk's Monthly Report of Omitted Assessments", February 2006;

116. Revenue Form 62A365, "Nonresidency Affidavit", December 2007;



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117. Revenue Form 62A366, "Order Correcting Erroneous Assessment", September 2005;

118. Revenue Form 62A366-D, "Order Correcting Erroneous Delinquent Assessment", December 2007;

119. Revenue Form 62A366R, "Exoneration Form for Property Tax Refund", September 2005;

120. Revenue Form 62A367, "Authorization for Preparing Additional/Supplemental Property Tax Bills", December 2008;

121. Revenue Form 62A367-A, "Instructions for Preparation of Additional/Supplemental Tax Bills and Official Receipt", December 2007;

122. Revenue Form 62A368-A, "County Clerk's Monthly Report of Delinquent Tax Collections", February 2006;

123. Revenue Form 62A368-B, "County Clerk's Monthly Report of Delinquent Tax Collections", February 2006;

124. Revenue Form 62A369, "County Clerk's Monthly Report of Delinquent Tax Collections", February 2006;

125. Revenue Form 62A369-A, "County Clerk's Monthly Report of Delinquent Tax Collections", February 2006;

126. Revenue Form 62A370, "Kentucky Department of Revenue Certificate of Registration", November 2009;

127. Revenue Form 62A370A, "Kentucky Department of Revenue Application for Certificate of Registration to Purchase Certificates of Delinquency", November 2009;

128. Revenue Form 62A372, "Sheriff's List of Orders Correcting Erroneous Assessments", February 2006;

129. Revenue Form 62A372-A, "Certification", February 2006;

130. Revenue Form 62A374, "County Clerk Certificate of Delinquency Sale Registration", November 2010;

131. Revenue Form 62A375, "Release of Certificate of Delinquency Assigned to a Third Party", April 2010;

132.[430.] Revenue Form 62A378, "Report of ~~Location of~~ Mobile Homes and Recreational Vehicles Not Registered in this State", August 2010[September 2006];

133.[434.] Revenue Form 62A379, "Listing of Omitted Real Property", November 2010[2009];

134. Revenue Form 62A380, "Notification of Updated Mailing Address from Sheriff to Property Valuation Administrator", September 2010;

135.[432.] Revenue Form 62A384C, "Clay Property Tax Return", January 2011[2010];

136.[433.] Revenue Form 62A384C-(I), "Instructions to Complete Clay Property Tax Return for 2011[2010] Tax Year", January, 2011[2010];

137.[434.] Revenue Form 62A384-G, "Natural Gas Property Tax Return", January 2011[2010];

138.[435.] Revenue Form 62A384-G/O(I), "Instructions for Gas and Oil Property Tax Returns", which is also referenced as "Gas/Oil", January 2011[2010];

139.[436.] Revenue Form 62A384L, "Limestone, Sand and Gravel Property Tax Return", January 2011[2010];

140.[437.] Revenue Form 62A384-O, "Oil Property Tax Return Lease Report", January 2011[2010];

141.[438.] Revenue Form 62A385, "Sheriff's Official Receipt for Property Tax Bills", February 2006;

142.[439.] Revenue Form 62A385-A, "Sheriff's Receipt for Unpaid and Partially Paid Tax Bills", February 2006;

143.[440.] Revenue Form 62A393, "Sheriff's Property Tax Account Statement", February 2006;

144.[444.] Revenue Form 62A393-A, "Incoming Sheriff's Property Tax Account Statement", February 2006;

145.[442.] Revenue Form 62A393-B, "Outgoing Sheriff's Property Tax Account Statement", February 2006;

146.[443.] Revenue Form 62A394, "Sheriff's Monthly Report of Property Tax Collections", January 2010;

147.[444.] Revenue Form 62A394-MV, "County Clerk's Monthly Report of Motor Vehicle Property Tax Collections", June 2008;

148.[445.] Revenue Form 62A398, "Property Valuation Administrator's Bond", September 2010[November 2006];

149.[446.] Revenue Form 62A500(P), "2011[2010] Personal Property Tax Forms and Instructions", November 2010[2009];

150.[447.] Revenue Form 62A500, "2011[2010] Tangible Personal Property Tax Return", November 2010[2009];

151.[448.] Revenue Form 62A500-A, "2011[2010] Tangible Personal Property Tax Return (Aircraft Assessments Only)", November 2010[2009];

152.[449.] Revenue Form 62A500-C, "Consignee Tangible Personal Property Tax Return", November 2010[2009];

153.[450.] Revenue Form 62A500-L, "Lessee Tangible Personal Property Tax Return", November 2010[2009];

154.[454.] Revenue Form 62A500-M1, "Boat Dealer's Used Inventory Listing for Line 31 Tangible Personal Property Tax Return", November 2010[2009];

155.[452.] Revenue Form 62A500-S1, "Dealer's Inventory Listing for Line 34 Tangible Personal Property Tax Return", November 2010[2009];

156.[453.] Revenue Form 62A500-W, "2010 Tangible Personal Property Tax Return (Documented Watercraft)", November 2010[2009];

157.[454.] Revenue Form 62A600, "Domestic Savings and Loan Tax Return", August 2010[May 2009];

158.[455.] Revenue Form 62A601, "Foreign Savings and Loan Tax Return", August 2010[November 2008];

159.[456.] Revenue Form 62A601-S2, "Schedule B, Computation of Exempt Securities", August 2010[November 2008];

160.[457.] Revenue Form 62A850, "Bank Deposits Tax Return", August[March,] 2010;

161.[458.] Revenue Form 62A862, "Certification of Tax Rate for Bank Deposits Franchise Tax", August 2010[October 2008];

162.[459.] Revenue Form 62A863, "Financial Institutions Local Deposits Summary Report", August 2010[May 2009];

163.[460.] Revenue Form 62A863-A, "Schedule A, Summary of Net Deposits", August 2010[May 2009];

164.[464.] Revenue Form 62A880, "Personal Property Assessment", October 2004;

165.[462.] Revenue Form 62B003, "Unmined Coal Notice of Tax Assessment", November 2008;

166.[463.] Revenue Form 62B011, "Limestone, Sand, or Gravel Assessment Notice", July 2006;

167.[464.] Revenue Form 62B012, "Oil Assessment Notice", July 2006;

168.[465.] Revenue Form 62B013, "Clay Assessment Notice", July 2006;

169.[466.] Revenue Form 62B015, "Gas Assessment Notice", July 2006;

170.[467.] Revenue Form 62F003, "Appeals Process for Real Property Assessments", May 2009;

171.[468.] Revenue Form 62F015, "PVA Open Records Commercial Fee Guidelines", November 2008;

172.[469.] Revenue Form 62F031, "Appeal to Local Board of Assessment Appeals", January, 2010; and

173.[470.] Revenue Form 62F1341, "Exemptions Allowed for Savings and Loans, Savings Banks and Similar Institutions for Intangible Property Tax Purposes", August 2010[October 2008]; and

(b) Severance taxes - referenced material:

1. Revenue Form 10A100, "Kentucky Tax Registration Application", July 2010[April 2009];
2. Revenue Form 55A004, "Coal Severance Tax Seller/Purchaser Certificate", October 2010[March 2009];
3. Revenue Form 55A100, "Coal Severance Tax Return", October 2010[May, 2008];
4. Revenue Form 55A100, "Part IV - Schedule of Purchased Coal " and "Part V - Schedule for Thin Seam Coal Tax Credit", October 2010[May, 2008];
5. Revenue Form 55A101, "Coal Severance Tax Return Instructions", October 2010[November 2009];
6. Revenue Form 55A131, "Credit Memorandum", December 2006;
7. Revenue Form 55A209, "Severance Tax Refund Application", August 2009;
8. Revenue Form 56A001, "Application for Certificate of Registration Minerals and Natural Gas Tax", October 1984;
9. Revenue Form 56A100, "Natural Gas and Natural Gas Liquids Tax Return", July 2004;
10. Revenue Form 56A101, "Minerals Tax Return", July 2004;
11. Revenue Form 56A106, "Minerals Tax Certificate of Ex-

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emption", December 2006;

12. Revenue Form 56A107, "Schedule A, Allocation of Gross Value of Minerals Severed in Kentucky and Schedule B, Minerals Purchased from Others for Processing by Taxpayer", January 2005;

13. Revenue Form 56A108, "Schedule A, Gross Value of Natural Gas Sold to Nonconsumers and Schedule B, Taxable Gross Value of Natural Gas and Natural Gas Liquids Extracted in Kentucky by Taxpayer - Allocation", March 2005;

14. Revenue Form 56A109, "Schedule C, Natural Gas First Purchased by Taxpayer from Kentucky Producers", January 2005;

15. Revenue Form 56A110, "Minerals Tax Return Attachment, Schedule C, Computation of Clay Severed and Processed in Kentucky and Allocation of Tax Attributable to Clay", March 2005;

16. Revenue Form 56A112, "Crude Petroleum Transporter's Monthly Report, Kentucky Oil Production Tax", July 2004;

17. Revenue Form 56A113, "Minerals Tax Credit for Limestone Sold in Interstate Commerce", November 1997; and

18. Revenue Form 56A114, "Crude Petroleum Transporter's Application for Registration", December 2006.

(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 40620, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: February 3, 2010

FILED WITH LRC: February 7, 2010 at 9 a.m.

**PUBLIC HEARING AND COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on March 25, 2011, from 10 in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend this hearing was 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 March 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed amended 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the administration of Property and Severance Taxes by the Department of Revenue.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Department of Revenue to meet the requirements of KRS Chapter 13A.110 which requires that forms required to be submitted by a regulated entity shall be included in an administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the administration of Property and Severance Taxes by the Department of Revenue.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the required forms used in the administration of Property and Severance Taxes by the Department of Revenue.

(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 contains tax forms to be used for tax year 2011.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update tax forms for the tax year 2011.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of the tax laws.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide taxpayers with the necessary tax forms to file and pay personal tangible and public service property taxes for tax years beginning in 2011.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky taxpayers and their representatives will be affected by the listing of forms administered by the Department of Revenue in an administrative regulation. Local government will be affected to the extent they utilize forms administered by the Department of Revenue. The Department of Revenue will be affected to the extent that it administers the referenced forms.

(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: As forms are changed, the manuals and the Department of Revenue Website in which copies of all forms listed in this regulation are maintained will be updated.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All taxpayers and the administering agencies will benefit by having access to a centralized listing of the most current forms in use.

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

(a) Initially: The Department of Revenue will not incur additional cost as the result of this regulation.

(b) On a continuing basis: The Department of Revenue will not incur additional costs as the result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because the requirements of this regulation apply to every taxpayer.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Admin-

istration Cabinet, Department of Revenue, Office of Property Valuation, Local Valuation Branch, State Valuation Branch and Mineral/GIS Services Branch. The branch level shall be responsible for the creation and updating of forms.

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)

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

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

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

(c) How much will it cost to administer this program for the first year? The administrative cost will be absorbed in the normal operating cost of the Department.

(d) How much will it cost to administer this program for subsequent years? The same administrative cost will be absorbed in the normal operating budget of the Department.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET**  
**Department of Revenue**  
**Office of Income Taxation**  
**(Amendment)**

**103 KAR 3:040. Income tax forms manual.**

RELATES TO: KRS 131.041, 131.051, 131.061, 131.071, 131.081, 131.110, 131.130, 131.155, 131.170, 131.180, 131.190, 131.340, 131.500, 131.510(1), (2)(a), 131.540, 141.010, 141.0101, 141.011, 141.016, 141.020, 141.0202, 141.030, 141.040, 141.0401, 141.0405, 141.041, 141.042, 141.044, 141.062, 141.065, 141.066, 141.067, 141.068, 141.069, 141.070, 141.071, 141.120, 141.121, 141.160, 141.170, 141.180, 141.200, 141.205, 141.206, 141.208, 141.300, 141.310, 141.325, 141.330, 141.335, 141.347, 141.370, 141.381, 141.382, 141.383, 141.385, 141.386, 141.390, 141.395, 141.400, 141.401, 141.402, 141.403, 141.405, 141.407, 141.412, 141.415, 141.418, 141.420, 141.421, 141.423, 141.424, 141.4242, 141.4244, 141.428, 141.430, 141.434, 141.436, 141.437, 141.990, 151B.127, 154.12-2086, 154.20-050, 154.22-060, 154.23-035, 154.24-110, 154.25-030, 154.26-090, 154.28-090, 154.32-010, 154.34-080, 154.45-090, 154.48-025, 155.170

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the administration of income taxes by the Department of Revenue.

Section 1. Corporation Income Taxes. (1) Revenue Form 41A720, "Form 720, 2010[2009] Kentucky Corporation Income Tax and LLET Return", shall be used by a C corporation to determine its corporation income tax due in accordance with KRS 141.040 and its limited liability entity tax due in accordance with KRS 141.0401 for tax years beginning in 2010[2009].

(2) Revenue Form 41A720A, "Schedule A, Apportionment and Allocation (For corporations and pass-through entities taxable both within and without Kentucky)", shall be used by a corporation or a pass-through entity taxable both within and without Kentucky to apportion and allocate its net income to Kentucky in accordance

with KRS 141.120 or 141.206.

(3) Revenue Form 41A720A-C, "Schedule A-C, Apportionment and Allocation - Continuation Sheet (For a corporation or pass-through entity taxable both within and without Kentucky that is also a partner or member of a limited liability pass-through entity or general partnership)", shall be used by a corporation or a pass-through entity taxable both within and without Kentucky that is also a partner or member of a pass-through entity to determine the sales, property and payroll amounts to be entered on Revenue Form 41A720A.

(4) Revenue Form 41A720BIO, "Schedule BIO, Application and Credit Certificate of Income Tax/LLET Credit Biodiesel", shall be used by a taxpayer who is a biodiesel producer, biodiesel blender, or renewable diesel producer to report the biodiesel gallons produced or used by the blender and request approval from the Kentucky Department of Revenue of the tax credit amount allowed by KRS 141.423.

(5) Revenue Form 41A720CC, "Schedule CC, Coal Conversion Tax Credit", shall be used by a corporation to compute the tax credit allowed by KRS 141.041 for coal used or substituted for other fuels in an eligible heating facility as described by KRS 141.041(1).

(6) Revenue Form 41A720-CCI, "Schedule CCI, Application and Credit Certificate of Clean Coal Incentive Tax Credit", shall be used by a taxpayer to request approval from the Department of Revenue of the tax credit amount allowed by KRS 141.428 for the purchase of Kentucky coal used by the taxpayer to generate electricity.

(7) Revenue Form 41A720CELL, "Schedule CELL, Application and Credit Certificate of Income Tax/LLET Credit Cellulosic Ethanol", shall be used by a taxpayer who is a producer of cellulosic ethanol to report the number of cellulosic ethanol gallons and request approval from the Department of Revenue of the tax credit amount allowed by KRS 141.4244.

(8) Revenue Form 41A720-CI, "Schedule CI, Application for Coal Incentive Tax Credit", shall be used by a taxpayer to request approval for the amount of tax credit allowed by KRS 141.0405 for the purchase of Kentucky coal used by the taxpayer to generate electricity.

(9) Revenue Form 41A720CR, "Schedule CR, Pro Forma Federal Consolidated Return Schedule", shall be used by a C corporation filing a consolidated return to show its federal pro forma consolidated return.

(10) Revenue Form 41A720CR-C, "Schedule CR-C, Pro Forma Federal Consolidated Return Schedule Continuation Sheet", shall be used by a C corporation filing a consolidated return as a continuation of Revenue Form 41A720CR.

(11) Revenue Form 41A720ES, "Form 720-ES Kentucky, 2011[2010] Corporation Income/Limited Liability Entity Tax Estimated Tax Voucher", shall be used by a corporation or a limited liability pass-through entity to submit payments of estimated corporation income or limited liability entity tax as required by KRS 141.044.

(12) Revenue Form 41A720ETH, "Schedule ETH, Application and Credit Certificate of Income Tax/LLET Credit Ethanol", shall be used by a taxpayer who is a producer of ethanol to report ethanol gallons produced and request approval from the Kentucky Department of Revenue of the tax credit amount allowed by KRS 141.4242.

(13) Revenue Form 41A720EZC, "Schedule EZC, Enterprise Zone Tax Credit", shall be used by a qualified taxpayer to determine the tax credit allowed by KRS 154.45-090.

(14) Revenue Form 41A720HH, "Schedule HH, Kentucky Housing for Homeless Families Deduction", shall be used by an individual, corporation, fiduciary, or pass-through entity to determine the deduction allowed by KRS 141.0202.

(15) Revenue Form 41A720(I), "Instructions, 2010[2009] Kentucky Corporation Income Tax and LLET Return", shall be used by a corporation to file its 2010[2009] Kentucky Corporation Income Tax and LLET Return and related schedules.

(16) Revenue Form 41A720KCR, "Schedule KCR, Kentucky Consolidated Return Schedule", shall be used by a C corporation filing a nexus consolidated return showing the income or loss of each entity included in the nexus consolidated tax return.

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(17) Revenue Form 41A720KCR-C, "Schedule KCR-C, Kentucky Consolidated Return Schedule - Continuation Sheet", shall be used by a C corporation filing a nexus consolidated return as a continuation of Revenue Form 41A720KCR.

(18) Revenue Form 41A720LLET, "Schedule LLET, Limited Liability Entity Tax", shall be used by a corporation or a limited liability pass-through entity to determine the limited liability entity tax in accordance with KRS 141.0401.

(19) Revenue Form 41A720LLET-C, "Schedule LLET-C, Limited Liability Entity Tax - Continuation Sheet (For a corporation or limited liability pass-through entity subject to the limited liability entity tax that is also a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006)", shall be used by a corporation or a limited liability pass-through entity that is a partner in a general partnership organized or formed as a general partnership after January 1, 2006, or a corporation or limited liability pass-through entity that is a member or partner in another limited liability pass-through entity to determine its Kentucky gross receipts and Kentucky gross profits and its gross receipts and gross profits from all sources to be entered on Revenue Form 41A720LLET.

(20) Revenue Form 41A720LLET(K), "Schedule LLET(K), Limited Liability Entity Tax (For a Limited Liability Pass-through Entity with Economic Development Project(s))", shall be used by limited liability pass-through entities with economic development projects to determine the limited liability entity tax.

(21) Revenue Form 41A720LLET(K)-C, "Schedule LLET(K)-C, Limited Liability Entity Tax - Continuation Sheet (For a limited liability pass-through entity with economic development project(s) subject to the limited liability entity tax that is a partner or member of a limited liability pass-through entity or a general partnership organized or formed as a general partnership after January 1, 2006)", shall be used by a limited liability pass-through entity with an economic development project that is a partner or member of a limited liability pass-through entity or a general partnership organized or formed as a general partnership after January 1, 2006, to determine its Kentucky gross receipts and Kentucky gross profits and its gross receipts and gross profits from all sources to be entered on Revenue Form 41A720LLET(K).

(22) Revenue Form 41A720NOL, "Schedule NOL, Net Operating Loss Schedule", shall be used by a C corporation with a current year net operating loss or net operating loss carry-forward.

(23) Revenue Form 41A720NOL-CF, "Schedule NOL-CF, Kentucky ~~NOL~~~~(KNOL)~~ Carry forward Schedule", shall be used by a corporation filing a nexus consolidated income tax return as provided by KRS 141.200, in addition to Revenue Form 41A720NOL, to show the Kentucky net operating loss (KNOL) carry forward balance for each new member of the affiliated group.

(24) Revenue Form 41A720-O, "Schedule O-720, Other Additions and Subtractions To/From Federal Taxable Income", shall be used by a corporation filing Kentucky Form 720 to show other additions to and subtractions from federal taxable income on Revenue Form 41A720, Part ~~III~~~~(H)~~, Lines 9 and ~~16~~~~(45)~~, respectively.

(25) Revenue Form 41A720QR, "Schedule QR, Qualified Research Facility Tax Credit", shall be used by a corporation, individual, or pass-through entity to determine the credit against the income tax liability or LLET liability allowed by KRS 141.395.

(26) Revenue Form 41A720RC, "Schedule RC, Application for Income Tax/LLET Credit for Recycling and/or Composting Equipment or Major Recycling Project", shall be used by a taxpayer to request approval for the amount of credit allowed by KRS 141.390 for the purchase and installation of recycling or composting equipment or a major recycling project. This form shall also be used by an individual, corporation, fiduciary, or pass-through entity to substantiate and keep a record of the amount of approved credit claimed on their tax return.

(27) Revenue Form 41A720RC-C, "Schedule RC-C, Schedule RC - Part I Continuation", shall be used by an individual, corporation, fiduciary, or pass-through entity, in addition to Revenue Form 41A720RC, to list additional equipment for which approval of the credit allowed by KRS 141.390 is being requested.

(28) Revenue Form 41A720RC(I), "Instructions for Schedule RC", shall be used by taxpayers filing Revenue Form 41A720RC and Revenue Form 41A720RC-C requesting approval of a tax

credit for recycling equipment, composting equipment, or a major recycling project.

(29) Revenue Form 41A720RC-R, "Schedule RC-R, ~~Kentucky Disposition of~~ Recycling or Composting Equipment Tax Credit ~~Recapture~~ ~~(Schedule)~~", shall be used by a taxpayer disposing of recycling or composting equipment before the end of the recapture period to compute the tax credit recaptured to be reported on the applicable tax return.

(30) Revenue Form 41A720RR-E, "Schedule RR-E, Application and Credit Certificate of Income Tax/LLET Credit Railroad Expansion", shall be used by a corporation or pass-through entity requesting approval of a railroad expansion tax credit allowed by KRS 141.386.

(31) Revenue Form 41A720RR-I, "Schedule RR-I, Railroad Maintenance and Improvement Tax Credit", shall be used by a corporation, individual, or pass-through entity to determine the credit against the income tax liability or LLET liability allowed by KRS 141.385.

(32) Revenue Form 41A720S, "Form 720S, 2010~~[2009]~~ Kentucky S Corporation Income Tax and LLET Return", shall be used by an S corporation to determine the amount of tax due in accordance with KRS 141.040 and 141.0401 and to report the shareholders' share of income, loss, credits, deductions, etc. for tax years beginning in 2010~~[2009]~~.

(33)~~(34)~~ Revenue Form 41A720S(I), "Instructions, 2010~~[2009]~~ Kentucky S Corporation Income Tax and LLET Return", shall be used by an S corporation to file its 2010~~[2009]~~ Kentucky S Corporation Income Tax and LLET Return and related schedules.

(34)~~(32)~~ Revenue Form 41A720S(K), "Form 720S(K), Kentucky Schedule K for S Corporations With Economic Development Project(s)", shall be used by S Corporations with economic development projects to determine the shareholders' shares of income, credit, deductions, etc., excluding the economic development projects.

(35)~~(33)~~ Revenue Form 41A720S(K-1), "Schedule K-1 (Form 720S), 2010~~[2009]~~ Shareholder's Share of Income, Credits, Deductions, Etc.", shall be used by an S corporation to report to each of its shareholders the amount of income, credit, deduction, etc., that the shareholder shall report for Kentucky income tax purposes.

(36)~~(34)~~ Revenue Form 41A720S-O, "Schedule O-PTE, Other Additions and Subtractions To/From Federal Ordinary Income", shall be used by a pass-through entity filing Revenue Form 41A720S, Form 41A765, or Form 42A765-GP to show other additions to and subtractions from federal ordinary income on Revenue Form 41A720S, 41A765, or 42A765-GP Part I, Lines 5 and 9, respectively.

(37)~~(35)~~ Revenue Form 41A720SL, "Application for Six-Month Extension of Time to File Kentucky Corporation or Limited Liability Pass-Through Entity Return", shall be used by a corporation or a limited liability pass-through entity to request a six (6) month extension of time to file a ~~corporation income~~ tax return or an LLET return or to submit payment of unpaid tax.

(38)~~(36)~~ Revenue Form 41A720TCS, "Schedule TCS, Tax Credit Summary Schedule", shall be used by a corporation or a limited liability pass-through entity to summarize tax credits claimed and shall be attached to the tax return.

(39)~~(37)~~ Revenue Form 41A720VERB, "Schedule VERB, Voluntary Environmental Remediation Tax Credit", shall be used by an entity claiming a tax credit provided by KRS 141.418.

(40)~~(38)~~ Revenue Form 41A720-S1, "Form 720X, Amended Kentucky Corporation Income Tax and Corporation License Tax Return", shall be used by a C corporation to amend its Kentucky Corporation Income and License Tax Return for tax periods beginning prior to January 1, 2005, as previously filed.

(41)~~(39)~~ Revenue Form 41A720-S2, "Form 720-AMENDED, Amended Kentucky Corporation Income Tax Return", shall be used by a C corporation to amend its Kentucky Corporation Income Tax Return for periods beginning on or after January 1, 2005 and before January 1, 2007, as previously filed.

(42)~~(40)~~ Revenue Form 41A720-S3, "Form 720-AMENDED (2007-2008), Amended Kentucky Corporation Income Tax and LLET Return", shall be used by a C corporation to amend its Kentucky Corporation Income Tax and LLET Return for periods beginning on or after January 1, 2007 and before January 1, 2009, as

previously filed.

~~(43)~~~~(44)~~ Revenue Form 41A720-S4, "Form 851-K, Kentucky Affiliations and Payment Schedule", shall be used by a corporation filing a consolidated Kentucky income tax return on Revenue Form 41A720 to identify the members of the affiliated group which are subject to the Kentucky corporation tax and to list the amount of tax paid.

~~(44)~~~~(42)~~ Revenue Form 41A720-S6, "Form 2220-K, Underpayment and Late Payment of Estimated Income Tax and LLET", shall be used by a corporation or limited liability pass-through entity required by KRS 141.042 and 141.044 to file a declaration of estimated tax, to compute the underpayment penalty as provided by KRS 131.180(3) and 141.990, and to compute the interest on any late payment or underpayment of an estimated tax installment as provided by KRS 131.183(2).

~~(45)~~~~(43)~~ Revenue Form 41A720-S7, "Form 5695-K, Kentucky Energy Efficiency Products Tax Credit", shall be used by a taxpayer to claim a tax credit for installation of energy efficiency products for residential and commercial property as provided by KRS 141.436.

~~(46)~~~~(44)~~ Revenue Form 41A720-S9, "Form 8903-K, Kentucky Domestic Production Activities Deduction", shall be used by a corporation to determine the Domestic Production Activities Deduction amount for Kentucky corporation income tax purposes and shall be attached to the corporation income tax return.

~~(47)~~~~(45)~~ Revenue Form 41A720-S11, "Form 8908-K, Kentucky ENERGY STAR (Homes and Manufactured Homes) Tax Credit", shall be used by a taxpayer to claim a tax credit for the construction of an ENERGY STAR home or the sale of an ENERGY STAR manufactured home as provided by KRS 141.437.

~~(48)~~~~(46)~~ Revenue Form 41A720-S16, "Schedule KREDA, Tax Credit Computation Schedule (For a KREDA Project of a Corporation~~[Corporations]~~)", shall be used by a corporation which has a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.347.

~~(49)~~~~(47)~~ Revenue Form 41A720-S17, "Schedule KREDA-T, Tracking Schedule for a KREDA Project", shall be used by a company which has a Kentucky Rural Economic Development Act (KREDA) project to maintain a record of the debt service payments, wage assessment fees and tax credits for the duration of the project.

~~(50)~~~~(48)~~ Revenue Form 41A720-S18, "Schedule KREDA-SP, Tax Computation Schedule (For a KREDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.347.

~~(51)~~~~(49)~~ Revenue Form 41A720-S20, "Schedule KIDA, Tax Credit Computation Schedule (For a KIDA Project of a Corporation~~[Corporations]~~)", shall be used by a corporation which has a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.400.

~~(52)~~~~(50)~~ Revenue Form 41A720-S21, "Schedule KIDA-T, Tracking Schedule for a KIDA Project", shall be used by a company which has a Kentucky Industrial Development Act (KIDA) project to maintain a record of the debt service payments and tax credits for the duration of the project.

~~(53)~~~~(51)~~ Revenue Form 41A720-S22, "Schedule KIDA-SP, Tax Computation Schedule (For a KIDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.400.

~~(54)~~~~(52)~~ Revenue Form 41A720-S24, "Schedule KIRA, Tax Credit Computation Schedule (For a KIRA Project of a Corporation~~[Corporations]~~)", shall be used by a corporation which has a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with

KRS 141.403.

~~(55)~~~~(53)~~ Revenue Form 41A720-S25, "Schedule KIRA-T, Tracking Schedule for a KIRA Project", shall be used by a company which has a Kentucky Industrial Revitalization Act (KIRA) project to maintain a record of the approved costs, wage assessment fees and tax credits for the duration of the project.

~~(56)~~~~(54)~~ Revenue Form 41A720-S26, "Schedule KIRA-SP, Tax Computation Schedule (For a KIRA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.403.

~~(57)~~~~(55)~~ Revenue Form 41A720-S27, "Schedule KJDA, Tax Credit Computation Schedule (For a KJDA Project of a Corporation~~[Corporations]~~)", shall be used by a corporation which has a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.407.

~~(58)~~~~(56)~~ Revenue Form 41A720-S28, "Schedule KJDA-T, Tracking Schedule for a KJDA Project", shall be used by a company which has a Kentucky Jobs Development Act (KJDA) project to maintain a record of the approved costs, wage assessment fees, in-lieu-of credits and tax credits for the duration of the project.

~~(59)~~~~(57)~~ Revenue Form 41A720-S29, "Schedule KJDA-SP, Tax Computation Schedule (For a KJDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.407.

~~(60)~~~~(58)~~ Revenue Form 41A720-S35, "Schedule KRA, Tax Credit Computation Schedule (For a KRA Project of a Corporation~~[Corporations]~~)", shall be used by a corporation which has entered into a Kentucky Reinvestment Act (KRA) project to compute the allowable KRA credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.415.

~~(61)~~ Revenue Form 41A720-S36, "Schedule KRA-SP, Tax Computation Schedule (For a KRA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Reinvestment Act (KRA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.415.

~~(62)~~~~(59)~~ Revenue Form 41A720-S37, "Schedule KRA-T, Tracking Schedule For a KRA Project", shall be used by a company which has entered into a Kentucky Reinvestment Act (KRA) project to maintain a record of the balance of approved costs and tax credits for the duration of the agreement.

~~(63)~~~~(60)~~ Revenue Form 41A720-S40, "Schedule KEOZ, Tax Credit Computation Schedule (For a KEOZ Project of a Corporation~~[Corporations]~~)", shall be used by a corporation which has entered into a Kentucky Economic Opportunity Zone (KEOZ) Act project to compute the allowable KEOZ credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.401.

~~(64)~~~~(61)~~ Revenue Form 41A720-S41, "Schedule KEOZ-SP, Tax Computation Schedule (For a KEOZ Project of a Pass-Through Entity)", shall be used by a pass-through entity which has entered into a Kentucky Economic Opportunity Zone (KEOZ) Act project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.401.

~~(65)~~~~(62)~~ Revenue Form 41A720-S42, "Schedule KEOZ-T, Tracking Schedule for a KEOZ Project", shall be used by a company which has entered into an agreement for a Kentucky Economic Opportunity Zone (KEOZ) Act project to maintain a record of the debt service payments, wage assessment fees, approved costs and tax credits for the duration of the agreement.

~~(66)~~~~(63)~~ Revenue Form 41A720-S43, "Schedule KESA, Tax Credit Computation Schedule (For a KESA Project of a Corporation~~[Corporations]~~)", shall be used by a corporation which has entered into a Kentucky Environmental Stewardship Act (KESA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with

KRS 141.430.

~~(67)~~~~(64)~~ Revenue Form 41A720-S44, "Schedule KESA-T, Tracking Schedule for a KESA Project", shall be used by a company which has entered into an agreement for a Kentucky Environmental Stewardship Act (KESA) project to maintain a record of the approved costs and tax credits for the duration of the agreement.

~~(68)~~~~(65)~~ Revenue Form 41A720-S45, "Schedule KJRA, Tax Credit Computation Schedule (For a KJRA Project of a Corporation~~Corporations~~)", shall be used by a company which has entered into a Kentucky Jobs Retention Act (KJRA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.402.

~~(69)~~~~(66)~~ Revenue Form 41A720-S46, "Schedule KJRA-T, Tracking Schedule For a KJRA Project", shall be used by a company which has entered into an agreement for a Kentucky Jobs Retention Act (KJRA) project to maintain a record of the debt service payments, wage assessment fees, approved costs, and tax credits for the duration of the agreement.

~~(70)~~~~(67)~~ Revenue Form 41A720-S50, "Schedule IEIA, Tax Credit Computation Schedule (For an IEIA Project of a Corporation~~Corporations~~)", shall be used by a company which has entered into an Incentives for Energy Independence Act (IEIA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.421.

~~(71)~~~~(68)~~ Revenue Form 41A720-S51, "Schedule IEIA-T, Tracking Schedule For an IEIA Project", shall be used by a company which has entered into an Incentives for Energy Independence Act (IEIA) project to maintain a record of the balance of approved costs, wage assessments, and tax credits ~~balance of credit for income tax and limited liability entity tax~~ for the duration of the agreement.

~~(72)~~ Revenue Form 41A720-S53, "Schedule KBI, Tax Credit Computation Schedule (For a KBI Project of a Corporation)", shall be used by a corporation which has entered into a Kentucky Business Investment (KBI) project to compute the allowable KBI credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.415.

~~(73)~~ Revenue Form 41A720-S54, "Schedule KBI-SP, Tax Computation Schedule (For a KBI Project of a Pass-Through Entity)", shall be used by a pass-through entity which has entered into a Kentucky Business Investment (KBI) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.415.

~~(74)~~ Revenue Form 41A720-S55, "Schedule KBI-T, Tracking Schedule for a KBI Project", shall be used by a company which has entered into an agreement for a Kentucky Business Investment (KBI) project to maintain a record of approved costs, wage assessments, and tax credits for the duration of the agreement.

~~(75)~~ Revenue Form 41A720-S80, "Form 8874(K), Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit", shall be used by a qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment eligible for the tax credit provided by KRS 141.434.

~~(76)~~ Revenue Form 41A720-S81, "Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification", shall be used by a qualified community development entity to provide proof to the Kentucky Department of Revenue of the receipt of cash for a taxpayer's qualified equity investment.

~~(77)~~ Revenue Form 41A720-S82, "Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture", shall be used by the Kentucky Department of Revenue to notify a taxpayer of a recapture of the New Markets Development Program tax credit.

~~(78)~~~~(69)~~ Revenue Form 41A725, "Form 725, 2010~~2009~~ Kentucky Single Member LLC Individually Owned LLET Return", shall be used by a single member individually-owned LLC to file an LLET return in accordance with KRS 141.0401 for tax years beginning in 2010~~2009~~.

~~(79)~~~~(70)~~ Revenue Form 41A725CP, "Schedule CP, Form 725, 2010~~2009~~ Kentucky Single Member LLC Individually Owned Composite Return Schedule", shall be used by a single member

individual with multiple LLC entities to file LLET returns in accordance with KRS 141.0401 for tax years beginning in 2010~~2009~~.

~~(80)~~~~(71)~~ Revenue Form 41A725(I), "Instructions, 2010~~2009~~ Kentucky Single Member LLC Individually Owned LLET Return", shall be used by a single member LLC individually owned to file its 2010~~2009~~ Kentucky LLET return and related schedules.

~~(81)~~~~(72)~~ Revenue Form 41A750, "Form 750, Business Development Corporation Tax Return", shall be used by a corporation organized under the provisions of KRS Chapter 155 to determine its excise tax due in accordance with KRS 155.170 for tax years beginning in 2010~~2009~~.

~~(82)~~~~(73)~~ Revenue Form 41A765, "Form 765, 2010~~2009~~ Kentucky Partnership Income and LLET Return", shall be used by an entity taxed as a partnership and organized as a LLC, LLP or LP to file its Kentucky income and LLET return in accordance with KRS 141.0401 and 141.206 for tax years beginning in 2010~~2009~~.

~~(83)~~~~(74)~~ Revenue Form 41A765(I), "Instructions, 2010~~2009~~ Kentucky Partnership Income and LLET Return", shall be used by an entity taxed as a partnership and organized as a LLC, LLP, or LP to file its 2010~~2009~~ Kentucky income and LLET return and related schedules.

~~(84)~~~~(75)~~ Revenue Form 41A765(K), "Form 765(K), Kentucky Schedule K For Partnerships With Economic Development Project(s)", shall be used by partnerships with economic development projects to determine the partners' share of income, credits, deductions, etc., excluding the economic development projects.

~~(85)~~~~(76)~~ Revenue Form 41A765 (K-1), "Schedule K-1 (Form 765), 2010~~2009~~ Partner's Share of Income, Credits, Deductions, Etc.", shall be used by an entity taxed as a partnership and organized as a LLC, LLP, or LP to report to its partners the amount of income, credit, deduction, etc., that the partners shall report for Kentucky income tax purposes.

~~(86)~~~~(77)~~ Revenue Form 41A800, "Corporation and Pass-through Entity Nexus Questionnaire", shall be used by a corporation or pass-through entity to determine if the entity has nexus with the Commonwealth of Kentucky.

Section 2. Individual Income and Withholding Taxes. (1) Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request", shall be submitted to the Department of Revenue to request an installment agreement to pay tax due.

(2) Revenue Form 40A100, "Application for Refund of Income Taxes", shall be presented to the Department of Revenue to request a refund of income taxes paid.

(3) Revenue Form 40A102, "2010~~2009~~ Application for Extension of Time to File Individual, General Partnership and Fiduciary Income Tax Returns for Kentucky", shall be submitted to the Department of Revenue by individuals, partnerships, and fiduciaries prior to the date prescribed by law for filing a return to request a six (6) month extension to file the return or to remit payment of tax prior to the date the return is due.

(4) Revenue Form 40A103, "Application for New Home Tax Credit", shall be submitted to the Department of Revenue by individuals to request approval for the new home tax credit.

(5) Revenue Form 40A200, "Form PTE-WH, Kentucky Nonresident Income Tax Withholding on ~~Net~~ Distributive Share Income", shall be used by a pass-through entity doing business in Kentucky to report Kentucky income tax withheld on each nonresident individual or corporate partner doing business in Kentucky only through its ownership interest in the pass-through entity.

(6) Revenue Form 40A201, "Form 740NP-WH, Kentucky Nonresident Income Tax Withholding on ~~Net~~ Distributive Share Income Transmittal Report and Composite Income Tax Return", shall be used by a pass-through entity doing business in Kentucky to report and pay Kentucky income tax withheld on nonresident individual and corporate partners.

(7) Revenue Form 40A727, "Kentucky Income Tax Forms Requisition", shall be used by a taxpayer or tax preparer to order individual income tax forms.

(8) Revenue Form 42A003, "Withholding Kentucky Income Tax Instructions for Employers", shall provide instructions for employers and shall contain forms used for withholding and reporting Kentucky income tax withholding.

(9) Revenue Form 42A003(T), "2011~~2010~~ Withholding Tax

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Tables Computer Formula", shall be used by an employer for computing employees Kentucky income tax withholding each pay period.

(10) Revenue Form 42A740, "Form 740, 2010[2009] Kentucky Individual Income Tax Return, Full-Year Residents Only", shall be completed by a resident individual to report taxable income and income tax liability for taxable years beginning in 2010[2009], and shall be due within three and one-half (3 1/2) months after the close of the taxable year.

(11) Revenue Form 42A740-A, "Schedule A, Form 740, 2010[2009] Kentucky Itemized Deductions", shall be completed by resident individuals and attached to Form 740 to support itemized deductions claimed for 2010[2009].

(12) Revenue Form 42A740-ES, "Form 740-ES, 2011[2010] Individual Income Tax Kentucky Estimated Tax Voucher", shall be submitted to the Department of Revenue by individuals with payment of quarterly estimated tax.

(13) Revenue Form 42A740-EZ, "Form 740-EZ, 2010[2009] Kentucky Individual Income Tax Return for Single Persons with No Dependents", shall be completed by resident individuals to report taxable income and income tax liability for taxable years beginning in 2010[2009], and shall be due within three and one-half (3 1/2) months after the close of the taxable year.

(14) Revenue Form 42A740(I), "2010[2009] Kentucky Individual Income Tax Instructions for Forms 740 and 740-EZ", shall be used by resident individuals to file the 2010[2009] Kentucky Individual Tax Return and related schedules.

(15) Revenue Form 42A740-J, "Schedule J, Kentucky Farm Income Averaging", shall be completed by individuals and attached to Form 740 to compute tax liability by averaging farm income for taxable years beginning after December 31, 1997.

(16) Revenue Form 42A740-KNOL, "Schedule KNOL, 2010[2009] Kentucky Net Operating Loss Schedule", shall be used by individuals to compute and carry forward a net operating loss to subsequent years.

(17) Revenue Form 42A740-M, "Schedule M, 2010[2009] Kentucky Federal Adjusted Gross Income Modifications", shall be completed by individuals and attached to Form 740 in support of additions to and subtractions from federal adjusted gross income.

(18) Revenue Form 42A740-NP, "Form 740-NP, 2010[2009] Kentucky Individual Income Tax Return, Nonresident or Part-Year Resident", shall be completed by part-year or full-year nonresident individuals to report taxable income and income tax liability for taxable years beginning in 2010[2009], and shall be filed within three and one-half (3 1/2) months after the close of the taxable year.

(19) Revenue Form 42A740-NP-A, "Schedule A, Form 740-NP, 2010[2009] Kentucky Schedule A Itemized Deductions", shall be completed and attached to Form 42A740-NP by part-year or full-year nonresidents to support the itemized deductions claimed for 2010[2009].

(20) Revenue Form 42A740-NP-ME, "Schedule ME, Form 740-NP, 2010[2009] Moving Expense and Reimbursement", shall be completed and attached to Form 42A740-NP by part-year or full-year nonresidents to support moving expenses and reimbursement by employers for moving expenses for 2010[2009].

(21) Revenue Form 42A740-NP(I), "Instructions for 2010[2009] Kentucky Form 740-NP, Nonresident or Part-Year Resident Income Tax Return", shall be used by nonresident or part-year resident individuals to file the 2010[2009] Kentucky Form 740-NP and related schedules.

(22) Revenue Form 42A740-NP-R, "Form 740-NP-R, 2010[2009] Kentucky Income Tax Return Nonresident - Reciprocal State", shall be completed by resident individuals of reciprocal states to request a refund of Kentucky withholding for 2010[2009].

(23) Revenue Form 42A740-NP(P), "2010[2009] Kentucky Income Tax Return, Nonresident or Part-Year Resident", shall be a packet containing forms and instructions and shall be mailed to nonresident and part-year resident individuals for use in filing a Kentucky individual tax return for 2010[2009].

(24) Revenue Form 42A740(PKT), "2010[2009] Kentucky Individual Income Tax Forms", shall be a packet containing forms and instructions and shall be mailed to resident individuals for use in filing a Kentucky individual tax return for 2010[2009].

(25) Revenue Form 42A740-P, "Schedule P, 2010[2009] Kentucky Pension Income Exclusion", shall be completed by individuals and attached to Form 740 to compute the amount of allowable pension exclusion for 2010[2009].

(26) Revenue Form 42A740-UTC, "Schedule UTC, Form 740, Unemployment Tax Credit", shall be completed by individuals and attached to Form 740 or Form 740-NP to provide the Department for Employment Services Certificate Numbers in support of credit claimed for hiring an unemployed person.

(27) Revenue Form 42A740-X, "Form 740-X, Amended Kentucky Individual Income Tax Return[~~For Tax Year 2005 through 2009~~]", shall be completed by individuals and filed with the Department of Revenue to amend a previously filed tax return for 2005 or future years [with tax years beginning in 2005, 2006, 2007, 2008, or 2009].

(28) Revenue Form 42A740-XP, "Form 740-XP, Amended Kentucky Individual Income Tax Return, 2004 and Prior Years", shall be completed by individuals and filed with the Department of Revenue to amend a previously filed tax return for 2004 or prior years.

(29) Revenue Form 42A740-S1, "Form 2210-K, 2010[2009] Underpayment of Estimated Tax by Individuals", shall be filed by individuals to request a waiver of estimated tax penalty or to compute and self assess an estimated tax penalty for a tax year beginning in 2010[2009].

(30) Revenue Form 42A740-S4, "2011[2010] Instructions for Filing Estimated Tax Vouchers", shall be used to compute the amount of estimated tax due for 2011[2010].

(31) Revenue Form 42A740-S18, "Form 8582-K, 2010[2009] Kentucky Passive Activity Loss Limitations", shall be completed by an individual taxpayer and attached to the individual tax return in support of an allowable passive loss deduction and carryover of a passive activity loss.

(32) Revenue Form 42A740-S21, "Form 4972-K, 2010[2009] Kentucky Tax on Lump-Sum Distributions", shall be completed by an individual taxpayer to compute tax liability on a lump sum distribution and attached to the taxpayer's individual income tax return.

(33) Revenue Form 42A740-S22, "Form 8453-K, 2010[2009] Kentucky Individual Income Tax Declaration for Electronic Filing", shall be completed, signed by the individual taxpayer or taxpayers and maintained by the preparer or taxpayer in support of an electronically filed return.

(34) Revenue Form 42A740-S23, "Form 740-V, 2010[2009] Kentucky Electronic Payment Voucher", shall be used by the individual taxpayer or taxpayers for the payment of additional tax due on an electronically filed return and submitted to the Department of Revenue.

(35) Revenue Form 42A740-S24, "Form 8863-K, 2010[2009] Kentucky Education Tuition Tax Credit", shall be used by an individual taxpayer or taxpayers to claim a tuition tax credit on the taxpayer's individual Kentucky income tax return.

(36) Revenue Form 42A741, "Form 741, 2010[2009] Kentucky Fiduciary Income Tax Return", shall be used by a fiduciary of an estate or trust to report income and tax liability of an estate or trust and filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the taxable year.

(37) Revenue Form 42A741-D, "Schedule D, Form 741, 2010[2009] Kentucky Capital Gains and Losses", shall be completed and attached to Form 741 by a fiduciary to report income from capital gains and losses.

(38) Revenue Form 42A741(I), "Instructions - Form 741, Kentucky Fiduciary Income Tax Return", shall be the instruction guide provided by the Department of Revenue for completing the 2010[2009] Form 741.

(39) Revenue Form 42A741(K-1), "Schedule K-1, Form 741, 2010[2009] Kentucky Beneficiary's Share of Income, Deductions, Credits, etc.", shall be filed by the fiduciary with Form 741 to report each beneficiary's share of income, deductions, and credits.

(40) Revenue Form 42A765-GP, "Form 765-GP, 2010[2009] Kentucky General Partnership Income Return", shall be completed and filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the taxable year by a general partnership to report income, deductions, and credits of a general partnership for 2010[2009].



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(41) Revenue Form 42A765-GP(I), "Instructions, 2010[2009] Kentucky General Partnership Income Return", shall be provided to assist the general partnership in completing a general partnership income return.

(42) Revenue Form 765-GP(K-1), "Schedule K-1, Form 765-GP, 2010[2009] Partner's Share of Income, Credits, Deductions, etc.", shall be filed by the general partnership with Form 765-GP to report each general partner's share of income, deductions, and credits.

(43) Revenue Form 42A765-GP(K), "Form 765-GP(K), Kentucky Schedule K for General Partnerships with Economic Development Project(s)", shall be used by a general partnership which has one (1) or more economic development projects to determine the total general partners' share of income, credits, deductions, etc., excluding the amount of each item of income, credit, deduction, etc., attributable to the projects.

(44) Revenue Form 42A801, "Form K-1, Kentucky Employer's Income Tax Withheld Worksheet", shall be used by employers to report wages and taxes withheld for the filing period.

(45) Revenue Form 42A801(D), "Form K-1, Amended Employer's Return of Income Tax Withheld", shall be used by employers to correct wages and taxes reported for the filing period.

(46) Revenue Form 42A801-E, "Form K-1E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", shall be used by employers who remit taxes withheld electronically to report wages and tax withheld for the filing period.

(47) "Form W-2, 2010[2009] Wage and Tax Statement", shall be used by an employer to report each of its employees' wages and Kentucky tax withheld for the calendar year 2010[2009].

(48) Revenue Form 42A803, "Form K-3, Kentucky Employer's Income Tax Withheld Worksheet", shall be used by employers to report wages and tax withheld for the filing period and annually reconcile wages and taxes reported.

(49) Revenue Form 42A803(D), "Form K-3, Amended Employer's Return of Income Tax Withheld", shall be used by employers to amend wages and taxes reported for the filing period and the annual reconciled wages and taxes reported.

(50) Revenue Form 42A803-E, "Form K-3E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", shall be used by employers to report wages and tax withheld for the filing period and to annually reconcile wages and taxes reported.

(51) Revenue Form 42A804, "Form K-4, Kentucky Department of Revenue Employee's Withholding Exemption Certificate", shall be used by an employee to inform the employer of the number of exemptions claimed in order to determine the amount of Kentucky tax to withhold from wages each pay period.

(52) Revenue Form 42A804-A, "Form K-4A, Kentucky Department of Revenue Withholding Exemptions for Excess Itemized Deductions", shall be used by an employee to determine additional withholding exemptions.

(53) Revenue Form 42A804-E, "Form K-4E, Special Withholding Exemption Certificate", shall be used by employees to inform employers of special tax exempt status.

(54) Revenue Form 42A804-M, "Form K-4M, Nonresident Military Spouse Withholding Tax Exemption Certificate", shall be used by employees to inform employers of special tax exempt status as a nonresident military spouse.

(55) Revenue Form 42A806, "Transmitter Report for Filing Kentucky Wage Statements", shall be used by employers annually to submit Form W-2 Wage and Tax Statements.

(56)(~~55~~) Revenue Form 42A807, "Form K-4FC, Fort Campbell Exemption Certificate", shall be completed by nonresident employees working at Fort Campbell, Kentucky, to inform employers of special tax exempt status.

(57)(~~56~~) Revenue Form 42A808, "Authorization to Submit Employees Annual Wage and Tax Statements Via Kentucky Department of Revenue Web Site", shall be used by employers to request authorization to annually submit wage and tax statements via the Kentucky Department of Revenue Web site.

(58)(~~57~~) Revenue Form 42A809, "Certificate of Nonresidence", shall be used by employees to inform employers of special tax exempt status as a result of being a resident of a reciprocal state.

(59)(~~58~~) Revenue Form 42A810, "Nonresident's Affidavit - Kentucky Individual Income Tax", shall be used by individuals to submit a sworn statement concerning residency status.

(60)(~~59~~) Revenue Form 42A811, "KREDA Annual Report", shall be completed by employers to report KREDA employee wage assessment fee information to the Department of Revenue.

(61)(~~60~~) Revenue Form 42A812, "KIDA Annual Report", shall be completed by employers to report KIDA employee wage assessment fee information to the Department of Revenue.

(62)(~~61~~) Revenue Form 42A813, "KJDA Annual Report", shall be completed by employers to report KJDA employee wage assessment fee information to the Department of Revenue.

(63)(~~62~~) Revenue Form 42A814, "KIRA Annual Report", shall be completed by employers to report KIRA employee wage assessment fee information to the Department of Revenue.

(64)(~~63~~) Revenue Form 42A815, "Withholding Tax Refund Application", shall be completed by employers to request a refund of withholding tax paid.

(65)(~~64~~) Revenue Form 42A816, "KEOZ Annual Report", shall be completed by employers to report KEOZ employee wage assessment fee information to the Department of Revenue.

(66) Revenue Form 42A817, "KJRA Annual Report", shall be completed by employers to report KJRA employee wage assessment fee information to the Department of Revenue.

(67) Revenue Form 42A818, "KBI Annual Report", shall be completed by employers to report KBI employee wage assessment fee information to the Department of Revenue.

(68)(~~65~~) Revenue Form 42D003, "2010[2009] Kentucky Wage and Tax Statements (W-2/K-2) Order Form", shall be used by employers to order wage and tax statements.

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

(a) Corporation income taxes; referenced material:

1. Revenue Form 41A720, "Form 720, 2010[2009] Kentucky Corporation Income Tax and LLET Return", 2010[2009];

2. Revenue Form 41A720A, "Schedule A, Apportionment and Allocation (For corporations and pass-through entities taxable both within and without Kentucky)", October 2010[2009];

3. Revenue Form 41A720A-C, "Schedule A-C, Apportionment and Allocation - Continuation Sheet (For a corporation or pass-through entity taxable both within and without Kentucky that is also a partner or member of a limited liability pass-through entity or general partnership)", October 2010[2009];

4. Revenue Form 41A720BIO, "Schedule BIO, Application and Credit Certificate of Income Tax/LLET Credit Biodiesel", October 2010[2009];

5. Revenue Form 41A720CC, "Schedule CC, Coal Conversion Tax Credit", October 2010[2009];

6. Revenue Form 41A720-CCI, "Schedule CCI, Application and Credit Certificate of Clean Coal Incentive Tax Credit", October 2010[2009];

7. Revenue Form 41A720CELL, "Schedule CELL, Application and Credit Certificate of Income Tax/LLET Credit Cellulosic Ethanol", October 2010[2009];

8. Revenue Form 41A720-CI, "Schedule CI, Application for Coal Incentive Tax Credit", October 2010[2009];

9. Revenue Form 41A720CR, "Schedule CR, Pro Forma Federal Consolidated Return Schedule", October 2010[2009];

10. Revenue Form 41A720CR-C, "Schedule CR-C, Pro Forma Federal Consolidated Return Schedule Continuation Sheet", October 2010[2009];

11. Revenue Form 41A720ES, "Form 720-ES Kentucky, 2011[2010] Corporation Income/Limited Liability Entity Tax Estimated Tax Voucher", June 2010[2009];

12. Revenue Form 41A720ETH, "Schedule ETH, Application and Credit Certificate of Income Tax/LLET Credit Ethanol", October 2010[2009];

13. Revenue Form 41A720EZC, "Schedule EZC, Enterprise Zone Tax Credit", October 2010[2009];

14. Revenue Form 41A720HH, "Schedule HH, Kentucky Housing for Homeless Families Deduction", October 2010[2009];

15. Revenue Form 41A720(I), "Instructions, 2010[2009] Kentucky Corporation Income Tax and LLET Return", October



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2010[2009];

16. Revenue Form 41A720KCR, "Schedule KCR, Kentucky Consolidated Return Schedule", October 2010[2009];

17. Revenue Form 41A720KCR-C, "Schedule KCR-C, Kentucky Consolidated Return Schedule - Continuation Sheet", October 2010[2009];

18. Revenue Form 41A720LLET, "Schedule LLET, Limited Liability Entity Tax", October 2010[2009];

19. Revenue Form 41A720LLET-C, "Schedule LLET-C, Limited Liability Entity Tax - Continuation Sheet (For a corporation or limited liability pass-through entity subject to the limited liability entity tax that is also a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006)", October 2010[2009];

20. Revenue Form 41A720LLET(K), "Schedule LLET(K), Limited Liability Entity Tax (For a Limited Liability Pass through Entity with Economic Development Project(s))", October 2010[2009];

21. Revenue Form 41A720LLET(K)-C, "Schedule LLET(K)-C, Limited Liability Entity Tax - Continuation Sheet (For a limited liability pass-through entity with economic development project(s) subject to the limited liability entity tax that is a partner or member of a limited liability pass-through entity or a general partnership organized or formed as a general partnership after January 1, 2006)", October 2010[2009];

22. Revenue Form 41A720NOL, "Schedule NOL, Net Operating Loss Schedule", October 2010[2009];

23. Revenue Form 41A720NOL-CF, "Schedule NOL-CF, Kentucky KNOL Carry forward Schedule", October 2010[2009];

24. Revenue Form 41A720-O, "Schedule O-720, Other Additions and Subtractions To/From Federal Taxable Income", November 2010[2009];

25. Revenue Form 41A720QR, "Schedule QR, Qualified Research Facility Tax Credit", October 2010[2009];

26. Revenue Form 41A720RC, "Schedule RC, Application for Income Tax/LLET Credit for Recycling and/or Composting Equipment or Major Recycling Project", October 2010[2009];

27. Revenue Form 41A720RC-C, "Schedule RC-C, Schedule RC - Part I Continuation", October 2010[2009];

28. Revenue Form 41A720RC(I), "Instructions For Schedule RC", October 2010[2009];

29. Revenue Form 41A720RC-R, "Schedule RC-R, Kentucky Disposition of Recycling or Composting Equipment Tax Credit Recapture Schedule", October 2010[2009];

30. Revenue Form 41A720RR-E, "Schedule RR-E, Application and Credit Certificate of Income Tax/LLET Credit Railroad Expansion", October 2010;

31. Revenue Form 41A720RR-I, "Schedule RR-I, Railroad Maintenance and Improvement Tax Credit", October 2010;

32. Revenue Form 41A720S, "Form 720S, 2010[2009] Kentucky S Corporation Income Tax and LLET Return", 2010[2009];

33.[34-] Revenue Form 41A720S(I), "Instructions, 2010[2009] Kentucky S Corporation Income Tax and LLET Return", October 2010[2009];

34.[32-] Revenue Form 41A720S(K), "Form 720S(K), Kentucky Schedule K for S Corporations With Economic Development Project(s)", October 2010[2009];

35.[33-] Revenue Form 41A720S(K-1), "Schedule K-1 (Form 720S), 2010[2009] Shareholder's Share of Income, Credits, Deductions, etc.", 2010[2009];

36.[34-] Revenue Form 41A720S-O, "Schedule O-PTE, Other Additions and Subtractions To/From Federal Ordinary Income", November 2010[2009];

37.[35-] Revenue Form 41A720SL, "Application for Six-Month Extension of Time to File Kentucky Corporation or Limited Liability Pass-Through Entity Return", June 2010[2009];

38.[36-] Revenue Form 41A720TCS, "Schedule TCS, Tax Credit Summary Schedule", October 2010[2009];

39.[37-] Revenue Form 41A720VERB, "Schedule VERB, Voluntary Environmental Remediation Tax Credit", October 2010[2009];

40.[38-] Revenue Form 41A720-S1, "Form 720X, Amended Kentucky Corporation Income Tax and Corporation License Tax Return", October 2010[2009];

41.[39-] Revenue Form 41A720-S2, "Form 720-AMENDED,

Amended Kentucky Corporation Income Tax Return", October 2010[2009];

42.[40-] Revenue Form 41A720-S3, "Form 720-AMENDED (2007-2008), Amended Kentucky Corporation Income Tax and LLET Return", October 2010[2009];

43.[44-] Revenue Form 41A720-S4, "Form 851-K, Kentucky Affiliations and Payment Schedule", October 2010[2009];

44.[42-] Revenue Form 41A720-S6, "Form 2220-K, Underpayment and Late Payment of Estimated Income Tax and LLET", October 2010[2009];

45.[43-] Revenue Form 41A720-S7, "Form 5695-K, Kentucky Energy Efficiency Products Tax Credit", October 2010[November 2009];

46.[44-] Revenue Form 41A720-S9, "Schedule 8903-K, Kentucky Domestic Production Activities Deduction", October 2010[2009];

47.[45-] Revenue Form 41A720-S11, "Form 8908-K, Kentucky ENERGY STAR (Homes and Manufactured Homes) Tax Credit", October 2010[2009];

48.[46-] Revenue Form 41A720-S16, "Schedule KREDA, Tax Credit Computation Schedule (For a KREDA Project of a Corporation)", October 2010[2009];

49.[47-] Revenue Form 41A720-S17, "Schedule KREDA-T, Tracking Schedule for a KREDA Project", October 2010[2009];

50.[48-] Revenue Form 41A720-S18, "Schedule KREDA-SP, Tax Computation Schedule (For a KREDA Project of a Pass-Through Entity)", October 2010[2009];

51.[49-] Revenue Form 41A720-S20, "Schedule KIDA, Tax Credit Computation Schedule (For a KIDA Project of a Corporation)", October 2010[2009];

52.[50-] Revenue Form 41A720-S21, "Schedule KIDA-T, Tracking Schedule for a KIDA Project", October 2010[2009];

53.[54-] Revenue Form 41A720-S22, "Schedule KIDA-SP, Tax Computation Schedule (For a KIDA Project of a Pass-Through Entity)", October 2010[2009];

54.[52-] Revenue Form 41A720-S24, "Schedule KIRA, Tax Credit Computation Schedule (For a KIRA Project of a Corporation)", October 2010[2009];

55.[53-] Revenue Form 41A720-S25, "Schedule KIRA-T, Tracking Schedule for a KIRA Project", October 2010[2009];

56.[54-] Revenue Form 41A720-S26, "Schedule KIRA-SP, Tax Computation Schedule (For a KIRA Project of a Pass-Through Entity)", October 2010[2009];

57.[55-] Revenue Form 41A720-S27, "Schedule KJDA, Tax Credit Computation Schedule (For a KJDA Project of a Corporation)", October 2010[2009];

58.[56-] Revenue Form 41A720-S28, "Schedule KJDA-T, Tracking Schedule for a KJDA Project", October 2010[2009];

59.[57-] Revenue Form 41A720-S29, "Schedule KJDA-SP, Tax Computation Schedule (For a KJDA Project of a Pass-Through Entity)", October 2010[2009];

60.[58-] Revenue Form 41A720-S35, "Schedule KRA, Tax Credit Computation Schedule (For a KRA Project of a Corporation)", October 2010[2009];

61. Revenue Form 41A720-S36, "Schedule KRA-SP, Tax Computation Schedule (For a KRA project of a Pass-Through Entity)", October 2010;

62.[59-] Revenue Form 41A720-S37, "Schedule KRA-T, Tracking Schedule for a KRA Project", October 2010[2009];

63.[60-] Revenue Form 41A720-S40, "Schedule KEOZ, Tax Credit Computation Schedule (For a KEOZ Project of a Corporation)", October 2010[2009];

64.[64-] Revenue Form 41A720-S41, "Schedule KEOZ-SP, Tax Computation Schedule (For a KEOZ project of a Pass-Through Entity)", October 2010[2009];

65.[62-] Revenue Form 41A720-S42, "Schedule KEOZ-T, Tracking Schedule for a KEOZ Project", October 2010[2009];

66.[63-] Revenue Form 41A720-S43, "Schedule KESA, Tax Credit Computation Schedule (For a KESA Project of a Corporation)", October 2010[2009];

67.[64-] Revenue Firm 41A720-S44, "Schedule KESA-T, Tracking Schedule for a KESA Project", October 2010[2009];

68.[65-] Revenue Form 41A720-S45, "Schedule KJRA, Tax Credit Computation Schedule (For a KJRA Project of a Corporation)", October 2010[2009];

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Corporations)", October 2010[2009];

69.[66-] Revenue Form 41A720-S46, "Schedule KJRA-T, Tracking Schedule for a KJRA Project", October 2010[2009];

70.[67-] Revenue Form 41A720-S50, "Schedule IEIA, Tax Credit Computation Schedule (For an IEIA Project of a Corporation [Corporations])", October 2010[2009];

71.[68-] Revenue Form 41A720-S51, "Schedule IEIA-T, Tracking Schedule for an IEIA Project", October 2010[2009];

72. Revenue Form 41A720-S53, "Schedule KBI, Tax Credit Computation Schedule (For a KBI Project of a Corporation)", October 2010;

73. Revenue Form 41A720-S54, "Schedule KBI-SP, Tax Credit Computation Schedule (For a KBI Project of a Pass-Through Entity)", October 2010;

74. Revenue Form 41A720-S55, "Schedule KBI-T, Tracking Schedule for a KBI Project", October 2010;

75. Revenue Form 41A720-S80, "Form 8874(K), Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit", June 2010;

76. Revenue Form 41A720-S81, "Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification", June 2010;

77. Revenue Form 41A720-S82, "Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture", June 2010;

78.[69-] Revenue Form 41A725, "Form 725, 2010[2009] Kentucky Single Member LLC Individually Owned LLET Return", 2010[2009];

79.[70-] Revenue Form 41A725CP, "Schedule CP, Form 725, 2010[2009] Kentucky Single Member LLC Individually Owned Composite Return Schedule", 2009;

80.[74-] Revenue Form 41A725(I), "Instructions, 2010[2009] Kentucky Single Member LLC Individually Owned LLET Return", October 2010[2009];

81.[72-] Revenue Form 41A750, "Form 750, Business Development Corporation Tax Return", September 2010[2009];

82.[73-] Revenue Form 41A765, "Form 765, 2010[2009] Kentucky Partnership Income and LLET Return", 2010[2009];

83.[74-] Revenue Form 41A765(I), "Instructions, 2010[2009] Kentucky Partnership Income and LLET Return", October 2010[2009];

84.[75-] Revenue Form 41A765(K), "Form 765(K), Kentucky Schedule K For Partnerships With Economic Development Project(s)", October 2010[2009];

85.[76-] Revenue Form 41A765 (K-1), "Schedule K-1 (Form 765), 2010[2009] Partner's Share of Income, Credits, Deductions, Etc.", 2010[2009]; and

86.[77-] Revenue Form 41A800, "Corporation and Pass-through Entity Nexus Questionnaire", December 2009; and

(b) Individual income and withholding taxes - referenced material:

1. Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request", November 2010[2009];

2. Revenue Form 40A100, "Application for Refund of Income Taxes", October 2010[2009];

3. Revenue Form 40A102, "2010[2009] Application for Extension of Time to File Individual, General Partnership and Fiduciary Income Tax Returns for Kentucky", November 2010[2009];

4. Revenue Form 40A103, "Application for New Home Tax Credit", June 2010[July 2009];

5. Revenue Form 40A200, "Form PTE-WH, Kentucky Nonresident Income Tax Withholding on [Net] Distributive Share Income", October 2010[2009];

6. Revenue Form 40A201, "Form 740NP-WH, Kentucky Nonresident Income Tax Withholding on [Net] Distributive Share Income Transmittal Report and Composite Income Tax Return", October 2010[2009];

7. Revenue Form 40A727, "Kentucky Income Tax Forms Requisition", October 2010[2009];

8. Revenue Form 42A003, "Withholding Kentucky Income Tax Instructions for Employers", April 2010[2009];

9. Revenue Form 42A003(T), "2011[2010] Withholding Tax Tables Computer Formula", October 2010[2009];

10. Revenue Form 42A740, "Form 740, 2010[2009] Kentucky

Individual Income Tax Return, Full-Year Residents Only", 2010[2009];

11. Revenue Form 42A740-A, "Schedule A, Form 740, 2010[2009] Kentucky Itemized Deductions", 2010[2009];

12. Revenue Form 42A740ES, "Form 740-ES, 2011[2010] Individual Income Tax Kentucky Estimated Tax Voucher", July 2010[2009];

13. Revenue Form 42A740-EZ, "Form 740-EZ, 2010[2009] Kentucky Individual Income Tax Return for Single Persons with No Dependents", 2010[2009];

14. Revenue Form 42A740(I), "2010[2009] Kentucky Individual Income Tax Instructions for Forms 740 and 740-EZ", October 2010[2009];

15. Revenue Form 42A740-J, "Schedule J, Kentucky Farm Income Averaging", October 2010[2009];

16. Revenue Form 42A740-KNOL, "Schedule KNOL, 2010[2009] Kentucky Net Operating Loss Schedule", 2010[2009];

17. Revenue Form 42A740-M, "Schedule M, 2010[2009] Kentucky Federal Adjusted Gross Income Modifications", 2010[2009];

18. Revenue Form 42A740-NP, "Form 740-NP, 2010[2009] Kentucky Individual Income Tax Return, Nonresident or Part-Year Resident", 2010[2009];

19. Revenue Form 42A740-NP-A, "Schedule A, Form 740-NP, 2010[2009] Kentucky Schedule A Itemized Deductions", 2010[2009];

20. Revenue Form 42A740-NP-ME, "Schedule ME, Form 740-NP, 2010[2009] Moving Expense and Reimbursement", 2010[2009];

21. Revenue Form 42A740-NP(I), "Instructions for 2010[2009] Kentucky Form 740-NP, Nonresident or Part-Year Resident Income Tax Return", October 2010[2009];

22. Revenue Form 42A740-NP-R, "Form 740-NP-R, 2010[2009] Kentucky Income Tax Return Nonresident - Reciprocal State", 2010[2009];

23. Revenue Form 42A740-NP(P), "2010[2009] Kentucky Income Tax Return Nonresident or Part-Year Resident", October 2010[2009];

24. Revenue Form 42A740(PKT), "2010[2009] Kentucky Individual Income Tax Forms", October 2010[2009];

25. Revenue Form 42A740-P, "Schedule P, 2010[2009] Kentucky Pension Income Exclusion", 2010[2009];

26. Revenue Form 42A740-UTC, "Schedule UTC, Form 740, Unemployment Tax Credit", October 2010[2009];

27. Revenue Form 42A740-X, "Form 740-X, Amended Kentucky Individual Income Tax Return [for Tax Year 2005 through 2009]", November 2010[2009];

28. Revenue Form 42A740-XP, "Form 740-XP, Amended Kentucky Individual Income Tax Return, 2004 and Prior Years", November 2008;

29. Revenue Form 42A740-S1, "Form 2210-K, 2010[2009] Underpayment of Estimated Tax by Individuals", 2010[2009];

30. Revenue Form 42A740-S4, "2011[2010] Instructions for Filing Estimated Tax Vouchers", October 2010[2009];

31. Revenue Form 42A740-S18, "Form 8582-K, 2010[2009] Kentucky Passive Activity Loss Limitations", 2010[2009];

32. Revenue Form 42A740-S21, "Form 4972-K, 2010[2009] Kentucky Tax on Lump-Sum Distributions", 2010[2009];

33. Revenue Form 42A740-S22, "Form 8453-K, 2010[2009] Kentucky Individual Income Tax Declaration for Electronic Filing", 2010[2009];

34. Revenue Form 42A740-S23, "Form 740-V, 2010[2009] Kentucky Electronic Payment Voucher", 2010[2009];

35. Revenue Form 42A740-S24, "Form 8863-K, 2010[2009] Kentucky Education Tuition Tax Credit", 2010[2009];

36. Revenue Form 42A741, "Form 741, 2010[2009] Kentucky Fiduciary Income Tax Return", 2010[2009];

37. Revenue Form 42A741-D, "Schedule D, Form 741, 2010[2009] Kentucky Capital Gains and Losses", 2010[2009];

38. Revenue Form 42A741(I), "Instructions - Form 741, Kentucky Fiduciary Income Tax Return", October 2010[2009];

39. Revenue Form 42A741(K-1), "Schedule K-1, Form 741, 2010[2009] Kentucky Beneficiary's Share of Income, Deductions, Credits, etc.", 2010[2009];

40. Revenue Form 42A765-GP, "Form 765-GP, 2010[2009]

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Kentucky General Partnership Income Return", 2010[2009];

41. Revenue Form 42A765-GP(I), "Instructions, 2010[2009] Kentucky General Partnership Income Return", October 2010[2009];

42. Revenue Form 765-GP(K-1), "Schedule K-1, Form 765-GP, 2010[2009] Partner's Share of Income, Credits, Deductions, etc.", 2010[2009];

43. Revenue Form 42A765-GP(K), "Form 765-GP(K), Kentucky Schedule K for General Partnerships with Economic Development Project(s)", October 2010[2009];

44. Revenue Form 42A801, "Form K-1, Kentucky Employer's Income Tax Withheld Worksheet", March 2007;

45. Revenue Form 42A801(D), "Form K-1, Amended Employer's Return of Income Tax Withheld", April 2008;

46. Revenue Form 42A801-E, "Form K-1E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", March 2007;

47. "Form W-2, 2010[2009] Wage and Tax Statement", 2010[2009];

48. Revenue Form 42A803, "Form K-3, Kentucky Employer's Income Tax Withheld Worksheet", March 2007;

49. Revenue Form 42A803(D), "Form K-3, Amended Employer's Return of Income Tax Withheld", April 2008;

50. Revenue Form 42A803-E, "Form K-3E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", March 2007;

51. Revenue Form 42A804, "Form K-4, Kentucky Department of Revenue Employee's Withholding Exemption Certificate", November 2010[2009];

52. Revenue Form 42A804-A, "Form K-4A, Kentucky Department of Revenue Withholding Exemptions for Excess Itemized Deductions", April 2008;

53. Revenue Form 42A804-E, "Form K-4E, Special Withholding Exemption Certificate", November 2010[February 2009];

54. Revenue Form 42A804-M, "Form K-4M, Nonresident Military Spouse Withholding Tax Exemption Certificate", November 2010;

55. Revenue Form 42A806, "Transmitter Report for Filing Kentucky Wage Statements", November 2010[March 2009];

56.[65-] Revenue Form 42A807, "Form K-4FC, Fort Campbell Exemption Certificate", August 2006;

57.[66-] Revenue Form 42A808, "Authorization to Submit Employees Annual Wage and Tax Statements Via Kentucky Department of Revenue Web Site", March 2006;

58.[67-] Revenue Form 42A809, "Certificate of Nonresidence", March 2007;

59.[68-] Revenue Form 42A810, "Nonresident's Affidavit - Kentucky Individual Income Tax", April 1989;

60.[69-] Revenue Form 42A811, "KREDA Annual Report", December 2007;

61.[60-] Revenue Form 42A812, "KIDA Annual Report", December 2007;

62.[61-] Revenue Form 42A813, "KJDA Annual Report", December 2007;

63.[62-] Revenue Form 42A814, "KIRA Annual Report", December 2007;

64.[63-] Revenue Form 42A815, "Withholding Tax Refund Application", August 2006;

65.[64-] Revenue Form 42A816, "KEOZ Annual Report", December 2007;

66. Revenue Form 42A817, "KJRA Annual Report", October 2010;

67. Revenue Form 42A818, "KBI Annual Report", October 2010; and

68.[65-] Revenue Form 42D003, "2010[2009] Kentucky Wage and Tax Statements (W-2/K-2) Order Form", July 2010[2009].

(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[40620], Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: January 27, 2011

FILED WITH LRC: January 27, 2011 at 9 a.m.

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, (502) 564-6660

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the forms to be used when reporting or estimating corporation tax, reporting or estimating limited liability entity tax, reporting or estimating individual tax, or withholding individual income tax for tax years beginning in 2010.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to provide taxpayers necessary tax forms for reporting and paying their corporation, limited liability entity, individual, and withholding taxes for tax years beginning in 2010.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of any revenue law by the promulgation of an administrative regulation pursuant to KRS Chapter 13A incorporating forms by reference.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes forms to be used by taxpayers to report and pay corporation taxes, limited liability entity taxes, individual income taxes, and withholding taxes to the Commonwealth of Kentucky pursuant to KRS Chapter 141.

(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 contains tax forms to be used for tax years beginning in 2010.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update tax forms to the current tax laws in effect for years beginning in 2010.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of the tax laws.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide taxpayers with the necessary tax forms to file and pay income taxes, limited liability entity taxes, and individual withholding taxes for tax years beginning in 2010.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individual, pass-through entity and corporate tax filers are affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individual, pass-through entity, and corporate tax filers will use the forms contained in this administrative regulation to report, pay, and withhold taxes due pursuant to KRS Chapter 141 for tax years beginning in 2010.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of filing tax returns contained in this administrative regulation with the Commonwealth of Kentucky should be comparable to filing tax returns with surrounding states.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The forms contained in this administrative regulation should simplify and expedite the reporting and paying of taxes required by KRS Chapter 141.

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

(a) Initially: The cost of printing and designing the forms.

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(b) On a continuing basis: Forms are updated each year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds will be provided by the Department of Revenue.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding will be required 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 does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as the forms included in this administrative regulation apply to all taxpayers taxed pursuant to KRS Chapter 141.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Department of Revenue.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(3).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not increase revenues or expenses for the Commonwealth, but will expedite the collection of taxes provided by KRS Chapter 141.

(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 additional revenue will be collected as a result of this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? A very small increase in expenditures will occur in the administrative regulation process.

(d) How much will it cost to administer this program for subsequent years? No costs for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### GENERAL GOVERNMENT CABINET Kentucky Board of Hairdressers and Cosmetologists (Amendment)

#### 201 KAR 12:083. Educational requirements.

RELATES TO: KRS 317A.050, 317A.140, 317B.025(1)(c), (4)(c)

STATUTORY AUTHORITY: KRS 317A.060, 317B.020(3)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 and 317B.020 require the board to promulgate administrative regulations governing the operation of schools of cosmetology and esthetics, including the proper education and training of students. This administrative regulation establishes proof of education and other enrollment requirements.

Section 1. (1) Any person enrolling in a school of cosmetology for a cosmetology or nail technician course shall complete a "Student Enrollment Application for Kentucky Cosmetology School"

provided by the board.

(2) The applicant shall furnish proof that he or she has completed two (2) years of high school or its equivalent.

(3) The required proof shall be any one (1) of the following:

(a) A transcript of subjects and grades showing the applicant has completed grade 10~~[grades nine (9) and ten (10)]~~;

(b) Results from the Test for Adult Basic Education (TABE) ~~[G.E.D. test]~~ indicating a score equivalent to tenth grade high school ~~[as determined by the Department of Education]~~; or

(c) High school diploma or G.E.D. certificate.

Section 2. Any person enrolling in a school of cosmetology for the esthetics course shall complete the application for enrollment provided by the board. The applicant shall furnish proof that he or she has completed four (4) years of high school or its equivalent. The required proof shall be any one (1) of the following:

(1) ~~A high school diploma; or [A transcript of subjects and grades showing the applicant has completed 12th grade.]~~

(2) ~~A G.E.D.; or [indicating score equivalent to 12th grade high school as determined by the Department of Education.]~~

(3) Results from the Test for Adult Basic Education (TABE) indicating a score equivalent to 12th grade high school. ~~[High school diploma or G.E.D. certificate.]~~

Section 3. (1) The student enrollment application, accompanied by the applicant's proof of education, shall be received by the board no later than ten (10) working days after the student date of enrollment.

(2) A student ~~may~~~~shall~~ not receive credit hours if the application is not received within the ten (10) day period.

(3) The school shall forward to the board the enrollment application and proof of education so that the board receives the information no later than ten (10) working days after the student date of enrollment.

(4) Failure of the school to timely forward the information to the board may result in suspension or revocation of the school's license or a fine of twenty-five (25) dollars a day for every day the application is late.

Section 4. (1) A person shall not be permitted to enroll in a school of cosmetology for a brush-up course unless:

(a) The applicant holds a current license issued by this board; or

(b) The applicant has obtained special permission from the board.

(2) The applicant shall complete the application for enrollment.

Section 5. Incorporation by Reference. (1) "Student Enrollment Application for Kentucky Cosmetology School", 2003, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, President

APPROVED BY AGENCY: February 10, 2011

FILED WITH LRC: February 11, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2011 at 10 a.m. at the Board's office located at 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on March 14, 2011, five (5) 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

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4:30p.m. on March 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Charles Lykins, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the educational requirements for an applicant enrolling in a school of cosmetology.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 317A.060 and 317B.020.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statutes that require the board to promulgate administrative regulations governing the operation of schools of cosmetology and esthetics, including the proper education and training of students.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets out the requirements for proof of education and enrollment in schools of cosmetology.

(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 includes language that updates current education law and allows for the addition of TABE to prove required levels of high school education.

(b) The necessity of the amendment to this administrative regulation: To comply with current education law and permit an alternative to prove required levels of high school education.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the Board to promulgate administrative regulations that govern cosmetology schools. This amendment is in conformity with statutory dictates.

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates the Board's requirements to be consistent with current education law, and allows an additional pathway to prove required levels of high school education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board enrolls approximately 500-600 students in cosmetology schools annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All applicants will have to complete an application and document the required levels of education.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No new costs will be incurred by applicants; the enrollment fee of \$15 shall remain the same.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be permitted to enroll in schools of cosmetology.

(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 applicants.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation would impact the Kentucky State Board of Hairdressers & Cosmetologists.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.060 and 317B.020 require and authorize 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? No new revenue will be generated from 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? 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 2:049. Small game and furbearer hunting and trapping on public areas.

RELATES TO: KRS 150.010, 150.370, 150.399, 150.400, 150.410, 150.990

STATUTORY AUTHORITY: KRS 150.025, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 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 statewide or 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 exceptions to statewide small game and furbearer regulations on public areas.

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

(2) "Upland bird" means a grouse or northern bobwhite.

(3) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease,

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license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

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

Section 2. This administrative regulation shall establish exceptions to the statewide requirements established in 301 KAR 2:122, 2:251, and 3:010.

Section 3. On a Wildlife Management Area owned or managed by the department:

(1) A person shall wear hunter orange clothing if a firearm is allowed for deer hunting, as established in 301 KAR 2:172.

(2) The hunter orange clothing requirement in subsection (1) of this section shall not apply to a person hunting:

(a) Waterfowl; or

(b) Raccoon or opossum at night.

(3) There shall be a free youth small game hunting week for seven (7) consecutive days beginning on the Saturday after Christmas, a youth may take small game without a hunting license.

(4) There shall be a free youth trapping week for seven (7) consecutive days beginning on the Saturday after Christmas, in which a youth may trap without a trapping license.

Section 4. Exceptions on Specific Public Areas. (1) Barren River Wildlife Management Area.

(a) The WMA shall be considered to be entirely within the Easter Zone, as established in 301 KAR 2:122;

(b) Northern bobwhite and rabbit seasons shall be closed after December 31; and

(c) On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person shall not hunt with a breech-loading firearm:

(2) Beaver Creek WMA, including private inholdings.

(a) Grouse season shall be open from October 1 through December 31; and

(b) Northern bobwhite and rabbit seasons shall be: closed after December 31.

(3) Big South Fork National River and Recreation Area, McCreary County.

(a) Grouse season shall be open from October 1 through December 31; and

(b) Northern bobwhite and rabbit seasons shall be: closed after December 31.

(4) Cane Creek WMA, including private inholdings.

(a) Grouse season shall be open from October 1 through December 31; and

(b) Northern bobwhite and rabbit seasons shall be: closed after December 31.

(5) Cedar Creek Lake WMA:

(a) Rabbit season shall be closed after December 31;

(b) Squirrel season shall coincide with the statewide season; and

(c) The area shall be closed to all other small game and furbearer hunting.

(6) Clay WMA.

(a) The area shall be closed for four (4) consecutive days beginning on the first Friday in December to all hunting except archery deer hunting and the pheasant quota hunt established in Section 5 of this administrative regulation;

(b) Rabbit season shall be closed after December 31;

(c) Grouse and northern bobwhite hunting shall be restricted to quota hunt dates established in Section 5 of this administrative regulation.

(d) Pheasant may be taken beginning on the Tuesday following the pheasant quota hunt through December 31.

1. Any person with a valid hunting license may take a pheasant; and

2. The daily limit per hunter shall be three (3) birds of either sex.

(e) Quota fox hunting field trials:

1. There shall be a maximum of two (2) four (4) day events per calendar year.

2. Each event shall be limited to 250 participants.

3. The area shall be closed to nonparticipants.

4. A participant shall:

(a) Wear a laminated identification badge issued by the department during the event; and

(b) Return the laminated badge at the close of the event.

(7) Curtis Gates Lloyd WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) A person shall not allow a dog to be unleashed from April 1 until the third Saturday in August except if squirrel hunting.

(8) Dix River WMA:

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Grouse season shall be open from October 1 through December 31.

(9) Fleming WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Grouse season shall be open from October 1 through December 31.

(10) Green River Lake WMA.

(a) The area shall be closed to all hunting for four (4) consecutive days beginning on the third Friday in November except for archery deer hunting and the pheasant quota hunt established in Section 5 of this administrative regulation.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) Pheasant.

1. Beginning on the Tuesday following the pheasant quota hunt through December 31, any person with a valid hunting license may take a pheasant.

2. The daily limit per hunter shall be three (3) birds of either sex.

(d) Grouse: closed to hunting and trapping.

(11) Higginson-Henry WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(12) Kleber WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(13) Lake Cumberland WMA.

(a) Grouse season shall be open from October 1 through December 31; and

(b) Northern bobwhite and rabbit seasons shall be: closed after December 31.

(14) Mill Creek WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(15) Miller-Welch Central Kentucky WMA.

(a) Small game and furbearer hunting seasons shall be closed, except that squirrel season shall be open; and

(b) A person shall not allow a dog to be unleashed:

1. From April 1 until the third Saturday in August; and

2. On a Monday, Wednesday, or Friday during the remainder of the year, except:

a. If a person is hunting squirrels during an open season; and

b. If a person is participating in an authorized field trial.

(16) Mullins WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(17) Nolin Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(18) Otter Creek Outdoor Recreation Area.

(a) Except as authorized by the department, a person shall not enter the area during a deer quota hunt without a valid quota hunt confirmation number:

(b) Northern bobwhite season shall be closed;

(c) Rabbit hunting season shall be from December 1 through December 31;

(d) Trapping season shall be from January 1 through the last day in February;

(e) A person who traps on the area shall:

1. First obtain prior authorization from the area manager; and

2. Only trap in department designated areas;

(f) Except during deer quota hunts, a person shall not use the following to take furbearers:

1. A rifle;

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- 2. Ball ammunition; or
- 3. Slug ammunition; and

(g) A person shall not use a rimfire gun to take small game, except during a deer quota hunt.

(19) Paul Van Booven WMA.

(a) Shall be closed to vehicle access from an hour after sunset until an hour before sunrise; and

(b) Shall be closed to Northern bobwhite hunting.

(20) [(49)] Pennyriple Forest WMA.

(a) Grouse season shall be open from December 1 through December 31; and

(b) The daily limit shall be two (2).

(21) [(20)] Pioneer Weapons WMA. A person shall not hunt with a breech-loading firearm.

(22) [(24)] Robinson Forest WMA.

(a) Hunting shall not be permitted on the Main Block; and

(b) The remainder of the WMA shall be open under statewide requirements.

(23) [(22)] Taylorsville Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(24) [(23)] Tradewater WMA.

(a) Grouse season shall be open from December 1 through December 31; and

(b) The daily limit shall be two (2).

(25) [(24)] West Kentucky WMA.

(a) A person shall not hunt on "A" tracts;

(b) Northern bobwhite and rabbit seasons shall be closed after December 31 on Tracts 2, 3, 6, and 7;

(c) Northern bobwhite and rabbit seasons shall be open on Tracts 1, 4, and 5 one-half (1/2) hour before sunrise until 1 p.m. local time from January 1 through January 10, except if harvest limits are reached prior to January 10;

1. A hunter shall report harvest numbers and total hours hunted to the area supervisor on a daily basis; and

2. If a tract is closed prior to January 10, a sign indicating closure shall be posted at the hunter check station at least twenty-four (24) hours prior to the closure; and

(d) A person shall not:

1. Use a rifle, ball, or slug ammunition;

2. Operate a vehicle on Tract 6 from February 1 through April 16; and

3. Allow a dog to be unleashed from April 1 until the third Saturday in August, except while squirrel hunting.

(26) [(25)] Yellowbank WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

Section 5. Pheasant Quota Hunts. (1) There shall be a pheasant quota hunt:

(a) On the Green River Wildlife Management Area for three (3) consecutive days beginning the third Friday in November; and

(b) On Clay Wildlife Management Area for three (3) consecutive days beginning the first Friday in December.

(2) There shall be a one (1) day clean-up hunt immediately following each of the hunts for pheasant quota hunters drawn for that particular WMA.

(3) Hunt hours for each day shall be from 9 a.m. to 4 p.m. Eastern time.

(4) During a quota hunt of clean-up hunt, a person shall wear orange clothing as specified in 301 KAR 2:172.

(5) The daily bag limit per hunter shall be two (2) birds of either sex, except there shall be a daily bag limit of three (3) birds of either sex during the one (1) day clean-up hunt.

(6) Pheasant quota hunt procedures.

(a) A person selected for a pheasant quota hunt may hunt on the one (1) day clean-up hunt for that area.

(b) A person applying for a pheasant quota hunt shall:

1. Not apply more than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and

2. Not apply as a group of more than five (5) people.

(c) A person who is drawn to hunt shall, by October 30, pay the permit fee established in 301 KAR 3:022, Section 5(2), by:

1. A check containing the drawn confirmation number;

2. A money order enclosed with the draw confirmation number; or

3. Credit card via the department's Web site as an applicant reviews the drawing results.

(d) If a group is drawn to hunt, then one group member shall submit a single payment for the entire group along with the confirmation number data.

Section 6. Northern Bobwhite and Upland Bird Quota Hunts.

(1) There shall be one (1) day northern bobwhite quota hunts on two (2) tracts of Peabody WMA on the following days:

(a) The fourth Saturday in November, which shall only be a youth-mentor hunt;

(b) The Tuesday following the fourth Saturday in November;

(c) The Tuesday following the third Saturday in December;

(d) The first Saturday in January;

(e) The second Saturday in January; and

(f) The Tuesday following the third Saturday in January.

(2) There shall be one-day upland bird quota hunts on Clay WMA on the following days:

(a) On the Wednesday following the first Saturday in November;

(b) The third Sunday in November;

(c) The second Sunday in December; and

(d) The third Tuesday in December.

(3) A person participating in a quota hunt shall:

(a) Only hunt from one-half (1/2) hour before sunrise to two (2) p.m.;

(b) Wear hunter orange clothing pursuant to 301 KAR 2:172; and

(c) Not take more than four (4) northern bobwhite on a daily basis.

(4) A person who participates in an upland bird quota hunt:

(a) Shall not take more than four (4) grouse daily; and

(b) May take woodcock pursuant to the requirements established in 301 KAR 2:225.

(5) A person applying for a northern bobwhite or upland bird quota hunt shall:

(a) Not apply more than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and

(b) Not apply as a group of more than three (3) people.

(6) A person selected for a quota hunt shall only hunt the species identified on the permit.

Section 7. General Quota Hunt Requirements. (1) A person applying for a pheasant, northern bobwhite, or upland bird quota hunt shall:

(a) Call the toll-free number listed in the current Fall Hunting and Trapping Guide from a touch tone phone between September 1 and September 30;

(b) Enter each applicant's Social Security number;

(c) Indicate a choice of days to hunt; and

(d) Pay a three (3) dollar application fee for each applicant prior to the drawing by:

1. Check;

2. Money order;

3. Visa; or

4. MasterCard.

(2) A person, prior to participating in a quota hunt, shall be required to show:

(a) A department-issued quota hunt permit;

(b) A valid Kentucky hunting license or proof of exemption; and

(c) A hunter education card, if required.

(3) A person or group participating in a northern bobwhite or upland bird quota hunt shall submit a hunting log within seven (7) days after the hunt.

(4) A youth-mentor quota hunt party shall have a minimum of one (1) youth as a member of the party.

(5) A person shall comply with all quota hunt requirements or be ineligible to apply for any other quota hunt during the following year, except for an elk quota hunt.

(6) A youth shall only apply as part of a party that has at least one (1) adult.

(7) The department 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.

BENJY KINMAN, Deputy Commissioner  
For DR. JONATHAN GASSETT, Commissioner  
MARCHEA SPARROW, Secretary

APPROVED BY AGENCY: February 10, 2011

FILED WITH LRC: February 15, 2011 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 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 five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by March 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 4507, fax (502) 564-9136.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation identifies exceptions from the statewide regulations for hunting small game and furbearer hunting and trapping on public lands.

(b) The necessity of this administrative regulation: This administrative regulation manages small game populations, furbearer populations, and hunting opportunity on public lands.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations regarding hunting seasons, including restricting the places where wildlife may be taken. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of lands it has acquired for public recreation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the administration of the statutes by establishing small game and furbearer hunting and trapping seasons and regulating hunting opportunity 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 will establish small game and furbearer hunting and trapping requirements on Otter Creek Outdoor Recreation Area in Meade County, Kentucky.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to properly manage the taking of small game and furbearers on this new property and to coordinate public hunting and trapping opportunities.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It is currently unknown how many hunters and trappers will be affected by this amendment, but the department will ascertain that information during the first year of operation. This amendment will increase small game and furbearer hunting and trapping opportunity near the Louisville Metropolitan area.

(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 and trappers will need to comply with the provisions of this amendment when using Otter Creek Outdoor Recreation Area.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation amendment does not directly increase any cost for hunters or trappers, however, if a hunter or trapper wishes to enter Otter Creek, they will be responsible to purchase a daily or annual entry permit (\$3 and \$30, respectively).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunting and trapping opportunity will increase for those entities and such opportunity is lacking near the Louisville Metro area.

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

(a) Initially: This administrative regulation change will result in a small cost for the department to administer.

(b) On a continuing basis: There will be a small additional cost to administer 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 regulation amendment did not establish any fees, however anyone using Otter Creek will require a daily or annual entry fee (see 4 c above), pursuant to 301 KAR 3:022.

(9) TIERING: Is tiering applied? Tiering was not used because all hunters and trappers must comply with this regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be affected by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the department to promulgate administrative regulations regarding open seasons for the taking of wildlife and bag limits. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of lands it has acquired for public recreation.

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 change will not result in a change in revenues for the first year.

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

(c) How much will it cost to administer this program for the first year? There will be a minor cost to implement this new administrative regulation for the first year.



(d) How much will it cost to administer this program for subsequent years? There will be a minor cost to implementing this new administrative regulation for subsequent years.

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

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

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

**301 KAR 3:100. Special commission permits.**

RELATES TO: KRS 150.170, 150.175~~[-150.177]~~  
STATUTORY AUTHORITY: KRS 150.025, 150.177, 150.195(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue special game permits to incorporated nonprofit wildlife conservation organizations. KRS 150.195(1) authorizes the department to promulgate administrative regulations pertaining to the issuance of licenses and permits. This administrative regulation establishes the requirements for the issuance and use of Special Commission Permits.; ~~KRS 150.177 authorizes the commission to donate special permits per species to qualified wildlife conservation organizations. This administrative regulation specifies the process for applying for these permits.]~~

Section 1. Definitions. (1) "Proceeds" means the amount of money received by a wildlife conservation organization ~~from~~after the sale or transfer of a special permit ~~minus~~and after the deduction of expenses directly attributable to the sale of that permit.

(2) "Special permit" means a permit for a species requiring an additional permit in order to hunt or fish which is issued by the Kentucky Fish and Wildlife Commission to a nonprofit wildlife conservation organization.

(3) "Wildlife conservation organization" means a 501(c)(3) nonprofit organization whose primary purpose is to:

- (a) Conserve and enhance fish and wildlife resources; or
- (b) Provide opportunity for hunting, fishing, trapping, or other related activities.

Section 2. Issuance, Sale and Transfer of Special Permit. (1) There shall be no more than ten (10) special permits issued per species per year.

(2) A wildlife conservation organization, including the parent organization and any Kentucky chapter, may apply for one (1) special commission permit per species by accurately completing a Special Commission Permit Application form provided by the department.

(3) In addition to the completed application, the organization shall also submit the following:

- (a) One (1) copy of the organization's articles of incorporation or a separate charter status from a parent organization;
- (b) Written proof of the organization's tax-exempt status including the individual tax identification number;
- (c) A letter from the organization's parent organization, if applicable, that states that the chapter organization is in good-standing and is recognized by the parent organization.

(4) The completed application and accompanying documents listed in subsection (3) of this section shall be delivered to the department by May 1 of each year.

(5) The following shall be grounds for disqualification from the consideration process:

- (a) An incomplete application;
- (b) Incomplete or missing accompanying documents, pursuant to subsection (3) of this section;
- (c) Failure to submit the required application and accompany-

ing documents to the department by the May 1 deadline; and

(d) The wildlife conservation organization applicant did not use or transfer a special commission permit awarded in a previous year.

(6) Prior to selecting special commission permit recipients, the Fish and Wildlife Commission shall review and consider all applications and documents submitted by each wildlife conservation organization that has not been disqualified pursuant to subsection (5) of this section.

(7) The department shall provide the Fish and Wildlife Commission with information concerning each applicant's relative standing with regard to:

- (a) Content and quality of submitted application materials;
- (b) Past compliance;
- (c) Ability to generate matching funds; and
- (d) The proposed conservation project's potential for enhanced fish and wildlife, habitats, or fish and wildlife-related recreation.

(8) The Fish and Wildlife Commission shall select permit recipients based on the information listed in subsection (7) of this section.

(9) A Special Commission Permit recipient shall:

(a) Use all proceeds from the sale or transfer of the permit for conservation projects in Kentucky as approved by the Fish and Wildlife Commission;

(b) Underwrite all promotional and administrative costs for the selling and transferring of the permit;

(c) Sell and transfer each permit as stated in the application;

(d) Provide the department with the following information on each individual who receives a transferred permit:

- 1. Name;
- 2. Address; and
- 3. Date of birth; and
- (e) Submit, by May 1 of the following year, a report that includes:

- 1. A financial statement containing:
  - a. Total funds raised;
  - b. Overhead costs or expenses related to the sale of the permit; and
  - c. Net profit;
- 2. A summary of:
  - a. The conservation project; and
  - b. Expenditures related to the conservation project; and
  - 3. A synopsis of the impact the conservation project had on fish and wildlife, habitats, or fish and wildlife-related recreation.

Section 3. Special Permit Use. (1) A special permit shall only be valid for the:

- (a) Individual named on the permit;
- (b) Species of wildlife listed on the permit; and
- (c) Next season following the quarterly commission meeting that the special permit was awarded.

(2) A special commission permit holder shall comply with all other department statutes and regulations.

(3) Notwithstanding any other statutory or regulatory provision, a holder of a special commission permit:

(a) For deer, shall be entitled to take one (1) additional antlered or antlerless deer per license year;

(b) For deer, may hunt on any Wildlife Management Area during an open deer season or nonmobility impaired quota hunt pursuant to 301 KAR 2:178, except:

- 1. Hunting shall not be allowed on closed waterfowl refuges, pursuant to 301 KAR 2:222;
- 2. A permit holder shall contact the wildlife area manager at least forty-eight (48) hours before hunting; and
- 3. A permit holder shall notify the area manager upon leaving a Wildlife Management Area;

(c) For turkey, shall be entitled to take one (1) additional turkey of either sex per license year, in addition to the statewide permit limit;

(d) For turkey, shall not hunt on a Wildlife Management Area that is closed to turkey hunting; and

(e) May hunt on private land with the permission of the landowner.

(4) Unless specific equipment is prohibited on a Wildlife Man-

agement Area, a special permit holder shall only harvest game with hunting equipment that is allowed for the season during which the permit holder is hunting.

Section 4. Incorporation by Reference. (1) "Special Commission Permits Application Form", 2011 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. [An applicant may apply for one (1) special permit per species by the May 1 deadline for applications.

(3) A proposal for special permit pursuant to KRS 150.177 shall be submitted to the Kentucky Fish and Wildlife Commission during the period prior to May 1. The proposal shall contain and identify:

(a) The name of the organization making the request and the names, addresses and telephone numbers of those members of the organization who are coordinating the proposal;

(b) The permit requested and the species and year for which it would be valid;

(c) The proposed wildlife conservation projects for which the proceeds would be used;

(d) The methods by which the permit would be transferred to an individual;

(e) The estimated amount of money to be raised and the rationale for that estimate;

(f) Any special needs or particulars relevant to the proposal, including time frame, limitations, or schedules; and

(g) One (1) copy of the organization's articles of incorporation shall accompany the proposal with proof that the organization has tax-exempt status.

(4) A letter accompanying the proposal shall include a statement that the applicant agrees to the conditions set forth in KRS 150.177 and this administrative regulation and shall be signed and dated by the authorized officer of the organization.

(5) The commission shall return to the applicant any application which does not conform with the requirements of KRS 150.177 or this administrative regulation. In selecting an applicant, the commission shall consider the written proposal and the proposed uses for the proceeds, the qualifications of the applicant as a fund raiser, the proposed fund-raising plan, the applicant's previous involvement with wildlife management, and its conservation objectives. Proposals from previous successful applicants may not be considered if permits issued to them were not used or transferred. The commission may accept any proposal in whole or in part and may reject any proposal. Commission approval and issuance of any special permit is contingent upon compliance with subsections (2), (5), and (6) of this administrative regulation.

(6) All successful applicants shall agree in writing to the following:

(a) To use all proceeds from the sale or transfer of the permit for conservation projects in Kentucky that are approved by the Kentucky Fish and Wildlife Commission;

(b) To underwrite all promotional and administrative costs to sell and transfer the special permit;

(c) To sell and transfer each special permit as described in the proposal;

(d) To provide the department with the name, address, and physical description of each individual to whom each special permit is transferred.

(e) To provide the department, within one (1) year of issuance of the special permit, a report summarizing:

1. The amount of money raised; and

2. The specific impact the money had on the proposed conservation project in the application submitted to and approved by the Kentucky Fish and Wildlife Commission.

Section 3. Use of Permits. (1) A special permit shall be valid only for the individual named on the permit and for the species for which the permit was issued. A special permit shall be valid for the forthcoming season following the commission meeting in which the special permit was awarded.

(2) A person using a special permit shall comply with all state laws and administrative regulations, including seasons, bag limits and size restrictions.

(3) Notwithstanding any other provision of law, a holder of a special permit for deer shall be entitled to take one (1) additional antlered or antlerless deer per license year.

(4) Notwithstanding any other provision of law, a holder of a special permit for turkey shall be entitled to take one (1) additional turkey of either sex per license year, in addition to the statewide permit. A holder of a special permit for turkey may not hunt on Wildlife Management Areas that are closed to the general public during the turkey season.

(5) Notwithstanding any other provision of law, a holder of the special permit for deer may hunt on any Wildlife Management Area, including Wildlife Management Areas otherwise closed for special hunts or otherwise closed to hunting, except hunting shall not be allowed on waterfowl refuges that are closed. A holder shall contact the wildlife area manager at least forty-eight (48) hours before hunting. A holder shall also notify the area manager upon leaving a Wildlife Management Area.

(6) Unless specific equipment is prohibited on a Wildlife Management Area, a holder of a special permit shall use the legal hunting equipment that is allowed for the season occurring when the holder is hunting, as well as any other hunting requirements in place during that season.

(7) A holder of a special permit may also hunt on private land with the permission of the landowner, but shall comply with the restrictions regarding the season where the land is located.]

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: December 3, 2010

FILED WITH LRC: February 15, 2011 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2011, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by March 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation authorizes the Fish and Wildlife Commission to issue special permits to qualified wildlife conservation organizations for the organizations to use as a fund-raising tool for wildlife conservation projects.

(b) The necessity of this administrative regulation: The administrative regulation gives the Fish and Wildlife Commission the authority to issue special permits.

(c) How does this administrative regulation conform to the content of the authorizing statute: KRS 150.025 authorizes the department to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue special game permits to incorporated nonprofit wildlife conservation organizations. KRS 150.195(1) authorizes the department to promulgate

administrative regulations pertaining to the issuance of licenses and permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation defines the process and criteria for applying for a special permit, the selection process used by the Commission, and report requirements for wildlife conservation organizations.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies the required qualifications of a wildlife conservation organization, and clearly defines both the permit process and permit requirements. The permit application is also incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment was necessary because the previous regulation lacked clarity in some areas and it was necessary to better define the entire process, including application requirements, definition of a wildlife conservation organization, and report requirements. The permit application also needed to be incorporated by reference.

(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: In 2010, there were approximately 20 wildlife conservation organizations that applied for at least one permit. It is expected that 15 to 30 wildlife organizations will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each wildlife conservation organization will need to follow the application procedures and reporting requirements if they request a permit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing. The application process is free.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The conservation organizations that receive a permit will benefit by using the permit for fund-raising events that will in turn be used for wildlife conservation projects, thus furthering their missions in Kentucky.

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

(a) Initially: There will be a small cost to administer and coordinate the permit application and selection process.

(b) On a continuing basis: There will be a small cost to the agency on a continuing basis to administer.

(6) What is the source of 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: 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 directly or indirectly nor does it increase any fees.

TIERING: Is tiering applied? Tiering is not applied as all wildlife conservation organizations applying for special permits are treated the same.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including

cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources is the division of state government that 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, 150.177, and 150.195.

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? Zero

(c) How much will it cost to administer this program for the first year? There will be a small cost associated with administering and coordinating this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a small cost in subsequent years.

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

Revenues (+/-):

Expenditures (+/-): A small cost relative to employees' time about once a year, plus some mailing costs.

Other Explanation:

#### JUSTICE AND PUBLIC SAFETY CABINET

##### Department of Juvenile Justice

##### Division of Community and Mental Health Services

##### (Amendment)

#### 505 KAR 1:130. Department of Juvenile Justice Policies and Procedures Manual: juvenile services in community.

RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Juvenile Services in Community", February 15, 2011[April 12, 2006], is incorporated by reference and includes the following:

- 600 ~~Policy Definitions (Amended 2/15/11)[Initial Contact and Court Support (Amended 12/15/05)]~~
- 601 ~~Initial Contact and Court Support for Public Offenders (Amended 2/15/11)~~
- 601.1 ~~Initial Contact and Court Support for Youthful Offenders (Amended 2/15/11)[Case Registration and Case Management (Amended 12/15/05)]~~
- 602 ~~Individual Client Record (Amended 2/15/11)[Service Complaints (Amended 12/15/05)]~~
- 603 ~~Service Complaints (Amended 2/15/11)[Children's Benefits (Amended 12/15/05)]~~
- 603.1 ~~Title IV-E: Federal Foster Care Maintenance Payments (Amended 12/15/05)~~
- 603.2 ~~Trust Funds (Amended 12/15/05)]~~
- 604 ~~Individual Treatment Plans (Amended 2/15/11)[12/15/05]~~

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- 605 Community Supervision (Amended 2/15/11)~~[Juvenile Service Case Records (Amended 3/15/06)]~~
- 605.1 Running Records (Amended 12/15/05)
- 605.2 Critical Incident Reports (Amended 12/15/05)
- 606 Probation of Public Offenders (Amended 2/15/11)~~[Transportation of Committed Youth (Amended 12/15/05)]~~
- 607 Commitment of Public Offenders (Amended 2/15/11)~~[Probation (Amended 12/15/05)]~~
- 607.1 Revocation of Probation (Amended 12/15/05)
- 607.2 Termination of Probation (Amended 3/15/06)
- 608 Drug Screening and Testing (Amended 2/15/11)~~[Youthful Offender Shock Probation (Amended 12/15/05)]~~
- 609 Children's Benefits (Amended 2/15/11)~~[Referral for Out-of-Home Placement (Amended 12/15/05)]~~
- 609.1 Title IV-E Foster Care Maintenance Payments (Amended 2/15/11)~~[Youth Awaiting Out-of-Home Placement (Amended 12/15/05)]~~
- 609.2 Trust Funds (Amended 2/15/11)~~[Services to Youth in Out-of-Home Placement (Amended 4/12/06)]~~
- 610 Transportation of Committed Youth (Amended 2/15/11)~~[Authorized Leave for Youth in Out-of-Home Placement (Amended 3/15/06)]~~
- 610.1 Out-of-State Travel (Amended 2/15/11)~~[Youth AWOL/Escapes (Amended 3/15/06)]~~
- 611 Electronic Monitoring (Amended 2/15/11)~~[Mental Health Services (Amended 12/15/05)]~~
- 611.1 Mental Health Emergencies (Amended 12/15/05)
- 612 Authorized Leave for Public Offenders and Youthful Offenders in Placement (Added 2/15/11)
- 613 Supervised Placement Revocation (Added 2/15/11)
- 614 Intensive Aftercare Program (Added 2/15/11)
- 615 Juvenile Intensive Supervision Team (JIST) (Added 2/15/11)
- 616 Youthful Offenders-Confined, Shock Probated, and Transferred to the Department of Corrections (Added 2/15/11)
- 616.1 Parole of Youthful Offenders (Added 2/15/11)
- 616.2 Parole of Youthful Offenders
- 617 Incident Reports (Amended 2/15/11)~~[Community Supervision (Amended 12/15/05)]~~
- 617.1 Intensive Aftercare Program (Amended 12/15/05)
- 618 AWOL or Escape (Amended 2/15/11)~~[Juvenile Intensive Supervision Team (JIST) (Amended 12/15/05)]~~
- 620 Use of Force and Searches (Amended 2/15/11)
- 622 Community Mental Health Operations (Added 2/15/11)
- 623 Health and Safety for Community and Mental Health Services (Added 2/15/11)~~[Supervised Placement Revocation (Amended 12/15/05)]~~
- 624 Searches (Amended 12/15/05)
- 626 Sex Offender Treatment (Amended 3/15/06)
- 629 Administrative Discharge from Commitment (Amended 3/15/06)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

J. RONALD HAWS, Commissioner

APPROVED BY AGENCY: February 15, 2011

FILED WITH LRC: February 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 11, at 9 a.m., at the Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 14, 11, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative

regulation. Written comments shall be accepted until March 31, 11. 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: Joslyn Olinger Glover, Staff Attorney, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joslyn Olinger Glover, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Department of Juvenile Justice, including the rights and responsibilities of the Department of Juvenile Justice employees and the community populations. This regulation and the material incorporated by reference appear to be significantly changed since the June 2006 filing. While changes have taken place, many of the changes are the result of "housekeeping" to alter the order of information contained within the regulation.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.067, 605.150, 635.095, and 635.100.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation governs every aspect of the program services for the community population of the Department of Juvenile Justice.

(d) How this administrative regulation currently assists, or will assist, in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees and the community population as to their duties, rights, privileges, and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment shall bring the Department of Juvenile Justice into compliance with ACA Standards and show actual practice of the agency.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.067, 605.150, 635.095, and 635.100.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Department of Juvenile Justice.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will help the Department of Juvenile Justice to operate more efficiently.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 employees of the Department of Juvenile Justice, approximately 1,848 youth in all programs, and all visitors and volunteers to Department of Juvenile Justice.

(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: By providing and implementing these policies and procedures, the Department of Juvenile Justice will be providing services more effectively and consistently.

(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 agency employees will provide services to the youth in all programs in accordance with the procedures outlined in the regulation and the materials incorporated by reference. The youth in all programs will receive services in accordance with the procedures outlined in the regulation and materials incorporated by reference. All visitors and volunteers will be engaged in accordance with the regulation and materials incorporated by reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) In complying with this administrative regulation, no

monetary costs will be incurred by the youth, the visitors or volunteers, or the Department of Juvenile Justice employees. All costs of implementation of this regulation and materials incorporated by reference will be paid out of budgeted monies by the Department of Juvenile Justice.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youth shall receive services more effectively and efficiently. Department of Juvenile Justice employees, visitors, and volunteers will more clearly and concisely understand the services to be provided by the Department of Juvenile Justice.

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

(a) Initially: \$5,000.00 for training staff.

(b) On a continuing basis: \$5,000.00 for training staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Juvenile Justice 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: None

(8) State whether or not this administrative regulation established any fees, or directly or indirectly, increased any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated, as well as the Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department of Juvenile Justice.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Response: KRS 15A.065, 15A.067, 15A.160, 15A.210, 15A.305(5), 200.115, 605.150, 635.095, 635.100, 640.120, and 645.250.

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 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? Response: See narrative provided below.

(d) How much will it cost to administer this program for subsequent years? See narrative provided below.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation will provide a clear and concise policies and procedures for all youth receiving services from the Department of Juvenile Justice, and reflect the treatment and practice of the agency. The only expense regarding this regulation is the cost of staff training, which for the first year is approximately \$5,000.

#### EDUCATION CABINET Kentucky Board of Education Department of Education (Amendment)

#### 702 KAR 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.030 establish the age for compulsory school attendance. KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. (1) Daily attendance of pupils in elementary schools shall be determined by taking attendance one (1) time each day prior to the start of instruction and maintaining a student entry and exit log at each school.

(2) Daily attendance of pupils in middle and high school shall be determined by taking attendance by class period and maintaining a student entry and exit log at each school.

(3) The student entry and exit log shall include the date, student name, grade or homeroom, time of late arrival, time of early departure (with the reason for both listed) and other information required by the local board of education. For elementary students who are signed out, the student entry and exit log shall also include a signature of:

(a) A parent;

(b) A legal guardian; or

(c) An adult with proof of identification and for whom the school has received a written authorization from the parent or legal guardian.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a co-curricular instructional activity that has been authorized by the local board of education and is a definite part of the instructional program of the school;

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035;

(c) The pupil is participating in an off-site virtual high school class or block. A student may be counted in attendance for a virtual high school class or block for the year or semester in which the student initially enrolled in the class or block if the student demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 5(2)(b) or (3);

(d) The pupil's mental or physical condition prevents or renders inadvisable attendance in a school setting, and the pupil meets the requirements of KRS 159.030(2). A pupil being served in the home/hospital program shall receive a minimum of one (1) hour of instruction two (2) times per five (5) instructional days;

(e) The student has been court ordered to receive educational services in a setting other than the classroom. A pupil being served through a court order shall receive a minimum of one (1) hour of instruction two (2) times per five (5) instructional days;

(f) The student has an individual education plan (IEP) that requires less than full-time instructional services;

(g) The pupil is participating in standards-based, performance-based credit that is awarded in accordance with 704 KAR 3:305, Section 5(2)(b) and that falls within one (1) or more of the categories of standards-based course work outlined in 704 KAR 3:305, Section 4(4). A student may be counted in attendance for performance-based credit for a class or block for the year or semester in which the student initially enrolled in the class or block if the student demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 5(3); or

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(h) The pupil participates in a school that is authorized by the Commissioner of Education to design and deliver an educational program so that all graduation requirements are based on student proficiency of standards and performance, rather than time and Carnegie units, as authorized in 704 KAR 3:305, Section 5.

(5) Even if a pupil's absence or tardy is due to factors beyond the pupil's control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent or tardy.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 2. The guidelines in this section shall be used to calculate student attendance for state funding purposes through June 30, 2010.

(1) A full day of attendance shall be recorded for a pupil who is in attendance 100 percent of the regularly-scheduled school day for the pupil's grade level.

(2) A tardy shall be recorded for a pupil who is absent sixty (60) minutes or less of the regularly-scheduled school day for the pupil's grade level.

(3) The actual percentage of the school day shall be recorded for attendance of a pupil absent for more than sixty (60) minutes of the regularly-scheduled school day for the pupil's grade level.

(4) A full day absence shall be recorded for a pupil who is absent 100 percent of the regularly-scheduled school day for the pupil's grade level.

(5) The percentages described in this section shall apply to the regularly-scheduled school day approved by the local board of education and shall be applicable to entry level through grade level twelve (12).

Section 3. The guidelines in this section shall be used to calculate student attendance for state funding purposes after June 30, 2010.

(1) A full day of attendance shall be recorded for a pupil who is in attendance at least sixty-five (65) percent of the regularly-scheduled school day for the pupil's grade level.

(2) A tardy shall be recorded for a pupil who is absent ~~less than~~ 35 percent or less of the regularly-scheduled school day for the pupil's grade level.

(3) A half day absence shall be recorded for a pupil who is absent ~~36[35]~~ percent to 84 percent of the regularly-scheduled school day for the pupil's grade level.

(4) A full day absence shall be recorded for a pupil who is absent more than 84 percent of the regularly-scheduled school day for the pupil's grade level.

Section 4. A local board of education may permit an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060, or local board of education policy. The time a student is in attendance shall be included in calculating the district's average daily attendance.

Section 5. A local board of education may permit an arrangement in which a pupil pursues part of the student's education under the direction and control of one (1) public school and part of the student's education under the direction and control of another public or nonpublic school. The time a student is served by public school shall be included when calculating the district's average daily attendance.

Section 6. If a local school district, under the provisions of KRS 157.360(6), enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 7. (1) If a local school district enrolls a pupil in the entry level program who will not be five (5) years of age on or before October 1 of the year of enrollment, the total aggregate days at-

tendance for the pupil shall not be included in calculating the district's average daily attendance.

(2) If a local school district enrolls a pupil in the second level of the primary program who will not be six (6) years of age on or before October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the following conditions:

(a) The local board of education shall have determined that the student is eligible for enrollment into the second level of the primary program after academic, social, and developmental progress records from multiple data sources are reviewed by a team and determined to support accelerated placement. These sources shall include:

1. Anecdotal records;
2. A variety of student work samples, including evidence of student self-reflection; and
3. Standardized test results;

(b) The team shall be comprised of three (3) members who have knowledge of the student's developmental skills and abilities. Team members shall be chosen from these categories:

1. Teachers;
2. Parents;
3. Psychologists;
4. Principals; or
5. District specialists;

(c) At least one (1) team member shall represent the district office and have an understanding of early childhood development and knowledge of developmentally-appropriate practices; and

(d) If a student is recommended by the local board of education for accelerated placement into the second level of the primary program, the district shall forward that recommendation to the department for approval with:

1. A list of data sources used in making the decision;
2. A list of all individuals who submitted the data sources;
3. A list of team members; and
4. The data needed to create a pupil attendance record.

(3) A local school district shall enroll any resident pupil, not holding a high school diploma, under the age of twenty-one (21) years of age who wishes to enroll. The days attended after the student's 21st birthday shall not be included in the calculation of the district's average daily attendance.

Section 8. The Growth Factor Report for the first two (2) school months of the school year pursuant to KRS 157.360(8) shall be submitted to the Department of Education within ten (10) business days following the last day of the second school month or by November 1 of each year, whichever occurs first.

Section 9. (1) ~~A copy of the~~ written agreement local boards of education execute for enrollment of nonresident pupils as provided by KRS 157.350(4) shall be filed in both the attending district and the resident district ~~submitted to the Department of Education~~ no later than February 1 of the year prior to the school year to which it will apply. The written agreement shall include the specific terms to which the districts have agreed. A list of the names of all nonresident pupils enrolled in the attending district covered by the agreement shall be filed in both the attending district and the resident district ~~submitted to the Department of Education~~ not later than November 1 of the school year covered by the agreement.

(2) A change may be made to the original nonresident pupil agreement up to the close of the school year to include the nonresident pupils enrolling after the close of the second school month. The amendment shall be filed in both the attending district and the resident district ~~submitted to the Department of Education~~ no later than June 30 of each year.

Section 10. The Superintendent's Annual Attendance Report (SAAR) shall be considered the request to substitute prior year's average daily attendance for up to ten (10) designated weather-related low attendance days, and certification that the low attendance was due to inclement weather in accordance with KRS 157.320(17). Documentation that the low attendance was due to inclement weather shall be retained at the central office.

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Section 11. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, student entry and exit logs, and the Home/Hospital Program Form, shall be the original source of attendance data for all pupils enrolled in the public common schools and shall be verified at the end of each school month.

(2) The school's records of daily attendance and teachers' monthly attendance reports shall be signed by a designated certified person within the elementary or secondary school who shall be responsible for verifying and certifying the state attendance documents for accuracy.

(3) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and student entry and exit logs shall be retained at least two (2) full school years after the current school year.

Section 12. The following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(2) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(3) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who withdrew as a W06, W07, W13, W16 or W18 during the 2004-2005 school year or as a W24 or W25 for previous school years;

(4) R01 - A pupil received from another grade in the same school;

(5) R02 - A pupil received from another public school in the same public school district;

(6) R06 - A pupil reentering the school after dropping out, discharge or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(7) R20 - A pupil previously enrolled in a home school in Kentucky during the current school year;

(8) R21 - A pupil previously enrolled in any public or nonpublic school (excluding home schools) in Kentucky during the current school year;

(9) W01 - A pupil transferred to another grade in the same school. The reentry code to use with W01 shall be R01;

(10) W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;

(11) W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2:020, Section 1(1), accompanied by a doctor's statement certifying the condition, or any other health-related condition for which the student is too ill to participate in regular school attendance or local homebound instructional services, or if the student has obtained a doctor's statement certifying the condition. The reentry code to use with W07 shall be R06;

(12) W08 - A pupil withdrawn due to death;

(13) W12 - A pupil under the jurisdiction of the court. For purposes of the W12 code, a pupil may be considered under the jurisdiction of the court on the day the petition is filed with the court. The reentry code to use with W12 shall be R06. For accountability purposes, a W12 shall be considered a dropout if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(14) W17 - An entry level student in the primary program, withdrawn during the first two (2) months enrolled due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5:060;

(15) W20 - A pupil transferred to a home school. The reentry code to use with W20 shall be R20;

(16) W21 - A pupil transferred to a nonpublic school (excluding home school). The reentry code to use with W21 shall be R21;

(17) W22 - A pupil who has transferred to another public school district and for whom a request for student records has been received or enrollment has been substantiated, or a pupil who is known to have moved out of the United States;

(18) W23 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W24 or W25 during the current school year;

(19) W24 - A pupil who has moved out of this public school district for whom enrollment elsewhere has not been substantiated;

(20) W25 - A pupil who is at least sixteen (16) years of age and has dropped out of public school;

(21) W26 - A pupil who has withdrawn from school after completing a secondary GED program and receiving a GED certificate;

(22) W27 - a pupil who has withdrawn from school and subsequently received a GED;

(23) W28 - a pupil who has reached the maximum age for education services without receiving a diploma or certificate of attainment;

(24) C01 - a pupil who completes the school year in the school of the most current enrollment;

(25) G01 - a pupil who graduates in less than four (4) years;

(26) G02 - a pupil who graduates in four (4) years;

(27) G03 - a pupil who graduates in five (5) or more years;

(28) G04 - a pupil who graduates in six (6) or more years; and

(29) NS - a pupil who completed the prior year with a C01 and was expected to enroll in the district but did not enroll by October 1 of the current year whose enrollment elsewhere cannot be substantiated.

Section 13. (1) For a student who has been suspended, a code of S shall be used to indicate the days suspended.

(2) Suspension shall be considered an unexcused absence.

Section 14. The ethnicity of each student shall be designated as either Hispanic/Latino or not Hispanic/Latino. The designation shall be Hispanic/Latino if the person is of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture of origin regardless of race. The term "Spanish origin" can be used in addition to "Hispanic/Latino or Latino".

Section 15. One (1) or more of the following racial codes shall be used to indicate the racial category of pupils:

1 - White - A person having origins in any of the original peoples of Europe, North Africa or the Middle East;

2 - Black or African American - A person having origins in any of the black racial groups of Africa;

3[4] - Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands,, Thailand, and Vietnam, ~~or the Pacific Islands~~;

4[5] - American Indian or Alaskan Native - A person having origins in any of the original peoples of North America and South America (including Central America), and who maintains cultural identification through tribal affiliation or community attach-  
ment[recognition]; and

5[7] - Native Hawaiian or other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Section 16. (1) The Student Dropout Questionnaire shall be completed during the one (1) hour counseling session mandated in accordance with KRS 159.010. Dropout data shall be reported to the Department of Education on the Nonacademic Report that is submitted to the Department each year.

(2) The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his designee pursuant to KRS 159.170, and shall be maintained in the student's permanent file.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Home/Hospital Program Form", 2008-2009;

(b) "Student Dropout Questionnaire", December 2000;

(c) "Growth Factor Report", November 2009;

(d) "Superintendent's Annual Attendance Report (SAAR)", November 2009; and

(e) "Nonacademic Report", October 2008.

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(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Division of Finance, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the

TERRY HOLLIDAY, Ph.D. Commissioner

DAVID KAREM, Chairperson

APPROVED BY AGENCY: February 15, 2011

FILED WITH LRC: February 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 29, 2011, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321 or email at kevin.brown@education.ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows the Kentucky Department of Education to administer attendance calculations for Kentucky's local school districts. The regulation also defines entry and withdrawal codes. In addition, the demographic data captured at the time of enrollment includes the race of the student.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.070, 156.160, 157.320, 158.060, and 158.070 that set forth the Kentucky Board of Education's responsibility to establish a attendance regulations used by all local school districts.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for school attendance required in KRS 156.070, 156.160, 157.320, 158.060, and 158.070.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specifics how attendance is to be calculated in local school districts per KRS 156.070, 156.160, 157.320, 158.060, and 158.070.

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

(a) How the amendment will change this existing administrative regulation: These changes reflect more current terminology and clarify definitions that have resulted in misunderstanding of current regulation including clarification of Daily Attendance, Ethnicity and Race Codes, and the submission of Non-resident Contracts for students. Ethnicity and Race codes will change to require identification per the Federal Guidelines. Elimination of the submission of Non-resident Contracts will reduce the paperwork burden on districts. The attendance rate definition corrects the tardy percent to 35%.

(b) The necessity of the amendment to this administrative

regulation: Revising 702 KAR 7:125 should result in clearer guidance to local districts in the area of attendance reporting for the tardy calculation. The ethnicity and race codes will accurately reflect federal codes and the elimination of submission of the non-resident contracts will reduce paperwork.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statutes with updated guidance as a means to improve data quality for state and federal reporting purposes and streamline the reporting process at the local school district level.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides specifics for school attendance requirements throughout the state.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All school districts in Kentucky and supporting staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed amendment will update the regulation to assist with the reporting process at the local district level, and comply with new federal reporting requirements.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts will abide by the requirements set forth. Kentucky Department of Education staff will continue to review data submitted by school districts and report as required to state and federal agencies.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky school districts will have the requested guidance to streamline and support the attendance process at the local district level. The Department of Education will have information required for state and federal reporting purposes.

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

(a) Initially: Proposed amendment does not result in additional aggregate costs.

(b) On a continuing basis: The proposed amendment does not result in additional aggregate costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary as the SEEK funding formula remains contingent upon current appropriated amounts.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, 156.160, 157.320, 158.060, and 158.070.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency



(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. No additional costs are expected.

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

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

(c) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost to administer or implement.

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost to administer or implement.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(Amendment)**

**810 KAR 1:009. Jockeys and apprentices.**

RELATES TO: KRS 230.215

STATUTORY AUTHORITY: KRS 230.215(2), 230.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the commission to promulgate administrative regulations prescribing conditions under which all horse racing is conducted. KRS 230.260 authorizes the commission to promulgate administrative regulations that regulate conditions under which thoroughbred racing shall be conducted in Kentucky and to establish safety standards for jockeys. This administrative regulation establishes the requirements for jockeys and apprentice jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a jockey, who has not ridden in a race previously, may ride in three (3) races before applying for a license as a jockey or apprentice jockey if:

(1) The person is a licensed stable employee, assistant trainer, or trainer with at least one (1) year of service with a racing stable;

(2) A licensed trainer certifies in writing to the stewards that the person has demonstrated sufficient horsemanship, as evidenced by his control of the animal while mounting, riding, and dismounting in race and nonrace conditions, to be permitted the probationary mounts;

(3) The starter has schooled the person in breaking from the starting gate with other horses and approves the person as capable of starting a horse properly from the starting gate in a race;

(4) The stewards determine that the person:

(a) Intends to become a licensed jockey;

(b) Possesses the physical ability to be a jockey; and

(c) Has demonstrated his ability to ride in a race without jeopardizing the safety of horses or other jockeys in the race; and

(5) The person has prior oral or written approval of the stewards.

Section 2. Qualifications for License. In addition to the requirements applicable to licensees under 810 KAR 1:025, a holder of a license as a jockey or apprentice jockey:

(1) Shall be sixteen (16) years of age or older and licensed under his legal name which shall be listed in the daily race program;

(2) Shall have served at least one (1) year with a racing stable;

(3) Shall have ridden in at least three (3) races; and

(4) Shall, if required by the stewards, to protect the health and safety of the jockey, other jockeys, the horses, and the welfare of

the betting public provide a medical affidavit certifying the person is physically and mentally capable of performing the activities and duties of a licensed jockey.

Section 3. Amateur or Provisional Jockey. (1) An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefore, shall:

(a) Be approved by the stewards as to competency of horsemanship, as demonstrated by meeting the requirements in Section 1(2), (3), and (4)(b) and (c) of this administrative regulation;

(b) Be granted an amateur jockey's license; and

(c) Have his amateur status duly noted on the daily race program.

(2) A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey's license to ride his own horse or horse registered in his care as trainer.

Section 4. Apprentice Allowance. (1) Any person sixteen (16) years of age or older, who has not been licensed previously as a jockey in any jurisdiction, and who is qualified under Section 2 of this administrative regulation, may claim in all purse races except handicaps the following weight allowances:

(a) Ten (10) pounds until he has ridden five (5) winners;

(b) Seven (7) pounds until he has ridden an additional thirty-five (35) winners;

(c) If he has ridden a total of forty (40) winners prior to the end of one (1) year from the date of riding his fifth winner, he shall have an allowance of five (5) pounds until the end of that year; and

(d) If after one (1) year from the date of the fifth winner, the apprentice jockey has not ridden forty (40) winners, the applicable weight allowance shall continue for one (1) additional year, or until the 40th winning mount whichever occurs first.

(2)(a) After the completion of conditions in subsection (1) of this section, a contracted apprentice may claim three (3) pounds for one (1) year if riding horses owned or trained by his original contract employer if his contract has not been transferred or sold since his first winner.

(b) The original contract employer shall be the party to the contract who was the employer at the time of the apprentice jockey's first winner.

(c) Apprentice allowance shall not be claimed for a period in excess of two (2) years from the date of the rider's fifth winner unless an extension has been granted in accordance with subsection (4) of this section.

(3) An apprentice jockey may enter into a contract with a licensed owner or licensed trainer qualified under Section 5 of this administrative regulation for a period not to exceed five (5) years.

(a) These contracts shall be:

1. Approved by the stewards;

2. Filed with the commission; and

3. Binding in all respects on the parties to the contract.

(b) An apprentice who has not entered into a contract pursuant to this subsection shall be given an apprentice jockey certificate.

(4) If an apprentice jockey is unable to ride for a period of seven (7) consecutive days or more because of service in the armed forces of the United States, physical disablement, attendance in an institution of secondary or higher education, restrictions on racing, or other valid reason, the commission, upon recommendation of the stewards and after consultation with the racing entity which approved the original apprentice contract, may extend the time during which the apprentice weight allowance may be claimed for a period no longer than the period the apprentice rider was unable to ride.

(5) After completion of conditions in subsection (1) of this section, the rider shall be issued a license as a jockey before accepting subsequent mounts. Under these circumstances, the commission may waive collection of an additional license fee.

Section 5. Rider Contracts. (1) All contracts between an employer owner or trainer and employee rider shall be subject to 810 KAR Chapter 1.

(2) All riding contracts for terms longer than thirty (30) days, and any amendments, cancellation, or transfer, shall be in writing with the signatures of the parties notarized, and shall be approved

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by the stewards and filed with the commission.

(3) The stewards shall approve a riding contract and permit parties to participate in racing in this state if the stewards find that:

(a) The contract employer is a licensed owner or licensed trainer who owns or trains at least three (3) horses eligible to race at the time of the execution of the contract;

(b) The contract employer possesses the character, ability, facilities, and financial responsibility conducive to developing a competent race rider; and

(c) If it is a contract for an apprentice jockey, the contract provides for fair remuneration, adequate medical care, and an option equally available to both employer and apprentice jockey to cancel the contract after two (2) years from the date of execution.

Section 6. Restrictions as to Contract Riders. A rider shall not:

(1) Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his contract employer;

(2) Ride or agree to ride any horse in a race without consent of his contract employer;

(3) Share any money earned from riding with his contract employer; and

(4) Accept any present, money, or reward of any kind in connection with his riding of any race except through his contract employer.

Section 7. Calls and Engagements. (1) Any rider not prohibited by prior contract may agree to give first or second call on his race-riding services to any licensed owner or trainer.

(2) These agreements, if for terms of more than thirty (30) days, shall be in writing, approved by the stewards, and filed with the commission.

(3) Any rider employed by a racing stable on a regular salaried basis shall not ride against the stable which employs him.

(4) An owner or trainer shall not employ or engage a rider to prevent him from riding another horse.

Section 8. Jockey Fee. (1) The fee to a jockey, in the absence of special agreement to the contrary, shall be as follows:

(a) ~~Purse \$500 and under: winning mount, \$33; second place mount, \$33; third place mount, \$33; losing mount, \$33.~~

(b) ~~Purse \$600 to \$699: winning mount, \$36; second place mount, \$33; third place mount, \$33; losing mount, \$33.~~

(c) ~~Purse \$700 to \$1,499: winning mount, ten (10) percent of win purse; second place mount, \$33; third place mount, \$33; losing mount, \$33.~~

(d) ~~Purse \$1,500 to \$1,999: winning mount, ten (10) percent of win purse; second place mount, \$35; third place mount, \$33; losing mount, \$33.~~

(e) ~~Purse \$2,000 to \$3,499: winning mount, ten (10) percent of win purse; second place mount, \$45; third place mount, \$40; losing mount, \$38.~~

(f) ~~Purse \$3,500 to \$4,999: winning mount, ten (10) percent of win purse; second place mount, \$55; third place mount, \$45; losing mount, \$40.~~

(g) ~~Purse up to \$5,000 to \$9,999: winning mount, ten (10) percent of win purse; second place mount, seventy (70) dollars or five (5) percent of place purse, whichever is greater [65]; third place mount, sixty (60) dollars; fourth place mount, fifty-five (55) dollars [50]; losing mount, fifty (50) dollars [45].~~

(b) ~~(h) Purse, \$10,000 to \$14,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, sixty-five (65) dollars or five (5) percent of third place purse, whichever is greater; fourth place mount sixty (60) dollars; losing mount, fifty-five (55) dollars [50].~~

(c) ~~(i) Purse, \$15,000 to \$24,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of show [third place] purse; fourth place mount, sixty-five (65) dollars; losing mount, sixty (60) dollars [55].~~

(d) ~~(j) Purse, \$25,000 to \$49,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of show [third place] purse; fourth place mount, ninety (90) dollars; losing~~

mount, seventy (70) dollars [65].

(e) ~~(k) Purse, \$50,000 to \$99,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of show [third place] purse; fourth place mount, five (5) percent of fourth place purse; losing mount, \$110 [80].~~

(f) ~~(l) Purse, \$100,000 and up: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, \$105.~~

(2) A jockey fee shall be considered earned by a rider if he is weighed out by the clerk of scales, with the following exceptions:

(a) If a rider does not weigh out and ride in a race for which he has been engaged because an owner or trainer engaged more than one (1) rider for the same race, the owner or trainer shall pay the appropriate fee provided in section 8(1) above to each rider engaged for the race [an appropriate fee to each rider engaged for the race];

(b) If a rider capable of riding elects to take himself off the mount without, in the opinion of the stewards, reasonable cause; or

(c) If a rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by the rider during the time between weighing out and start of the race.

Section 9. Revised Order of Finish After Race is Declared Official. If a winning purse is forfeited through subsequent ruling of the stewards or the commission, after the result has originally been made official, the winning fee shall be paid to the jockey whose mount is ultimately adjudged the winner, and the original winner shall be credited only with a losing mount.

Section 10. Duty to Fulfill Engagements. Every rider shall fulfill his duly scheduled riding engagements, unless excused by the stewards due to circumstances under which a jockey could not reasonably be expected to be physically present at the required time. A rider shall not be required to ride a horse he believes to be unsound, nor over a racing strip he believes to be unsafe, but if the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, the rider may be subject to disciplinary action.

Section 11. Presence in Jockey Room. (1) Each rider who has been engaged to ride in a race shall be physically present in the jockey room no later than one (1) hour prior to post time for the first race on the day he is scheduled to ride, unless excused by the stewards or the clerk of scales due to circumstances under which a jockey could not reasonably be expected to ride; and upon arrival shall report to the clerk of scales his engagements. If a rider fails for any reason to arrive in the jockey room no later than one (1) hour before post time of a race in which he is scheduled to ride, the clerk of scales shall so advise the stewards who may name a substitute rider and shall cause a public announcement to be made of the rider substitution prior to opening of wagering on the race.

(2) Each rider reporting to the jockey room shall remain in the jockey room until he has fulfilled all his riding engagements for the day, except to ride in a race, or except to view the running of a race from a location approved by the stewards. While a rider is outside of the jockey room, a rider shall not have contact or communication with any person other than an owner or trainer for whom he is riding, a racing official, or a representative of the regular news media, until the rider has fulfilled all his riding engagements for the day.

(3) The association shall be responsible for security of the jockey room to conduct specific business previously approved by the stewards so as to exclude all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, duly accredited members of the news media, and persons having special permission of the stewards to enter the jockey room.

(4) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall notify the stewards of his intent to depart after fulfilling his final riding engagement of the day.

Section 12. Weighing Out. (1) Each rider engaged to ride in a

race shall report to the clerk of scales for weighing out not more than one (1) hour and not less than fifteen (15) minutes before post time for each race in which he is engaged to ride, and when weighing out, the rider shall declare overweight, if any.

(2)(a) A rider shall not pass the scale with more than one (1) pound overweight, without consent of the owner or trainer of the horse he is engaged to ride; and

(b) A rider shall not pass the scale with more than five (5) pounds overweight.

(3) A horse shall not be disqualified because of overweight carried.

(4) Whip, blinkers, number cloth, bridle, goggles, rider's safety helmet, and rider's safety vest shall not be included in a rider's weight.

Section 13. Wagering. A rider shall not place a wager, cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race except on his own mount, and except through the owner or trainer of the horse he is riding. The owner or trainer placing wagers for his rider shall maintain a precise and complete record of all of these wagers, and the record shall be available for examination by the stewards at all times.

Section 14. Attire. (1) Upon leaving the jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional jockey costume with all jacket buttons and catches fastened.

(2) Each jockey shall wear:

(a) The cap and jacket racing colors registered in the name of the owner of the horse he is to ride;

(b) Stock tie;

(c) White or light breeches;

(d) Top boots;

(e) A safety vest and safety helmet that meet the standards set forth in subsections (4) and (5) of this section; and

(f) A number on his right shoulder corresponding to his mount's number as shown on the saddle cloth and daily racing program.

(3) The clerk of scales and attending valet shall be held jointly responsible with a rider for his neat and clean appearance and proper attire.

(4) A jockey mounted on a horse or stable pony at a location under the jurisdiction of the commission shall wear a properly secured safety helmet at all times. If requested by a commission official, the jockey shall provide sufficient evidence that his helmet has a tag, stamp, or similar identifying marker indicating that it meets one of the following safety standards:

(a) ASTM International Standard, ASTM F1163-04a;

(b) British Standards, BS EN 1384:1997 or PAS 015:1999; or

(c) Australian/New Zealand Standard, AS/NZS 3838:2006.

(5) A jockey mounted on a horse or stable pony at any location under the jurisdiction of the commission shall wear a safety vest at all times. If requested by a commission official, the jockey shall provide sufficient evidence that his safety vest has a tag, stamp, or similar identifying marker indicating that it meets or exceeds one (1) of the following safety standards:

(a) British Equestrian Trade Association (BETA):2000 Level 1;

(b) Euro Norm (EN) 13158:2000 Level 1;

(c) ASTM International Standard, ASTM F2681-08;

(d) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3; or

(e) Australian Racing Board (ARB) Standard 1.1998.

Section 15. Advertising. (1) A jockey shall not wear advertising or promotional material of any kind (whether for a nonprofit or for-profit entity) on clothing within one (1) hour before or after a race, unless:

(a)1. The material advertises or promotes the Jockey's Guild in the form of the picture of a jockey's boot or the picture of a wheel-chair, with no additional picture or logo;

2. The material advertises or promotes the Permanently Disabled Jockey's Fund in the form of the pictures of its logo, with no additional picture or logo; or

3. The picture or logo has previously been approved by the current owner, association, and the stewards under the process set

forth in this administrative regulation, and this approval is reflected in the commission's official records;

(b) The material complies with the size restrictions of subsection (2)(b) of this section;

(c) The material meets the advertising standards listed in subsection (2) of this section;

(d) Written approval by the following is submitted to the commission:

1. The managing owner of the horse, or authorized agent of the managing owner who acts with actual authority and has been specifically authorized in writing to sign the written approval on behalf of the managing owner. Written authorization shall be evidenced by completion and return to the commission of the "Authorized Agent License Application" form. If the owner is a business entity, in lieu of filing the "Authorized Agent License Application" form, the owner may file duly adopted resolutions of the business entity authorizing the agent to act on its behalf and remit the twenty-five (25) dollar license application fee;

2. The jockey riding the horse or the authorized agent of the jockey who acts with actual authority and has been specifically authorized in writing to sign the written approval on behalf of the jockey. Written authorization shall be evidenced by completion and return to the commission of the "Authorized Agent License Application" form;

3. The licensed racing association, which shall grant approval if it reasonably determines the material meets the standards in subsection (2)(a) of this section; and

4. The stewards, who shall grant approval if they reasonably determine the material meets the standards in subsections (2)(b) and (3) of this section; and

(e) Written approval required pursuant to subsection (1)(d) is evidenced by completion and return to the commission of the "Request to Wear Advertising and Promotional Materials" form. The form shall be completed and submitted to the stewards not later than 5 p.m. two (2) days prior to the day of the race in which the advertising and promotional materials will be worn. No other form of approval shall be accepted by the commission.

(2) Advertising or promotional material displayed on jockey clothing shall:

(a) Not compete with, conflict with, or infringe upon sponsorship agreements applicable to the racing association race or to the race meet in progress; and

(b) Comply with the following size restrictions:

1. A maximum of thirty-two (32) square inches on each thigh of the pants on the outer side between the hip and knee and ten (10) square inches on the rear of the pant at the waistline at the base of the spine;

2. A maximum of twenty-four (24) square inches on boots and leggings on the outside of each nearest the top of the boot; and

3. A maximum of six (6) square inches on the front center of the neck area (on a turtleneck or other undergarment).

(3) A sponsorship shall not be permitted by a person or entity whose message, business reputation, or ongoing business activity may be considered as obscene or indecent to a reasonable person.

(4)(a) The party presenting the advertising or promotional opportunity to the owner and jockey (including without limitation, the owner and jockey) shall disclose in writing all material terms, including financial, regarding the advertising or promotional opportunity to the owner and the jockey;

(b) The division of proceeds from any advertising or promotional material placed in accordance with this administrative regulation is subject to agreement between the owner and the jockey;

(c) The agreement between the owner and jockey shall be made in writing on the "Owner/Jockey Advertising and Promotional Materials Agreement" not later than 5 p.m. two (2) days prior to the day of the race in which the advertising and promotional materials will be worn;

(d) Other forms of agreement or contract shall not be used; and

(e) Any party who fails to comply with this or any other provision provided in this administrative regulation may be subject to penalties by the commission in accordance with KRS Chapter 230 and 810 KAR Chapter 1.

(5) As a condition for approval of advertising or promotional material, either the owners, the stewards, or the licensed racing association may require a personal viewing of the proposed material as it is to be displayed, to determine that the requirements of this section are met.

(6) The sponsor of a licensed racing association race or race meeting may display advertising or promotional material on an association saddlecloth if it does not interfere with the clear visibility of the number of the horse.

(7) Advertising content other than that approved in this administrative regulation shall not be permitted.

(8) This administrative regulation shall not infringe upon or limit the common law rights of a racing association to eject or exclude persons, licensed or unlicensed, from association grounds, or to apply the association's internal rules regarding other forms of advertising not addressed in this or any other applicable statute or administrative regulation, if the internal rules have been previously filed with and approved by the commission or its authorized representative.

Section 16. Viewing Films or Tapes of Races. (1) Every rider shall check the film list posted by the stewards in the jockey room the day after riding in a race.

(2) The posting of the film list shall be considered as notice to all riders whose names are listed to present themselves when designated by the stewards to view the patrol films or video tapes of races.

(3) Any rider may be accompanied by a representative of the jockey organization of which he is a member in viewing the films, or with the stewards' permission, be represented at the viewing by his designated representative.

Section 17. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Request to Wear Advertising and Promotional Material", KHRC 009-01, 10/10.

(b) "Authorized Agent License Application", KHRC 009-02, 5/10; and

(c) "Owner/Jockey Advertising or Promotional Materials Agreement", KHRC 009-03, 5/10.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained from the Kentucky Horse Racing Commission Web site at <http://www.khrc.ky.gov/>.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Provider Operations**  
**(Amendment)**

**907 KAR 1:715. School-based health services.**

RELATES TO: KRS 156.070, 205.520, 605.115, 314.470, 20 U.S.C. 33, 34 C.F.R. 300.320, 300.321, 300.324, 42 C.F.R. 440.110

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medicaid services to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to school-based health services (SBHS) for which payment shall be made by the Medicaid Program on behalf of Medicaid recipients who are eligible for school-based health services under 20 U.S.C. Chapter 33.

Section 1. Definitions. (1) "Admissions and release committee" or "ARC" means a group of individuals which meets the:

(a) ARC requirements established in 707 KAR 1:320; and  
(b) IEP team requirements established in 34 C.F.R. 300.321.

(2) "Advanced registered nurse practitioner" is defined by KRS 314.011(7).

(3) "Assistive technology device" means an item, piece of equipment, or product system that is:

(a) Used to increase, maintain, or improve the functional capabilities of a child with a disability; and

(b) Medically necessary to implement the health services in the child's individualized education program.

(4) "Certified psychologist" means an individual who holds the title of certified psychologist pursuant to KRS 319.056.

(5) "Certified psychologist with autonomous functioning" means an individual who holds the title of certified psychologist with autonomous functioning pursuant to KRS 319.056.

(6) "Certified social worker" means an individual with a certified social worker license pursuant to KRS 335.080.

(7) "Department of Education" means the Commonwealth of Kentucky, Department of Education.

(8) "IDEA" means the Individuals with Disabilities Education Act, 20 U.S.C. Chapter 33.

(9) "IEP team" is defined by 34 C.F.R. 300.321.

(10) "Incidental interpreter services" means the interpreter services that are necessary to allow the child to benefit from other covered school-based health services.

(11) "Individualized Education Program" or "IEP" is defined by 34 C.F.R. 300.320.

(12) "Licensed clinical social worker" means an individual possessing a current licensed clinical social worker license pursuant to KRS 335.100.

(13) "Licensed practical nurse" is defined by KRS 314.011(9).

(14) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(15) "Licensed professional clinical counselor associate" is defined by KRS 335.500(4).

(16) "Licensed psychological associate" means an individual holding the title of licensed psychological associate pursuant to KRS 319.064.

(17) "Licensed psychological practitioner" means an individual who meets the licensed psychological practitioner requirements established in KRS 319.053.

(18) "Licensed psychologist" means a psychologist who holds a licensed psychologist license pursuant to KRS 319.010(5).

(19) "Licensed social worker" means an individual possessing a current licensed social worker license pursuant to KRS 335.090.

(20) "Occupational therapist" is defined by KRS 319A.030(3).

(21) "Occupational therapy assistant" is defined by KRS 319A.030(4).

(22) "Physical therapist" is defined by KRS 327.010(2).

(23) "Physical therapist assistant" means an individual:

(a) With a current credential from the Kentucky Board of Physical Therapy; and

(b) Working under the supervision of a physical therapist.

(24) "Psychologist" is defined by KRS 319.010(8).

(25) "Recipient" is defined by KRS 205.8451(9).

(26) "Registered nurse" is defined by KRS 314.011(5).

(27) "Respiratory care practitioner" is defined by KRS 314A.010(3).

(28) "SBHS" or "School-based health services" means medically-necessary health services;

(a) Provided for in 907 KAR 1:034; and

(b) Specified in an individualized education program for a child determined to be eligible under the provisions of the Individuals with Disabilities Education Act, 20 U.S.C. Chapter 33, and 707 KAR Chapter 1.

(29) "SBHS recipient" means a recipient who:

(a) Is under the age of twenty-one (21) years; and

(b) Receives school-based health services.

(30) "Special transportation" means a special arrangement, special equipment, or a special vehicle:

(a) Which is appropriate for the child's disability; and

(b) The need for which is described in the child's individualized education plan.

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Section 2. Provider Requirements. (1) A school district that requests to participate as a school-based health care provider shall not be qualified to provide school-based health services:

(a) Until it has enrolled as a Medicaid provider pursuant to 907 KAR 1:672;

(b) Until it has been certified by the Department of Education to provide school-based health services; and

(c) Unless it is currently compliant with the Medicaid provider participation requirements established in 907 KAR 1:671.

(2) The Department of Education shall grant certification to a district that agrees to:

(a) Provide services as:

1. Required by 20 U.S.C. Chapter 33; and

2. Specified in an approved individualized education program developed by an ARC that includes a multidisciplinary team of professionals acting within their scope of practice;

(b) Comply with the service provision requirements mandated by 20 U.S.C. Chapter 33 and in accordance with 707 KAR 1:320;

(c) Employ or contract with health care professionals who meet the qualifications specified in Section 4 of this administrative regulation;

(d) Provide the Department of Education with a proposed quality assurance outline;

(e) Maintain and submit to the Department of Education all required records and reports to ensure compliance with 20 U.S.C. Chapter 33; and

(f) Provide the Department of Education with a list of school-based health services that the school district provides. This list shall contain the following information for employees and contractors providing the services:

1. Name; and

2. Credentials;

3. Hourly salary;

4. Hourly fringe benefit costs; and

5. Hourly contract amounts].

(3) The Department for Medicaid Services shall grant Medicaid enrollment to a provider who:

(a) Meets the criteria established in subsections (1) and (2) of this section;

(b) Works within his or her scope of practice as established in Kentucky law; and

(c) Is recommended by the Department of Education for certification and enrollment in the Kentucky Medicaid Program as a provider of school-based health services.

(4) A Medicaid school-based health services provider shall:

(a) Submit to an annual review by the Department of Education to ensure

compliance with the standards for continued participation as a Medicaid provider;

(b) Have an on-site survey completed by the Department of Education as necessary to determine compliance with the Medicaid Program;

(c) Take action as specified by the Department of Education to correct a deficiency if found to be in noncompliance with the provision of services outlined in 707 KAR 1:320 or this administrative regulation;

(d) Agree to implement a quality assurance program approved by the Department of Education for the provision of Medicaid-covered services within one (1) year from the date the Department of Education recommends enrollment to the Medicaid Program;

(e) Maintain a current list of school-based health services that the school district provides. The list shall contain the information listed in subsection (2)(f) of this section for an employee or contractor providing the services;

(f) Maintain records on each SBHS recipient who receives services reimbursed by Medicaid. The records shall:

1. Identify the child, services performed, and quantity or units of service;

2. Be signed and dated by the professional who provided or supervised the service;

3. Be legible with statements written in an objective manner;

4. Indicate progress being made, any change in treatment, and response to the treatment; and

5. Be retained for a minimum of five (5) years plus any addi-

tional time required by law; and

(g) Comply with 907 KAR 1:671 and 1:672.

Section 3. Covered Services. (1) A school-based health service that is included in an IEP authorized by an IEP team or ARC and provided in accordance with this administrative regulation shall:

(a) Be considered medically necessary; and

(b) Not be subject to additional Medicaid prior-authorization requirements.

(2) The following services shall be covered if provided to address a medical or mental disability and to assist an individual in benefiting from special education programming which is included, authorized, and provided in accordance with the individualized education program:

(a) Nursing;

(b) Audiology;

(c) Speech and language;

(d) Occupational therapy;

(e) Physical therapy;

(f) Behavioral health services[Mental health];

(g) Incidental interpreter services provided in conjunction with another covered service;

(h) Orientation and mobility services;

(i) Respiratory therapy;

(j) Assistive technology devices and appropriate related evaluations if the devices purchased by the Medicaid Program become the property of the SBHS recipient; and

(k) Special transportation with the following limitations:

1. A special transportation service shall be limited to transporting an SBHS recipient to receive a Medicaid-covered service at:

a. A site other than the school building in which the child is enrolled for general education purposes;

b. The child's home if the child is a home-bound student and receives general education services at home; or

c. The school building where the child receives the Medicaid-covered service. Special transportation to the school building from the child's home or other site and return special transportation from the school building to the child's home or other site shall be covered for the day the Medicaid-covered service is provided at the school building;

2. A special transportation service shall be provided using a type of vehicle which:

a. Meets the specifications established by KRS 156.153, 702 KAR 5:060, and 702 KAR 5:130; and

b. Is appropriate for the child's disability as determined by the ARC in accordance with 702 KAR 5:100; and

3. A special transportation service provided by a member of an SBHS recipient's household to the SBHS recipient shall not be covered unless the SBHS recipient's household member is an employee of the school district.

(3) A covered school-based health service:

(a) Shall not be limited by site of service;

(b) Shall be provided in:

1. A group of no more than six (6); or

2. In a one-on-one situation; and

(c) May include:

1. An assessment or evaluation if the assessment or evaluation is stated in the SBHS recipient's IEP, except as allowed in subsection (4) of this section; or

2. A treatment component if the treatment component is stated in the SBHS recipient's IEP.

(4) An assessment or evaluation conducted prior to the establishment of an individualized education program shall be covered if the individualized education program is subsequently developed and implemented as a result of the assessment or evaluation.

Section 4. Staffing Requirements. School-based health services shall be reimbursable if provided by a professional acting within his or her scope of practice as defined by state law and as provided in this section.

(1) A nursing service shall be provided by:

(a) An advanced registered nurse practitioner with a current license from the Kentucky Board of Nursing;

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- (b) A registered nurse;  
1. With a current license from the Kentucky Board of Nursing;  
or  
2. Authorized to provide a nursing service;  
(c) A licensed practical nurse:  
1. With a current license issued by the Kentucky Board of Nursing, under appropriate supervision and delegated authority; or  
2. Authorized to provide a nursing service pursuant to KRS 314.470; or  
(d) A health aide if:  
1. The aide is under the supervision of a specific registered nurse or advanced registered nurse practitioner;  
2. The supervising registered nurse or advanced registered nurse practitioner has trained the aide for the specific SBHS nursing service for the specific recipient; and  
3. The supervising registered nurse or advanced registered nurse practitioner has verified in writing that the aide has appropriate training and skills to perform the specific service in a safe, effective manner.  
(2) Audiology services shall be provided by an audiologist with a current license from the Kentucky Board of Speech-Language Pathology and Audiology.  
(3) Speech and language services shall be provided by:  
~~(a) a speech-language pathologist who has a current certificate of clinical competence issued by the American Speech-Language-Hearing Association[;~~  
1. ~~Has a current license from the Kentucky Board of Speech-Language Pathology and Audiology;~~  
2. ~~Has a master's level professional certification issued by the Kentucky Education Professional Standards Board after January 1, 2001; or~~  
3. ~~Has a certificate of clinical competence issued by the American Speech-Language-Hearing Association; or~~  
4. ~~Is working under the supervision of an individual who:~~  
~~a. Has a current license from the Kentucky Board of Speech-Language Pathology and Audiology;~~  
~~b. Has a master's level professional certification issued by the Kentucky Education Professional Standards Board after January 1, 2001; or~~  
~~c. Has a certificate of clinical competence issued by the American Speech-Language-Hearing Association; or~~  
~~(b) A speech-language pathology assistant who:~~  
1. ~~Has:~~  
~~a. A current license from the Kentucky Board of Speech-Language Pathology and Audiology; or~~  
~~b. A baccalaureate-level certification issued by the Kentucky Educational Professional Standards Board; and~~  
2. ~~Is under the supervision of a licensed or certified masters-level speech-language pathologist in accordance with KRS 334A.033, 334A.080, and 161.053].~~  
(4) Occupational therapy services shall be provided by:  
(a) An occupational therapist;  
(b) An occupational therapy assistant; or  
(c) An unlicensed occupational therapy aide who:  
1. Provides supportive services to occupational therapists and occupational therapy assistants; and  
2. Is under the direct supervision of a licensed occupational therapist.  
(5) Physical therapy services shall be provided by:  
(a) A physical therapist;  
(b) A physical therapist assistant;  
(c) An individual with a temporary permit to perform physical therapy in Kentucky pursuant to 327.010(5);  
(d) A student of physical therapy under the supervision of a physical therapist; or  
(e) Physical therapy supportive personnel under the direct on-site supervision of a:  
1. Physical therapist; or  
2. Physical therapist assistant in accordance with the provisions of 201 KAR 22:053.  
(6) A behavioral~~mental~~ health service shall be provided by:  
(a) A licensed psychologist;  
(b) A licensed psychological practitioner;  
(c) A certified psychologist with autonomous functioning;

- (d) A certified psychologist;  
(e) A licensed psychological associate;  
(f) A licensed clinical social worker;  
(g) A licensed social worker;  
(h) A certified social worker;  
(i) An advanced registered nurse practitioner who has a specialty area in accordance with the American Nurses' Association's Scope and Standards of Psychiatric Mental Health Nursing Practice in accordance with 201 KAR 20:057;  
(j) A licensed professional clinical counselor; or  
(k) A licensed professional clinical counselor associate.  
(7) An incidental interpreter service shall be provided by an interpreter licensed by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing pursuant to KRS 309.301.  
(8) Orientation and mobility services shall be provided by an orientation and mobility specialist certified by the:  
(a) Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP); or  
(b) National Blindness Professional Certification Board (NBPCB).  
(9) Respiratory therapy services shall be provided by a respiratory care practitioner.

Section 5. Reimbursement. (1) Reimbursement for SBHS shall be provided in accordance with the school-based health service reimbursement provisions established in 907 KAR 1:035.

(2) A school-based health services provider shall certify the expenditure of state or local funds for school-based health services in accordance with 702 KAR 3:285.

Section 6. Individualized Education Program. An IEP shall:

- (1) Be developed, reviewed, and revised in accordance with:  
(a) 707 KAR 1:320; and  
(b) 34 C.F.R. 300.324; and  
(2) Not be considered authorized unless it has been approved by an IEP team.

NEVILLE WISE, Acting Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: February 9, 2011

FILED WITH LRC: February 10, 2011 at Noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Linda Proctor (502) 564-6890, Stephanie Mack (502) 564-6890, or Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:  
(a) What this administrative regulation does: This administrative regulation establishes Medicaid school-based health service policies.  
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish school-based health service policies in concert with 20 U.S.C. 33.

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(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 school-based health service policies.

(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 school-based health service policies.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the speech and language provider requirements. Currently, to be eligible to provide Medicaid speech and language services, a speech language pathologist has to have a current license from the Kentucky Board of Speech-Language Pathology and Audiology, a master's level certification issued (after January 1, 2001) by the Kentucky Education Professional Standards Board, or a certificate of clinical competence issued by the American Speech-Language Hearing Association; or be working under the supervision of someone who meets the aforementioned requirements. With the amendment, a speech-language pathologist will have to have a current license from the Kentucky Board of Speech-Language Pathology and Audiology and a certificate of clinical competence issued by the American Speech-Language Hearing Association. Additionally, the Department for Medicaid Services (DMS) is changing the term mental health services to behavioral health to ensure consistency with the corresponding state plan amendment approved by the Centers for Medicare and Medicaid Services (CMS) and is removing hourly salary, hourly fringe benefit costs and hourly contract amounts from the list of information required to be submitted by school districts as that information will be captured on the cost report (now required by CMS) to be submitted by each school district.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with a Centers for Medicare and Medicaid Services (CMS) mandate.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with a CMS mandate regarding speech-language pathologists' requirements; thus, preventing Kentucky's DMS program from losing federal funding for services provided by speech language pathologists.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by complying with a CMS mandate regarding speech-language pathologists' requirements; thus, preventing Kentucky's DMS program from losing federal funding for services provided by speech language pathologists.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: School districts which provide Medicaid-covered school-based health services will be affected by the amendment to this administrative regulation. There are approximately 143 school districts in Kentucky who provide Medicaid-covered school based health services.

(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. Any speech-language pathologist who provides Medicaid school-based services currently but does not meet the amended speech-language pathologists' requirements will have to meet the requirements if they wish to be able to provide Medicaid-covered, school-based health services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Any speech-language pathologist who does not currently meet the CMS-mandated requirements, will experience the costs of obtaining the revised credentials if they wish to be able to provide Medicaid-covered, school-based health services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Speech-language pathologists

who meet the CMS-mandated requirements will be able to be reimbursed for Medicaid school-based health services and their employers, school districts, likewise, will be able to be reimbursed by the Medicaid program.

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

(a) Initially: The Department for Medicaid Services (DMS) expects to experience no cost as a result of this amendment.

(b) On a continuing basis: DMS expects to experience no cost as a result of this amendment.

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

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

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

(9) Tiering: Is tiering applied? Tiering was not applied in this administrative regulation because it is applicable equally to all individuals or entities regulated by it.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 440.110 and a state plan amendment required and subsequently approved by the Centers for Medicare and Medicaid Services (CMS). The state plan amendment was submitted to CMS in response to a CMS audit which requested changes to the Department for Medicaid Services school-based health services program.

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. To be Medicaid reimbursable, Kentucky speech-language pathology services must be provided by a speech-language pathologist who has a current license from the Kentucky Board of Speech-Language Pathology and Audiology and a current certificate of clinical competence issued by the American Speech-Language-Hearing Association.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment will 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 and Kentucky school districts who provide Medicaid school-based health services will be affected by the amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42

C.F.R. 440.110.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS anticipates no increase in revenue as a result of this administrative regulation. A school district whose speech-language pathologists who fail to obtain the CMS-mandated credentials for providing Medicaid school-based health services could lose revenues as those pathologists would be ineligible to provide Medicaid school-based health services as a result of the amendment. Thus, the school district would be unable to be reimbursed for the services that otherwise could have been provided by those speech-language pathologists.

(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 anticipates no increase in revenue as a result of this administrative regulation. A school district whose speech-language pathologists who fail to obtain the CMS-mandated credentials for providing Medicaid school-based health services could lose revenues as those pathologists would be ineligible to provide Medicaid school-based health services as a result of the amendment. Thus, the school district would be unable to be reimbursed for the services that otherwise could have been provided by those speech-language pathologists.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) expects to experience no cost as a result of this amendment.

(d) How much will it cost to administer this program for subsequent years? DMS expects to experience no cost as a result of this amendment.

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

Revenues (+/-):

Expenditures (+/-):



NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, FEBRUARY 15, 2011

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Teachers' Retirement System  
(New Administrative Regulation)**

**102 KAR 1:178. Investment policies for insurance trust fund.**

RELATES TO: KRS 161.430

STATUTORY AUTHORITY: KRS 161.310(1), 161.430(1), 161.677

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. KRS 161.677(3) provides that the board of trustees shall manage the Kentucky Teachers' Retirement System insurance trust fund in the same general manner in which it administers retirement funds. The administrative regulation establishes investment policies and procedures to carry out these responsibilities for the Kentucky Teachers' Retirement System insurance trust fund.

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 the 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 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 long-term 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.

MS. BARBARA STERRETT, Chair

APPROVED BY AGENCY: December 20, 2010

FILED WITH LRC: January 24, 2011 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 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 March 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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, in regulatory format, investment policies and procedures for investment of the system's insurance trust fund.

(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 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: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: Investment policies and procedures are required by statute to be promulgated in an administrative regulation.

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

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zations, or state and local governments affected by this administrative regulation: This amendment applies to the Kentucky Teachers' Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: Kentucky Teachers' Retirement System will 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): Kentucky Teachers' Retirement System will 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 cost to implement this administrative regulation will 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, 161.677.

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 will be 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.

quent 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 Dentistry (New Administrative Regulation)

#### 201 KAR 8:531. Licensure of dentist.

RELATES TO: KRS 39A.350 - 366, 214.615, 304.40 - 075, 313.030, 313.035, 313.080, 313.130, 313.245

STATUTORY AUTHORITY: KRS 214.615(2), 313.020(2), 313.021(1)(a), (b), (c), 313.035(1), (3), 313.254

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.035 requires the board to promulgate administrative regulations relating to requirements and procedures for the licensure of dentists. This administrative regulation establishes requirements and procedures for licensure of dentists.

Section 1. General Licensure Requirements. An applicant desiring dental licensure in the Commonwealth shall at a minimum:

(1) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(2) Submit a completed, signed, and notarized Application for Dental Licensure with an email contact address and with an attached applicant photo taken within the past six (6) months;

(3) Pay the fee required 201 KAR 8:520;

(4) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(5) Provide proof of completion of the requirements of KRS 214.615(1);

(6) Complete and pass the board's jurisprudence exam;

(7) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) which meets or exceeds the guidelines set forth by the American Heart Association;

(8) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint;

(9) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(10) Provide proof that the applicant is a graduate of a Commission on Dental Accreditation (CODA) accredited dental school or college or dental department of a university;

(11) Provide proof that the applicant has successfully completed Part I and Part II of the National Board Dental Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations; and

(12) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

Section 2. Requirements for Licensure by Examination. (1) Each individual desiring initial licensure as a dentist by examination shall complete all of the requirements listed in Section 1 of this administrative regulation.

(2) Each individual desiring initial licensure as a dentist by examination shall successfully complete a clinical examination within the five (5) years preceding the filing of his application.

(a) Prior to July 15, 2013, the board shall accept the following regional clinical examinations:

1. The examination of the Council of Interstate Testing Agencies (CITA);

2. The examination of the Central Regional Dental Testing Service (CRDTS);

3. The examination of the North East Regional Board of Dental

Examiners (NERB);

4. The examination of the Southern Regional Testing Agency (SRTA); and

5. The examination of the Western Regional Examining Board (WREB).

(b) After July 15, 2013, the board shall only accept a nationalized clinical examination.

(3) An individual desiring initial licensure as a dentist by examination more than two (2) years after fulfilling all of the requirements of his CODA accredited dental education shall:

(a) Hold a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dentistry in good standing, complete a board approved refresher course prior to receiving a license to practice dentistry in the Commonwealth of Kentucky.

(4) An applicant who has taken a clinical examination three (3) times and failed to achieve a passing score shall not be allowed to sit for the examination again until the applicant has completed and passed a remediation plan approved by the board.

Section 3. Requirements for Licensure by Credentials. Each individual desiring initial licensure as a dentist by credentials shall:

(1) Complete all of the requirements listed in Section 1 of this administrative regulation;

(2) Provide proof of having passed a state, regional, or national clinical examination used to determine clinical competency in a state or territory of the United States or the District of Columbia; and

(3) Provide proof that, for five (5) of the six (6) years immediately preceding the filing of the application, the applicant has been engaged in the active practice of dentistry when he or she was legally authorized to practice dentistry in a state or territory of the United States or the District of Columbia if the qualifications for the authorization were equal to or higher than those of the Commonwealth of Kentucky.

Section 4. Requirements for Student Limited Licensure. (1) Each individual desiring a student limited license shall:

(a) Complete all of the requirements listed in Section 1 of this administrative regulation with the exception of subsections (10) and (11);

(b) Provide a letter from the dean or program director of a postgraduate, residency, or fellowship program in the Commonwealth of Kentucky stating that the applicant has been accepted into the program and the expected date of completion;

(c) Submit a signed "Statement Regarding Student Licensure Limitations"; and

(d) Submit an official final transcript of the applicant's dental coursework with degree posted.

(2) An individual licensed under this section shall only practice dentistry in conjunction with programs of the dental school where the individual is a student and shall only provide professional services to patients of these programs.

(3) Licenses issued under this section shall be renewed with all other dental licenses issued by the board and shall automatically expire upon the termination of the holder's status as a student.

(4) A program enrolling an individual holding a student limited license shall notify the board in writing of the date the student graduates from or exits the program.

(5) Nothing in this section shall prohibit:

(a) A student from performing a dental operation under the supervision of a competent instructor within the dental school, college, or department of a university or private practice facility approved by the board. The board may authorize a student of any dental college, school, or department of a university to practice dentistry in any state or municipal institution or public school, or under the board of health, or in a public clinic or a charitable institution. A fee shall not be accepted by the student beyond the expenses provided by the stipend;

(b) A student limited license holder from working under the general supervision of a licensed dentist within the confines of the postgraduate training program; and

(c) A volunteer health practitioner from providing services under KRS 39A.350-366.

Section 5. Requirements for Faculty Limited Licensure. (1) Each individual desiring a faculty limited license shall:

(a) Complete all of the requirements listed in Section 1 of this administrative regulation with the exception of subsections (10) and (11);

(b) Provide a letter from the dean or program director of the dental school showing a faculty appointment with one (1) of the Commonwealth's dental schools;

(c) Submit a signed "Statement Regarding Faculty Licensure Limitations"; and

(d) Submit an official final transcript of his dental coursework with degree posted.

(2) An individual licensed under this section shall only practice dentistry in conjunction with programs of the dental school where the individual is a faculty member and shall only provide professional services to patients of these programs.

(3) Licenses issued under this section shall be renewed with all other dental licenses issued by the board and shall automatically expire upon the termination of the holder's status as a faculty member.

(4) A program employing an individual holding a faculty limited license shall notify the board in writing of the date the licensee exits the program.

Section 6. Requirements for Licensure of Foreign Trained Dentists. (1) Each individual desiring licensure as a dentist who is a graduate of a non-CODA accredited dental program shall successfully complete two (2) years of postgraduate training in a CODA accredited general dentistry program and shall:

(a) Provide proof of having passed the Test of English as a Foreign Language (TOEFL) administered by the Educational Testing Service with a score of 650 on the paper-based examination or a score of 116 on the internet-based examination, if English is not the applicant's native language;

(b) Submit a completed, signed, and notarized Application for Dental Licensure with an email contact address and with an attached applicant photo taken within the past six (6) months;

(c) Pay the fee required by 201 KAR 8:520;

(d) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(e) Provide proof of having completed the requirements of KRS 214.615(1);

(f) Complete and pass the board's jurisprudence exam;

(g) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) that meets or exceeds the guidelines set forth by the American Heart Association;

(h) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint;

(i) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(j) Provide proof of having successfully completed two (2) years postgraduate training in a CODA accredited general dentistry program;

(k) Submit one (1) letter of recommendation from the program director of each training site;

(l) Provide proof of successful completion of Part I and Part II of the National Board Dental Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations within the five (5) years preceding application for licensure;

(m) Provide proof of successfully completing within the five (5) years prior to application a clinical examination approved in Section 2(2) of this administrative regulation; and

(n) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An individual desiring initial licensure as a dentist who is a graduate of a non-CODA accredited dental program and applies more than two (2) years after fulfilling all of the requirements of his

post-graduate training in a CODA accredited general dentistry program shall:

(a) Hold a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dentistry in good standing, complete a board approved refresher course prior to receiving a license to practice dentistry in the Commonwealth of Kentucky.

Section 7. Requirements for Charitable Limited Licensure. (1) Each individual desiring a charitable limited license shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Submit a completed, signed, and notarized Application for Charitable Dental Licensure with an attached applicant photo taken within the past six (6) months;

(c) Not be subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(d) Have a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; and

(e) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An individual licensed under this section shall:

(a) Work only with charitable entities registered with the Cabinet for Health and Family Services that have met the requirements of KRS 313.254 and 201 KAR 8:580;

(b) Only perform procedures allowed by 2010 Ky. Acts ch. 85, sec. 22, which shall be completed within the duration of the charitable event;

(c) Be eligible for the provisions of medical malpractice insurance procured under KRS 304.40-075;

(d) Perform these duties without expectation of compensation or charge to the individual, and without payment or reimbursement by any governmental agency or insurer; and

(e) Have a charitable limited license that shall be valid for no more than two (2) years and shall expire during the regular dental renewal cycle.

(f) Comply with reciprocity requirements if applicable.

1. A state that extends a reciprocal agreement shall comply with this section.

2. An individual shall notify the sponsor of a charitable clinic and the board of the intent to conduct or participate in the clinic.

3. An individual conducting or participating in a charitable clinic shall have a license to practice dentistry in the state in which the dentist practices.

Section 8. Requirements for Specialty Licensure. Each individual desiring initial licensure as a specialist as defined by KRS 313.010 shall:

(1) Submit a completed, signed, and notarized Application for Specialty Licensure with an attached applicant photo taken within the past six (6) months;

(2) Pay the fee required by 201 KAR 8:520;

(3) Hold an active Kentucky license to practice general dentistry prior to being issued a specialty license; and

(4) Submit satisfactory evidence of completing a CODA accredited graduate or postgraduate specialty program after graduation from a dental school.

Section 9. Minimum Continuing Education Requirements. (1) Each individual desiring renewal of an active dental license shall complete thirty (30) hours of continuing education that relates to or advances the practice of dentistry and would be useful to the licensee's practice.

(2) Acceptable continuing education hours shall include course content designed to increase:

(a) Competency in treating patients who are medically compromised or who experience medical emergencies during the course of dental treatment;

(b) Knowledge of pharmaceutical products and the protocol of

the proper use of medications;

(c) Competence to diagnose oral pathology;

(d) Awareness of currently accepted methods of infection control;

(e) Knowledge of basic medical and scientific subjects including, biology, physiology, pathology, biochemistry, pharmacology, epidemiology, and public health;

(f) Knowledge of clinical and technological subjects;

(g) Knowledge of subjects pertinent to patient management, safety, and oral healthcare;

(h) Competency in assisting in mass casualty or mass immunization situations;

(i) Clinical skills through the volunteer of clinical charitable dentistry that meets the requirements of KRS 313.254;

(j) Knowledge of office business operations and best practices;

or

(k) Participation in dental association or society business meetings.

(3) A minimum of ten (10) hours shall be taken in a live interactive presentation format.

(4) A maximum of ten (10) hours total may be taken that meet the requirements of subsection (2)(i) - (k) of this section.

(5) All continuing education hours shall be verified by the receipt of a certificate of completion or certificate of attendance bearing:

(a) The signature of or verification by the provider;

(b) The name of the licensee in attendance;

(c) The title of the course or meeting attended or completed;

(d) The date of attendance or completion;

(e) The number of hours earned; and

(f) Evidence of the method of delivery if the course was taken in a live interactive presentation format.

(6) It shall be the sole responsibility of the individual licensee to obtain documentation from the provider or sponsoring organization verifying participation as established in subsection (5) of this section and to retain the documentation for a minimum of five (5) years.

(7) At license renewal, each licensee shall attest to the fact that he or she has complied with the requirements of this section.

(8) Each licensee shall be subject to audit of proof of continuing education compliance by the board.

Section 10. Requirements for Renewal of a Dental License. (1) Each individual desiring renewal of an active dental license shall:

(a) Submit a completed and signed, signed, and notarized Application for Renewal of Dental Licensure with an email contact address and with an attached applicant photo taken within the past six (6) months;

(b) Pay the fee required by 201 KAR 8:520;

(c) Maintain with no more than a thirty (30) day lapse CPR certification that meets or exceeds the guidelines set forth by the American Heart Association unless a hardship waiver is submitted to and subsequently approved by the board;

(d) Meet the requirements of KRS 214.615(1) regarding HIV/AIDS education for healthcare providers; and

(e) Meet the continuing education requirements as outlined in Section 9 of this administrative regulation except in the following cases:

1. If a hardship waiver has been submitted to and is subsequently approved by the board;

2. If the licensee graduated in the first year of the renewal biennium, in which case the licensee shall complete one-half (1/2) of the hours as outlined in Section 9 of this administrative regulation; and

3. If the licensee graduated in the second year of the renewal biennium, in which case the licensee shall not be required to complete the continuing education requirements outlined in Section 9 of this administrative regulation.

(2) If a licensee has not actively practiced dentistry in the two (2) consecutive years preceding the filing of the renewal application, he or she shall complete and pass a board approved refresher course prior to resuming the active practice of dentistry.

Section 11. Retirement of a License. (1) Each individual desir-

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ing retirement of a dental license shall submit a completed and signed "Retirement of License Form".

(2) Upon receipt of this form, the board will send written confirmation of retirement to the last known address of the licensee.

(3) A licensee shall not retire a license that has a pending disciplinary action against it.

(4) Each retirement shall be effective upon the processing of the completed and signed "Retirement of License Form" by the board.

Section 12. Reinstatement of a License. (1) Each individual desiring reinstatement of a properly retired dental license shall:

(a) Submit a completed, signed, and notarized Application to Reinstatement a Dental License with an attached applicant photo taken within the past six (6) months;

(b) Pay the fee required by 201 KAR 8:520;

(c) Show proof of having current certification in CPR that meets or exceeds the guidelines set forth by the American Heart Association;

(d) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(e) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint; and

(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) If an individual is reinstating a license that was retired within the two (2) consecutive years immediately preceding the filing of the reinstatement application, the individual shall provide proof of having met the continuing education requirements as outlined in Section 9 of this administrative regulation within those two (2) years.

(3) If the applicant has not actively practiced dentistry in the two (2) consecutive years immediately preceding the filing of the reinstatement application, the applicant shall complete and pass a refresher course approved by the board.

(4) If a license is reinstated in the first year of a renewal biennium, the licensee shall complete all of the continuing education requirements as outlined in Section 9 of this administrative regulation prior to the renewal of the license.

(5) If a license is reinstated in the second year of a renewal biennium, the licensee shall complete one-half (1/2) of the hours as outlined in Section 9 of this administrative regulation prior to the renewal of the license.

Section 13. Requirements for Verification of Licensure. Each individual desiring verification of a dental license shall:

(1) Submit a signed and completed "Verification of Licensure or Registration Form"; and

(2) Pay the fee required by 201 KAR 8:520.

Section 14. Requesting a Duplicate License. Each individual desiring a duplicate dental license shall:

Submit a signed and completed "Duplicate License or Registration Request Form"; and

(2) Pay the fee required by 201 KAR 8:520.

Section 15. Issuance of Initial Licensure. If an applicant has completed all of the requirements for licensure within six (6) months of the date the application was received at the office of the board, the board shall:

(1) Issue a license in sequential numerical order; or

(2) Deny licensure due to a violation of KRS Chapter 313 or 201 KAR Chapter 8.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Dental Licensure", January 2011;

(b) "Statement Regarding Student Licensure Limitations", July 2010;

(c) "Statement Regarding Faculty Licensure Limitations", July 2010;

(d) "Application for Charitable Dental Licensure," July 2010;

(e) "Application for Specialty Licensure", July 2010;

(f) "Application for Renewal of Dental Licensure", January 2011;

(g) "Retirement of License Form", July 2010;

(h) "Application to Reinstatement a Dental License", July 2010;

(i) "Verification of Licensure or Registration Form", July 2010;

(j) "Duplicate License or Registration Form", July 2010; and

(k) "American Heart Association CPR Guidelines", 2010.

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

DR. C. MARK FORT, DMD, Board President

APPROVED BY AGENCY: February 4, 2011

FILED WITH LRC: February 8, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, March 29, 2011, at 9 a.m. at the office of the Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing no later than March 22, 2011, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the emergency 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 emergency 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 emergency administrative regulation to the contact person.

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

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures for the licensure of dentists as mandated by KRS 313.035.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement KRS 313.035, which requires the board to promulgate administrative regulations regarding the licensure of dentists.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary about the classification of and licensure of dentists, by examination or credentials, the licensure of specialists, student limited licenses, faculty limited licenses, reciprocity, retirement of a license, reinstatement of a license, charity licenses and renewal programs as required by KRS 313.035.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets out the procedure for the licensure of dentists, by examination or credentials, the licensure of specialists, student limited licenses, faculty limited licenses, reciprocity, retirement of a license, reinstatement of a license, charity licenses and renewal programs as required by KRS 313.035.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statute: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

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(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact 3119 currently licensed dentists and approximately 125 new applicants per year. Additionally, the Kentucky Board of Dentistry will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no new actions for licensees to take in order to comply with this administrative regulation. The Kentucky Board of Dentistry is charged by KRS 313.020 to regulate the practice of dentistry in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): From 201 KAR 8:520:

The initial licensure fee for a general dental license applied for in a nonrenewal year shall be \$325.

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

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

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

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

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

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

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

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

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

The specialty license application fee shall be \$100.

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

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

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

The Board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 – 2011 an allotment of \$705,400 and for FY 2011 – 2012 and allotment of \$714,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for its licensees to legally practice dentistry in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 – 2011 an allotment of \$705,400 and for FY 2011 – 2012 and allotment of \$714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

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

by licensing fees paid by dentists as part of compliance with this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fees found in 201 KAR 8:520 make the agency financially solvent.

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

(9) TIERING: Is tiering applied? This administrative regulation applies tiering by identifying each classification of licensure available to dentists in the Commonwealth of Kentucky. General dental licenses are the standard, full license type available, and applicants are therefore subject to the full complement of requirements. Reporting requirements are reduced for student, faculty, and charitable limited license applicants as they are subject to restrictions of practice. Specialty license holders are subject to additional reporting requirements as they hold a more advanced license than general dentists.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313.020, 313.035.

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

There will be no new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB1 of the 2010 Extraordinary Session of the General Assembly.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 – 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is \$705,400

(d) How much will it cost to administer this program for subsequent years? FY 2011 – 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is \$714,000

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### GENERAL GOVERNMENT CABINET Board of Dentistry (New Administrative Regulation)

201 KAR 8:550. Anesthesia and sedation.

RELATES TO: KRS 313.035

STATUTORY AUTHORITY: KRS 313.035(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 313.035(1) requires the board to promulgate administrative regulations related to conscious sedation and anesthesia permits. This administrative regulation establishes requirements for permits to perform conscious sedation or anesthesia.

Section 1. Definitions. (1) "Advanced Cardiac Life Support" or "ACLS" means a certification that an individual has successfully completed an advanced cardiac life support course that meets or exceeds the standards established by the American Heart Association and incorporated by reference in 201 KAR 8:530.

(2) "Anesthesia" means an artificially induced insensibility to pain usually achieved by the administration of gases or drugs.

(3) "Anesthesia and sedation" means:

- (a) Minimal sedation;
- (b) Moderate sedation;
- (c) Deep sedation; and
- (d) General anesthesia.

(4) "Board" means the Kentucky Board of Dentistry.

(5) "Certified registered nurse anesthetist" means a registered nurse who is currently certified to practice nurse anesthesia in Kentucky.

(6) "Conscious sedation permit" means a permit that was issued by the board before the effective date of this regulation, that authorized the dentist to whom the permit was issued to administer parenteral sedation for the practice of dentistry.

(7) "Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Cardiovascular function is usually maintained.

(8) "Enteral" means a technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (oral, rectal, or sublingual).

(9) "Facility" means a location in which anesthesia or sedation is administered for the practice of dentistry.

(10) "Facility inspection" means an on-site inspection by the board or its designee to determine if a facility where the applicant proposes to provide anesthesia and sedation is adequately supplied, equipped, staffed, and maintained in a condition to support the provision of anesthesia and sedation services in a manner that meets the requirements of this administrative regulation.

(11) "General anesthesia" means a drug-induced loss of consciousness during which patients are not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation, drug-induced depression, or changes in neuromuscular function. Cardiovascular function may be impaired.

(12) "General anesthesia permit" means a permit that was issued by the board prior to the effective date of this regulation, that authorized the dentist to whom the permit was issued to administer general anesthesia for the practice of dentistry.

(13) "Incident" means dental treatment performed on a patient under minimal sedation, moderate sedation, deep sedation, or general anesthesia with unforeseen complications.

(14) "Incremental dosing" means administration of multiple doses of a drug until a desired effect is reached.

(15) "Minimal sedation" means a drug-induced state, with or without nitrous oxide to decrease anxiety, in which patients respond normally to tactile stimulation and verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are maintained and do not require assistance.

(16) "Moderate enteral sedation" means a drug-induced depression of consciousness through the gastrointestinal tract or oral mucosa during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(17) "Moderate parenteral sedation" means a drug-induced

depression of consciousness that bypasses the gastrointestinal tract or oral mucosa during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(18) "Moderate sedation" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(19) "Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract, that is, through an intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraosseous technique.

(20) "Pediatric Advanced Life Support" or "PALS" means a certification that an individual has successfully completed a pediatric advanced life support course that meets or exceeds the standards established by the American Heart Association and incorporated by reference in 201 KAR 8:530.

(21) "Sedation" means the reduction of stress or excitement by the administration of a drug that has a soothing, calming, or tranquilizing effect.

Section 2. Minimal Sedation Without a Permit. (1) A permit shall not be required for a dentist to administer minimal enteral sedation for patients age thirteen (13) and older.

(2) A dentist who intends to administer minimal sedation shall indicate the intent to administer minimal sedation in the patient's record.

(3) Medication used to produce minimal sedation shall not exceed the manufacturer's recommended dose (MRD) for unmonitored use by the individual. Additional dosing shall be within the MRD limits.

(4) A dentist who administers minimal sedation shall maintain a margin of safety and a level of consciousness that does not approach moderate sedation and other deeper states of sedation and general anesthesia.

(5) Nitrous oxide may be combined with an oral medication only if the level of sedation is maintained at the level of minimal sedation.

Section 3. Permit and Location Certificate Required. (1) A dentist shall not administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry unless:

(a) The dentist holds an appropriate Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation or Deep Sedation or General Anesthesia permit issued by the board; or

(b) The dentist holds a conscious sedation or general anesthesia permit that shall be converted to a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation/General Anesthesia permit at the next license renewal.

(2) A dentist shall not administer an anesthetic technique under a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia, conscious sedation, or general anesthesia permit issued by the board at a facility unless:

(a) The facility has a current Anesthesia and Sedation Facility Certificate issued by the board; or

(b) The facility passed an inspection by the board for the purpose of issuing a conscious sedation or general anesthesia permit.

(3) A treating dentist who does not hold an anesthesia and sedation permit shall not allow a physician anesthesiologist, another dentist who holds an anesthesia and sedation permit, or a certified registered nurse anesthetist to administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry at a facility owned or operated by the treating dentist unless:

(a) The facility has a current Anesthesia and Sedation Facility Certificate issued by the board; or

(b) The facility passed an inspection by the board for the purpose of issuing a conscious sedation or general anesthesia permit.

Section 4. Classifications of Anesthesia and Sedation Permits. The following permits shall be issued by the board to a qualified licensed dentist:

(1) Minimal Pediatric Sedation permit that authorizes a dentist to use minimal enteral sedation for patients age five (5) to twelve (12). Medication or medications used to produce minimal sedation shall not exceed the manufacturer's recommended dose (MRD) for unmonitored use by the individual. Incremental dosing shall be prohibited. All dosing shall be administered in the dental office. A dentist who administers minimal sedation shall maintain a margin of safety and a level of consciousness that does not approach moderate sedation and other deeper states of sedation and general anesthesia. Nitrous oxide may be combined with an oral medication only if the level of sedation is maintained at the level of minimal sedation.

(2) Moderate Enteral Sedation permit that authorizes a dentist to use moderate enteral sedation for patients age thirteen (13) and older;

(3) Moderate Parenteral Sedation permit that authorizes a dentist to use moderate parenteral sedation for patients age thirteen (13) and older;

(4) Moderate Pediatric Sedation permit that authorizes a dentist to use moderate sedation by any route of administration for patients age twelve (12) and under.

(5) Deep Sedation or General Anesthesia permit that authorizes a dentist to use:

- (a) General anesthesia; or
- (b) Deep sedation.

Section 5. Qualifications for Obtaining a Minimal Pediatric Sedation Permit. To qualify for a Minimal Pediatric Sedation permit, an applicant shall:

(1) Submit an Application for a Sedation or Anesthesia Permit which is incorporated by reference;

(2) Pay the fee required by 201 KAR 8:520;

(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and

(4) Provide proof of successful completion of:

(a) a Commission on Dental Accreditation (CODA) accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage minimal sedation; or

(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of twenty-four (24) hours of didactic instruction on pediatric minimal sedation by the enteral route or the combination enteral and nitrous oxide route.

Section 6. Qualifications for Obtaining a Moderate Enteral Sedation Permit. To qualify for a Moderate Enteral Sedation permit, an applicant shall:

(1) Submit an "Application for a Sedation or Anesthesia Permit" which is incorporated by reference;

(2) Pay the fee required by 201 KAR 8:520;

(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and

(4) Provide proof of successful completion of:

(a) A Commission on Dental Accreditation (CODA) accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage moderate sedation; or

(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of twenty-four (24) hours of didactic instruction plus management of at least ten (10) adult case experiences by the enteral route or the combination enteral and nitrous oxide route. These ten (10) cases shall include at least three (3) live (on sight) clinical dental experiences managed by participants in groups that shall not exceed five (5) individuals.

These three (3) live (on-sight) experiences may be obtained by observing a permit level dentist in their office; and the remaining cases may include simulations and video presentations and shall include at least one (1) experience in returning a patient from deep to moderate sedation.

Section 7. Qualifications for Obtaining a Moderate Parenteral Sedation Permit. To qualify for a Moderate Parenteral Sedation permit, an applicant shall:

(1) Submit an Application for a Sedation or Anesthesia Permit which is incorporated by reference;

(2) Pay the fee required by 201 KAR 8:520;

(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and

(4) Provide proof of successful completion of:

(a) a CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage moderate parenteral sedation; or

(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of sixty (60) hours of didactic instruction plus management of at least twenty (20) patients per course participant in moderate parenteral sedation techniques.

Section 8. Qualifications for Obtaining a Moderate Pediatric Sedation Permit. To qualify for a Moderate Pediatric Sedation permit, an applicant shall:

(1) Submit an Application for a Sedation or Anesthesia Permit which is incorporated by reference;

(2) Pay the fee required by administrative regulation;

(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and

(4) Provide proof of successful completion of a CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage moderate sedation for patients age twelve (12) and under.

Section 9. Qualifications for Obtaining a Deep Sedation/General Anesthesia Permit. To qualify for a Deep Sedation/General Anesthesia permit, an applicant shall:

(1) Submit an Application for a Sedation or Anesthesia Permit which is incorporated by reference;

(2) Pay the fee required by administrative regulation;

(3) Hold current certification in either ACLS or PALS; and

(4) Provide proof of successful completion of:

(a) A board-approved Accreditation Council for Graduate Medical Education (ACGME) accredited post doctoral training program in anesthesiology which affords comprehensive and appropriate training necessary to administer deep sedation and general anesthesia; or

(b) Provide proof of successful completion of a minimum of two (2) years advanced clinical training in anesthesiology from a Joint Commission on Accreditation of Healthcare Organization (JCAHO) accredited institution that meets the objectives set forth in part two (2) of the American Dental Association's "Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry"; or

(c) Provide proof of successful completion of a CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage deep sedation and general anesthesia.

Section 10. Multiple Application Levels Permitted. Dentists with education and training for more than one (1) level of sedation may mark their levels of qualification on the Application for a Sedation or Anesthesia Permit, based on the requirements of Sections 4 through 7 of this administrative regulation.

Section 11. Location Requirement. A dentist holding a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, Deep Sedation/General Anesthesia, conscious sedation, or general anesthesia



sia permit shall advise the Board of the name and address of each facility where the dentist intends to or has ceased to administer anesthesia and sedation by submitting the "Anesthesia and Sedation Permit Location Notification Form" which is incorporated by reference within ten (10) business days of the change.

Section 12. Anesthesia and Sedation Facility Certificates. (1) The owner or operator of a facility shall obtain an Anesthesia and Sedation Facility Certificate from the board for any location at which:

(a) A dentist holding a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, Deep Sedation/General Anesthesia, conscious sedation, or general anesthesia permit may administer anesthesia and sedation under the permit; or

(b) The treating dentist may allow a physician anesthesiologist, another dentist who holds an anesthesia and sedation permit, or a certified registered nurse anesthetist to administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry.

(2) A facility owner or operator desiring to obtain an Anesthesia and Sedation Facility Certificate shall:

(a) Submit an Application for an Anesthesia and Sedation Facility Certificate which is incorporated by reference;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Successfully pass a facility inspection as outlined in Section 10 of this administration.

(d) A dentist that is currently in an advanced training course for sedation may request the Board of Dentistry complete a Sedation Facility Inspection prior to completion of the course.

(3) The owner or operator of a facility may not allow an individual to administer anesthesia or sedation unless the individual is permitted to do so under this administrative regulation.

(4) The owner or operator of a facility shall maintain for five (5) years for inspection by the board the name and license number of each dentist, physician anesthesiologist, or certified registered nurse anesthetist who has administered anesthesia or sedation at that location.

(5) The owner or operator of a facility shall ensure that the facility:

(a) Remains properly equipped in accordance with Section 10 of this administrative regulation; and

(b) Remains properly staffed in accordance with Section 11 of this administrative regulation.

(6) In addition to the requirements contained in Subsection (5) of this section, the owner or operator of a facility shall ensure that the facility has appropriate nonexpired emergency and sedation medications.

Section 13. Facility Inspection Criteria. (1) To qualify for an Anesthesia and Sedation Facility Certificate, the facility shall pass an evaluation of facility equipment, medications, and clinical records to include at least the following:

(a) Oxygen and gas delivery system, backup system fail-safe;

(b) Gas storage facility;

(c) Safety indexed gas system;

(d) Suction and backup system;

(e) Auxiliary lighting system;

(f) Suitability of operating room to include:

1. Size, which must be at a minimum ten (10) feet by eight (8) feet or eighty (80) square feet;

2. Operating primary light source and secondary portable backup source, unless back-up generator is available;

3. Accessibility by Emergency Medical Staff;

(g) Recovery area, including oxygen, suction, and visual and electronic monitoring, which may include the operating room;

(h) Appropriate emergency drugs;

(i) Non-expired drugs;

(j) Appropriate devices to maintain an airway with positive pressure ventilation,

(k) Preoperative medical history and physical evaluation form;

(l) Anesthesia records, including monitoring and discharge records;

(m) Monitoring equipment, including pulse oximeter and blood

pressure monitoring;

(n) Electrocardiogram (EKG):

1. May be present for use by Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, and Moderate Pediatric Sedation permit holders for patients with significant cardiac history; and

2. Shall be present for use by Deep Sedation/General Anesthesia permit holders.

(o) Anesthesia and monitoring equipment to ensure they are in proper working order;

(p) Defibrillator or automated external defibrillator (AED) for Deep Sedation/General Anesthesia permits on adult patients; and

(q) For deep sedation or general anesthesia in pediatric patients:

1. A precordial stethoscope; or

2. A pretracheal stethoscope.

(2) During a facility inspection, inspectors shall:

(a) Examine the facility's equipment to determine if it is in proper working order;

(b) Determine if appropriate emergency drugs are present; and

(c) Determine if emergency drugs are nonexpired.

Section 14. Inducing a Level of Sedation for a Patient. (1) Administration of minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia to a patient requires at least the following appropriately trained individuals:

(a) The treating dentist;

(b) An individual trained and competent in basic life support (BLS) or its equivalent to assist the treating dentist; and

(c) Another individual trained and competent in BLS or its equivalent in close proximity to assist if needed.

(2) A dentist administering minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia to a patient may not leave the site until the patient:

(a) Is conscious;

(b) Is spontaneously breathing;

(c) Has stable vital signs;

(d) Is ambulatory with assistance; and

(e) Is under the care of a responsible adult.

(3) A treating dentist who allows a physician, another dentist, or certified registered nurse anesthetist to administer minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia under Sections 18 and 19 of this administrative regulation shall ensure that the physician, dentist, or certified registered nurse anesthetist does not leave the site until the patient:

(a) Is conscious;

(b) Is spontaneously breathing;

(c) Has stable vital signs;

(d) Is ambulatory with assistance; and

(e) Is under the care of a responsible adult.

Section 15. Conscious Sedation Permits and General Anesthesia permits. (1) A dentist who holds a current general anesthesia permit may continue to administer anesthesia and sedation consistent with a Deep Sedation/General Anesthesia permit until the expiration date of the permit.

(2) A dentist who holds a current conscious sedation permit and meets the requirements of Section 6(4) of this administrative regulation may continue to administer anesthesia and sedation consistent with a Moderate Pediatric Sedation permit until the expiration date of the permit.

(3) A dentist who holds a current conscious sedation permit and meets the requirements of Section 5 of this administrative regulation may continue to administer anesthesia and sedation consistent with a Moderate Parenteral Sedation permit until the expiration date of the permit.

(4) During the license renewal process, current general anesthesia permit holders shall convert the permit to a Deep Sedation/General Anesthesia permit.

(5) During the license renewal process, current conscious sedation permit holders shall convert the permit to a minimal pediatric

sedation, moderate enteral sedation, moderate parenteral sedation, and/or moderate pediatric sedation permit.

(6) A dentist who currently practices enteral sedation without a permit may continue without a permit until January 1st, 2012 and shall receive a Moderate Enteral Sedation permit by the submission of:

(a) Twenty-four (24) hours of didactic education plus twenty (20) sedation records documenting their experience; and

(b) Satisfactory completion of an on-site inspection as outlined in Section 10 of this administrative regulation.

**Section 16. Issuance and Expiration of Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation/General Anesthesia Permits.**

(1) Once an applicant has met the qualifications for obtaining a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation/General Anesthesia permit the board shall issue a permit in sequential numerical order.

(2) Each permit issued under this administrative regulation shall expire on the same date as the permit holder's license to practice dentistry.

**Section 17. Renewal of Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, and Deep Sedation/General Anesthesia Permits.** An individual desiring renewal of an active Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, and Deep Sedation/General Anesthesia permits shall:

(1) Submit a completed and signed Application for Renewal of a Sedation or Anesthesia Permit which is incorporated by reference;

(2) Pay the fee required by 201 KAR 8:520; and

(3) Provide evidence satisfactory to the board that the applicant meets the continuing education requirements outlined in Section 15 of this administrative regulation.

**Section 18. Continuing Education Requirements for Renewal of a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation/General Anesthesia Permit.**

(1) An individual desiring renewal of an active Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, or Moderate Pediatric Sedation permit shall:

(a) Complete not less than six (6) hours of clinical continuing education related to sedation or anesthesia in a classroom setting that includes hands-on airway management during the two (2) year term of the permit; or

(b) Shall maintain ACLS or PALS certification.

(2) An individual desiring renewal of an active Deep Sedation/General Anesthesia permit shall:

(a) Complete not less than four (4) hours of on-site clinical continuing education related to sedation or anesthesia during the two (2) year term of the permit; and

(b) Maintain ACLS or PALS certification.

(3) Continuing education required by this administrative regulation shall:

(a) Not be used to satisfy other continuing education requirements; and

(b) Be in addition to other continuing education requirements of 201 KAR 8:530.

**Section 19. Facilities Inspected Prior to the Effective Date of this Regulation.** (1) A facility owner or operator desiring to obtain an Anesthesia and Sedation Facility Certificate for a facility which passed an inspection by the board prior to the effective date of this regulation shall provide acceptable proof to the board of having passed a facility inspection for the purpose of issuing a conscious sedation or general anesthesia.

**Section 20. Issuance of an Anesthesia and Sedation Facility Certificate.** (1) Once an applicant has met the qualifications for

obtaining an Anesthesia and Sedation Facility Certificate the board shall issue a certificate in sequential numerical order.

**Section 21. Administration by a Physician Anesthesiologist or Dentist at the Facility of a Treating Dentist.** (1) A treating dentist who desires to allow a physician anesthesiologist or another dentist who holds an anesthesia and sedation permit to administer anesthesia and sedation to a patient at a specific practice location shall comply with Section 9 of this administrative regulation.

(2) A physician anesthesiologist may administer anesthesia and sedation in accordance with Section 4 of this administrative regulation without the need for review by the board.

**Section 22. Administration by a Certified Registered Nurse Anesthetist.** (1) A treating dentist who wishes to allow a certified registered nurse anesthetist to administer anesthesia and sedation to a patient at a specific practice location shall comply with Section 9 of this administrative regulation.

(2) Nothing under this section shall preclude a dentist from working with a certified registered nurse anesthetist in an ambulatory care center or hospital.

**Section 23. Morbidity and Mortality Incident Reports.** (1) A dentist shall report to the board, in writing, any death caused by or resulting from the dentist's administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within seven (7) days after its occurrence.

(2) A dentist shall report to the board, in writing, any incident that resulted in hospital in-patient admission caused by or resulting from the dentist's administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within thirty (30) days after its occurrence.

(3) The written report to the board required in subsections (1) and (2) of this section shall include:

(a) The date of the incident;

(b) The name, age, and address of the patient;

(c) The patient's original complete dental records;

(d) The name and license number of the licensee and the name and address of all other persons present during the incident;

(e) The address where the incident took place;

(f) The preoperative physical condition of the patient;

(g) The type of anesthesia and dosages of drugs administered to the patient;

(h) The techniques used in administering the drugs;

(i) Any adverse occurrence including:

1. The patient's signs and symptoms;

2. The treatment instituted in response to adverse occurrences;

3. The patient's response to the treatment; and

4. The patient's condition on termination of any procedures undertaken; and

(j) A narrative description of the incident including approximate times and evolution of symptoms.

(4) The duties outlined in this section apply to every dentist whether or not the dentist holds a permit.

**Section 24. Registered Dental Assistant Duties permitted when working with Sedation Permit holders:** (1) A registered dental assistant working with Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation/General Anesthesia permit holders may, under direct supervision:

(a) Apply noninvasive monitors;

(b) Perform continuous observation of patients and noninvasive monitors appropriate to the level of sedation, during the preoperative, intra-operative and post-operative (recovery) phases of treatment;

(c) Report monitoring parameters to the operating dentist on a periodic basis and when changes in monitored parameters occur; and

(d) Record vital sign measurements in the sedation record.

(e) Remove IV lines (Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation/General Anesthesia Permit holders only).

(2) A registered dental assistant working with Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation/General Anesthesia Permit holders, may under direct supervision assist in the management of emergencies.

(3) A registered dental assistant working with Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation/General Anesthesia Permit holders may, under direct supervision:

(a) Administer medications into an existing IV line upon the verbal order and direct supervision of a dentist with a Moderate Parenteral Sedation, Moderate Pediatric or Deep Sedation/General Anesthesia permit; and

(b) Establish an IV line under direct supervision if they have completed a course approved by the board of Dentistry in intravenous access.

Section 25. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Application for Sedation or Anesthesia Permit;

(b) Application for Sedation or Anesthesia Facility Certificate; and

(c) Sedation of Anesthesia Permit Location Notification Form.

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

C. MARK FORT, DMD, President

APPROVED BY AGENCY: February 1, 2011

FILED WITH LRC: February 2, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, March 29th, 2011, at 9 a.m. at the office of the Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing no later than March 22nd, 2011, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the emergency 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 emergency 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 emergency administrative regulation to the contact person.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures for issuing permits to dentists for the administration of anesthesia and sedation as mandated by KRS 313.035.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement KRS 313.035, which requires the board to promulgate administrative regulations regarding the requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary about the requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist as required by KRS 313.035.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This adminis-

trative regulation sets out the requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist as required by KRS 313.035.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the statutory authority citation of this administrative regulation and makes cardiopulmonary resuscitation requirements and forms incorporated by reference consistent with other agency requirements.

(b) The necessity of the amendment to this administrative regulation: The statutory authority for this administrative regulation has changed, which necessitates an amendment of the statutory citation of this regulation.

(c) How the amendment conforms to the content of the authorizing statute: This administrative regulation provides information necessary about the requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist as required by KRS 313.035.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides information necessary about the requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist as required by KRS 313.035. The amended forms improve agency efficiency by ensuring consistency across forms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact 268 current anesthesia and sedation permit holders and approximately 20 new applicants per year. Additionally, the Kentucky Board of Dentistry will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: There will be no new impact on the 268 current anesthesia and sedation permit holders and approximately 20 new applicants per year.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no new actions for licensees to take in order to comply with this administrative regulation. The Kentucky Board of Dentistry is charged by KRS 313.035 to regulate the practice of dentistry in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): From 201 KAR 8:520: Section 1. Dentists.

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

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

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

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

The board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of \$705,400 and for FY 2011 - 2012 and allotment of \$714,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees who are in compliance will have the legal ability to administer general anesthesia, conscious sedation, and deep sedation in the Commonwealth of Kentucky. The Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for its licensees to legally practice dentistry in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of \$705,400 and for FY 2011 - 2012 and allotment of \$714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this regulation are fully funded by licensing fees paid by dentists as part of compliance with this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: The fees found in 201 KAR 8:520 make the agency financially solvent.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all licensees.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 313 et seq.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Compliance with this regulation will provide the agency with enough money to meet its budgetary obligations as set forth in HB 1, 2010 Extraordinary Session of the GA.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Compliance with this regulation will provide the agency with enough money to meet its budgetary obligations as set forth in HB 1, 2010 Extraordinary Session of the GA.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1, 2010 Extraordinary Session of the GA is \$705,400

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1, 2010 Extraordinary Session of the GA is \$714,000

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Dentistry (New Administrative Regulation)

#### 201 KAR 8:561. Licensure of dental hygienists.

RELATES TO: KRS 214.615, 304.40 - 075, 313.030, 313.040, 313.060, 313.080, 313.130, 313.254

STATUTORY AUTHORITY: KRS 214.615(2), 313.021(1)(a) -

(c), 313.040(1), (2), (7), 313.254

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.040 requires the board to promulgate administrative regulations relating to requirements and procedures for the licensure of dental hygienists. This administrative regulation establishes requirements and procedures for the licensure of dental hygienists.

Section 1. General Licensure Requirements. An applicant desiring licensure in the Commonwealth shall at a minimum:

(1) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(2) Submit a completed, signed, and notarized Application for Dental Hygiene Licensure with an email contact address and an attached applicant photo taken within the past six (6) months;

(3) Pay the fee required by 201 KAR 8:520;

(4) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(5) Provide proof of completion of the requirements of KRS 214.615(1);

(6) Complete and pass the board's jurisprudence exam;

(7) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) that meets or exceeds the guidelines set forth by the American Heart Association, incorporated by reference in 201 KAR 8:530;

(8) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint;

(9) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dental hygiene held previously or currently in any state or jurisdiction;

(10) Provide proof that the applicant is a graduate of a Commission on Dental Accreditation (CODA) accredited dental hygiene school or college or dental hygiene department of a university;

(11) Provide proof that the applicant has successfully completed the National Board Dental Hygiene Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations; and

(12) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

Section 2. Requirements for Licensure by Examination. (1) Each individual desiring initial licensure as a dental hygienist by examination shall complete all of the requirements listed in Section 1 of this administrative regulation.

(2) Each individual desiring initial licensure as a dental hygienist by examination shall successfully complete a clinical examination within the five (5) years preceding the filing of his application.

(a) Prior to July 15, 2013, the board shall accept the following regional clinical examinations:

1. The examination of the Council of Interstate Testing Agencies (CITA);

2. The examination of the Central Regional Dental Testing Service (CRDTS);

3. The examination of the North East Regional Board of Dental Examiners (NERB);

4. The examination of the Southern Regional Testing Agency (SRTA); or

5. The examination of the Western Regional Examining Board (WREB).

(b) After July 15, 2013, the board shall only accept a nationalized clinical examination.

(3) An individual desiring initial licensure as a dental hygienist by examination more than two (2) years after fulfilling all of the requirements of his CODA accredited dental hygiene education shall:

(a) Hold a license to practice dental hygiene in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dental hygiene in good standing, complete a board approved refresher course prior to receiving a license to practice dental hygiene in the

Commonwealth of Kentucky.

(4) An applicant who has taken a clinical examination three (3) times and failed to achieve a passing score shall not be allowed to sit for the examination again until the applicant has completed and passed a remediation plan prescribed by the board based on the applicant's deficiencies.

Section 3. Requirements for Licensure by Credentials. Each individual desiring initial licensure as a dental hygienist by credentials shall:

(1) Complete all of the requirements listed in Section 1 of this administrative regulation;

(2) Provide proof of having passed a state, regional, or national clinical examination used to determine clinical competency in a state or territory of the United States or the District of Columbia; and

(3) Provide proof that, for five (5) of the six (6) years immediately preceding the filing of the application, the applicant has been engaged in the active practice of dental hygiene while he or she was legally authorized to practice dental hygiene in a state or territory of the United States or the District of Columbia if the qualifications for the authorization were equal to or higher than those of the Commonwealth of Kentucky.

Section 4. Requirements for Charitable Limited Licensure. (1) Each individual desiring a charitable limited license shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Submit a completed, signed, and notarized Application for Charitable Dental Hygiene Licensure with an attached applicant photo taken within the past six (6) month;

(c) Not be subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(d) Have a license to practice dental hygiene in good standing in another state; and

(e) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) Individuals licensed under this section shall:

(a) Work only with charitable entities registered with the Cabinet for Health and Family Services which have met requirements of KRS 313.254 and 201 KAR 8:580;

(b) Only perform procedures allowed by KRS 313.254, which shall be completed within the duration of the charitable event;

(c) Be eligible for the provisions of medical malpractice insurance procured under KRS 304.40-075;

(d) Perform these duties without expectation of compensation or charge to the individual and without payment or reimbursement by any governmental agency or insurer; and

(e) Have a charitable limited license that shall be good for two (2) years and expire during the regular dental hygiene renewal cycle.

(f) Comply with reciprocity requirements if applicable,

1. A state that extends a reciprocal agreement shall comply with this section.

2. An individual shall notify the sponsor of a charitable clinic and the board of the intent to conduct or participate in the clinic.

3. An individual conducting or participate in a charitable clinic shall have a license to practice dental hygiene in the state in which the dental hygienist practices.

Section 5. Minimum Continuing Education Requirements. (1) Each individual desiring renewal of an active dental hygiene license shall complete thirty (30) hours of continuing education that relates to or advances the practice of dental hygiene and would be useful to the licensee in his practice.

(2) Acceptable continuing education hours shall include course content designed to increase:

(a) Competency in treating patients who are medically compromised or who experience medical emergencies during the course of dental hygiene treatment;

(b) Knowledge of pharmaceutical products and the protocol of the proper use of medications;

(c) Awareness of currently accepted methods of infection control;

(d) Knowledge of basic medical and scientific subjects including, biology, physiology, pathology, biochemistry, pharmacology, epidemiology, and public health;

(e) Knowledge of clinical and technological subjects;

(f) Knowledge of subjects pertinent to patient management, safety, and oral healthcare;

(g) Competency in assisting in mass casualty or mass immunization situations;

(h) Clinical skills through the volunteer of clinical charitable dental hygiene that meets the requirements of KRS 313.254;

(i) Knowledge of office business operations and best practices; or

(j) Participation in dental or dental hygiene association or society business meetings.

(3) A minimum of ten (10) hours shall be taken in a live interactive presentation format.

(4) A maximum of ten (10) hours total may be taken that meet the requirements of subsection (2)(h) - (j) of this section.

(5) All continuing education hours shall be verified by the receipt of a certificate of completion or certificate of attendance bearing:

(a) The signature of the provider;

(b) The name of the licensee in attendance;

(c) The title of the course or meeting attended or completed;

(d) The date of attendance or completion;

(e) The number of hours earned; and

(f) Evidence of the method of delivery if the course was taken in a live interactive presentation format.

(6) It shall be the sole responsibility of the individual dental hygienist to obtain documentation from the provider or sponsoring organization verifying participation as outlined in subsection (5) of this section and to retain the documentation for a minimum of five (5) years.

(7) At license renewal, each licensee shall attest to the fact that he or she has complied with the requirements of this section.

(8) Each licensee shall be subject to audit of proof of continuing education compliance by the board.

Section 6. Requirements for Renewal of a Dental Hygiene License. (1) Each individual desiring renewal of an active dental hygiene license shall:

(a) Submit a completed, signed, and notarized Application for Renewal of Dental Hygiene Licensure with an email contact address and an attached applicant photo taken within the past six (6) months;

(b) Pay the fee required by 201 KAR 8:520;

(c) Maintain with no more than a thirty (30) day lapse CPR certification that meets or exceeds the guidelines set forth by the American Heart Association, incorporated by reference in 201 KAR 8:530, unless a hardship waiver is submitted to and subsequently approved by the board;

(d) Meet the requirements of KRS 214.615(1); and

(e) Meet the continuing education requirements as outlined in Section 5 of this administrative regulation except in the following cases:

1. If a hardship waiver has been submitted to and is subsequently approved by the board;

2. If the licensee graduated in the first year of the renewal biennium, in which case the licensee shall complete one-half (1/2) of the hours as outlined in Section 5 of this administrative regulation; and

3. If the licensee graduated in the second year of the renewal biennium, in which case the licensee shall not be required to complete the continuing education requirements outlined in Section 5 of this administrative regulation.

(2) If a licensee has not actively practiced dental hygiene in the two (2) consecutive years preceding the filing of the renewal application, he or she shall complete and pass a board approved refresher course prior to resuming the active practice of dental hygiene.

Section 7. Retirement of a License. (1) Each individual desiring

retirement of a dental hygiene license shall submit a completed and signed "Retirement of License Form".

(2) Upon receipt of this form, the board shall send written confirmation of retirement to the last known address of the licensee.

(3) A licensee shall not retire a license that has pending disciplinary action against it.

(4) Each retirement shall be effective upon the processing of the completed and signed "Retirement of License Form" by the board.

Section 8. Reinstatement of a License. (1) Each individual desiring reinstatement of a properly retired dental hygiene license shall:

(a) Submit a completed, signed, and notarized Application for Dental Hygiene Licensure with an email contact address and an attached applicant photo taken within the past six (6) months;

(b) Pay the fee required by 201 KAR 8:520;

(c) Show proof of having current certification in CPR that meets or exceeds the guidelines set forth by the American Heart Association, incorporated by reference in 201 KAR 8:530;

(d) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dental hygiene held previously or currently in any state or jurisdiction;

(e) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint; and

(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) If an individual is reinstating a license that was retired within the two (2) consecutive years immediately preceding the filing of the reinstatement application, the individual shall provide proof of having met the continuing education requirements as outlined in Section 5 of this administrative regulation within those two (2) years.

(3) If the applicant has not actively practiced dental hygiene in the two (2) consecutive years immediately preceding the filing of the reinstatement application, the applicant shall complete and pass a refresher course approved by the board.

(4) If a license is reinstated in the first year of a renewal biennium, the licensee shall complete all of the continuing education requirements as outlined in Section 5 of this administrative regulation prior to the renewal of his license.

(5) If a license is reinstated in the second year of a renewal biennium, the licensee shall complete one-half (1/2) of the hours as outlined in Section 5 of this administrative regulation prior to the renewal of his license.

Section 9. Requirements for Verification of Licensure. Each individual desiring verification of a dental hygiene license shall:

(1) Submit a signed and completed Verification of Licensure or Registration Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 10. Requesting a Duplicate License. Each individual desiring a duplicate dental hygiene license shall:

(1) Submit a signed and completed Duplicate License or Registration Request Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 11. Requirements for Local Anesthesia Registration.

(1) An individual who has completed a course of study in dental hygiene at a board-approved CODA accredited institution on or after July 15, 2010, which meets or exceeds the education requirements as established in KRS 313.060(10) shall be granted the authority to practice local anesthesia upon the issuance by the board of a dental hygiene license.

(2) An individual licensed as a hygienist in Kentucky and not subject to disciplinary action who desires to administer local anesthesia and does not qualify to do so under Section 12(1) of this administrative regulation shall complete a training and education course as described in KRS 313.060(10).

(3) The training and education course shall be offered by at least one (1) of the following institutions in Kentucky:

- (a) University of Louisville School of Dentistry;
- (b) University of Kentucky College of Dentistry;
- (c) Western Kentucky University Dental Hygiene Program; and
- (d) Kentucky Community Technical College System Dental Hygiene Programs.

(4) Training received outside of Kentucky shall be from a CODA accredited dental or dental hygiene school and shall meet the requirements established in KRS 313.060(10).

(5) Once the required training is complete the applicant shall:

(a) Complete the Dental Hygiene Local Anesthesia Registration Application; and

(b) Pay the fee required by 201 KAR 8:520.

(6) Individuals authorized to practice under this provision shall receive a license from the board indicating registration to administer local anesthesia.

(7) A licensed dental hygienist shall not administer local anesthesia if the licensee does not hold a local anesthesia registration issued by the board.

(8) Any licensed dental hygienist holding a local anesthesia registration from the board who has not administered block anesthesia, infiltration anesthesia, or nitrous oxide analgesia for one (1) year shall complete a board approved refresher course prior to resuming practice of that specific technique.

Section 12. Requirements for General Supervision Registration. (1) An individual licensed as a hygienist in Kentucky and not subject to disciplinary action who desires to practice under general supervision shall:

(a) Complete the General Supervision Registration Application;

(b) Meet the requirements of KRS 313.040(7)(a);

(c) Document through payroll records, employment records, or other proof that is independently verifiable the dates and hours of employment by a dentist in the practice of dental hygiene that demonstrate the required two (2) years and 3,000 hours of experience;

(d) Successfully complete a live three (3) hour course approved by the board in the identification and prevention of potential medical emergencies that shall include, at a minimum, the following topics:

1. Medical history, including American Society of Anesthesiologists (ASA) classifications of physical status;

2. Recognition of common medical emergency situations, symptoms, and possible outcomes;

3. Office emergency protocols; and

4. Prevention of emergency situations during dental treatments.

(2) An individual authorized to practice under these provisions shall receive a license from the board indicating registration to practice under general supervision.

(3) A dentist who employs a dental hygienist who has met the standards of this administrative regulation and who allows the dental hygienist to provide dental hygiene services pursuant to KRS 313.040(7) shall complete a written order prescribing the dental service or procedure to be done to a specific patient by the dental hygienist and shall retain the original order in the patient's dental record.

(4) The minimum requirements for the written order shall include:

(a) Medical history update;

(b) Radiographic records requested;

(c) Dental hygiene procedures requested;

(d) Name of the patient;

(e) Date of last oral examination;

(f) Date of the written order; and

(g) Signature of the dentist.

(5) The oral examination of the patient by the supervising dentist shall have been completed within the seven (7) months preceding treatment by the dental hygienist practicing under general supervision.

(6) The supervising dentist shall evaluate and provide to the board written validation of an employed dental hygienist's skills necessary to perform dental hygiene services established in KRS 313.040(7) as part of the General Supervision Registration Application.

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(7) The supervising dentist shall provide a written protocol addressing the medically compromised patients who may or may not be treated by the dental hygienist. The dental hygienist shall only treat patients who are in the ASA Patient Physical Status Classification of ASA I or ASA II as listed in Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, 2007 Edition, American Dental Association.

(8) A licensed dental hygienist shall not practice under general supervision if the licensee does not hold a general supervision registration issued by the board.

**Section 13. Requirements for Starting Intravenous Access Lines.** (1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action under KRS Chapter 313 who desires to start an intravenous (IV) access line while under the direct supervision of a dentist who holds a sedation or anesthesia permit issued by the board shall:

(a) Submit a signed and completed Application for Intravenous Access Line Registration;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Submit documentation proving successful completion of a board-approved course in starting IV access lines.

(2) An individual authorized to practice under this provision shall receive a license from the board indicating registration to start IV access lines.

(3) A licensed dental hygienist shall not start an IV access line if the licensee does not hold a board-issued registration to start IV access lines.

**Section 14. Requirements for Performing Laser Debridement.**

(1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action under KRS Chapter 313 who desires to perform laser debridement while under the direct supervision of a dentist licensed by the board shall:

(a) Submit a signed and completed Application for Laser Debridement Registration;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Submit documentation proving successful completion of a board-approved course in performing laser debridement.

(2) An individual authorized to practice under this provision shall receive a license from the board indicating registration to perform laser debridement.

(3) A licensed dental hygienist shall not perform laser debridement if the licensee does not hold a registration to do so issued by the board.

**Section 15. Issuance of Initial Licensure.** If an applicant has completed the requirements for licensure the board shall:

(1) Issue a license in sequential numerical order; or

(2) Deny licensure due to a violation of KRS Chapter 313 or 201 KAR Chapter 8.

**Section 16. Incorporation by Reference.** (1) The following material is incorporated by reference:

(a) "Application for Dental Hygiene Licensure", January 2011;

(b) "Application for Charitable Dental Hygiene Licensure", July 2010;

(c) "Application for Renewal of Dental Hygiene Licensure", January 2011;

(d) "Retirement of License Form", July 2010;

(e) "Application to Reinstate a Dental Hygiene License", July 2010;

(f) "Verification of Licensure or Registration Form", July 2010;

(g) "Duplicate License or Registration Request Form", July 2010;

(h) "Dental Hygiene Local Anesthesia Registration Application", July 2010;

(i) "General Supervision Registration Application", July 2010;

(j) "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students", 2007 Edition;

(k) "Application for Intravenous Access Line Registration", July 2010; and

(l) "Application for Laser Debridement Registration", July 2010.

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

ject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistr-y.ky.gov>.

DR. C Mark Fort, DMD, Board President

APPROVED BY AGENCY: February 4, 2011

FILED WITH LRC: February 8, 2011 at 10 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on Tuesday, March 29, 2011, at 9 a.m. at the office of the Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing no later than March 22, 2011, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the emergency 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 emergency 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 emergency administrative regulation to the contact person.

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

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures for the licensure of dental hygienist as mandated by KRS 313.040. This administrative regulation also establishes the requirements for the administration of local anesthesia by a licensed dental hygienist as required in 2010 Ky. Acts ch. 85 sec. 10.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the requirements and procedures for the licensure of dental hygienist as mandated by KRS 313.040 and establishes the requirements for the administration of local anesthesia by a licensed dental hygienist as required in KRS 313.060.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation is necessary to implement KRS 313.040 and 313.060, which requires the board to promulgate administrative regulations regarding the requirements for the licensure of dental hygienist and the requirements for the administration of local anesthesia.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to implement KRS 313.040 and 313.060, which requires the board to promulgate administrative regulations regarding the requirements for the licensure of dental hygienist and the requirements for the administration of local anesthesia.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statute: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the 2402 dental hygienist currently licensed by the board as well as any new dental hygienist licensed by the board in the future. Additionally,



the Kentucky Board of Dentistry will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no new actions for licensees to take in order to comply with this administrative regulation. The Kentucky Board of Dentistry is charged by KRS 313.040 to regulate the practice of dentistry in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): the fees established in 201 KAR 8:520 are:

The initial licensure fee for a dental hygiene license applied for in a nonrenewal year shall be \$125.

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

The renewal fee for a dental hygiene license appropriately renewed on or before the expiration of the license shall be \$110.

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

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

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

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

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

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

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

The fee for reinstatement of a properly retired dental hygiene license shall be \$125. The Board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010-2011 an allotment of \$705,400 and for FY 2011-2012 and allotment of \$714,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees who are in compliance will have the legal ability to practice dental hygiene in the Commonwealth of Kentucky. Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for its licensees to legally practice dentistry in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010-2011 an allotment of \$705,400 and for FY 2011-2012 and allotment of \$714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this regulation are fully funded by licensing fees paid by dental hygienist as part of compliance with this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fees found in 201 KAR 8:520 make the agency financially solvent.

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

administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is applied in as much as the dental hygienist wishes to undertake additional responsibilities allowed under the authority of the dentist for which he works. This administrative regulation establishes additional requirements for individual wishing to practice under the general supervision of the dentist, use lasers for debridement, or establish inter venous access on patients.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

The Kentucky Board of Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 313.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB1 of the 2010 Extraordinary Session of the General Assembly.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010-2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is \$705,400.

(d) How much will it cost to administer this program for subsequent years? FY 2011-2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is \$714,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

#### 811 KAR 1:280. 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 pari-mutuel wagering thereon shall be conducted in the Commonwealth. KRS 230.361(1) requires the commission to promulgate administrative regulations governing wagering under the pari-mutuel system of wagering. This administrative regulation establishes the calculation of payouts and the distribution of pools for



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pari-mutuel wagering on live horse races.

Section 1. Definitions. (1) "Betting interest" is defined by 811 KAR 1:005.

(2) "Breakage" is defined by 811 KAR 1:005.

(3) "Broken consolation price" means the profit per dollar, plus one (1) dollar, rounded down to the break point.

(4) "Carryover" is defined 811 KAR 1:005.

(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 811 KAR 1:005.

(8) "Gross pool" means the sum of all wagers less refunds.

(9) "Individual" is defined by 811 KAR 1:285.

(10) "Multi-commission pool" means a pari-mutuel pool where entities accepting wagers use different takeout rates.

(11) "Net pool" is defined by 811 KAR 1:005.

(12) "Payout" is defined by 811 KAR 1:005.

(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 pari-mutuel pool equally between each winning combination and dividing each portion by the number of winning tickets.

(16) "Scratch" is defined by 811 KAR 1:005.

(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 811 KAR 1:005.

(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 230.750. 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.

(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 (2) 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 fi-

nisher for three (3) 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 Takeout)	=	\$1 Unbroken Base Price x (1 - Percent
\$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 (2) 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 (3) 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 (2) 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 (2) betting interests to finish are deducted from the net pool and the balance remaining is the profit. The profit is divided into two (2) 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 (2) 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 (2) finishers, but if there are no such wagers on one (1) of those two (2) finishers, then;
- (c) As a single price pool to individuals who selected the one (1) covered betting interest included within the first two (2) finishers, but if there are no such wagers, then;
- (d) As a single price pool to individuals who selected the third-place 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 (2) 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 (2) 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 (3) betting interests are deducted from the net pool and the balance remaining is the profit. The profit is divided into three (3) 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 (3) 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 (2) of the first three (3) 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 (3) finishers, otherwise;

(c) As a profit split to individuals whose selection is included within the first three (3) finishers, but if there are no such wagers on one (1) of those three (3) finishers, then;

(d) As a profit split to individuals who selected one (1) of the two (2) covered betting interests included within the first three (3) finishers, but if there are no such wagers on two (2) of those three (3) finishers, then;

(e) As a single price pool to individuals who selected the one (1) covered betting interest included within the first three (3) finishers, but if there are no such wagers, then;

(f) As a single price pool to individuals who selected the fourth-place 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 (2) 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 (3) 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 (2) 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 (2) 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 (3) 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 (2) 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 (2) 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 (2) 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 (2) races, but if there are no such wagers, then;

(c) As a single price pool to individuals who selected the one (1) 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 (2) 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 (2) or more betting interests, the double pool shall be distributed as a profit split if there is more than one (1) 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 (2) 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 (2) 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 (2) 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 (2) 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 (2) 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 (1) covered combination, then;

(b) As a single price pool to individuals combining the first-place betting interest with the one (1) 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 (2) 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 (2) 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 (2) 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 (1) of those two (2) finishers, then;

(d) As a single price pool to individuals whose combination included the one (1) covered betting interest included within the first two (2) 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 (2) 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 (3) 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 (2) 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 (1) covered combination, then;

(b) As a single price pool to individuals combining the winner

with the one (1) 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 (3) 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 (3) races, but if there are no such wagers, then;

(b) As a single price pool to individuals who selected the first-place finisher in any two (2) of the three (3) races, but if there are no such wagers, then;

(c) As a single price pool to individuals who selected the first-place finisher in any one (1) of the three (3) 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 (3) 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 (3) races involving horses representing two (2) 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 (3) races, but if there are no such wagers, then;

2. As a single price pool to individuals who selected the first-place finisher in any two (2) of the three (3) races, but if there are no such wagers, then;

3. As a single price pool to individuals who selected the first-place finisher in any one (1) of the three (3) 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 (2) races; or

(c) After the third race of the Pick-3, there are no wagers with the winners of the first three (3) 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 (4) 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 (4) races, but if there are no such wagers, then;

(b) As a single price pool to individuals who selected the first-place finisher in any three (3) of the four (4) races, but if there are no such wagers, then;

(c) As a single price pool to individuals who selected the first-place finisher in any two (2) of the four (4) races, but if there are no such wagers, then;

(d) As a single price pool to individuals who selected the first-place finisher in any one (1) of the four (4) 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 (1) or two (2) 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) If for any reason three (3) 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 (2) 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 (2) 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 (3) 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, 100 percent 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 (2) 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 (2) 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 (1) 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 (3) 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 exceeds 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, 100 percent 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 (75) percent 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 (1) "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 (1) "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 (3) 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 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 three (3) 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 (2) 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 (3) 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 (3) or more betting interests, all of the wagering combinations selecting three (3) 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 (2) betting interests, both of the wagering combinations selecting the two (2) 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 (2) 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 (4) 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 (4) 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 (3) 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 (2) 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 (4) 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 (3) betting interests, all of the wagering combinations selecting the three (3) 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 (2) betting interests, both of the wagering combinations selecting the two (2) 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 (3) or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three (3) 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 (2) betting interests, all of the wagering combinations correctly selecting the winner, the two (2) 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 (2) finishers, in correct sequence, along with any two (2) 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 (3) 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 (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 interest-bearing 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 (2) finishers, irrespective of order, in each of two (2) 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 (1) 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 (2) 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 (2) 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 (1) of the two (2) finishers, then;

(d) Individuals whose combination included the one (1) covered betting interest included within the first two (2) finishers shall be winners, but if there are no such wagers, then;

(e) The entire pool shall be refunded on Big 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 (2) 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 (3) or more betting interests, individuals whose combination included any two (2) 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 (2) 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 (2) 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 (1) of those two (2) finishers, then;

(d) As a single price pool to individuals whose combination included one (1) of the covered betting interests included within the first two (2) 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 (2) 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 (3) or more betting interests, the net Big Q pool shall be distributed as a profit split to individuals whose combination included any two (2) 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 (2) 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 (1) covered combination, then;

(b) As a single price pool to individuals combining the winner with the one (1) 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 (3) finishers, in their exact order, in each of two (2) 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 (1) 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 (2) 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 (3) 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 (2) 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 (3) 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 (3) finishers shall be exchanged for tickets selecting the first three (3) 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 (3) 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, 100 percent 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 (3) 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 (2) 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 100 percent of that performance's net Twin Trifecta pool, and any existing Twin Trifecta carryover.

(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: February 14, 2011

FILED WITH LRC: February 14, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, March 24, 2011 at 10 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, March 17, 2011, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 Thursday, March 31, 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, Assistant General Counsel

(1) 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 standardbred 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 standardbred horse racing in the Commonwealth. Specifically, this regulation sets forth the rules regarding the pari-mutuel wagers offered on standardbred 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 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 230.361(1) requires the commission to promulgate administrative regulations governing wagering under the pari-mutuel 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 pari-mutuel pools and distribution of pari-mutuel wagers on standardbred 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: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the three (3) currently-licensed racing associations in the Commonwealth that offer standardbred racing and the patrons who wager on standardbred 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 standardbred 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? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? N/A

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

#### 811 KAR 2:180. 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 pari-mutuel wagering thereon shall be conducted in the Commonwealth. KRS 230.361(1) requires the commission to promulgate administrative regulations governing wagering under the pari-mutuel 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 811 KAR 2:010.

(2) "Breakage" is defined by 811 KAR 2:010.

(3) "Broken consolation price" means the profit per dollar, plus one (1) dollar, rounded down to the break point.

(4) "Carryover" is defined 811 KAR 2:010.

(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 811 KAR 2:010.

(8) "Gross pool" means the sum of all wagers less refunds.

(9) "Individual" is defined by 811 KAR 2:185.

(10) "Multi-commission pool" means a pari-mutuel pool where entities accepting wagers use different takeout rates.

(11) "Net pool" is defined by 811 KAR 2:010.

(12) "Payout" is defined by 811 KAR 2:010.

(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 pari-mutuel pool equally between each winning combination and dividing each portion by the number of winning tickets.

(16) "Scratch" is defined by 811 KAR 2:010.

(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 811 KAR 2:010.

(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 230.750. 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.

(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 (2) 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 (3) 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 (2) 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 (3) 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

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 (2) 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 (2) betting interests to finish are deducted from the net pool and the balance remaining is the profit. The profit is divided into two (2) 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 (2) 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 (2) finishers, but if there are no such wagers on one (1) of those two (2) finishers, then;

(c) As a single price pool to individuals who selected the one (1) covered betting interest included within the first two (2) finishers, but if there are no such wagers, then;

(d) As a single price pool to individuals who selected the third-place 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 (2) 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 (2) 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 (3) betting interests are deducted from the net pool and the balance remaining is the profit. The profit is divided into three (3) 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 pre-

cedence based on the official order of finish:

(a) If horses in a mutuel entry or mutuel field finish in the first three (3) 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 (2) of the first three (3) 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 (3) finishers, otherwise;

(c) As a profit split to individuals whose selection is included within the first three (3) finishers, but if there are no such wagers on one (1) of those three (3) finishers, then;

(d) As a profit split to individuals who selected one (1) of the two (2) covered betting interests included within the first three (3) finishers, but if there are no such wagers on two (2) of those three (3) finishers, then;

(e) As a single price pool to individuals who selected the one (1) covered betting interest included within the first three (3) finishers, but if there are no such wagers, then;

(f) As a single price pool to individuals who selected the fourth-place 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 (2) 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 (3) 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 (2) 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 (2) 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 (3) 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 (2) 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 (2) 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 (2) 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 (2) races, but if there are no such wagers, then;

(c) As a single price pool to individuals who selected the one (1) 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 (2) 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 (2) or more betting interests, the double pool shall be distributed as a profit split if there is more than one (1) 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 (2) 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 (2) 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 (2) 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 (2) 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 (2) 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 (1) covered combination, then;

(b) As a single price pool to individuals combining the first-place betting interest with the one (1) 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 (2) 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 (2) 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 (2) 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 (1) of those two (2) finishers, then;

(d) As a single price pool to individuals whose combination included the one (1) covered betting interest included within the first two (2) 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 (2) 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 (3) 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 (2) 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 (1) covered combination, then;

(b) As a single price pool to individuals combining the winner with the one (1) 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 (3) 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 (3) races, but if there are no such wagers, then;

(b) As a single price pool to individuals who selected the first-place finisher in any two (2) of the three (3) races, but if there are no such wagers, then;

(c) As a single price pool to individuals who selected the first-place finisher in any one (1) of the three (3) 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 (3) 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 (3) races involving horses representing two (2) 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 (3) races, but if there are no such wagers, then;

2. As a single price pool to individuals who selected the first-place finisher in any two (2) of the three (3) races, but if there are no such wagers, then;

3. As a single price pool to individuals who selected the first-place finisher in any one (1) of the three (3) 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 (2) races; or

(c) After the third race of the Pick-3, there are no wagers with the winners of the first three (3) 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 (4) 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 (4) races, but if there are no such wagers, then;

(b) As a single price pool to individuals who selected the first-place finisher in any three (3) of the four (4) races, but if there are no such wagers, then;

(c) As a single price pool to individuals who selected the first-place finisher in any two (2) of the four (4) races, but if there are no such wagers, then;

(d) As a single price pool to individuals who selected the first-place finisher in any one (1) of the four (4) 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 (1) or two (2) 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) If for any reason three (3) 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 (2) 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 (2) 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 (3) 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, 100 percent 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 (2) 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 nonstarter, 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 (2) 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 (1) 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 (3) 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 exceeds 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, 100 percent 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 (75) percent 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 (1) "all win" selection.

(b) Twenty-five (25) percent 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 paragraph (a) of this subsection 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 (1) "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 (3) finishers, in their exact order, for a single race.

(2) For Trifecta price calculations only, the highest placed fi-

nisher 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 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 three (3) 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 (2) 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 (3) 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 (3) or more betting interests, all of the wagering combinations selecting three (3) 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 (2) betting interests, both of the wagering combinations selecting the two (2) 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 (2) 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 (4) 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 (4) 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 (3) 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 (2) 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 (4) 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 (3) betting interests, all of the wagering combinations selecting the three (3) 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 (2) betting interests, both of the wagering combinations selecting the two (2) 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 (3) or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three (3) 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 (2) betting interests, all of the wagering combinations correctly selecting the winner, the two (2) 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 (2) finishers, in correct sequence, along with any two (2) 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 (3) 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 (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 interest-bearing 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 (2) finishers, irrespective of order, in each of two (2) 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 (1) 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 (2) 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 (2) 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 (1) of the two (2) finishers, then;

(d) Individuals whose combination included the one (1) covered betting interest included within the first two (2) finishers shall be winners, but if there are no such wagers, then;

(e) The entire pool shall be refunded on Big 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 (2) 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 (3) or more betting interests, individuals whose combination included any two (2) 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 (2) 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 (2) 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 (1) of those two (2) finishers, then;

(d) As a single price pool to individuals whose combination included one (1) of the covered betting interests included within the first two (2) 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 (2) 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 (3) or more betting interests, the net Big Q pool shall be distributed as a profit split to individuals whose combination included any two (2) 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 (2) 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 (1) covered combination, then;

(b) As a single price pool to individuals combining the winner with the one (1) 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 (3) finishers, in their exact order, in each of two (2) 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 (1) 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 (2) 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 (3) 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 (2) 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 (3) 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 (3) finishers shall be exchanged for tickets selecting the first three (3) 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 (3) 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

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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, 100 percent 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 (3) 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 (2) 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 100 percent of that performance's net Twin Trifecta pool, and any existing Twin Trifecta carryover.

(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: February 14, 2011

FILED WITH LRC: February 14, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, March 24, 2011 at 10 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, March 17, 2011, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 Thursday, March 31, 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, (859) 246-2040

(1) 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 quarter horse, appaloosa and Arabian 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 quarter horse, appaloosa and Arabian horse racing in the Commonwealth. Specifically, this regulation sets forth the rules regarding the pari-mutuel wagers offered on quarter horse, appaloosa and Arabian 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 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 230.361(1) requires the commission to promulgate administrative regulations governing wagering under the pari-mutuel 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 pari-mutuel pools and distribution of pari-mutuel wagers on quarter horse, appaloosa and Arabian 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: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the currently-licensed racing associations in the Commonwealth that offer quarter horse, appaloosa and Arabian racing and the patrons who wager on quarter horse, appaloosa and Arabian 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 quarter horse, appaloosa and Arabian 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? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? N/A

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

### 811 KAR 2:190. Kentucky Quarter Horse, Appaloosa and Arabian Development Fund.

RELEATES TO: KRS 230.215, 230.225, 230.443, 230.445

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.445

NECESSITY, FUNCTION AND CONFORMITY: KRS 230.215 and 230.260 authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.445 establishes the Kentucky Quarter Horse, Appaloosa, and Arabian Development Fund and requires the commission to promulgate administrative regulations to carry out the purpose of the statute and to administer the development fund in a manner to promote and aid in the development of the horse industry in Kentucky; upgrade the quality of racing in Kentucky; and to improve the quality of horses bred in Kentucky. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the administration of purses and payments in these races.

Section 1. Definitions. (1) "Appaloosa" is defined in 811 KAR 2:010.

(2) "Arabian" is defined in 811 KAR 2:010.

(3) "Donor mare" means the mare from which an embryo is harvested for the purpose of performing an embryo transfer.

(4) "Kentucky bred" means a quarter horse or appaloosa, whose sire is a quarter horse, appaloosa, or thoroughbred currently registered with the KQHAADF, or a quarter horse or appaloosa whose dam is a quarter horse, appaloosa, or thoroughbred currently registered with the KQHAADF, or an Arabian whose sire and dam are Arabians currently registered with the KQHAADF.

(5) "Kentucky Quarter Horse, Appaloosa and Arabian Development Fund" means the trust and revolving fund established by KRS 230.445.

(6) "KQHAADF" means the Kentucky Quarter Horse, Appaloosa and Arabian Development Fund.

(7) "Kentucky Quarter Horse Racing Association Stallion Auction" means the auction of stallion seasons offered by the Kentucky

Quarter Horse Racing Association.

(8) "Quarter horse" is defined in 811 KAR 2:010.

Section 2. Advisory Committee. (1) The proposed distribution of money for KQHAADF funded races shall be reviewed and addressed annually, not later than December 31 of each calendar year, by an advisory committee consisting of at least one (1) representative of each of the following:

- (a) The racing commission;
- (b) The licensed racing associations in Kentucky that host quarter horse, appaloosa or Arabian racing;
- (c) The owner of a stallion registered with the KQHAADF;
- (d) The owner of a mare registered with the KQHAADF; and
- (e) One member of the Kentucky Quarter Horse Racing Association that resides in Kentucky, selected by that organization's board of directors.

(2) The final determination regarding the distribution of money from the KQHAADF shall be made by the commission.

Section 3. Stallion Eligibility. (1) In order for a stallion's progeny to be eligible to earn KQHAADF money, the stallion shall be registered with the KQHAADF on or before December 31 of the year prior to the breeding year.

(2) In order to be eligible to be registered with the KQHAADF, a stallion shall:

- (a) Be domiciled in Kentucky continuously from its first cover of the breeding season until its last cover of the breeding season; or
  - (b) Have a breeding season purchased through the Kentucky Quarter Horse Racing Association Stallion Auction.
- (3) If a KQHAADF registered stallion leaves Kentucky to breed a mare, his registration for that year shall be revoked and his progeny shall not be eligible to register with the KQHAADF.
- (4) A stallion shall be registered the KQHAADF by:
- (a) Completing and filing with the commission a Quarter Horse/Appaloosa/ Arabian Stallion Registration, KHRC 190-1 (2/11); and
  - (b) Paying a registration fee of one hundred dollars (\$100).

Section 4. Broodmare Eligibility. (1) In order for a broodmare's progeny to be eligible to earn KQHAADF money, the broodmare shall be registered with the KQHAADF on or before December 31 prior to the breeding year.

(2) In order to be eligible to be registered with the KQHAADF, a broodmare must be domiciled in Kentucky continuously from December 31 prior to the breeding year until delivery of her foal.

(3) A broodmare shall be registered the KQHAADF by:

- (a) Completing and filing with the commission a Quarter Horse/Appaloosa/ Arabian Broodmare Registration, KHRC 190-2 (2/11); and
- (b) Paying a registration fee of twenty-five (25) dollars.

(4) Broodmares that have competed in a race during the breeding year and are registered with the Kentucky Quarter Horse Racing Association as racing stock shall be registered as breeding stock prior to being bred. The registration shall be accompanied by a registration fee of twenty-five (25) dollars.

Section 5. Racing stock Nomination. (1) Except as set forth in subsection (3) of this section, in order for racing stock to be eligible to earn KQHAADF money, it shall be nominated to the KQHAADF on or before December 31 of its three-year-old year by:

- (a) Completing and filing with the commission a Quarter Horse/Appaloosa/ Arabian Racing Stock Nomination, KHRC 190-3 (2/11); and
- (b) Paying a nomination fee of twenty-five (25) dollars if nominating as a weanling, fifty (50) dollars if nominating as a yearling, or one hundred dollars (\$100) if nominating as a two- or three-year-old.

(2) Foals that are the product of an embryo transfer shall be permitted to be nominated to the KQHAADF if the recipient mare is domiciled in Kentucky as set forth in section 4. If a donor mare produces more than one (1) foal in a breeding season, only the first born foal will be eligible to be nominated to the KQHAADF.

(3) Until December 31, 2012, racing stock of any age shall be eligible to be nominated to the KQHAADF and to participate in

races, a part of the purse for which is provided by money from the KQHAADF. Any such horse shall be nominated by:

- (a) Completing and filing with the commission a Quarter Horse/Appaloosa/ Arabian Racing Stock Nomination, KHRC 190-3 (2/11);
- (b) Paying a nomination fee of fifty (50) dollars; and
- (c) Including the following with the nomination:
  1. DNA parentage verification;
  2. Registration papers showing ownership and demonstrating that the horse was foaled in Kentucky;
  3. An American Quarter Horse Association shipped semen report or a stallion breeders certificate demonstrating that the horse was bred in Kentucky; and
  4. Mare pregnancy verification and care records from a licensed veterinarian showing that the dam was domiciled in Kentucky during the entirety of her pregnancy.

Section 6. Kentucky Quarter Horse Racing Association Stallion Auction. (1) A stallion not domiciled in Kentucky continuously from its first cover of the breeding season until its last cover of the breeding season shall become eligible to be registered with the KQHAADF if its ownership donates one (1) breeding season to the Kentucky Quarter Horse Racing Association Stallion Auction and that breeding season is sold at the auction. The eligibility shall pertain only to the year in which the breeding season is donated.

(2) Any foal that is the result of breeding an eligible mare with a stallion that had a breeding season purchased through the Kentucky Quarter Horse Racing Association Stallion Auction Program shall be eligible to be nominated to the KQHAADF, if all other criteria described in this administrative regulation are satisfied.

Section 7. Compliance. (1) The commission shall be the official registrar for the KQHAADF.

(2) Questions as to eligibility, registration, nomination, or breeding of a Kentucky bred horse shall be decided exclusively by the commission.

(3) The commission may demand and inspect the records pertaining to any horse registered with or nominated to the KQHAADF and may conduct on-site visits to verify the domicile of any such horse.

(4) Any person who knowingly fails to disclose or knowingly falsifies any information required in the registration process for the KQHAADF may be disqualified and excluded from participation in the fund.

Section 8. Distribution of Funds. (1) At a scheduled meeting of the Commission, the Commission shall, based upon the advice of the advisory committee established by Section 2 of this administrative regulation:

- (a) Establish the distribution of funds for KQHAADF funded races for the upcoming year;
- (b) Establish the conditions and rules for the KQHAADF funded races; and
- (c) Authorize expenditures at a time it designates.

(2) The racing dates for KQHAADF funded races shall be issued after the track has established its race dates.

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

- (a) "Quarter Horse/Appaloosa/Arabian Stallion Registration", KHRC 190-1, 2/11;
- (b) "Quarter Horse/Appaloosa/Arabian Broodmare Registration", KHRC 190-2, 2/11; and
- (c) "Quarter Horse/Appaloosa/Arabian Racing Stock Nomination", KHRC 190-3, 2/11.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained at the commission's Web site, [www.khrc.ky.gov](http://www.khrc.ky.gov).

ROBERT M. BECK, JR., Chairman  
ROBERT D. VANCE, Secretary

## VOLUME 37, NUMBER 8 – MARCH 1, 2011

APPROVED BY AGENCY: February 14, 2011  
FILED WITH LRC: February 14, 2011 at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on Thursday, March 24, 2011 at 10 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, March 17, 2011, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 Thursday, March 31, 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, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides the rules governing eligibility for participation in the Kentucky Quarter Horse, Appaloosa and Arabian Development Fund ("KQHAADF") and the administration of that fund.

(b) The necessity of this administrative regulation: KRS 230.445 requires the Kentucky Horse Racing Commission ("KHRC") to promulgate administrative regulations regarding eligibility for participation in the KQHAADF and the administration of that fund. This regulation fulfills that statutory mandate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.455(2) establishes the KQHAADF and requires the KHRC to "use the development fund to promote races and to provide purses for races for horses bred and foaled in the Commonwealth" and to "provide for distribution of money to the credit of the development fund to persons, corporations, or associations operating licensed tracks within Kentucky conducting quarter horse, Appaloosa, or Arabian horse racing." This regulation establishes an advisory committee to make recommendations to the KHRC regarding conditions for eligibility to earn KQHAADF money, conditions for KQHAADF races, and the distribution of money from the fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specific rules for eligibility to earn KQHAADF money, conditions for KQHAADF races, and the distribution of money from the fund.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect those persons who breed and race quarter horses, appaloosas and Arabians in the Commonwealth of Kentucky.

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

including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Persons who breed and race quarter horses, appaloosas and Arabian in the Commonwealth of Kentucky will have to comply with the domicile requirements and pay the registration fees set forth in the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will cost \$100 to register a stallion to the KQHAADF, \$25 to register a broodmare, and from \$25 - \$100 to register racing stock, depending on the age of the horse at the time of registration.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Persons who breed and race quarter horses, appaloosas and Arabian in the Commonwealth of Kentucky will have an opportunity to earn money from the fund when competing in KQHAADF races.

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

(a) Initially: The KHRC does not anticipate incurring significant costs in administering the KQHAADF. However, the costs will be dependent on the number of participants in the program. As this is a new program, it is difficult to estimate what the initial level of participation will be. If the program is successful, and the number of participants increases, there will be a corresponding increase in the costs of administration.

(b) On a continuing basis: See answer to (5)(a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation will be funded out of the KHRC's operating budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The regulation establishes registration and nomination fees to cover the cost of administering the fund. No increase in funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes registration fees for stallions and broodmares and nomination fees for racing stock.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The KHRC.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.445

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? It is impossible to say, although the KHRC does not expect that the initial costs of administration will be significant. The primary expenses associated with this regulation are processing registrations and nominations, and checking the domicile of registered stallions and broodmares. Right now, there is very little quarter horse and Arabian racing in the Commonwealth and no appaloosa racing whatsoever. As such, the KHRC does not anticipate that there will be a large number of participants. However, if the pro-

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gram is successful and the number of participants increases, there will be a corresponding increase in the costs processing applications and making site visits to verify the domicile of registered horses.

(d) How much will it cost to administer this program for subsequent years? See answer to 4(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**  
**Minutes of February 14, 2011**

**Call to Order and Roll Call**

The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, February 14, 2011, at 1:00 p.m., in Room 149 of the Capitol Annex. Senator Joe Bowen, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the January 2011 meeting were approved.

Present were:

Members: Senators Joe Bowen, David Givens, and Joey Pendleton, and Representatives Johnny Bell, Danny Ford, and Jimmie Lee.

LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, and Laura Napier.

Guests: Becky Gilpatrick, Melissa Justice, Kentucky Higher Education Assistance Authority; Lindsay Crawford, Virginia Woodward, Crime Victims Compensation Board; Nathan Goldman, Board of Nursing; Margaret Everson, Benji Kinman, Mark Mangeot, Karen Waldrop, Department of Fish and Wildlife; John Cummings, Verman Winburn, Parole Board; Ann D'Angelo, Godwin Onodu, Rick Taylor, Transportation Cabinet; Jill Mitchell, Department of Insurance; Debbie Garrison, Ron Horseman, Rosie Miklavcic, Kathy Fowler, Lewis Ramsey, Department for Public Health; Stuart Owen, Department for Medicaid Services; Virginia Carrington, Elizabeth Caywood, Shirley Eldridge, Elizabeth Fiehler, Juanita Shackelford, Cabinet for Health and Family Services; and Winnie Hepler, Conservationist.

**The Administrative Regulation Review Subcommittee met on Monday, February 14, 2011, and submits this report:**

**Administrative Regulations Reviewed by the Subcommittee:**

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY:  
Division of Student and Administrative Services: Kentucky  
Loan Program**

11 KAR 3:100. Administrative wage garnishment. Becky Gilpatrick, branch manager, Student Aid Branch, and Melissa Justice, senior associate counsel, represented the division.

**Authority**

11 KAR 4:080. Student aid applications.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (3) to amend Section 2 and the form incorporated by reference to update the title of the form to reflect its intended use. Without objection, and with agreement of the agency, the amendments were approved.

**Coal County Scholarship Program**

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

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 5 and 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.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this

administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2, 3, 4, 6, and 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.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**PUBLIC PROTECTION CABINET: Crime Victims Compensation  
Board: Sexual Assault Examinations Program**

107 KAR 2:010. Payment schedule for sexual assault examinations. Lindsay Crawford, policy advisor, and Virginia Woodward, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE for clarity; (2) to amend Section 1 to add definitions; (3) to amend Section 3 to correct the reimbursement amounts and to clarify the reimbursement process; (4) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (5) 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 (6) to amend Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**GENERAL GOVERNMENT CABINET: Board of Nursing: Board**

201 KAR 20:470. Dialysis technician credentialing requirements and training program standards. Nathan Goldman, general counsel, represented the board.

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

301 KAR 2:122. Seasons, methods, and limits for small game. Margaret Everson, general counsel; Mark Mangeot, legislative liaison; and Karen Waldrop, Wildlife Director, represented the department. Winnie Hepler, conservationist, appeared in opposition to 301 KAR 3:012 and 3:022.

In response to a question by Representative Damron, Ms. Waldrop stated that biologists investigated requests by hunters to lengthen the squirrel-hunting season. Biologists determined that lengthening the season should not have negative biological effects.

In response to a question by Co-Chair Bell, Ms. Waldrop stated that changes to prohibitions against hunters carrying certain ammunition or firearms were for compliance with the right to bear arms. Hunters were not prohibited from carrying certain ammunition or firearms, but were still subject to requirements pertaining to methods of taking wildlife. For example, a hunter hunting deer during archery season may carry a firearm but shall not harvest a deer with a weapon other than the established archery equipment.

**Hunting and Fishing**

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

In response to a question by Representative Damron, Ms. Waldrop stated that the department had meetings with stakeholder groups in the Otter Creek area. Local landowners were apprised of the changes, and the department had not received complaints from the stakeholders.

Winnie Hepler, conservationist from Louisville, stated that



Otter Creek Park should not be opened to activities that endanger wildlife in the park. The Department of Fish and Wildlife Resources was unduly influenced by hunters because the funding came from those interests. The department should be funded from the General Fund so that conservationists would have balanced influence with the department. She stated that hunting was a cruel and unnecessary activity. The department did not have the moral right to open Otter Creek to hunting. The wildlife inhabitants of Otter Creek were unprepared for the changes because they had been protected for decades. Otters had only recently returned to the area. Whooping crane hunting led to near extinction of the species. Ms. Hepler stated that the killing of wildlife in Otter Creek Park should be limited to at least fifty (50) percent of what was allowed by the administrative regulations.

In response to a question by Senator Pendleton, Ms. Hepler and Ms. Waldrop stated that Otter Creek Park consisted of 2,200 acres.

Senator Pendleton stated that overpopulation in parks sometimes led to wildlife problems and violence against a species. Squirrels were known to cause property damage.

Ms. Everson stated that the original deed permitted recreational hunting in Otter Creek Park. The department provided an opportunity for a public hearing and was available to accept written public comments but did not receive any.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

**JUSTICE AND PUBLIC SAFETY CABINET: Parole Board: Board**

501 KAR 1:030. Determining parole eligibility. John Cummings, counsel, Office of Legal Services, Kentucky Parole Board, and Verman Winburn, chair, Kentucky Parole Board, represented the board.

In response to a question by Co-Chair Bell, Mr. Winburn stated that the omnibus bill being promoted by the Pugh Foundation, if approved, would not substantively impact these administrative regulations. Mr. Cummings stated that the omnibus bill would not substantively impact these administrative regulations and that the board provided flexibility in certain portions of these administrative regulations in anticipation of the possibility of changes resulting from approval of the omnibus bill. There may be a need for new administrative regulations if the omnibus bill was approved, but the approval would not require amendments to these administrative regulations.

A motion was made and seconded to approve the following amendments: (1) to delete Sections 3(6), 4, 5, and 6 because those provisions are more appropriately included in 501 KAR 1:080; and (2) to amend Sections 1 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.

501 KAR 1:080. Parole board policies and procedures.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1(1) and the material incorporated by reference to delete unnecessary policies, correct citations, clarify provisions and policy titles, delete provisions in conflict with other statutes and administrative regulations, relocate provisions from other board administrative regulations, and include provisions on final disposition hearings and board deadlines. 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 1:101. Proof of liability and cargo insurance. Ann D'Angelo, assistant general counsel; Godwin Onodu, assistant director; and Rick Taylor, deputy commissioner, represented the division.

Senator Pendleton thanked the division for working diligently to assist with developing 2011 Senate Bill 79 and 601 KAR 1:018 & E, the administrative regulation pertaining to overweight or overdimensional vehicle loads.

**Division of Motor Vehicle Licensing: Division**

601 KAR 9:210. Continuation of title liens.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 2 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**PUBLIC PROTECTION CABINET: Department of Insurance: Health and Life Division: Division**

806 KAR 17:460. Requirements for autism benefits for children. Jill Mitchell, branch manager, Health and Life Division, represented the division.

**CABINET FOR HEALTH AND FAMILY SERVICES: 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. Ron Horseman, branch manager, and Rosie Miklavcic, director, Division of Administration and Financial Management, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE for clarity; (2) to amend the RELATES TO paragraph to add a citation; and (3) to amend 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.

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

In response to questions by Representative Ford, Mr. Horseman stated that the administrative regulation provided more flexibility pertaining to salary issues for employees of local health departments. The administrative regulation established a ten (10) percent maximum cap for salary increases resulting from a reclassification. Ms. Miklavcic stated that local health departments developed their budgets independently.

A motion was made and seconded to approve the following amendments: (1) to delete Sections 1 and 2 because they repeated statutory provisions in violation of KRS 13A.120(2); (2) to amend the TITLE for clarity; (3) to amend the RELATES TO paragraph to correct statutory citations; (4) 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 (5) to amend Sections 1, 2, 3, 6, 7, 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.

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

A motion was made and seconded to approve the following amendments: (1) to amend Section 7(1) to incorporate by reference the updated application form; and (2) to amend Sections 1, 3, 4, 6, and 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.

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

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A motion was made and seconded to approve the following amendments: to amend Sections 6, 7, 9, 11, 12, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: 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.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; and (2) to amend Sections 1, 3, 4, 5, 8, 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.

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

In response to questions by Representative Ford, Mr. Horseman stated that the administrative regulation was amended to clarify requirements pertaining to carrying concealed weapons with a permit. The amendment revised the language to comply with statutory provisions pertaining to carrying concealed weapons with a permit.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4(2)(c) to comply with statutory provisions regarding the carrying of concealed weapons; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 3, 4, 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.

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

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 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.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 6, 9, 10, 11, 13, 18, and 19 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend Sections 1, 2, and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**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. Kathy Fowler, interim director, Division of Public Health Protection and Safety, and Lewis Ramsey, manager, Milk and Milk Products Safety, represented the department.

In response to questions by Senator Pendleton, Mr. Ramsey stated that this administrative regulation applied only to interstate raw milk sales, not to raw milk farm-direct sales. This administrative regulation was amended to comply with federal requirements. Most farm-direct raw milk sales had removed advertisements for raw milk; however, it was not likely that they had all ceased selling farm-direct raw milk.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to delete a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with the agreement of the agency, the amendments were approved.

**Department for Medicaid Services: Division of Medical Management: Payment and Services**

907 KAR 3:215 & E. Tobacco cessation coverage and reimbursement. Stuart Owen, regulation coordinator, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Section 10 to incorporate by reference the updated Tobacco Cessation Referral Form; (2) to amend the form incorporated by reference to list on the form the support programs approved for the tobacco cessation program; (3) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, 4, 5, 8, 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.

**Department for Aging and Independent Living: Aging Services**

910 KAR 1:190. Nutrition program for older persons. Shirley Eldridge, internal policy analyst III; Elizabeth Fiehler, dietician consultant; and Juanita Shackelford, internal policy analyst III, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 2, 4 through 11, 13, and 14 to comply with: (a) the drafting and formatting requirements of KRS Chapter 13A; and (b) applicable federal law provisions; and (4) to create a new Section 15 to incorporate by reference the Meal Planning Nutrient Requirements and the Dietary Guidelines for Americans. Without objection, and with agreement of the agency, the amendments were approved.

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

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 13 to comply with: (a) the drafting and formatting requirements of KRS Chapter 13A; and (b) applicable federal law provisions. Without objection, and with agreement of the agency, the amendments were approved.

**Department for Community Based Services: Division of Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation**

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921 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP). Elizabeth Caywood, internal policy analyst IV, and Virginia Carrington, branch manager, represented the division.

In response to questions by Representative Ford, Ms. Carrington stated that this administrative regulation revised provisions pertaining to benefit allowances based on who the applicant was. Home school recipients were included as potential beneficiaries; however, verification was required.

In response to questions by Senator Givens, Ms. Carrington stated that the requirements in this administrative regulation proceeded from the previous program. TANF was a fairly flexible program, and the division had options to establish state-specific requirements for benefit retention. If a beneficiary refused to work, the beneficiary could not reapply for benefits for thirty (30) days.

921 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).

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 Section 3(3) to state that the following shall not be included in the \$2,000 resource limit: (a) a federal tax refund or advance payment of a refundable federal tax credit for a period of twelve (12) months from receipt; or (b) after December 31, 2012, earned income tax credit payment in the month of receipt and the following month; and (3) to amend Section 5(2) to state that the following income shall be excluded in the gross income test: (a) a federal tax refund or advance payment of a refundable federal tax credit; or (b) after December 31, 2012, the advance payment or refund of earned income tax credit. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 2:017. Kentucky works supportive services.

921 KAR 2:370. Technical requirements for Kentucky Works.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to put definitions in alphabetical order; (2) to amend Section 2 for clarity; and (3) to amend the KW-202 form for minor corrections. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 2:500. Family alternatives diversion (FAD).

### **Food Stamps**

921 KAR 3:010. Definitions.

A motion was made and seconded to approve the following amendments: to amend 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.

921 KAR 3:025. Technical requirements.

### **Other Business**

Staff introduced Representative Johnny Bell who was appointed to the Subcommittee to fill the House vacancy. Representative Lee made a motion, seconded by Representative Damron, that Representative Bell be nominated for House Co-Chair. Representative Bell accepted the nomination. Representative Damron made a motion, seconded by Representative Lee, to end House Co-Chair nominations. Representative Bell was unanimously endorsed as House Co-Chair of the Subcommittee.

**The following administrative regulations were deferred to the March 8, 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.

**GENERAL GOVERNMENT CABINET: Board of Dentistry: Board**

201 KAR 8:571. Registration of dental assistants.

201 KAR 8:581. Charity dental practices.

**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 1:070 & E. Conducting sex offender conditional discharge revocation hearings.

**PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Thoroughbred Racing**

810 KAR 1:001. Definitions.

810 KAR 1:011. Pari-mutuel wagering.

810 KAR 1:120. Exotic wagering.

**Harness Racing**

811 KAR 1:005. Definitions.

811 KAR 1:125. Pari-mutuel wagering.

811 KAR 1:250. Exotic wagering.

**Quarter Horse, Appaloosa and Arabian Racing**

811 KAR 2:010. Definitions.

811 KAR 2:060. Pari-mutuel wagering.

811 KAR 2:160. Exotic wagering.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need**

900 KAR 6:060 & E. Timetable for submission of Certificate of Need applications.

**Department for Public Health: Division of Public Health Protection and Safety: 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 Community Based Services: Division of Family Support: Food Stamps**

921 KAR 3:035. Certification process.

**The Subcommittee adjourned at 2:10 p.m. until March 8, 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

I - 2

The Locator Index lists all administrative regulations published in VOLUME 37 of the Administrative Register from July 2010 through June 2011. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 36 are those administrative regulations that were originally published in VOLUME 36 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2010 bound Volumes were published.

### KRS Index

I - 13

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

I - 27

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

I - 28

The Subject Index is a general index of administrative regulations published in VOLUME 37 of the Administrative Register, and is mainly broken down by agency.

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	36 Ky.R. Page No.	Effective Date	Regulation Number	36 Ky.R. Page No.	Effective Date
<b>VOLUME 36</b>					
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.					
<b>SYMBOL KEY:</b>			Amended	1095	
* Statement of Consideration not filed by deadline			As Amended	1434	
** Withdrawn, not in effect within 1 year of publication			31 KAR 6:010		
*** Withdrawn before being printed in Register			Amended	2110-M	
**** Emergency expired after 180 days			As Amended	2176	6-4-10
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.			101 KAR 2:066		
			Amended	1963	
			Withdrawn		7-19-10
			102 KAR 1:160		
			Amended	1966	
			As Amended	2177	6-4-10
			102 KAR 1:225		
			Amended	1967	
			Amended	2056-A	
			As Amended	2299	
			Amended	2061-A	
			As Amended	2302	6-4-10
			200 KAR 5:314		
			Amended	1300	
			As Amended	2177	6-4-10
			200 KAR 5:315		
			Amended	616	
			Withdrawn	**	Date
			201 KAR 10:050		
			Amended	1301	
			As Amended	2047-M	
			Withdrawn		7-8-10
			201 KAR 16:030		
			Amended	2353	
			Withdrawn		11-5-10
			201 KAR 20:240		
			Amended	2071-A	6-16-10
			201 KAR 20:450		
			Amended	527	
			201 KAR 20:490		
			Amended	2073-A	
			As Amended	2312	6-16-10
			201 KAR 20:510	2402	(See 37 Ky.R.)
			201 KAR 22:020		
			Amended	2208	
			Withdrawn		6-15-10
			201 KAR 22:045		(See 37 Ky.R.)
			Amended	2209	
			201 KAR 22:135		(See 37 Ky.R.)
			Amended	2211	
			201 KAR 30:050		
			Amended	152	
			Amended	569	
			301 KAR 1:140		(See 37 Ky.R.)
			Amended	2212	
			301 KAR 2:049		(See 37 Ky.R.)
			Amended	2215	
			301 KAR 2:132		(See 37 Ky.R.)
			Amended	2075-A	
			Amended	2335	
			301 KAR 2:172		
			Amended	2080-A	
			As Amended	2314	6-3-10
			301 KAR 2:178		
			Amended	2082-A	
			As Amended	2316	6-3-10
			401 KAR 5:045		(See 37 Ky.R.)
			Amended	2112-M	
			401 KAR 5:070		
			Amended	2114-M	8-5-10
			401 KAR 5:075		(See 37 Ky.R.)
			Amended	2119-M	
<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>					
11 KAR 5:145					
Amended	1508				
11 KAR 12:060					
Amended	2055-A	7-12-2010			
13 KAR 1:020					
Amended	2347	9-3-10			
31 KAR 3:010					

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Amended	2339		Withdrawn		6-15-10
401 KAR 8:010			781 KAR 1:020		
Amended			Amended	2230	(See 37 Ky.R.)
401 KAR 8:020			781 KAR 1:030		
Amended	2088-A		Amended	2232	(See 37 Ky.R.)
As Amended	2321	6-3-10	781 KAR 1:040		
401 KAR 8:070			Amended	2235	
Amended	2092-A		Withdrawn		6-15-10
401 KAR 8:150		(See 37 Ky.R.)	803 KAR 30:010		(See 37 Ky.R.)
Amended	2094-A		Amended	2238	
401 KAR 8:200			804 KAR 11:030		
Amended	2097-A		Amended	2112-A	
As Amended	2323	6-3-10	Amended	2344	
401 KAR 8:250			Withdrawn		7-7-10
Amended	2099-A		810 KAR 1:025		
As Amended	2324		Amended	2244	(See 37 Ky.R.)
401 KAR 8:300			810 KAR 1:037	2261	(See 37 Ky.R.)
Amended	2100-A		810 KAR 1:100	2264	(See 37 Ky.R.)
As Amended	2324	6-3-10	811 KAR 1:037	2265	(See 37 Ky.R.)
401 KAR 8:510			811 KAR 1:070		
Amended	2101-A		Amended	2127-M	6-4-10
As Amended	2324	6-3-10	As Amended	2187	
401 KAR 8:550			811 KAR 1:230	2268	(See 37 Ky.R.)
Amended	2103-A		811 KAR 2:130	2269	(See 37 Ky.R.)
As Amended	2325	6-3-10	815 KAR 7:070		(See 37 Ky.R.)
401 KAR 11:010			Amended	2251	
Amended	2094		815 KAR 8:070	2004	
401 KAR 11:030		(See 37 Ky.R.)	As Amended	2194	6-4-10
Amended	2105-A		815 KAR 8:080	2006	
401 KAR 47:090		(See 37 Ky.R.)	Amended	2048-A	
Amended	620		As Amended	2195	6-4-10
401 KAR 59:015			815 KAR 8:090	2008	
Amended	2355	(See 37 Ky.R.)	As Amended	2196	6-4-10
405 KAR 8:010			815 KAR 10:060		
Amended	2360	(See 37 Ky.R.)	Reprint	1857	
503 KAR 1:140			815 KAR 20:018	2271	(See 37 Ky.R.)
Amended	1989		815 KAR 20:050		
As Amended	2178	6-4-10	Amended	1134	
503 KAR 3:010			As Amended	2067-M	6-4-10
Amended	2373	(See 37 Ky.R.)	815 KAR 20:191		
503 KAR 3:040			Amended	2135-M	
Amended	2379	(See 37 Ky.R.)	As Amended	2327	(See 37 Ky.R.)
503 KAR 3:110			815 KAR 2	5:080	
Amended	2383	(See 37 Ky.R.)	Amended	2114-A	
601 KAR 1:200		(See 37 Ky.R.)	As Amended	2333	
Amended	2220		900 KAR 5:020		
601 KAR 1:220	1571		Amended	2255	(See 37 Ky.R.)
Amended	2058-M		900 KAR 6:020		
As Amended	2184	6-4-10	Amended	2256	(See 37 Ky.R.)
601 KAR 2:020			900 KAR 6:060		
Amended	2388	(See 37 Ky.R.)	Amended	2258	(See 37 Ky.R.)
601 KAR 12:060			900 KAR 6:125	260	
Amended	1116		Withdrawn		11-13-09
As Amended	2325	6-4-10	902 KAR 20:400	1572	
603 KAR 4:045			Amended	2049-A	(See 37 Ky.R.)
Amended	2124-M		906 KAR 1:180	1403	
As Amended	2184		Amended	2103-M	
702 KAR 3:030			As Amended	2197	6-4-10
Amended	2108-A		910 KAR 1:240		
As Amended	2326		Amended	2391	(See 37 Ky.R.)
702 KAR 3:246			910 KAR 1:260		
Amended	2225	(See 37 Ky.R.)	Amended	1997	
703 KAR 5:060			As Amended	2201	6-4-10
Amended	2109-A	(See 37 Ky.R.)	921 KAR 1:410		
703 KAR 5:180	2144-M		Amended	2395	(See 37 Ky.R.)
704 KAR 3:540	2260	(See 37 Ky.R.)			
725 KAR 1:061					
Amended	2227				

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<b>EMERGENCY ADMINISTRATIVE REGULATIONS:</b>			810 KAR 1:037E		(See 36 Ky.R.)
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)			Replaced	369	9-3-10
			810 KAR 1:100E		(See 36 Ky.R.)
			Replaced	371	9-3-10
			810 KAR 1:110E	923	9-15-10
			811 KAR 1:037E		(See 36 Ky.R.)
			Replaced	372	9-3-10
31 KAR 4:130E	4	6-15-10	811 KAR 1:230		(See 36 Ky.R.)
Replaced	680	10-1-10	Replaced	372	9-3-10
31 KAR 4:140E	6	6-15-10	811 KAR 1:240E	927	9-15-10
Replaced	682	10-1-10	811 KAR 2:150E	931	9-15-10
31 KAR 5:010E	2128	2-1-11	811 KAR 2:020E	22	6-15-10
32 KAR 1:030E	1381	11-2-10	811 KAR 2:130E		(See 36 Ky.R.)
32 KAR 1:190E	1382	11-2-10	Replaced	374	9-3-10
32 KAR 2:130E	2130	2-7-2011	811 KAR 2:140E	30	6-15-10
101 KAR 2:210E	916	9-15-10	900 KAR 5:020E	1384	10-18-10
Replaced	1000	1-3-2011	900 KAR 6:060E	1385	10-18-10
101 KAR 5:015E	211	7-13-10	902 KAR 20:320E	1387	10-18-10
Withdrawn		8-13-10	902 KAR 20:330E	1404	10-18-10
Resubmitted	664	8-13-10	902 KAR 20:410E	935	9-1-10
102 KAR 1:320E	212	7-15-10	902 KAR 30:001E	257	7-15-10
102 KAR 1:330E	215	7-15-10	Replaced	1659	2-4-11
102 KAR 1:178E	2132	1-24-11	902 KAR 30:110E	260	7-15-10
103 KAR 3:040E	2134	1-27-11	Replaced	1661	2-4-11
105 KAR 1:190E	217	7-15-10	902 KAR 30:120E	265	7-15-10
201 KAR 8:007E	224	7-15-10	Replaced	1665	2-4-11
201 KAR 8:390E	225	7-15-10	902 KAR 30:130E	274	7-15-10
Expired	****	1-11-11	Replaced	1673	2-4-11
201 KAR 8:500E	228	7-15-10	902 KAR 30:150E	279	7-15-10
Expired	****	1-11-11	Replaced	1677	2-4-11
201 KAR 8:510E	231	7-15-10	902 KAR 30:160E	283	7-15-10
Replaced	1627	2-4-11	Replaced	1680	2-4-11
201 KAR 8:520E	233	7-15-10	902 KAR 30:180E	286	7-15-10
Replaced	1628	2-4-11	Replaced	1682	2-4-11
201 KAR 8:530E	235	7-15-10	902 KAR 30:200	289	7-15-10
Withdrawn	**	2-8-11	Replaced	1685	2-4-11
201 KAR 8:550E	2143	2-2-11	902 KAR 45:005E	939	9-8-10
201 KAR 8:540E	239	7-15-10	Withdrawn		10-18-10
Replaced	1629	2-4-11	902 KAR 45:110E	942	9-8-10
201 KAR 8:560E	241	7-15-10	Withdrawn		10-18-10
Withdrawn	**	2-8-11	907 KAR 1:012E	295	7-1-10
201 KAR 8:570E	245	7-15-10	Replaced	1446	12-1-2010
Withdrawn		10-15-00	907 KAR 1:014E	298	7-1-10
201 KAR 8:580E	248	7-15-10	907 KAR 1:015E	302	7-1-10
Withdrawn		9-14-10	Replaced	1447	12-1-2010
201 KAR 20:059E	1953		907 KAR 1:019E	305	7-1-10
201 KAR 39:050E	250	6-16-10	Replaced	1449	12-1-2010
Replaced	444	11-5-10	907 KAR 1:479E	312	7-1-10
301 KAR 2:221E	1158	10-15-10	Replaced	1455	12-1-2010
Replaced	1338	2-4-11	907 KAR 6:005E	1954	1-3-2010
301 KAR 2:222E	1160	10-15-10	907 KAR 1:677E	318	7-1-10
Replaced	1341	2-4-11	Replaced	1460	12-1-2010
301 KAR 2:225E	917	8-18-10	907 KAR 1:825E	323	7-1-10
Replaced	1029	1-3-2011	Replaced	1464	12-1-2010
302 KAR 20:115E	252	7-2-10	907 KAR 3:090E	333	7-1-10
Replaced	955	10-13-10	Replaced	1479	12-1-2010
302 KAR 21:005E	254	7-2-10	907 KAR 3:100E	348	7-1-10
Replaced	955	10-13-10	Replaced	1489	12-1-2010
405 KAR 8:010E		(See 36 Ky.R.)	907 KAR 3:215E	1164	10-1-10
Replaced	689	9-2-10	907 KAR 5:005E	352	7-1-10
501 KAR 1:070E	1619	12-1-10	921 KAR 2:040E	672	7-23-10
503 KAR 1:110E	9	6-10-10	921 KAR 3:030E	674	7-23-10
601 KAR 1:018E	666	8-12-10	922 KAR 1:420E	1960	1-3-11
702 KAR 7:130E	255	6-23-10			
Replaced	969	10-6-10			
803 KAR 25:091E	920	9-15-10	<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>		
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815 KAR 1:025E		(See 36 Ky.R.)	4 KAR 1:020	873	12-3-2010
Replaced	363	9-3-10	4 KAR 1:030	875	12-3-2010
810 KAR 1:026E	18	6-15-10	4 KAR 1:040	877	
Replaced	1649	2-4-11			



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10 KAR 7:011 (r)	2096		As Amended	1170	11-8-2010
11 KAR 3:100			102 KAR 1:330	609	
Amended	71	10-1-10	As Amended	1172	11-8-2010
Amended	1736		103 KAR 3:010		
11 KAR 4:080			Amended	2258	
Amended	1746		103 KAR 3:020		
As Amended	2150		Amended	755	
11 KAR 5:145			As Amended	1172	12-3-2010
Amended	84	10-1-10	103 KAR 3:030		
11 KAR 19:010	1923		Amended	2263	
As Amended	2150		103 KAR 3:040		
11 KAR 19:020	1925		Amended	2273	
As Amended			103 KAR 3:050		
11 KAR 19:030	1927		Amended	760	
As Amended	2153		103 KAR 15:180	1107	
13 KAR 2:060			Amended	1490	
Amended	2250		As Amended	1625	2-4-11
16 KAR 2:150			103 KAR 15:190	2097	
Amended	1317		103 KAR 18:070		
As Amended	1622	2-4-11	Amended	409	
16 KAR 3:050			As Amended	1177	12-3-2010
Amended	1500		103 KAR 31:102	611	
As Amended	1963		As Amended	945	11-5-10
16 KAR 5:010			105 KAR 1:190		
Amended	2027		Amended	410	
16 KAR 6:010			As Amended	945	11-5-10
Amended	86		105 KAR 1:370		
As Amended	678	10-1-10	Amended	99	
Amended	2036		As Amended	683	10-1-10
16 KAR 6:020			106 KAR 2:020		
Amendment	1318		Amended	417	
As Amended	1622	2-4-11	As Amended	1177	11-22-2010
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Amended	89		Amended	1505	
As Amended	680	10-1-10	As Amended	2154	
31 KAR 4:130			109 KAR 15:020		
Amended	91		Amended	767	
As Amended	680	10-1-10	As Amended	1178	11-17-10
31 KAR 4:140			200 KAR 5:400	1109	
Amended	94		As Amended	1627	2-4-11
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31 KAR 5:010			As Amended	1411	1-3-2011
Amended	2254		201 KAR 1:065		
32 KAR 1:030			Amended	1507	
Amended	1502		As Amended	1969	
32 KAR 1:190			201 KAR 1:140		
Amended	1504		Amended	1508	
32 KAR 2:130			As Amended	1969	
Amended	2256		201 KAR 2:015		
40 KAR 2:350			Amended	2041	
Amended	96		201 KAR 2:165		
Amended	741	11-5-2010	Amended	1328	2-4-11
101 KAR 2:210			201 KAR 2:330	612	
Amended	1000	1-3-2011	As Amended	951	10-2-10
101 KAR 5:015	605		201 KAR 7:075		
Withdrawn		8-13-10	Amended	1001	
Resubmitted	879	12-3-2010	As Amended	1411	12-15-2010
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Amendment	2039		Repealed	224	7-15-10
102 KAR 1:178	2303		201 KAR 8:015		
102 KAR 1:225			Repealed	224	7-15-10
Amended	1322		201 KAR 8:070		
As Amended	1964		Repealed	224	7-15-10
102 KAR 1:230			201 KAR 8:130		
Amended	1323		Repealed	224	7-15-10
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102 KAR 1:245			Repealed	224	7-15-10
Amended	1327		201 KAR 8:140		
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201 KAR 8:170			201 KAR 8:550	2308	
Repealed	224	7-15-10	201 KAR 8:560	626	
201 KAR 8:180			Withdrawn	**	2-8-11
Repealed	224	7-15-10	201 KAR 8:561	2314	
201 KAR 8:185			201 KAR 8:570	630	
Repealed	224	7-15-10	Withdrawn		10-14-10
201 KAR 8:190			201 KAR 8:571	1929	
Repealed	224	7-15-10	201 KAR 8:580	633	
201 KAR 8:220			Withdrawn		9-14-10
Repealed	224	7-15-10	201 KAR 8:581	1931	
201 KAR 8:225			201 KAR 9:005		
Repealed	224	7-15-10	Repealed	194	9-15-10
201 KAR 8:230			201 KAR 9:006(r)	194	9-15-10
Repealed	224	7-15-10	201 KAR 10:050		
201 KAR 8:240			Amended	1510	
Repealed	224	7-15-10	As Amended	1970	
201 KAR 8:250			201 KAR 12:083		
Repealed	224	7-15-10	Amended	2282	
201 KAR 8:260			201 KAR 17:030		
Repealed	224	7-15-10	Amended	1003	
201 KAR 8:265			As Amended	1412	12-15-2010
Repealed	224	7-15-10	201 KAR 18:150		
201 KAR 8:270			Amended	768	
Repealed	224	7-15-10	As Amended	1178	12-3-2010
201 KAR 8:277			201 KAR 20:056		
Repealed	224	7-15-10	Amended	419	
201 KAR 8:280			Amended	1215	
Repealed	224	7-15-10	Amended	2043	12-15-2010
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Repealed	224	7-15-10	Amended	421	10-20-10
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Repealed	224	7-15-10	As Amended	1413	12-15-2010
201 KAR 8:330			201 KAR 20:062	637	
Repealed	224	7-15-10	Amended	1217	
201 KAR 8:340			As Amended	1415	12-15-2010
Repealed	224	7-15-10	201 KAR 20:070		
201 KAR 8:345			Amended	423	10-20-10
Repealed	224	7-15-10	201 KAR 20:110		
201 KAR 8:350			Amended	426	10-20-10
Repealed	224	7-15-10	201 KAR 20:162		
201 KAR 8:355			Amended	428	10-20-10
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201 KAR 8:420			Amended	429	10-20-10
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201 KAR 8:430			Amended	431	
Repealed	224	7-15-10	As Amended	952	10-20-10
201 KAR 8:440			201 KAR 20:240		
Repealed	224	7-15-10	Amended	432	10-20-10
201 KAR 8:450			201 KAR 20:370		
Repealed	224	7-15-10	Amended	434	10-20-10
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Repealed	224	7-15-10	Amended	436	10-20-10
201 KAR 8:470			201 KAR 20:470		
Repealed	224	7-15-10	Amended	438	10-20-10
201 KAR 8:480			Amended	1748	
Repealed	224	7-15-10	201 KAR 20:510		(See 36 Ky.R.)
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Withdrawn	**	2-8-11	201 KAR 22:020		
201 KAR 8:510	616		Amended	775	12-3-2010
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201 KAR 8:520	618		As Amended	34	7-21-10
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Withdrawn	**	2-8-11	As Amended	1184	12-3-2010

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Amended	779		201 KAR 30:190		
As Amended	1419	12-15-2010	Amended	2052	
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Amended	1330		Amended	443	11-5-10
As Amended	1971		201 KAR 36:060		
201 KAR 23:050			Amended	780	12-15-2010
Amended	1331		201 KAR 36:070		
As Amended	1630	2-4-11	Amended	783	
201 KAR 23:070			Withdrawn		12-14-2010
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Amended	1335		Amended	784	11-16-2010
Amended	1692		201 KAR 40:050		
As Amended	1974		Amended	786	
201 KAR 26:115			As Amended	1186	11-16-2010
Amended	1511		201 KAR 40:060		
As Amended	1976		Amended	787	
201 KAR 26:121			As Amended	1187	11-16-2010
Amended	1513		201 KAR 40:070		
201 KAR 26:125			Amended	789	
Amended	1514		As Amended	1188	11-16-2010
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201 KAR 26:130			Amended	791	
Amended	1516		As Amended	1189	11-16-2010
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201 KAR 26:155			Amended	794	11-16-2010
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Amended	1520		Amended	1009	
As Amended	1979		Amended	1695	
201 KAR 26:175			As Amended	1988	
Amended	1523		201 KAR 42:020		
201 KAR 26:180			Amended	1011	
Amended	1526		Amended	1696	
201 KAR 26:185			As Amended	1989	
Amended	1527		201 KAR 42:030		
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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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