

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 37, NUMBER 10
FRIDAY, APRIL 1, 2011

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MEETING NOTICE: ARRS

The Administrative Regulation Review Subcommittee is ten-
tatively scheduled to meet April 12, 2011 at 1:00 p.m. in room
149 Capitol Annex. See tentative agenda on pages 2347 - 2348
of this Administrative Register.

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

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

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, APRIL 12, 2011, at 1:00 p.m., Room 149 Capitol Annex**

COUNCIL ON POSTSECONDARY EDUCATION

Public Educational Institutions

13 KAR 2:060. Degree program approval; equal opportunity goals.

KENTUCKY STATE BOARD OF ELECTIONS

Voting

31 KAR 5:010 & E. Use of the federal write-in absentee ballot in elections for federal office. ("E" expires 7/31/2011)

**DEPARTMENT OF STATE
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32 KAR 2:130 & E. Monetary contributions made in a format other than cash, and refunds. ("E" expires 8/6/2011)

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

General Rules

102 KAR 1:178 & E. Investment policies for insurance trust fund. ("E" expires 7/23/2011)

Department of Revenue

Forms

103 KAR 3:010. General Administrative Forms Manual.

103 KAR 3:030. Property and Severance Forms Manual.

103 KAR 3:040 & E. Income Tax Forms Manual. ("E" expires 7/26/2011)

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

Office of Income Taxation

General Administration

103 KAR 15:190. Endow Kentucky Tax Credit. (Deferred from March)

**GENERAL GOVERNMENT CABINET
Board of Pharmacy**

Board

201 KAR 8:531. Licensure of dentist.

201 KAR 8:550 & E. Anesthesia and sedation. ("E" expires 8/1/2011)

201 KAR 8:561. Licensure of dental hygienists.

Board of Hairdressers and Cosmetologists

Board

201 KAR 12:083. Educational requirements.

Board of Nursing

Board

201 KAR 20:059 & E. Advanced practice registered nurse controlled substances prescriptions. ("E" expires 7/12/2011) (Not Amended After Comments)

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

Fish

301 KAR 1:155. Commercial fishing requirements. (Amended After Comments)

Game

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas.

Hunting and Fishing

301 KAR 3:100. Special commission permits.

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

Water Quality

401 KAR 5:006. Wastewater planning requirements for regional planning agencies. (Amended After Comments)

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
Division of Community and Mental Health Services**

Child Welfare

505 KAR 1:130. Department of Juvenile Justice policies and procedures; juvenile services in community.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education**

Pupil Transportation

702 KAR 7:125. Pupil attendance.

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

Administration

806 KAR 2:150. Collection fee. (Amended After Comments)

Kentucky Horse Racing Commission

Thoroughbred Racing

810 KAR 1:001. Definitions. (Not Amended After Comments)(Deferred from November)

810 KAR 1:009. Jockeys and apprentices.

810 KAR 1:011. Pari-mutuel wagering. (Not Amended After Comments) (Deferred from November)

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

Harness Racing

811 KAR 1:005. Definitions. (Not Amended After Comments) (Deferred from November)

811 KAR 1:125. Pari-mutuel wagering. (Not Amended After Comments) (Deferred from November)

811 KAR 1:250. Exotic wagering. (Not Amended After Comments) (Deferred from November)

811 KAR 1:280. Calculation of payouts and distribution of pools.

Quarter Horse, Appaloosa, and Arabian Racing

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

811 KAR 2:060. Pari-mutuel wagering. (Not Amended After Comments) (Deferred from November)

811 KAR 2:160. Exotic wagering. (Not Amended After Comments) (Deferred from November)

811 KAR 2:180. Calculation of payouts and distribution of pools.

811 KAR 2:190. Kentucky Quarter Horse, Appaloosa, and Arabian Development.

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Public Health Protection and Safety**

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 Community Based Services
Division of Protection and Permanency**

Child Welfare

922 KAR 1:420 & E. Child fatality or near fatality investigations. ("E" expires 7/2/2011) (Deferred from March)

REMOVED FROM ARRS'S APRIL AGENDA

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

Water Quality Standards

401 KAR 10:030. Antidegradation policy implementation methodology. (Comments Received)

**PUBLIC PROTECTION CABINET
~~Department of Housing, Buildings and Construction~~
~~Board of Home Inspectors~~**

~~Board~~

~~815 KAR 6:040. Home inspector prelicensing providers. (Comments Received, SOC ext.) (Withdrawn by agency)~~

~~815 KAR 6:060. Continuing education approval. (Comments Received, SOC ext.) (Withdrawn by agency)~~

~~815 KAR 6:060. Complaint procedure. (Comments Received, SOC ext.) (Withdrawn by agency)~~

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Provider Operations**

Medicaid Services

907 KAR 1:715. School-based health services. (Comments Received)

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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.

REPRINT

902 KAR 30:120 contained errors when the last version was printed. This administrative regulation has been corrected and the finalized version is reprinted here to accurately reflect the changes that were been made to this administrative regulation.

902 KAR 30:120. Evaluation and eligibility.

RELATES TO: KRS 200.654, 200.668, 34 C.F.R. 303.11, 303.300, 303.322, 20 U.S.C. 1434

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050, 200.660(7), 34 C.F.R. 303.322, 20 U.S.C. 1434

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the evaluation, eligibility, and redetermination of eligibility requirements for First Steps, Kentucky's Early Intervention Program.

Section 1. Eligibility. (1) A child shall be eligible for First Steps service if the child:

- (a) Is age birth up to three (3) years;
- (b) Is a resident of Kentucky at the time of referral and resides in Kentucky while receiving early intervention services; and
- (c) 1. Has a documented established risk condition that has a high probability of resulting in developmental delay; or

2. Is determined to have a significant developmental delay based on the evaluation and assessment process.

(2) A determination of initial eligibility, assessments, and the initial IFSP team meeting shall occur within forty-five (45) calendar days after a point of entry receives an initial referral for a child who meets the requirements established in subsection (1) of this section.

(3) Eligibility by established risk conditions:

(a) In accordance with KRS 200.654(10)(b), a child meeting the criteria established in subsection (1)(a) and (b) of this section with a suspected established risk condition shall be eligible once the diagnosis is confirmed by a physician and documented in the medical records provided to the First Steps Program.

(b) A list of approved established risk diagnoses shall be maintained by the First Steps Program and made available in policies and procedures.

1. A child with an established risk shall have a five (5) area assessment, assessing the five (5) areas listed in subsection (4)(a) of this section, completed by a developmental evaluator using a cabinet-approved criterion referenced assessment instrument in lieu of a primary level evaluation.

2. If the established risk condition relates to hearing loss, the five (5) area assessment shall be performed by a speech therapist or a teacher of the deaf and hard of hearing who is approved as a developmental evaluator.

(4) Eligibility by developmental delay:

(a) A child meeting the criteria established in subsection (1)(a) and (b) of this section shall be eligible for First Steps services if the child is determined to have fallen significantly behind in development, based on the evaluation and assessment process, in one (1) or more of the following domains of development:

- 1. Total cognitive development;
- 2. Total communication area through speech and language development, which shall include expressive and receptive language;
- 3. Total physical development including motor development, vision, hearing, and general health status;
- 4. Total social and emotional development; or
- 5. Total adaptive skills development.

(b) Evidence of falling significantly behind in developmental norms shall be determined on a norm referenced test by the child's score that is:

- 1. Two (2) standard deviations below the mean in one (1) skill area; or
- 2. At least one and one-half (1 1/2) standard deviations below the mean in two (2) skill areas.

(c) 1. If a norm-referenced test reveals a delay in one (1) of the five (5) skill areas but does not meet the eligibility criteria required by paragraph (b) of this subsection, a more in-depth standardized test in that area of development may be administered if the following is evident:

a. The primary level evaluator and a parent or guardian have a concern or suspect that the child's delay is greater than the testing revealed;

b. A different norm-referenced test tool reveals a standardized score which would meet eligibility criteria; and

c. There is one (1) area of development that is of concern.

2. The results of the alternate testing required by subparagraph 1. of this paragraph shall determine the child's eligibility if the standardized scores indicate a delay of greater than two (2) standard deviations.

(5) Eligibility by professional judgment. A child may be determined eligible by informed clinical opinion by the following multidisciplinary evaluation teams of professionals:

(a) An approved neonatal follow-up program team;

(b) An approved intensive level evaluation team; or

(c) The designated record review team, if reviewing for eligibility.

(6) To be an approved neonatal follow-up program team, a university-based program shall:

(a) Submit to the cabinet the credentials and documentation of experience in conducting assessments for the birth to three (3) age population for each proposed team member; and

(b) Contract with the cabinet to conduct neuro-developmental follow-up of high risk infants.

(7) To be an approved intensive level evaluation team, two (2) or more professionals who meet the criteria established in Section 2(9) of this administrative regulation shall:

(a) Submit to the cabinet their credentials and documentation of experience in conducting assessments for the birth to three (3) age population for each proposed team member; and

(b) Contract with the cabinet to conduct intensive level evaluations.

Section 2. Child Evaluation. (1) A child referred to the First Steps Program who meets the criteria established in Section 1(1)(a) and (b) of this administrative regulation shall receive an evaluation to determine eligibility if:

(a) There is a suspected developmental delay as confirmed by the cabinet-approved screening protocol; and

(b) The child does not have an established risk diagnosis.

(2) For a child without an established risk diagnosis, the primary level evaluation shall be used to:

(a) Determine eligibility;

(b) Determine developmental status;

(c) Establish the baselines for progress monitoring; and

(d) Make recommendations for the Individual Family Service Plan (IFSP) outcomes.

(3)(a) Primary level evaluations shall include the five (5) developmental areas identified in Section 1(4)(a) of this administrative regulation using norm-referenced standardized instruments that provide a standard deviation score in the total domain for the five (5) areas and shall include a cabinet-approved criterion referenced assessment instrument.

(b) The primary level evaluation shall include:

1. A medical component completed by a physician or nurse practitioner that includes a:

a. History and physical examination;

b. Hearing and vision screening; and

c. Recent medical evaluation in accordance with the timelines established in subsection (5) of this section; and

2. A developmental component completed by a cabinet-approved primary level evaluator that includes:

a. A review of pertinent health and medical information;

b. Completion of each appropriate instrument needed to determine the child's unique strengths and needs; and

c. A recommendation of eligibility.

(c) Results of the evaluation shall be explained to the family.

(d) An evaluation report shall be written:

1. Within ten (10) calendar days of the completion of the evaluation; and

2. In clear, concise language that is easily understood by the family.

(4) Child records of evaluations transferred from a developmental evaluator outside the Kentucky Early Intervention System shall be reviewed by the Point of Entry staff and shall be used for eligibility determination if:

(a) The records meet evaluation timelines established in subsection (5) of this section; and

(b) The records contain the developmental evaluation information required by subsection (3)(b) of this section.

(5) If there is a recent medical or developmental evaluation available, as required by subsection (3)(b) of this section, it shall be used to determine eligibility if the evaluation was performed within:

(a) Three (3) months prior to referral to First Steps, for a child under twelve (12) months of age; or

(b) Six (6) months prior to referral to First Steps, for a child between twelve (12) months of age and three (3) years of age.

(6)(a) A child referred to the First Steps program who was born at less than thirty-seven (37) weeks gestational age shall be evaluated and assessed using an adjusted gestational age to correct for prematurity.

(b) For a child who is less than six (6) months corrected age, the primary evaluation shall be done by an approved intensive level evaluation team or an approved neonatal follow-up program team, in accordance with Section 1(5) of this administrative regulation.

(7) If the child does not have an established risk diagnosis and is determined not eligible, the POE staff shall discuss available community resources, such as Medicaid, EPSDT, the Department for Public Health's and the Commission for Children with Special Health Care Need's (CCSHCN's) Title V programs, and other third-party payors.

(8) A review of the child's First Steps record by the record review team shall be the second level in the First Steps evaluation system that shall be utilized to determine eligibility for cases which are complex or have contradictory information from testing.

(a) Upon obtaining a written consent by the parent or guardian, a service coordinator shall submit a child's record to the Department for Public Health or the designee for a record review if:

1. The child does not meet eligibility guidelines at the primary level;

2. The primary level evaluator and a parent or guardian have concerns that the child is developing atypically; and

3. A determination of eligibility based on professional judgment is needed.

(b) Upon receiving a referral, a record review team shall conduct a record review and issue findings within ten (10) calendar days of receipt of the request.

(9) If the record review team requests an intensive level clinical evaluation, this shall be conducted by a team of early intervention professionals approved by the Part C Coordinator that shall include the following:

(a) 1. A board certified medical professional with expertise in early childhood development;

2. A board certified developmental pediatrician;

3. A pediatrician who has training and experience in the area of early childhood development;

4. A board certified pediatric psychiatrist; or

5. A board certified pediatric neurologist; and

(b) One (1) or more developmental professionals identified in 902 KAR 30:150, Section 2(1)(a)-(s).

Section 3. Annual Redetermination of Eligibility. (1) A redetermination of eligibility shall not be used to address concerns that are medical in nature.

(2) A child shall have continuing program eligibility for First Steps services if:

(a) The child is:

1. Under three (3) years old; and

2. A resident of Kentucky; and

(b) The result of the most recent semi-annual progress review demonstrates:

1. An ongoing delay or failure to attain an expected level of development in one or more developmental areas; and

2. Continued First Steps services are required in order to support continuing developmental progress by consensus of the IFSP team.

(3) Based on the results of the redetermination of eligibility, the IFSP team shall:

(a) Continue with the same outcomes and services;

(b) Continue with modified outcomes and services; or

(c) Transition the child from First Steps services.

(4) Redetermination of eligibility shall occur at least annually.

(a) The annual redetermination shall be part of the child's ongoing assessment and shall include an assessment in all five (5) areas by the Primary Service Provider (PSP) using a cabinet-approved criterion referenced instrument.

(b) If a person directly involved in conducting the evaluation and assessments is unable to attend an IFSP meeting, arrangements shall be made for that person's involvement by other means including participating in a telephone conference call, having a representative attend the meeting, or making pertinent records and reports available at the meeting.

Section 4. Incorporation by Reference. (1) "The Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) Periodicity Schedule", August 2003 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (23 Ky.R. 3133; Am. 3851; 4171; eff. 6-16-1997; 25 Ky.R. 661; 1407; eff. 1-19-1999; Recodified from 908 KAR 2:120, 10-25-2001; 30 Ky.R. 318; 619; 1287; eff. 9-16-2003; 31 Ky.R. 485; 1270; eff. 1-19-2005; Recodified from 911 KAR 2:120, 5-17-2010; 37 Ky.R. 518; 1259; 1665; eff. 2-4-11.)

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

STATEMENT OF EMERGENCY
31 KAR 6:030E

Nature of the emergency: The emergency amendment to this administrative regulation is being promulgated in response to recent issues that arose during the conduct of recounts and contests after the 2010 Primary and General election in which the courts followed the uniform definition of a vote regulation in hand counting ballots, as well as to address inconsistencies that arose from a hand count of ballots by county boards of elections in counting absentee ballots on election day. This emergency amendment must be effective immediately so as to require Kentucky's courts and county boards of elections to follow consistent standards for hand counting ballots before the next election.

The reasons why an ordinary administrative regulation is not sufficient: An ordinary amendment is not sufficient because it will not be effective prior to the next primary election. A delay in the enactment of this amendment may result in inconsistent counting of ballots.

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.

KENTUCKY STATE BOARD OF ELECTIONS
(Emergency Amendment)

31 KAR 6:030E. Uniform definition of a vote.

RELATES TO: KRS 117.265, 117.379, 117.381, 42 U.S.C. 15481

STATUTORY AUTHORITY: KRS 117.015(1), 42 U.S.C. 15481(a)(6)

EFFECTIVE: March 10, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. 42 U.S.C. 15481(a)(6) requires each state to adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the state. This administrative regulation establishes those standards.

Section 1. Definitions. (1) "Accessibility device" means any mechanism used to aid the voter in casting his or her vote for a candidate or an answer to a question on a ballot and is approved pursuant to KRS 117.379 and 117.381.

(2) "Ballot" is defined by KRS 117.375(6).

(3) "Ballot label" is defined by KRS 117.375(5).

(4) "Direct recording electronic voting system" or "DRE voting system" means a computer-driven unit that counts votes cast by a voter through the use of a touchscreen, a button, or an approved accessibility device, and that processes and records the data by means of internal memory devices.

(5) "First name" means an individual's name or names given at birth, as distinguished from a family name or surname.

(6) "Name" means one (1) or more first names coupled with one (1) or more surnames.

(7) "Nickname" means a shortened version of an individual's name or a descriptive or alternative name, in addition to or instead of the first name or surname of an individual.

(8) "[Optical]Scan voting system" means a tabulating device that reads paper ballots by detecting voters' marks by electronic means [using reflected or absorbed light].

(9) "Overvote" means a voter has made more than the permitted number of selections in a single race except when a voter casts a vote using a straight party option and votes for a candidate in a particular race.

(10) "Surname" means the family name bestowed at birth, acquired by marriage, or legally adopted by choice.

(11) "Touchscreen" means a screen on a DRE voting system that the voter touches to enter his or her selections in casting a ballot in an election.

(12) "Write-in vote" means a vote on a ballot on which the voter writes, types, or uses an approved accessibility device to record, the surname of an eligible write-in candidate in the space reserved on the ballot for write-in votes and, on a paper [an optical scan] ballot, properly marks the oval or box or connects the arrow according to the directions provided to the voter.

Section 2. A ballot may be paper or electronic.

Section 3. Definition of a Vote for the Direct Recording Electronic Voting System.

(1) A vote on a direct recording electronic voting system shall be the choice made when a voter selects a candidate, or the desired answer to a question, and touches the screen, presses a button, or uses an approved accessibility device to cast a ballot.

(2) To select a candidate or an answer to a question, the voter shall:

(a) Press the appropriate place on the touchscreen, press the button, or use an approved accessibility device to choose a candidate or answer to a question for which the voter desires to vote;

(b) Type on the touchscreen or use the scrolling device to select on the screen the letters for the name of a write-in candidate in accordance with the instructions for voting on the DRE voting system and press the appropriate place on the touchscreen or press the button to record the write-in vote; or

(c) Press the appropriate place on the ballot label to designate a write-in candidate and write in the name of an eligible candidate on the paper provided in the write-in candidate window.

(3) To cast a ballot, the voter shall:

(a) Press the place on the touchscreen or press the button designated for casting the ballot; or

(b) Use an approved accessibility device for the accessible voting unit to signify the voter's desire to cast the ballot.

Section 4. Definition of a Vote for the [Optical] Scan Voting System. (1) Automatic tabulation. If ballots are tabulated electronically, a vote cast on an [optical] scan voting system shall be the choice made by a voter by:

(a) Filling in the oval or box or connecting the arrow next to the candidate's name or the question choice; or

(b) Writing in the name of an eligible candidate in the designated write-in space and filling in the oval or box or connecting the arrow next to the designated write-in space.

(2) Manual tabulation. If ballots are tabulated manually, the following marks made by a voter shall constitute a vote for a candidate or question choice on an optical scan voting system:

(a) The majority of an oval, box, or arrow designating a candidate or question choice is filled in;

(b) The oval, box, or arrow next to the candidate's name or the question choice is circled or underlined;

(c) The candidate's name or the question choice is circled or underlined;

(d) The party, group, organization, or independent status abbreviation next to the candidate's name is circled or underlined;

(e) There is an "X", a check mark, a plus sign, an asterisk, a star, or any other mark indicating the intent of the voter next to the candidate's name or question choice; or

(f) There is a diagonal, horizontal, or vertical line:

1. A portion of which intersects two (2) points on the oval or arrow next to the candidate's name or the question choice; and

2. That does not intersect another oval or arrow at any two (2) points. ~~[(g) If a voter designates a choice to vote a straight political party ticket, and also designates a vote for an opposing candidate in a specific race, the vote shall be counted for the opposing candidate for that specific race and the remaining votes on the ballot shall be counted for the straight political party.]~~

(3) Manual tabulation of write-in voting.

(a) If write-in ballots are tabulated manually, the following shall constitute a valid vote for a candidate:

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1. The oval, box, or arrow next to the area designated for the selection of a write-in candidate is marked consistent with subsection (2) of this section; and

2. The voter shall write the name of an eligible write-in candidate as provided in [under] KRS 117.265 [is written] in the area designated for the selection of a write-in candidate.

(b) If a voter designates a vote for a named candidate on the ballot and also writes in the name of a different person, these actions shall be considered an overvote, with neither candidate receiving credit for the vote, except as provided in Section 7 of this administrative regulation.

(4) Manual tabulation of other marks or words. If a choice is indicated in accordance with subsection (2) or (3) of this section, and another choice is similarly marked constituting an overvote, the voter may take one (1) of the following actions to cancel the overvote:

(a) If the voter used a pencil, the voter may erase the mark for the candidate he or she does not wish to select; or

(b) If the voter used ink, the voter may circle the name of the candidate he or she wishes to select.

Section 5. Definition of a Vote for a Paper Ballot. (1) Tabulation. The following marks made by a voter shall constitute a vote for a candidate or question choice on a paper ballot:

(a) The majority of an oval, a box, or space designating a candidate or question choice is filled in;

(b) The oval, box, or space next to the candidate's name or the question choice is circled or underlined;

(c) The candidate's name or the question choice is circled or underlined;

(d) The party, group, organization, or independent status abbreviation next to the candidate's name is circled or underlined;

(e) There is an "X", a check mark, a plus sign, an asterisk, a star, or any other mark indicating the intent of the voter next to the candidate's name or question choice; or

(f) There is a diagonal, horizontal, or vertical line:

1. A portion of which intersects two (2) points on the oval, box, or space next to the candidate's name or the question choice; and

2. That does not intersect another oval, box, or space at any two (2) points. ~~[(g) If a voter designates a choice to vote a straight political party ticket, and also designates a vote for an opposing candidate in a specific race, the vote shall be counted for the opposing candidate for that specific race and the remaining votes on the ballot shall be counted for the straight political party.]~~

(2) Write-in voting on a paper ballot.

(a) The following shall constitute a valid vote for a candidate:

1. The oval, box, or space next to the area designated for the selection of a write-in candidate is marked consistent with subsection (1) of this section; and

2. The name of an eligible write-in candidate as provided in [under] KRS 117.265 is written in the area designated for the selection of a write-in candidate.

(b) If a voter designates a vote for a named candidate on the ballot and also writes in the name of a different person, these actions shall be considered an overvote, with neither candidate receiving credit for the vote, except as provided in Section 7 of this administrative regulation.

(3) Other marks or words on a paper ballot. If a choice is indicated in accordance with subsection (1) or (2) of this section, and another choice is similarly marked constituting an overvote, the voter may take one (1) of the following actions to cancel the overvote:

(a) If the voter used a pencil, the voter may erase the mark for the candidate he or she does not wish to select; or

(b) If the voter used ink, the voter may circle the name of the candidate he or she wishes to select.

Section 6. Definition of a Vote for Write-in Voting Generally. (1) Only votes cast for eligible write-in candidates as provided in [under] KRS 117.265 shall be considered valid and counted.

(2) A write-in vote for a candidate whose name already appears on the ballot label as a candidate shall not be counted as a vote as provided in [under] KRS 117.265.

(3) The use of stickers, labels, rubber stamps, or other similar

devices shall not be counted as write-in votes.

(4) Any minor misspelling of the name of a candidate shall be disregarded in determining the validity of a write-in vote as long as the intended candidate may be clearly determined.

(5) Writing in only the surname of an eligible candidate shall constitute a valid vote, unless there is more than one (1) filed candidate with the same surname for that office. If there is more than one (1) filed candidate with the same surname for that office, writing in only the last name or surname shall not constitute a vote.

(6) Writing in only the first name of an eligible candidate shall not constitute a valid vote.

(7) Writing in only the initials of a candidate shall not constitute a vote.

(8) Writing in only the nickname of an eligible candidate shall not constitute a valid vote.

(9) If the voter writes in any other name along with the surname of an eligible write-in candidate, the other name written by the voter shall comply with the variations of names listed by the candidate on SBE/SOS/01, SBE/SOS/02, or SBE/SOS/03, depending on the candidate, to constitute a valid vote.

(10) Writing in the surname of the candidate for Governor or the surname of the candidate for Lieutenant Governor shall be sufficient to cast a write-in vote for the slate.

(11) Writing in the surname of the candidate for President or the surname of the candidate for Vice President shall be sufficient to cast a write-in vote for the slate.

Section 7. Straight Party Voting. (1) For all voting systems and types of ballots, if a voter designates a choice to vote a straight political party ticket and also designates a vote for an opposing candidate whose name appears on the ballot or writes in the name of an eligible write-in candidate in a specific race, the vote shall be counted for the opposing candidate or the eligible write-in candidate for that specific race and the remaining votes on the ballot shall be counted for the straight political party.

(2) Straight party voting shall not be considered an overvote if cast in a manner consistent with subsection (1) of this section. [This administrative regulation shall not diminish the powers granted to the State Board of Elections and County Boards of Elections established by KRS Chapter 117.]

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

(a) SBE/SOS/01-"Declaration of Intent to be a Write-In Candidate", February 2011 edition~~[(June 2007 edition)]~~;

(b) SBE/SOS/02-"Presidential/Vice Presidential Candidates' Declaration of Intent to be Write-In Candidates", February 2011 edition~~[(June 2007 edition)]~~;

(c) SBE/SOS/03-"Governor/Lieutenant Governor Candidates' Declaration of Intent to be a Write-In Candidates", February 2011 edition~~[(June 2007 edition)]~~;

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

HON. ELAINE WALKER, Chair

APPROVED BY AGENCY: February 15, 2011

FILED WITH LRC: March 10, 2011 at 9 a.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 summary of:

(a) What this administrative regulation does: This administrative regulation provides a uniform and nondiscriminatory standard to define what constitutes a vote and what will be counted as a vote for each category of voting system used in the state.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with 42 U.S.C. 15481(a)(6).

(c) How this administrative regulation conforms to the content

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of the authorizing statutes: KRS 117.015(1)(a) authorizes the board to promulgate administrative regulations governing the conduct of elections. 42 U.S.C. 15481(a)(6) requires each state to adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the state. This administrative regulation establishes those requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a uniform and nondiscriminatory standard to define what constitutes a vote and what will be counted as a vote for each category of voting system used in the state ensuring that all eligible voters, registered voters, actual voters, election officials and boards and the general public will know what constitutes a vote.

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

(a) How the amendment will change this existing administrative regulation: The amendment to the administrative regulation will provide clarity for the language applied to straight party voting and more accurately defines what constitutes a write-in vote to safeguard against inconsistent results between automatic tabulation and hand counting in the event of a recount.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to safeguard against confusion on the part of election officials in counting straight party votes on election day and to avoid potential inconsistent results in election contests and recounts.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides a more accurate definition for what constitutes a write-in vote in conformity with 42 U.S.C. 15481(a)(6).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist election officials in counting straight party votes after each election and to conform to 42 U.S.C. 15481(a)(6), the Help America Vote Act.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All eligible voters; all registered voters; all actual voters; all election officials and boards; all candidates for office, and the general public.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The election officials will have to follow this amendment when manually counting ballots after an election.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The groups will know what constitutes a vote for each category of voting system used in the state and, through this amendment, will have a more accurate definition for what constitutes a write-in vote.

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

(a) Initially: There are no costs associated with this administrative regulation or its amendment.

(b) On a continuing basis: There are no costs associated with this administrative regulation or its amendment.

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.015(1)(a) and 42 U.S.C. 15481(a)(6), the Help America Vote Act.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no costs associated with this administrative regulation.

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 15481(a)(6).

(2) State compliance standards: KRS 117.015(1) authorizes the board to promulgate administrative regulations governing the conduct of elections.

(3) Minimum or uniform standards contained in the federal mandate: 42 U.S.C. 15481(a)(6) requires each state to adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the state. This administrative regulation establishes those requirements.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: None

STATEMENT OF EMERGENCY 401 KAR 51:052E

Nature of emergency: Pursuant to 401 KAR 51:052, requirements are set forth for the construction of new major stationary sources and major modifications at existing stationary sources located in areas, or impacting areas, designated nonattainment for any primary national ambient air quality standard. To ensure im-

provement of air quality in those areas, the emissions resulting from the construction project have to be "offset" with compensating reductions of emissions. Currently, 401 KAR 51:052 is not consistent with the corresponding federal law in regards to calculating eligible emission reductions (offsets). As a result of this inconsistency, Kentucky is at a disadvantage in recruiting new industry and manufacturers and the expansion of existing industry and manufacturers for the Commonwealth. Emergency adoption of the less restrictive administrative regulation is necessary to prevent the potential loss of state funds and revenues relating to economic development. Reasons an ordinary administrative regulation is not sufficient: The ordinary administrative regulation process can take as long as six (6) months to finalize. Kentucky is currently at an economic investments by allowing easier access to eligible offsets. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
LEONARD K. PETERS, Cabinet Secretary

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Emergency Amendment)

401 KAR 51:052E. Review of new sources in or impacting upon nonattainment areas.

RELATES TO: KRS 224.20-100(5), 224.20-110, 224.20-120, 40 C.F.R. Part 51 Appendix S, Part 51 Subpart I[4], 51.165, 51.166, 51.300, 51.307, 52.21, 60, 61, 70.6, Part 81[~~5~~] Subpart D, 81.318, 42 U.S.C. 7401-7671q[~~EO 2009-538~~]

STATUTORY AUTHORITY: KRS 224.10-100(5), 42 U.S.C. 7401-7671q[~~EO 2009-538~~]

EFFECTIVE: March 14, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) ~~requires [authorizes]~~ the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. ~~[EO 2009-538, effective June 12, 2009, establishes the Energy and Environment Cabinet.]~~ This administrative regulation establishes requirements for the construction or modification of stationary sources within, or impacting upon, areas where the national ambient air quality standards have not been attained. The provisions of this administrative regulation are ~~not [neither different nor]~~ more stringent than the federal regulation, 40 C.F.R. 51.165.

Section 1. Applicability. This administrative regulation shall apply to the construction of a new major stationary source or a project that is a major modification at an existing major stationary source, which commences construction after September 22, 1982, and locates in or impacts upon an area designated nonattainment under 42 U.S.C. 7407(d)(1)(A)(i).

(1) The provisions of this administrative regulation relating to visibility protection shall also apply to major sources or major modifications in nonattainment areas that potentially have an impact on visibility in a mandatory Class I federal area.

(2) Applicability tests for projects. Except as provided in subsection (3) of this section, a project shall be a major modification for a regulated NSR pollutant only if the project causes a significant emissions increase and a significant net emissions increase, as provided in paragraphs (a) and (b) of this subsection.

(a) Prior to beginning actual construction, the owner or operator shall first determine if a significant emissions increase will occur for the applicable type of unit being constructed or modified according to subparagraphs 1 to 3 of this paragraph.

1. Actual-to-projected actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

2. Actual-to-potential test for projects that involve only construction of new emissions units. A significant emissions increase

of a regulated NSR pollutant shall be projected to occur if the sum of the potential to emit from each new emissions unit following completion of the project equals or exceeds the significant amount for that pollutant.

3. Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the emissions increases for each emissions unit, using the methods specified in subparagraphs 1 and 2 of this paragraph as applicable for each emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Prior to beginning actual construction and after completing the applicable test in paragraph (a) of this subsection, the owner or operator shall determine for each regulated NSR pollutant if a significant net emissions increase will occur pursuant to 401 KAR 51:001, Section 1(144) and (218).

(3) For a plant-wide applicability limit (PAL) for a regulated NSR pollutant at a major stationary source, the owner or operator of the major stationary source shall comply with the applicable requirements of Section 11 of this administrative regulation.

Section 2. Initial Screening Analyses and Determination of Applicable Requirements. (1) Review of all sources for emissions limitation compliance.

(a) The cabinet shall examine each proposed major new source and proposed major modification to determine if the source or modification will meet all applicable emissions requirements in the Kentucky State Implementation Plan (SIP) and 40 C.F.R. Parts 60 and 61.

(b) If the cabinet determines from the application and all other available information that the proposed source or modification will not meet the applicable emissions requirements, the permit to construct shall be denied.

(2) Review of specified sources of air quality impact.

(a) The cabinet shall determine if a proposed major stationary source or major modification will be constructed in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i) for a pollutant for which the stationary source or modification is major.

(b) If a designated nonattainment area is projected to be an attainment area as part of an approved control strategy by the new source start-up date, offsets shall not be required if the new source will not cause a new violation.

(3) Fugitive emissions sources. Sections 4 and 10 of this administrative regulation shall not apply to a source or modification that will be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to one (1) of the following categories:

- (a) Coal cleaning plants with thermal dryers;
- (b) Kraft pulp mills;
- (c) Portland cement plants;
- (d) Primary zinc smelters;
- (e) Iron and steel mills;
- (f) Primary aluminum ore reduction plants;
- (g) Primary copper smelters;
- (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) Hydrofluoric, sulfuric, or nitric acid plants;
- (j) Petroleum refineries;
- (k) Lime plants;
- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants, furnace process;
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140;
- (u) Fossil-fuel boilers, or combination of fossil-fuel boilers,

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totaling more than 250 million BTUs per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or

(aa) Another stationary source category that, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

Section 3. Sources Locating in Designated Attainment or Unclassifiable Areas that Will Cause or Contribute to a Violation of a National Ambient Air Quality Standard. (1) This section shall apply only to new major stationary sources or new major modifications that will locate in designated attainment or unclassifiable areas, pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii), if the source or modification will cause impacts that exceed the significance levels, as listed in the table in this subsection, at a locality that does not or will not meet the national ambient air quality standards.

Pollutant	Annual Average	Averaging Time			
		24-Hour	8-Hour	3-Hour	1-Hour
Sulfur Dioxide	1.0 $\mu\text{g}/\text{m}^3$	5 $\mu\text{g}/\text{m}^3$	--	25 $\mu\text{g}/\text{m}^3$	--
PM ₁₀	1.0 $\mu\text{g}/\text{m}^3$	5 $\mu\text{g}/\text{m}^3$	--	--	--
Nitrogen Dioxide	1.0 $\mu\text{g}/\text{m}^3$	--	--	--	--
Carbon Monoxide	--	--	0.5 mg/m^3	--	2 mg/m^3

(2) Sources to which this section applies shall meet the requirements in Section 4(1), (2) and (4) of this administrative regulation and may be exempt from Section 4(3) of this administrative regulation.

(3) For sources of sulfur dioxide (SO₂), particulate matter, and carbon monoxide (CO), the determination that a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made on a case-by-case basis using the source's allowable emissions in an approved atmospheric simulation model listed in 40 C.F.R. Part 51, Appendix W, "Guideline on Air Quality Models".

(4) For sources of NO_x, the initial determination that a new major source or major modification will cause or contribute to a violation of the national ambient air quality standard for nitrogen dioxide (NO₂) shall be made using an approved atmospheric simulation model assuming all the nitric oxide emitted is oxidized to NO₂ by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.

(5) For ozone, sources of VOCs or NO_x locating outside a designated ozone nonattainment area shall be presumed to not have a significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, the source shall be permitted pursuant to this administrative regulation and 401 KAR 52:020 until the area is designated nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i).

(6) The determination that a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made as of the start-up date.

(7) Applications for major new sources and major modifications locating in attainment or unclassifiable areas, the operation of which will cause a new violation of a national ambient air quality standard but will not contribute to an existing violation, may be approved only if the following conditions are met:

(a) The new source shall:

1. Meet an emissions limitation;

2. Meet a design, operational, or equipment standard; or

3. Control existing sources so that the new source will not cause a violation of a national ambient air quality standard.

(b) The new emissions limitations for the new and existing

sources affected shall be state and federally enforceable in accordance with Section 6 of this administrative regulation.

Section 4. Sources Locating in a Designated Nonattainment Area. This section shall apply to a new major stationary source or major modification that will be constructed in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i) for a pollutant for which the stationary source or modification is major. Approval to construct may be granted only if the conditions of this section are met.

(1) The new major source or major modification shall be required to meet an emissions limitation that specifies the lowest achievable emissions rate (LAER) for the source.

(2) The applicant shall demonstrate that all existing major sources owned or operated by the applicant, or an entity controlling, controlled by, or under common control with the applicant, in the Commonwealth of Kentucky are in compliance with all applicable emissions limitations and standards specified in Title 401, Chapters 50 to 65, and 40 C.F.R. Parts 60 and 61 and 42 U.S.C. 7401-7626, or are in compliance with an expeditious state and federally enforceable compliance schedule or a court decree establishing a compliance schedule.

(3)(a) Except for VOCs or NO_x emissions, emissions from existing sources in the affected area of the proposed new major source or modification, whether or not under the same ownership, shall be reduced or offset at a ratio of at least 1:1, so that there will be reasonable further progress toward attainment of the applicable national ambient air quality standard (NAAQS). Only those transactions in which the emissions being offset are from the same criteria pollutant category shall be accepted.

(b) The ratio of total emissions reductions of VOCs or NO_x to total increased emissions of the same air pollutant shall be at least the ratio indicated for the following ozone nonattainment area classifications:

1. For marginal nonattainment areas, at least 1.1 to 1;
2. For moderate nonattainment areas, at least 1.15 to 1;
3. For serious nonattainment areas, at least 1.2 to 1;
4. For severe nonattainment areas, at least 1.3 to 1; and
5. For extreme nonattainment areas, at least 1.5 to 1.

(4) The emissions reductions shall provide a positive net air quality benefit in the affected area.

(a) Atmospheric simulation modeling shall not be required for VOCs and NO_x.

(b) Except as provided in Section 3(5) of this administrative regulation, compliance with subsection (3) of this section and Section 5(3)(e) of this administrative regulation shall be adequate to meet this condition.

(5) The proposed major stationary source or major modification shall include in the application for a construction permit an analysis of the alternative sites, sizes, production processes, and environmental control techniques for the proposed source, which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Section 5. Determining Credit for Emissions Offsets. (1) The baseline for determining credit for emissions reductions or offsets shall be, considering that baseline actual emissions as defined in 401 KAR 51:001, Section 1(20), shall not be used for determining the baseline for emissions offsets:

(a) The emissions limitations in effect when the application to construct or modify a source is filed; or

(b) The actual emissions of the source from which offset credit is attained if:

1. The demonstration of reasonable further progress and attainment of ambient air quality standards for the SIP was based on actual emissions; or

2. The SIP does not contain an emissions limitation for that source or source category.

(2) Credit for emissions offsets. Credit for emissions offset purposes may be allowed for existing control if the existing control goes beyond the control required under 401 KAR Chapters 50 to 65 and applicable federal regulations.

(3) General provisions for calculating offset values.

(a) Offset calculations shall be made on a pound-per-hour basis if all facilities involved in the emissions offset calculations are operating at their maximum or allowed production rate.

(b) Offsets may be calculated on a tons-per-year basis if baseline emissions for existing sources providing the offsets are calculated using the actual annual operating hours for the previous two (2) year period.

(c) If the cabinet requires certain hardware controls instead of an emissions limitation, baseline allowable emissions shall be based on actual operating conditions for the previous two (2) year period in conjunction with the required hardware controls.

(d) If the emissions limitations required by the cabinet allow greater emissions than the uncontrolled emissions rate of the source, emissions offset credit shall be allowed only for control below the uncontrolled emissions rate.

(e) The owner or operator of a new or modified major stationary source shall comply with any offset requirement in effect under this administrative regulation to increase emissions of an air pollutant by obtaining emissions reductions of the air pollutant from:

1. ~~[Obtaining emissions reductions of the air pollutant from]~~ The same source or other sources in the same nonattainment area; or

2. A source~~[From sources]~~ in another nonattainment area if:

a. The other area has an equal or higher nonattainment classification than the area in which the source is located; and

b. Emissions from the other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.

(4) Calculating offsets if an applicable emissions limitation does not exist. If the Kentucky SIP does not contain an emissions limitation for a source or source category, the emissions offset baseline involving the source shall be actual emissions determined under actual operating conditions for the previous two (2) year period.

(5) Calculating offsets for existing fuel combustion sources.

(a) The emissions for determining emissions offset credit involving an existing fuel combustion source shall be the allowable emissions under the emissions limitation requirements of the cabinet for the type of fuel being burned when the new major source or major modification application is filed.

(b) If the existing source has switched to a different type of fuel at some earlier date, a resulting emissions reduction, either actual or allowable, shall not be used for emissions offset credit.

(c) If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable emissions for the fuels involved shall not be allowed unless the permit is conditioned to require the use of a specified alternative control measure that will achieve the same degree of emissions reduction if the source switches back to a dirtier fuel at some later date.

(6) Calculating offsets for operating hours and source shutdowns.

(a) A source may be credited with emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels if the work force to be affected has been notified in writing of the proposed shutdown or curtailment.

(b) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours:

1. May be generally credited for offsets pursuant to 40 C.F.R. 51.165(a)(3)(ii)(C)(1) if:

a. The reductions are surplus, permanent, quantifiable, and federally enforceable; and

b. The shutdown or curtailment occurred after the last day of the base year for the SIP planning process.

(i) The cabinet may consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop an attainment demonstration explicitly includes the emissions from the previously shutdown or curtailed emission unit, pursuant to 40 C.F.R. 51.165(a)(3)(ii)(C)(1)(ii).

(ii) Credit shall not be given for a shutdown that occurred before August 7, 1977;

2. That do not meet the requirements of subparagraph 1.b. of this paragraph may be generally credited pursuant to 40 C.F.R. 51.165(a)(3)(ii)(C)(2) if:

a. The shutdown or curtailment occurred on or after the date the construction permit application is filed; or

b. The applicant establishes that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment meet the requirements of subparagraph 1.a. of this paragraph. [Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed shall not be used for emissions offset credit.]

(c) If an applicant establishes ~~[can establish]~~ that it shut down or curtailed production after August 7, 1977, or less than one (1) year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for the shutdown or curtailment may be applied to offset emissions from the new source.

(7) Calculating offsets for hydrocarbon substitution. An emissions offset credit shall not be allowed for replacing one volatile organic compound with another of lesser photochemical reactivity, unless the replacement compound is methane, ethane, 1,1,1-trichloroethane, or trichlorofluoroethane.

(8) Banking of emissions offset credit.

(a) New sources obtaining permits by applying offsets after the effective date of this administrative regulation may bank offsets that exceed the requirements of Section 5(3) of this administrative regulation.

(b) An owner or operator of an existing source that reduces its own emissions may bank a resulting reduction beyond those required by regulation for use under this administrative regulation, even if the offsets are applied immediately to a new source permit.

(c) Banked emissions offsets may be used under the preconstruction review program required in 42 U.S.C. 7401 to 7626, as long as these banked emissions are identified and accounted for in Kentucky's control strategy.

(9) Offset credit for meeting NSPS or NESHAPS.

(a) If a source is subject to an emissions limitation established in a New Source Performance Standard (NSPS) or a National Emissions Standard for Hazardous Air Pollutants (NESHAPS) and a different emissions limitation is required by the cabinet, the more stringent limitation shall be used as the baseline for determining credit for emissions offsets.

(b) The difference in emissions between NSPS or NESHAPS and other emissions limitations shall not be used as offset credit.

Section 6. Administrative Procedures for Emissions Offsets. (1) Emission reductions shall be enforceable by the cabinet and the U.S. EPA, and shall be accomplished by the start-up date of the new source.

(a) If emissions reductions are to be obtained in a state that neighbors the Commonwealth for a new source to be located in the Commonwealth, the emissions reductions shall be enforceable by the neighboring state or local agencies and the U.S. EPA.

(b) The necessary emissions offsets may be proposed by the owner of the proposed source or by the cabinet.

(2) Source initiated emissions offsets.

(a) The owner or operator of a source may propose:

1. Internal emissions offsets, which involve reductions from sources controlled by the owner; or

2. External emissions offsets, which involve reductions from other sources, if the emissions offsets meet the requirements of this section and Section 4(3) of this administrative regulation.

(b) An internal emissions offset shall be included and made enforceable as a condition of the source's permit.

(c) An external emissions offset shall only be accepted if the cabinet requires the affected source to comply with a new emissions limitation to ensure that its emissions shall be reduced by a specified amount in a specified time; and the new emissions limitation shall be enforceable by the cabinet and the U.S. EPA.

(3) Cabinet initiated emissions offsets.

(a) The cabinet may commit to reducing emissions from mobile sources and other existing sources to provide a net air quality benefit in the impact area of a proposed new source to accommodate

the proposed new source.

(b) This emissions reduction commitment shall be reflected in the emissions limitation requirements for the new and existing sources as required by this section.

Section 7. Source Obligation. (1) An owner or operator of a source or modification subject to this administrative regulation shall construct and operate the source or modification in accordance with the application submitted to the cabinet under this administrative regulation and 401 KAR 52:020 or under the terms of an approval to construct.

(2)(a) Approval to construct shall become invalid if construction:

1. Is not commenced within eighteen (18) months after receipt of the approval;
2. Is discontinued for a period of eighteen (18) months or more; or
3. Is not completed within a reasonable time.

(b) The cabinet may extend the eighteen (18) month period upon a satisfactory demonstration that an extension is justified.

1. An extension shall not apply to the time period between construction of the approved phases of a phased construction project; and

2. Each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve an owner or operator of the responsibility to comply fully with applicable provisions of 401 KAR Chapters 50 to 65 and other applicable requirements under local, state, or federal law.

(4) If a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in an enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, the requirements of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5)(a) The provisions of this subsection shall apply to projects at existing emissions units at a major stationary source other than projects at a source with a PAL, if:

1. There is a reasonable possibility that a project that is not part of a major modification may result in a significant emissions increase; and

2. The owner or operator uses the method specified in 401 KAR 51:001, Section 1(199)(b) to calculate projected actual emissions.

(b) Before beginning actual construction of a project specified in paragraph (a) of this subsection, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;
2. Identification of the emissions units for which emissions of a regulated NSR pollutant may be affected by the project; and
3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:
 - a. Baseline actual emissions;
 - b. Projected actual emissions;
 - c. Amount of emissions excluded in calculating projected actual emissions and an explanation for why that amount was excluded; and
 - d. Any applicable netting calculations.

(c) For a project specified in paragraph (a) of this subsection, the owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by an emissions unit identified in paragraph (a)2 of this subsection; and

2. Calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for:

- a. Five (5) years following resumption of regular operations after the change; or
- b. Ten (10) years if the project increases the design capacity of or potential to emit for that regulated NSR pollutant at the emissions unit.

(d) If the unit is an existing EUSGU, before beginning actual construction, the owner or operator:

1. Shall provide a copy of the information in paragraph (b) of this subsection to the cabinet; and

2. Shall not be required to obtain a determination from the cabinet before beginning actual construction; and

3. Shall submit a report to the cabinet within sixty (60) days after the end of each year during which records are required to be generated under paragraph (b) of this subsection that contains the unit's annual emissions during the calendar year preceding report submittal.

(e)1. For an existing unit other than an EUSGU, the owner or operator shall submit a report to the cabinet if:

a. The annual emissions, in tons per year, from a project identified in paragraph (a) of this subsection exceed the baseline actual emissions, as documented and maintained pursuant to paragraph (b)3 of this subsection, by a significant amount for that regulated NSR pollutant; and

b. The emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (b)3 of this subsection.

2. The report shall be submitted to the cabinet within sixty (60) days after the end of the year during which records are required to be generated under paragraph (b) of this subsection and shall contain the following:

a. The name, address, and telephone number of the major stationary source;

b. The annual emissions as calculated pursuant to paragraph (c) of this subsection; and

c. Any other information that the owner or operator wishes to include in the report.

(f) The owner or operator of the source shall make the information required to be documented and maintained under this subsection available for review upon request for inspection by the cabinet or the general public pursuant to 401 KAR 52:100.

Section 8. Permit Condition Rescission. (1) An owner or operator holding a permit for a stationary source or modification that was issued pursuant to 401 KAR 51:050 or 51:051E may request that the cabinet rescind the applicable conditions.

(2) The cabinet shall rescind a permit condition if the owner or operator:

(a) Requests and demonstrates to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or to a portion of the source or modification if construction will have commenced after September 22, 1982; and

(b) Demonstrates that the rescission will not violate the requirements of Sections 4(3) and 7 of this administrative regulation.

Section 9. Class I Areas. (1) The following areas, which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:

(a) International parks;

(b) National wilderness areas and national memorial parks which exceed 5,000 acres in size; and

(c) National parks that exceed 6,000 acres in size.

(2) Any other area, unless otherwise specified in the legislation creating the area, is designated Class II but may be redesignated as provided in 40 C.F.R. 51.166(g).

(3) The visibility protection requirements of this administrative regulation shall apply only to sources that may impact a mandatory Class I federal area.

(4) The following areas may be redesignated only as Class I or II:

(a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lake-shore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 10. Protection of Visibility. (1) New source review; applicability and exemptions.

(a) A stationary source or modification to which this section applies shall not begin actual construction without a permit that

states the stationary source or modification shall meet the requirements of this section.

(b) This section shall apply to construction of a new major stationary source or major modification that will be constructed in an area designated as nonattainment under 42 U.S.C. 7407(d)(1)(A)(i) and potentially have an impact on visibility in a Class I area.

(c) This section shall apply to a major stationary source or major modification for each pollutant subject to regulation under 42 U.S.C. 7401 to 7626 that it will emit, except as provided in paragraphs (d) and (e) of this subsection.

(d) This section shall not apply to a particular major stationary source or major modification if:

1. The source or modification is a nonprofit health or nonprofit educational institution or a major modification will occur at the institution, and the Governor of the Commonwealth requests that it be exempt from the requirements of this section; and

2. The source is a portable stationary source that has previously received a permit under this section and will be temporarily relocated; and

- (a) The emissions from the source will not exceed the allowable emissions;

- b. The emissions from the source will not impact a Class I area or an area where an applicable increment is known to be violated; and

- c. Reasonable notice is given to the cabinet prior to the relocation, identifying the proposed new location and the probable duration of operation at the new location. The notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet pursuant to this section.

(e) This section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

1. Will not impact a Class I area;

2. Will not impact an area where an applicable increment is known to be violated; and

3. Will be temporary.

- (2) Visibility impact analyses. The owner or operator of a source shall provide an analysis of the impairment to visibility that will occur in a Class I area as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification.

- (3) Federal land manager notification.

- (a) The federal land manager and the federal official charged with direct responsibility for management of Class I areas shall have an affirmative responsibility to protect the visibility and other air quality related values of the Class I lands and to consider, in consultation with the cabinet, if a proposed source or modification will have an adverse impact on these values.

- (b) The cabinet shall provide written notification to all affected federal land managers and to the federal official charged with direct responsibility for management of lands within the Class I area of a permit application or an advanced notice of a permit application for a proposed new major stationary source or major modification that may affect visibility in a Class I area. The notification shall:

1. Include a copy of all information relevant to the permit application;

2. Be submitted pursuant to this paragraph within thirty (30) days of receipt of the permit application or advanced notice of permit application and at least sixty (60) days prior to a public hearing on the application for a permit to construct; and

3. Include an analysis of the proposed source's anticipated impacts on visibility in a Class I area.

- (c)1. The cabinet shall consider an analysis by the federal land manager, provided within thirty (30) days of the notification and analysis required by paragraph (b) of this subsection, that the proposed new major stationary source or major modification may have an adverse impact on visibility in a Class I area.

2. If the cabinet finds that the analysis does not demonstrate, to the satisfaction of the cabinet, that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public hearing notice required in 401 KAR 52:100, either explain that decision or give notice as to where the explanation ~~may~~^{can} be

obtained.

(d) Adverse impact on visibility as it applies to paragraph (c) of this subsection shall be determined on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and time of natural conditions that reduce visibility.

(4) Public participation. The cabinet shall follow the applicable procedures of 401 KAR 52:100 in processing applications under this section and shall follow the procedures at 40 C.F.R. 52.21(r), effective July 1, 2009, to the extent that the procedures of 401 KAR 52:100 do not apply.

(5) National visibility goal.

(a) The cabinet shall only issue permits to those sources for which emissions will be consistent with making reasonable progress toward the national goal of preventing future, and remedying existing, impairment of visibility in Class I areas which impairment results from manmade air pollution.

(b) In making the decision to issue a permit, the cabinet shall consider:

1. The costs of compliance;

2. The time necessary for compliance;

3. The energy and non-air quality environmental impacts of compliance; and

4. The useful life of the source.

(6) Monitoring.

(a) The cabinet may require monitoring of visibility in a Class I area near the proposed new stationary source or major modification using human observations, teleradiometers, photographic cameras, nephelometers, fine particulate monitors, or other appropriate methods as specified by the U.S. EPA.

(b) The monitoring method selected shall be determined on a case-by-case basis by the cabinet.

(c) The cabinet shall not undertake visibility monitoring in a Class I area without the approval of the federal land manager.

(d) Data obtained from visibility monitoring shall be made available to the cabinet, the federal land manager, and the U.S. EPA, upon request.

Section 11. Plant-wide Applicability Limit Provisions. The cabinet may approve the use of an actuals PAL (PAL) for an existing major stationary source if the PAL meets the requirements of this section.

(1) General provisions.

(a) An owner or operator may execute a project without triggering major NSR, if the source maintains its total source-wide emissions below the PAL level, meets the requirements in this section, and complies with the PAL permit. If these conditions are met, a project:

1. Shall not be considered a major modification for the PAL pollutant;

2. Shall not have to be approved through Kentucky's major NSR program; and

3. Shall not be subject to the provisions of Section 7(4) of this administrative regulation concerning restrictions on relaxing enforceable emissions limitations that the major stationary source used to avoid applicability of the major NSR program.

(b) Except as provided under subparagraph (1)(a)3 of this section, the major stationary source shall continue to comply with all applicable federal or state requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the PAL.

(c) The cabinet shall not allow a PAL for VOC or NOx for any major stationary source located in an extreme ozone nonattainment area.

(2) Permit application requirements. The owner or operator of a major stationary source shall submit the following information to the cabinet for approval as part of an application for a permit or permit revision requesting a PAL:

- (a) A list of all emissions units at the source designated as small, significant or major, based on their potential to emit;

- (b) Identification of the federal and state applicable requirements, emissions limitations, and work practice requirements that apply to each emissions unit;

(c) Calculations of the baseline actual emissions for the emissions units with supporting documentation; and

(d) The calculation procedures the owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section.

(3) Establishing a PAL. The cabinet shall establish a PAL at a major stationary source in a federally enforceable permit pursuant to the requirements of this section.

(a) The PAL shall impose an annual emissions limitation in tons per year that is enforceable as a practical matter for the entire major stationary source, in which:

1. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the owner or operator shall demonstrate that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL as a twelve (12) month average, rolled monthly; and

2. For each month during the first eleven (11) months from the PAL effective date, the owner or operator shall demonstrate that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL;

(b) The PAL shall be established in a PAL permit that:

1. Meets the public participation requirements in subsection (4) of this section; and

2. Contains all the requirements of subsection (6) of this section;

(c) A PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source;

(d) Each PAL shall regulate emissions of only one (1) pollutant;

(e) Each PAL shall have a PAL effective period of ten (10) years;

(f) The owner or operator of a major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements of subsections (11) to (13) of this section for each emissions unit under the PAL through the PAL effective period; and

(g) Emissions reductions of a PAL pollutant that occur during the PAL effective period shall not be creditable as decreases for offsets under 40 C.F.R. 51.165(a)(3)(ii), unless:

1. The level of the PAL is reduced by the amount of the emissions reductions; and

2. The reductions would be creditable in the absence of the PAL.

(4) Public participation requirements. PALs for existing major stationary sources shall be established, renewed, or increased pursuant to this subsection and the applicable procedures of 401 KAR 52:100 for issuing permits or permit revisions. The cabinet shall:

(a) Provide the public with notice of the proposed approval of a PAL permit with at least a thirty (30) day period for submittal of public comment; and

(b) Address all material comments before taking final action on a PAL permit or permit revision.

(5) Setting the ten (10) year PAL level.

(a) The PAL level for a major stationary source shall be the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source during the chosen twenty-four (24) month period plus the applicable significant level for the PAL pollutant under the definition for "significant" in 401 KAR 51:001, Section 1 or under 42 U.S.C. 7401-7671q, whichever is lower.

(b) In establishing a PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units.

(c) A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(d) Emissions associated with units that were permanently shut down after the chosen twenty-four (24) month period shall be subtracted from the PAL level.

(e) Emissions from units for which actual construction began after the twenty-four (24) month period shall be added to the PAL level in an amount equal to the potential to emit of the units.

(f) The cabinet shall specify a reduced PAL level in the PAL

permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the cabinet is aware of prior to issuance of the PAL permit.

(6) Contents of the PAL permit. The PAL permit shall contain the following information:

(a) The PAL pollutant and the applicable source-wide emissions limitation in tons per year;

(b) The PAL permit effective date and the expiration date of the PAL or PAL effective period;

(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL under subsection (9) of this section before the end of the PAL effective period, the PAL shall remain in effect until a revised PAL permit is issued by the cabinet;

(d) A requirement that emissions calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions;

(e) A requirement that, once the PAL expires, the major stationary source shall be subject to the requirements of subsection (8) of this section;

(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section;

(g) A requirement that the major stationary source owner or operator shall monitor all emissions units in accordance with the provisions in subsection (12) of this section;

(h) A requirement that the owner or operator shall retain the records required under subsection (12) of this section on site. Records may be retained in an electronic format;

(i) A requirement for the owner or operator to submit, by the reports required under subsection (13) of this section by the required deadlines; and

(j) Any requirements necessary to implement and enforce the PAL.

(7) PAL effective period and reopening of a PAL permit.

(a) A PAL effective period shall be ten (10) years.

(b) The cabinet shall reopen a PAL permit to:

1. Correct typographical or calculation errors made in setting the PAL;

2. Reflect a more accurate determination of emissions used to establish the PAL;

3. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 C.F.R. 51.165(a)(3)(ii); or

4. Revise the PAL to reflect an increase in the PAL according to subsection (10) of this section.

(c) The cabinet may reopen the PAL permit, during the PAL effective period, to:

1. Reduce the PAL to reflect newly applicable federal requirements with compliance dates after the PAL effective date;

2. Reduce the PAL consistent with any other requirement:

a. That is enforceable as a practical matter; and

b. That may be imposed on the major stationary source under the SIP; and

3. Reduce the PAL if the cabinet determines that a reduction is necessary to avoid causing or contributing to:

a. A National Ambient Air Quality Standard (NAAQS) or PSD increment violation; or

b. An adverse impact on visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) All permit reopenings shall be carried out under the public participation requirements of subsection (4) of this section except for permit reopenings to correct typographical or calculation of errors that do not increase the PAL level.

(8) Expiration of a PAL. A PAL that is not renewed shall expire at the end of the PAL effective period and the requirements of this subsection shall then apply.

(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emissions limitation under a revised permit established as follows:

1. An owner or operator of a major stationary source using a PAL shall submit a proposed allowable emissions limitation for each emissions unit, or each group of emissions units, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL.

a. This proposal shall be submitted to the cabinet at least six (6) months before the expiration of the PAL permit but not sooner than eighteen (18) months before permit expiration.

b. If the PAL has not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection (9)(e) of this section, distribution of allowable emissions shall be made as if the PAL has been adjusted.

2. The cabinet shall provide the date and procedure the owner or operator shall use to distribute the PAL allowable emissions.

3. The cabinet shall issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the cabinet determines is appropriate.

(b) Each emissions unit shall comply with the allowable emissions limitation on a twelve (12) month rolling basis. The cabinet may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS if the alternate monitoring system demonstrates compliance with the allowable emissions limitation.

(c) The source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emissions limitation until the cabinet issues the revised permit incorporating allowable limits for each emissions unit or each group of emissions units.

(d) A major modification at the major stationary source shall be subject to major NSR requirements.

(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements eliminated by the PAL that applied during or before the PAL effective period, except for those emissions limitations established pursuant to Section 7(4) of this administrative regulation.

(9) Renewal of a PAL.

(a) Public participation requirements.

1. The cabinet shall follow the public participation procedures specified in subsection (4) of this section in approving a request to renew a PAL for a major stationary source.

2. The cabinet shall provide a written rationale for the proposed PAL level for public review and comment.

3. Any person may propose a PAL level for the source for consideration by the cabinet during the public review period.

(b) Application deadline.

1. A major stationary source owner or operator shall submit an application for renewal of a PAL at least six (6) months before the date of permit expiration but not earlier than eighteen (18) months before permit expiration.

2. The deadline for application submittal shall ensure that the permit shall not expire before the permit is renewed.

3. If a complete application for renewal is submitted within the timeframe specified in subparagraph 1 of this paragraph, the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) Application requirements. The application to renew a PAL permit shall contain:

1. The information required in subsection (2) of this section;

2. A proposed PAL level;

3. The sum of the potential to emit of all emissions units under the PAL with supporting documentation; and

4. Any other information the owner or operator wishes the cabinet to consider in determining the appropriate level to renew the PAL.

(d) PAL adjustment.

1. A PAL shall not exceed the source's potential to emit. The cabinet shall adjust the PAL downward to a level not greater than the potential to emit if a source's potential to emit has declined below the PAL level.

2. The cabinet may renew the PAL at the same level as the current PAL without considering the factors specified in subparagraph 3 of this section, if the emissions level calculated according to subsection (5) of this section is equal to or greater than eighty (80) percent of the PAL level; or

3. The cabinet may set the PAL at a level that is determined to be:

a. More representative of the source's baseline actual emissions; or

b. Appropriate considering the following factors:

(i) Air quality needs;

(ii) Advances in control technology;

(iii) Anticipated economic growth in the area of the source;

(iv) The cabinet's goal of promoting voluntary emissions reductions; or

(v) Other factors as specifically identified by the cabinet in its written rationale for setting the PAL level.

4. The cabinet shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection (10) of this section.

(e) The PAL shall be adjusted in conjunction with the PAL permit renewal or Title V permit renewal, whichever comes first, if:

1. The compliance date for a state or federal applicable requirement that applies to the PAL source occurs during the PAL effective period; and

2. The cabinet has not already adjusted for the requirement.

(10) Increasing a PAL during the PAL effective period. The cabinet may increase a PAL emissions limitation during the PAL effective period if the major stationary source complies with the provisions of this subsection.

(a) Application procedures. To request an increase in the PAL limit for a PAL major modification, the owner or operator of the major stationary source shall submit a complete application, which shall include:

1. Identification of the emissions units contributing to the increase in emissions for the PAL major modification;

2. Demonstration that increased PAL, as calculated in paragraph (c) of this subsection exceeds the PAL, and:

a. The level of control that results from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis when the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years.

b. If an emissions unit currently complies with BACT or LAER, the assumed control level for that emissions unit shall be equal to the current level of BACT or LAER for that emissions unit; and

3. A statement that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) NSR permit and compliance requirement. The owner or operator shall obtain a major NSR permit for all emissions units contributing to the increase in emissions for the PAL major modification.

1. A significant level shall not apply in deciding for which emissions units a major NSR permit shall be obtained; and

2. Emissions units that obtain a major NSR permit shall comply with any emissions requirements resulting from the major NSR process, even though the units shall also become subject to the PAL or shall continue to be subject to the PAL.

(c) Calculation of increased PAL. The cabinet shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the baseline actual emissions of the small emissions units.

(d) Public notice requirement. The public notice requirements of subsection (4) of this section shall be followed during PAL permit revision for an increased PAL level.

(11) Monitoring requirements for PALs.

(a) General requirements.

1. Each PAL permit shall contain enforceable requirements for the chosen monitoring system that accurately determines plant-wide emissions of the PAL pollutant in terms of mass per unit of time;

2. A monitoring system authorized for use in the PAL permit shall be:

a. Approved by the cabinet pursuant to this subsection; and

b. Based on sound science and meet generally-acceptable scientific procedures for data quality and manipulation;

3. The data generated by a monitoring system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit;

4. The PAL monitoring system shall employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in paragraph (b) of this subsection;

5. The cabinet may approve an alternative monitoring approach that meets the requirements of subparagraphs 1 to 3 of this paragraph; and

6. Failure to use a monitoring system that meets the requirements of this section shall render the PAL invalid.

(b) Minimum performance requirements for approved monitoring approaches. If conducted in accordance with the minimum requirements in paragraphs (c) to (i) of this subsection, the following shall be acceptable monitoring approaches:

1. Mass balance calculations for activities using coatings or solvents;

2. CEMS;

3. CPMS or PEMS; and

4. Emissions factors.

(c) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coatings or solvents shall:

1. Provide a demonstrated means of validating the published content of the PAL pollutant contained in or created by all materials used in or at the emissions unit;

2. If it cannot be accounted for in the process, assume that the emissions unit emits all of the PAL pollutant contained in or created by any raw material or fuel used in or at the emissions unit; and

3. If the vendor of the material or fuel from which the pollutant originates publishes a range, use the highest value of the published range of pollutant content to calculate the PAL pollutant emissions, unless the cabinet determines there is site-specific data or a site-specific monitoring program to support another pollutant content within the range.

(d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. CEMS shall comply with applicable Performance Specifications found in 40 C.F.R. Part 60, Appendix A; and

2. CEMS shall sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameter and the PAL pollutant emissions across the range of operation of the emissions unit; and

2. While the unit is operating, each CPMS or PEMS shall sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the cabinet.

(f) Emissions factors. An owner or operator using emissions factors to monitor PAL pollutant emissions shall meet the following requirements:

1. All emissions factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

2. The emissions unit shall operate within the designated range of use for the emissions factor, if applicable; and

3. The owner or operator of a significant emissions unit that relies on an emissions factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emissions factor within six (6) months of PAL permit issuance if the cabinet determines that the testing is required and technically practicable.

(g) A source owner or operator shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during any period of time there is no monitoring data, unless another method for determining emissions during the periods is specified in the PAL permit.

(h) If an owner or operator of an emissions unit cannot demon-

strate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, as an alternative to the requirements in paragraphs (c) to (g) of this subsection, in conjunction with permit issuance the cabinet shall:

1. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at operating points if a correlation cannot be demonstrated; or

2. If there is not a correlation between monitored parameters and the PAL pollutant emissions, determine that operation of the emissions unit during operating conditions is a violation of the PAL.

(i) Revalidation. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the cabinet. Validation testing shall occur at least once every five (5) years after issuance of the PAL.

(12) Recordkeeping requirements.

(a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions for five (5) years from the date of the determination.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

1. A copy of the PAL permit application and any applications for revisions to the PAL; and

2. Each annual certification of compliance pursuant to Title V and the data used to certify the compliance.

(13) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the cabinet in accordance with 401 KAR Chapter 52 that meet the following requirements:

(a) Semiannual report. The semiannual report shall be submitted to the cabinet within thirty (30) days of the end of each reporting period and shall contain:

1. The identification of owner and operator and the permit number;

2. Total annual emissions, in tpy, based on a twelve (12) month rolling total for each month in the reporting period recorded pursuant to subsection (12)(a) of this section;

3. All data used in calculating the monthly and annual PAL pollutant emissions, including any quality assurance or quality control data;

4. A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period;

5. The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and any corrective action following a deviation;

6. A notification of permanent or temporary shutdown of any monitoring system including:

a. The reason for the shutdown;

b. The anticipated date that the monitoring system shall be fully operational or shall be replaced with another monitoring system;

c. If applicable, a statement that the emissions unit monitored by the monitoring system continued to operate without the monitoring system; and

d. The calculation of the emissions of the pollutant or the number determined according to subsection (11)(g) of this section that is included in the permit; and

7. A signed statement by the responsible official, as defined by 401 KAR 51:001, Section 1(210), certifying the truth, accuracy, and completeness of the information provided in the semiannual report.

(b) Deviation report. The major stationary source owner or operator shall submit reports of any deviation or exceedance of the PAL requirements, including periods monitoring is unavailable.

1. A report submitted pursuant to 40 C.F.R. 70.6(a)(3)(iii)(B) shall satisfy this deviation reporting requirement;

2. The deviation report shall be submitted within the time limits prescribed by the applicable program implementing 40 C.F.R. 70.6(a)(3)(iii)(B);

3. The deviation report shall contain the following information:

a. The identification of the owner, the operator, and the permit

number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official, as defined by 401 KAR 51:001, Section 1(210), certifying the truth, accuracy, and completeness of the information provided in the report.

(c) Revalidation results. The owner or operator shall submit to the cabinet the results of any revalidation test or method within three (3) months after completion of the test or method.

(14) Transition requirements.

(a) After the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published at 67 Fed. Reg. 80186, December 31, 2002, the cabinet shall only issue a PAL that complies with the requirements of this section.

(b) The cabinet may supersede a PAL that was established before August 10, 2006, with a PAL that complies with the requirements of this administrative regulation.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: March 12, 2011

FILED WITH LRC: March 14, 2011 at 9 a.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Lund, Environmental Technologist II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes air quality permitting requirements for the construction or modification of major stationary sources located within, or impacting upon, areas where the national ambient air quality standards have not been demonstrated to be attained.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that the addition of stationary source emissions will not contribute significantly to Kentucky's achievement of reasonable further progress of a national ambient air quality standard for an area currently not attaining that standard. This administrative regulation provides for economic growth in a nonattainment area without impeding Kentucky's progress towards cleaner air and attainment of the applicable national ambient air quality standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the cabinet to provide for the prevention, abatement, and control of air pollution. 42 U.S.C 7503 requires air quality permits issued to sources located or impacting a nonattainment area to include provisions for the attainment of the national primary ambient air quality standards and reasonable further progress of the air quality, which are contained in this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the requirements for issuing permits to stationary sources in areas where the national ambient air quality standards have not been attained.

(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 allows emissions reductions from source shutdowns and curtailments in production or operating hours to be used as emissions offset credits for new construction projects, even if the permit application for the new construction is received after the emissions reductions have occurred. The current regulation only allows for emission offset credits if a permit application is received before a source shutdown or curtailment.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for consistency between the state regulation and corresponding federal regulation; thereby eliminating regulatory uncertainty for sources located in Kentucky. This amendment also eliminates the economic disadvantage that

sources locating in Kentucky would have compared to sources in surrounding states by allowing the use of emissions reductions resulting from shutdowns or a curtailment occurring before the permit application is filed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the Cabinet to provide for the prevention, abatement, and control of air pollution. 42 U.S.C 7503 requires that permits issued in a nonattainment area contain provisions for the attainment of the national primary ambient air quality standards and reasonable further progress of the air quality, which are contained in this administrative regulation.

(d) How the amendment will assist in the effective administration of statutes: This amendment eliminates regulatory uncertainty by amending the administrative regulation to be consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation affects individuals, businesses, organizations, and state and local governments in Kentucky that are constructing or modifying major stationary sources that are within, or that impact upon, areas where the national ambient air quality standards have not been attained. This regulation does not affect sources in Jefferson County, which is regulated under the Louisville Metro Air Pollution Control District. There are currently 6 counties in Kentucky (not including Jefferson County) classified as nonattainment for the 1997 annual particulate matter national ambient air quality standard (Boone, Boyd, Bullitt, Campbell, Kenton, a portion of Lawrence).

(4) Provide an assessment 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:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No further action by the regulated community is required to comply with this regulation amendment. This amendment allows emissions from a shutdown or curtailment that occurred prior to the filing of a new application to be used as emissions offsets.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sources may be able to take credit for emissions reductions that were not creditable prior to this amendment. This amendment also eliminates the regulatory uncertainty due to the inconsistency between state and federal law. In addition, this amendment removes the disadvantage for economic development in areas of nonattainment by allowing the use of emissions reductions as offsets for shutdowns or curtailments occurring before a permit application for a new project is filed.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation and enforcement of this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. The applicability of this administrative regulation is tiered, dependent on emission thresholds of stationary sources and the classification of ozone nonat-

tainment areas.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 7401-7626, specifically 7407(d), 7410, and 7501-7514a., provides the statutory mandate as promulgated in 40 C.F.R. 51.165.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5).

3. Minimum or uniform standards contained in the federal mandate. The federal mandate governing nonattainment New Source Review requires sources subject to this regulation to demonstrate that any construction or modification of a major stationary source will not cause a net increase in air pollution; that emissions resulting from the project will not create a delay in attainment of the national ambient air quality standards; and that the source will install and use control technology that achieves the lowest achievable emissions rate (LAER). The Clean Air Act is the federal mandate that requires states to possess a plan for the attainment of the national primary ambient air quality standards and reasonable further progress of the air quality. 40 C.F.R. 51.165 is the federal rule that provides authority for the Cabinet to establish a plan and promulgate administrative regulation requirements to ensure compliance.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation is no more stringent than the federal rule, codified in 40 C.F.R. 51.165, and no more stringent than the federal mandate established by 42 U.S.C. 7401-7626.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division for Air Quality will continue to implement and enforce the New Source Review (NSR) program. Also, state and local governments constructing or modifying a major stationary source in, or impacting upon, an area where the national ambient air quality standards have not been attained 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 224.10-100(5), 40 C.F.R. 51.165, and 42 U.S.C. 7401-7671q.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation generates no revenues.

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

(c) How much will it cost to administer this program for the first year? The cabinet's existing operating budget continues as the source of funding for the implementation of this program.

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

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, March 8, 2011)

16 KAR 5:010. Standards for accreditation of educator preparation units and approval of programs.

RELATES TO: KRS 161.028, 161.030, 164.945, 164.946, 164.947, 20 U.S.C. 1021-~~1022h~~~~(4030)~~

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel. ~~and~~ KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126 to be issued in accordance with the administrative regulations of the board. This administrative regulation establishes the standards for accreditation of an educator preparation unit and approval of a program to prepare an educator.

Section 1. Definitions. (1) "AACTE" means the American Association of Colleges for Teacher Education.

(2) "Biennial report" means the report prepared by the EPSB summarizing the institutionally-prepared annual reports for a two (2) year period.

(3) "Board of examiners" means the team who reviews an institution on behalf of NCATE or EPSB.

(4) "EPSB" means the Education Professional Standards Board.

(5) "NCATE" means the National Council for Accreditation of Teacher Education.

(6) "NCATE accreditation" means a process for assessing and enhancing academic and educational quality through voluntary peer review.

(7) "State accreditation" means recognition by the EPSB that an institution has a professional education unit that has met accreditation standards as a result of review, including an on-site team review.

Section 2. Accreditation Requirements. (1) An institution offering an educator certification program or a program leading to a rank change:

(a) Shall be accredited by the state; and

(b) May be accredited by NCATE.

(2) State accreditation shall be:

(a) A condition of offering an educator certification program or a program leading to a rank change; and

(b) Based on the national accreditation standards which include the program standards enumerated in KRS 161.028(1)(b), and which are set out in the "Professional Standards for the Accreditation of Teacher Preparation Institutions" established by NCATE. The accreditation standards shall include:

1. Standard 1 - Candidate Knowledge, Skills, and Dispositions. Candidates preparing to work in schools as teachers or other professional school personnel know and demonstrate the content, pedagogical, and professional knowledge, skills, and dispositions necessary to help all students learn. Assessments indicate that candidates meet professional, state, and institutional standards.

2. Standard 2 - Assessment System and Unit Evaluation. The unit has an assessment system that collects and analyzes data on applicant qualifications, candidate and graduate performance, and unit operations to evaluate and improve the unit and its programs.

3. Standard 3 - Field Experience and Clinical Practice. The unit and its school partners design, implement, and evaluate field experiences and clinical practice so that teacher candidates and other school personnel develop and demonstrate the knowledge, skills, and dispositions necessary to help all students learn.

4. Standard 4 - Diversity. The unit designs, implements, and evaluates curriculum and experiences for candidates to acquire and apply the knowledge, skills, and dispositions necessary to help all students learn. These experiences include working with diverse higher education and school faculty, diverse candidates, and diverse students in P-12 schools.

5. Standard 5 - Faculty Qualifications, Performance, and Development. Faculty are qualified and model best professional practices in scholarship, service, and teaching, including the assessment of their own effectiveness as related to candidate performance; they also collaborate with colleagues in the disciplines and schools. The unit systematically evaluates faculty performance and facilitates professional development.

6. Standard 6 - Unit Governance and Resources. The unit has the leadership, authority, budget, personnel, facilities, and resources including information technology resources, for the preparation of candidates to meet professional, state, and institutional standards.

(3) NCATE accreditation shall not be a condition of offering an educator certification program or a program leading to a rank change.

(4) All educator preparation institutions and programs operating in Kentucky that require licensure by the Council on Postsecondary Education under KRS 164.945, 164.946, 164.947, and 13 KAR 1:020 shall:

(a) Be accredited by the state through the EPSB under this administrative regulation as a condition of offering an educator certification program or a program leading to rank change; and

(b) Comply with the EPSB "Accreditation of Preparation Programs Procedure".

Section 3. Developmental Process for New Educator Preparation Programs. (1) New educator preparation institutions requesting approval from the EPSB to develop educator preparation programs that do not have a historical foundation from which to show the success of candidates or graduates as required under Section 9 of this administrative regulation shall follow the four (4) stage developmental process established in this section to gain temporary authority to admit candidates.

(2) Stage One.

(a) The educator preparation institution shall submit an official letter from the chief executive officer and the governing board of the institution to the EPSB for review and acceptance by the board indicating the institution's intent to begin the developmental process to establish an educator preparation program.

(b) The EPSB staff shall make a technical visit to the institution.

(c) The institution shall submit the following documentation:

1. Program descriptions required by Section 11 of this administrative regulation;

2. Continuous assessment plan required by Section 11(2) of this administrative regulation; and

3. Fulfillment of Preconditions 1, 2, 3, 5, 7, 8, and 9 established in Section 9 of this administrative regulation.

(d) The EPSB shall provide for a paper review of this documentation by the Reading Committee and the Continuous Assessment Review Committee.

(e) Following review of the documentation, EPSB staff shall make an additional technical visit to the institution.

(3) Stage Two.

(a) A board of examiners team shall make a one (1) day visit to the institution to verify the paper review.

(b) The team shall be comprised of:

1. One (1) representative from a public postsecondary institution;

2. One (1) representative from an independent postsecondary institution; and

3. One (1) representative from the Kentucky Education Association.

(c) The team shall submit a written report of its findings to the EPSB.

(d) The EPSB shall provide a copy of the written report to the institution.

(e)1. The institution may submit a written rejoinder to the report within thirty (30) working days of its receipt.

2. The rejoinder may be supplemented by materials pertinent to the conclusions found in the team's report.

(f) The Accreditation Audit Committee shall review the materials gathered during Stages One and Two and make one (1) of the following recommendations to the EPSB with regards to temporary authorization:

1. Approval;
2. Approval with conditions; or
3. Denial of approval.

(4) Stage Three.

(a) The EPSB shall review the materials and recommendations from the Accreditation Audit Committee and make one (1) of the following determinations with regards to temporary authorization:

1. Approval;
2. Approval with conditions; or
3. Denial of approval.

(b) An institution receiving approval or approval with conditions shall:

1. Hold this temporary authorization for two (2) years; and
2. Continue the developmental process and the first accreditation process established in this administrative regulation.

(c) An institution denied temporary authorization may reapply.

(d) During the two (2) year period of temporary authorization, the institution shall:

1. Admit candidates;
2. Monitor, evaluate, and assess the academic and professional competency of candidates; and
3. Report regularly to the EPSB on the institution's progress.

(e) During the two (2) year period of temporary authorization, the EPSB:

1. May schedule additional technical visits; and
2. Shall monitor progress by paper review of annual reports, admission and exit data, and trend data.

(5) Stage Four.

(a) The institution shall host a first accreditation visit within two (2) years of the approval or approval with conditions of temporary authorization.

(b) All further accreditation activities shall be governed by Section 9 of this administrative regulation.

Section 4. Schedule and Communications. (1) The EPSB shall send an accreditation and program approval schedule to each educator preparation institution no later than August 1 of each year. The first accreditation cycle shall provide for an on-site continuing accreditation visit at a five (5) year interval. The regular accreditation cycle shall provide for an on-site continuing accreditation visit at a seven (7) year interval.

(2) The accreditation and program approval schedule shall be directed to the official designated by the institution as the head of the educator preparation unit with a copy to the president. The head of the educator preparation unit shall disseminate the information to administrative units within the institution, including the appropriate college, school, department, and office.

(3) The EPSB shall annually place a two (2) year schedule of on-site accreditation visits for a Kentucky institution in the agenda materials and minutes of an EPSB business meeting.

(4) The EPSB shall coordinate dates for a joint state and NCATE accreditation on-site visit.

(5) At least six (6) months prior to a scheduled on-site visit, an institution seeking NCATE or state accreditation shall give public notice of the upcoming visit.

(6) The governance unit for educator preparation shall be responsible for the preparation necessary to comply with the requirements for timely submission of materials for accreditation and program approval as established in this administrative regulation.

Section 5. Annual Reports. (1)(a) Each institution shall report annually to the EPSB to provide data about:

1. Faculty and students in each approved program;
2. Progress made in addressing areas for improvement identified by its last accreditation evaluation; and
3. Major program developments in each NCATE standard.

(b)1. An institution seeking accreditation from NCATE and EPSB shall complete the Professional Educator Data System (PEDS) sponsored by AACTE and NCATE and located online at <http://www.aacte.org>. After the PEDS is submitted electronically, the institution shall print a copy of the completed report and mail it to the EPSB at 100 Airport Road, Frankfort, Kentucky 40601.

2. An institution seeking state-only accreditation shall complete the Annual State-Only Institutional Data Report online at <http://www.kyepsb.net/teacherprep/index.asp> and submit it electronically to the division contact through the EPSB Web site.

(2)(a) The EPSB shall review each institution's annual report to monitor the capacity of a unit to continue a program of high quality.

(b) The EPSB may pursue action against the unit based on data received in this report.

(3) The Accreditation Audit Committee shall submit a biennial report, based on data submitted in the annual reports, to the unit head in preparation for an on-site accreditation visit.

Section 6. Content Program Review Committee. (1)(a) The EPSB shall appoint and train a content program review committee in each of the certificate areas to provide content area expertise to EPSB staff and the Reading Committee.

(b) Nominations for the content program review committees shall be solicited from the education constituent groups listed in Section 13 of this administrative regulation.

(2)(a) A content program review committee shall review an educator preparation program to establish congruence of the program with standards of nationally-recognized specialty program associations and appropriate state performance standards.

(b) A content program review committee shall examine program content and faculty expertise.

(3) A content program review committee shall submit written comments to EPSB staff and the Reading Committee for use in the program approval process.

(4) A content program review committee shall not make any determination or decision regarding the approval or denial of a program.

Section 7. Continuous Assessment Review Committee. (1) The EPSB shall appoint and train a Continuous Assessment Review Committee to be comprised of P-12 and postsecondary faculty who have special expertise in the field of assessment.

(2) The Continuous Assessment Review Committee shall conduct a preliminary review of each institution's continuous assessment plan.

(3) The Continuous Assessment Review Committee shall meet in the spring and fall semesters of each year to analyze the continuous assessment plan for those institutions that are within one (1) year of their on-site visit.

(4) The Continuous Assessment Review Committee shall provide technical assistance to requesting institutions in the design, development, and implementation of the continuous assessment plan.

Section 8. Reading Committee. (1) The EPSB shall appoint and train a Reading Committee representative of the constituent groups to the EPSB.

(2) The Reading Committee shall conduct a preliminary review of accreditation materials, annual reports, and program review documents from an educator preparation institution for adequacy, timeliness, and conformity with the corresponding standards.

(3) For first accreditation, the Reading Committee shall:

(a) Review the preconditions documents prepared by the institution; and

(b) Send to the EPSB a preconditions report indicating whether a precondition has been satisfied by documentation. If a precondition has not been met, the institution shall be asked to revise or send additional documentation. A preconditions report stating that

the preconditions have been met shall be inserted into the first section of the institutional report.

(4) For continuing accreditation and program approval, the Reading Committee shall:

- (a) Determine that a submitted material meets requirements;
 - (b) Ask that EPSB staff resolve with the institution a discrepancy or omission in the report or program;
 - (c) Refer an unresolved discrepancy or omission to the on-site accreditation team for resolution; or
 - (d) Recommend that the evaluation and approval process be terminated as a result of a severe deficiency in the submitted material.
- (5) The EPSB shall discuss a recommendation for termination with the originating institution. The institution may submit a written response which shall be presented, with the Reading Committee comments and written accreditation and program, by EPSB staff for recommendation to the full EPSB.

Section 9. Preconditions for First Unit Accreditation. (1) Eighteen (18) months prior to the scheduled on-site visit of the evaluation team, the educator preparation institution shall submit information to the EPSB, and to NCATE if appropriate, documenting the fulfillment of the preconditions for the accreditation of the educator preparation unit, as established in subsection (2) of this section.

(2) As a precondition for experiencing an on-site first evaluation for educator preparation, the institution shall present documentation to show that the following conditions are satisfied:

(a) Precondition Number 1. The institution recognizes and identifies a professional education unit that has responsibility and authority for the preparation of teachers and other professional education personnel. Required documentation shall include:

- 1. A letter from the institution's chief executive officer that designates the unit as having primary authority and responsibility for professional education programs;
- 2. A chart or narrative that lists all professional education programs offered by the institution, including any nontraditional and alternative programs. The chart or narrative report shall depict:
 - a. The degree or award levels for each program;
 - b. The administrative location for each program; and
 - c. The structure or structures through which the unit implements its oversight of all programs;
- 3. If the unit's offerings include off-campus programs, a separate chart or narrative as described in subparagraph 2 of this paragraph, prepared for each location at which off-campus programs are geographically located; and
- 4. An organizational chart of the institution that depicts the professional education unit and indicates the unit's relationship to other administrative units within the college or university.

(b) Precondition Number 2. A dean, director, or chair is officially designated as head of the unit and is assigned the authority and responsibility for its overall administration and operation. The institution shall submit a job description for the head of the professional education unit.

(c) Precondition Number 3. Written policies and procedures guide the operations of the unit. Required documentation shall include cover page and table of contents for codified policies, by-laws, procedures, and student handbooks.

(d) Precondition Number 4. The unit has a well-developed conceptual framework that establishes the shared vision for a unit's efforts in preparing educators to work in P-12 schools and provides direction for programs, courses, teaching, candidate performance, scholarship, service, and unit accountability. Required documentation shall include:

- 1. The vision and mission of the institution and the unit;
- 2. The unit's philosophy, purposes, and goals;
- 3. Knowledge bases including theories, research, the wisdom of practice, and education policies, that inform the unit's conceptual framework;
- 4. Candidate proficiencies aligned with the expectations in professional, state, and institutional standards; and
- 5. A description of the system by which the candidate proficiencies described are regularly assessed.

(e) Precondition Number 5. The unit regularly monitors and evaluates its operations, the quality of its offerings, the perfor-

mance of candidates, and the effectiveness of its graduates. Required documentation shall include a description of the unit's assessment and data collection systems that support unit responses to Standards 1 and 2 established in Section 2(2)(b)1 and 2 of this administrative regulation.

(f) Precondition Number 6. The unit has published criteria for admission to and exit from all initial teacher preparation and advanced programs and can provide summary reports of candidate performance at exit. Required documentation shall include:

- 1. A photocopy of published documentation (e.g., from a catalog, student teaching handbook, application form, or Web page) listing the basic requirements for entry to, retention in, and completion of professional education programs offered by the institution, including any nontraditional, alternative or off-campus programs; and

2. A brief summary of candidate performance on assessments conducted for admission into programs and exit from them. This summary shall include:

- a. The portion of Title II documentation related to candidate admission and completion that was prepared for the state; and
- b. A compilation of results on the unit's own assessments.

(g) Precondition Number 7. The unit's programs are approved by the appropriate state agency or agencies and the unit's summary pass rate meets or exceeds the required state pass rate of eighty (80) percent. Required documentation shall include:

- 1. The most recent approval letters from the EPSB and CPE, including or appended by a list of approved programs. If any program is not approved, the unit shall provide a statement that it is not currently accepting new applicants into the nonapproved program or programs. For programs that are approved with qualifications or are pending approval, the unit shall describe how it will bring the program or programs into compliance; and
- 2. Documentation submitted to the state for Title II, indicating that the unit's summary pass rate on state licensure examinations meets or exceeds the required state pass rate of eighty (80) percent. If the required state pass rate is not evident on this documentation, it shall be provided on a separate page.

(h) Precondition Number 8. If the institution has chosen to pursue dual accreditation from both the state and NCATE and receive national recognition for a program or programs, the institution shall submit its programs for both state and national review.

(i) Precondition Number 9. The institution is accredited, without probation or an equivalent status, by the appropriate regional institutional accrediting agency recognized by the U.S. Department of Education. Required documentation shall include a copy of the current regional accreditation letter or report that indicates institutional accreditation status.

Section 10. Institutional Report. (1) For a first accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a written narrative describing the unit's conceptual framework and evidence that demonstrates the six (6) standards are met. The written narrative may be supplemented by a chart, graph, diagram, table, or other similar means of presenting information. The institutional report, including appendices, shall not exceed 100 pages in length. The report shall be submitted to the EPSB and to NCATE, if appropriate.

(2) For a continuing accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a report not to exceed 100 pages addressing changes at the institution that have occurred since the last accreditation visit, a description of the unit's conceptual framework, and evidence that demonstrates that the six (6) standards are met. The narrative shall describe how changes relate to an accreditation standard and the results of the continuous assessment process, including program evaluation. The report shall be submitted to the EPSB and to NCATE, if appropriate.

Section 11. Program Review Documents. Eighteen (18) months for first accreditation and twelve (12) months for continuing accreditation in advance of the scheduled on-site evaluation visit, the educator preparation unit shall prepare and submit to the EPSB for each separate program of educator preparation for which the institution is seeking approval a concise description which shall

provide the following information:

(1) The unit's conceptual framework for the preparation of school personnel which includes:

(a) The mission of the institution and unit;
(b) The unit's philosophy, purposes, professional commitments, and dispositions;

(c) Knowledge bases, including theories, research, the wisdom of practice, and education policies;

(d) Performance expectations for candidates, aligning the expectations with professional, state, and institutional standards; and

(e) The system by which candidate performance is regularly assessed;

(2) The unit's continuous assessment plan that provides:

(a) An overview of how the unit will implement continuous assessment to assure support and integration of the unit's conceptual framework;

(b) Each candidate's mastery of content prior to exit from the program, incorporating the assessment of the appropriate performance standards;

(c) Assessment of the program that includes specific procedures used to provide feedback and make recommendations to the program and unit; and

(d) A monitoring plan for candidates from admission to exit;

(3) Program experiences including the relationship among the program's courses and experiences, content standards of the relevant national specialty program associations (e.g., National Council of Teachers of Mathematics, National Council for the Social Studies, The Council for Exceptional Children, North American Association for Environmental Education, etc.), student academic expectations as established in 703 KAR 4:060, and relevant state performance standards established in 16 KAR 1:010 or incorporated by reference into this administrative regulation including:

(a) NCATE Unit Standards established in Section 2(2)(b) of this administrative regulation;

(b) Kentucky's Safety Educator Standards for Preparation and Certification;

(c) National Association of School Psychologists, Standards for School Psychology Training Programs, Field Placement Programs, Credentialing Standards; and

(d) Kentucky's Standards for Guidance Counseling Programs;

(4)(a) Identification of how the program integrates the unit's continuous assessment to assure each candidate's mastery, prior to exit from the program, of content of the academic discipline, and state performance standards as established in 16 KAR 1:010; and

(b) Identification of how the program utilizes performance assessment to assure that each candidate's professional growth is consistent with the Kentucky Teacher Standards as established in 16 KAR 1:010;

(5) A list of faculty responsible for and involved with the conduct of the specific program, along with the highest degree of each, responsibilities for the program, and status of employment within the unit and the university; and

(6) A curriculum guide sheet or contract provided to each candidate before or at the time of admittance to the program.

Section 12. Teacher Leader Master's Programs and Planned Fifth-Year Programs for Rank II. (1) All master's programs for rank change or planned fifth-year program for Rank II approved or accredited by the EPSB prior to May 31, 2008 shall no longer be approved or accredited as of December 31, 2010.

(a) Master's programs for initial certification shall be exempt from the requirements of this section.

(b) A master's program or planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 shall cease admitting new candidates after December 31, 2010.

(c) Candidates admitted to a master's program or planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 shall complete the program by January 31, 2013.

(d) An institution of higher learning with a master's program or a planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 may submit a redesigned program for approval pursuant to the requirements of subsection (2) of this section beginning May 31, 2008.

(e) An institution may become operational beginning January

1, 2009, if the institution:

1. Submits a redesigned master's program or a planned fifth-year program for Rank II for review pursuant to the requirements of subsection (2) of this section; and

2. Receives approval of the redesigned program by the EPSB pursuant to Section 22 of this administrative regulation.

~~(f) [Institutions submitting a redesigned master's program or planned fifth-year program for Rank II shall not be subject to any submission dates for program approval until December 31, 2010.]~~

~~(g)]~~1. The EPSB shall appoint a Master's Redesign Review Committee to conduct reviews of redesigned master's programs and planned fifth-year programs for Rank II submitted for approval ~~after [between] May 31, 2008 [and December 31, 2010].~~

2. A master's program or a planned fifth-year program for Rank II submitted for approval ~~after [between] May 31, 2008 [and December 31, 2010]~~ shall not be reviewed by the Continuous Assessment Review Committee, Content Program Review Committee, or the Reading Committee prior to presentation to the EPSB pursuant to Section 22(2) of this administrative regulation, but shall be reviewed by the Master's Redesign Review Committee.

3.a. After review of a master's program or planned fifth-year program for Rank II, the Master's Redesign Review Committee shall issue one (1) of the following recommendations to the Educational Professional Standards Board:

- i. Approval;
- ii. Approval with conditions; or
- iii. Denial of approval.

b. The EPSB shall consider recommendations from staff and the Master's Redesign Review Committee and shall issue a decision pursuant to Section 22(4) of this administrative regulation.

(2) Beginning May 31, 2008, the educator preparation unit shall prepare and submit to the EPSB for each separate master's program or planned fifth-year program for Rank II for which the institution is seeking approval a concise description which shall provide the following information:

(a) Program design components which shall include the following descriptions and documentation of:

1. The unit's plan to collaborate with school districts to design courses, professional development, and job-embedded professional experiences that involve teachers at the elementary, middle, and secondary levels;

2. The unit's collaboration plan with the institution's Arts and Science faculty to meet the academic and course accessibility needs of candidates;

3. The unit's process to individualize a program to meet the candidate's professional growth or improvement plan;

4. The unit's method to incorporate interpretation and analysis of annual P-12 student achievement data into the program; and

5. The institution's plan to facilitate direct service to the collaborating school districts by education faculty members;~~]-]~~

(b) Program curriculum that shall include core component courses designed to prepare candidates to:

1. Be leaders in their schools and districts;
2. Evaluate high-quality research on student learning and college readiness;

3. Deliver differentiated instruction for P-12 students based on continuous assessment of student learning and classroom management;

4. Gain expertise in content knowledge, as applicable;

5. Incorporate reflections that inform best practice in preparing P-12 students for postsecondary opportunities;

6. Support P-12 student achievement in diverse settings;

7. Enhance instructional design utilizing the Program of Studies, Core Content for Assessment, and college readiness standards;

8. Provide evidence of candidate mastery of Kentucky Teacher Standards utilizing advanced level performances and Specialized Professional Associations (SPA) Standards if applicable; and

9. Design and conduct professionally relevant research projects; and

(c) The unit's continuous assessment plan that includes, in addition to the requirements of Section 11(2) of this administrative regulation:

1. Instruments to document and evaluate candidate ability to

demonstrate impact on P-12 student learning;

2. Clinical experiences and performance activities; and

3. A description of a culminating performance-based assessment.

(3)(a) A master's program for rank change approved pursuant to this section shall be known as a Teacher Leader Master's Program.

(b) Upon completion of a Teacher Leader Master's Program and recommendation of the institution, a candidate may apply to the EPSB for a Teacher Leader endorsement.

(c)1. An institution with an approved Teacher Leader Master's Program may establish an endorsement program of teacher leadership coursework for any candidate who received a Master's degree at an out of state institution or who received a master's degree from a Kentucky program approved prior to May 31, 2008.

2. Upon completion of the teacher leadership course work and recommendation of the institution, a candidate who has received a master's degree at an out of state institution or a master's degree from a Kentucky program approved prior to May 31, 2008, may apply to the EPSB for a Teacher Leader endorsement.

Section 13. Board of Examiners. (1) A Board of Examiners shall:

(a) Be recruited and appointed by the EPSB. The board shall be comprised of an equal number of representatives from three (3) constituent groups:

1. Teacher educators;
2. P-12 teachers and administrators; and
3. State and local policymaker groups; and

(b) Include at least thirty-six (36) members representing the following constituencies:—

1. Kentucky Education Association, at least ten (10) members;
2. Kentucky Association of Colleges of Teacher Education, at least ten (10) members; and
3. At least ten (10) members nominated by as many of the following groups as may wish to submit a nomination:
 - a. Kentucky Association of School Administrators;
 - b. Persons holding positions in occupational education;
 - c. Kentucky Branch National Congress of Parents and Teachers;
 - d. Kentucky School Boards Association;
 - e. Kentucky Association of School Councils;
 - f. Kentucky Board of Education;
 - g. Kentucky affiliation of a national specialty program association;
 - h. Prichard Committee for Academic Excellence;
 - i. Partnership for Kentucky Schools; and
 - j. Subject area specialists in the Kentucky Department of Education.

(2) An appointment shall be for a period of four (4) years. A member may serve an additional term if renominated and reappointed in the manner prescribed for membership. A vacancy shall be filled by the EPSB as it occurs.

(3) A member of the Board of Examiners and a staff member of the EPSB responsible for educator preparation and approval of an educator preparation program shall be trained by NCATE or trained in an NCATE-approved state program.

(4) The EPSB shall select and appoint for each scheduled on-site accreditation a team of examiners giving consideration to the number and type of programs offered by the institution. Team appointments shall be made at the beginning of the academic year for each scheduled evaluation visit. A replacement shall be made as needed.

(5) For an institution seeking NCATE accreditation, the EPSB and NCATE shall arrange for the joint Board of Examiners to **co-chaired** be ~~cochaired~~ by an NCATE appointed team member and a state team chair appointed by the EPSB.

(a) The joint Board of Examiners shall be composed of a majority of NCATE appointees in the following proportions, respectively: NCATE and state - six (6) and five (5), five (5) and four (4), four (4) and three (3), three (3) and two (2).

(b) The size of the Board of Examiners shall depend upon the size of the institution and the number of programs to be evaluated.

(6) For an institution seeking state-only accreditation, the

EPSB shall appoint a chair from a pool of trained Board of Examiners members.

(7) For state-only accreditation, the Board of Examiners shall have six (6) members.

(8) The EPSB shall make arrangements for the release time of a Board of Examiner member from his **or her** place of employment for an accreditation visit.

Section 14. Assembly of Records and Files for the Evaluation Team. For convenient access, the institution shall assemble, or make available, records and files of written materials which supplement the institutional report and which may serve as further documentation. The records and files shall include:

- (1) The faculty handbook;
- (2) Agenda, list of participants, and products of a meeting, workshop, or training session related to a curriculum and governance group impacting professional education;
- (3) Faculty vitae or resumes;
- (4) A random sample of graduates' transcripts;
- (5) Conceptual framework documents;
- (6) A curriculum program, rejoinder, or specialty group response that was submitted as a part of the program review process;
- (7) Course syllabi;
- (8) Policies, criteria, and student records related to admission and retention;
- (9) Samples of students' portfolios and other performance assessments;
- (10) Record of performance assessments of candidate progress and summary of results including a program change based on continuous assessment;
- (11) Student evaluations, including student teaching and internship performance; and
- (12) Data on performance of graduates, including results of state licensing examinations and job placement rates.

Section 15. Previsit to the Institution. No later than one (1) month prior to the scheduled on-site evaluation visit, the EPSB shall conduct a previsit to the institution to make a final review of the arrangements. For an NCATE-accredited institution, the previsit shall be coordinated with NCATE.

Section 16. On-site Accreditation Visit. (1) At least one (1) staff member of the EPSB shall be assigned as support staff and liaison during the accreditation visit.

(2) The educator preparation institution shall reimburse a state team member for travel, lodging, and meals in accordance with 200 KAR 2:006. A team member representing NCATE shall be reimbursed by the educator preparation institution.

(3) The evaluation team shall conduct an on-site evaluation of the self-study materials prepared by the institution and seek out additional information, as needed, to make a determination as to whether the standards were met for the accreditation of the institution's educator preparation unit and for the approval of an individual educator preparation program. The evaluation team shall make use of the analyses prepared through the preliminary review process.

(4)(a) An off-campus site which offers a self-standing program shall require a team review. If additional team time is required for visiting an off-campus site, the team chair, the institution, and the EPSB shall negotiate special arrangements.

- (b) Off-campus programs shall be:
1. Considered as part of the unit and the unit shall be accredited, not the off-campus programs; and
 2. Approved in accordance with Section 28 of this administrative regulation.

(5) In a joint team, all Board of Examiners members shall vote on whether the educator preparation institution has met the six (6) NCATE standards. A determination about each standard shall be limited to the following options:

- (a) Met;
 - (b) Met, with one (1) or more defined areas for improvement; or
 - (c) Not met.
- (6)(a) The Board of Examiners shall review each program and

cite the areas for improvement for each, if applicable.

(b) The Board of Examiners shall define the areas for improvement in its report.

(7) The processes established in subsections (5) and (6) of this section shall be the same for first and continuing accreditation.

(8) The on-site evaluation process shall end with a brief oral report:

(a) By the NCATE team chair and state team chair for a joint state/NCATE visit; or

(b) By the state team chair for a state-only visit.

Section 17. Preparation and Distribution of the Evaluation Report. (1) For a state-only visit, the evaluation report shall be prepared and distributed as **required by this subsection.[follows:]**

(a) The EPSB staff shall collect the written evaluation pages from each Board of Examiners member before leaving the institution.

(b) The first draft shall be typed and distributed to Board of Examiners members.

(c) A revision shall be consolidated by the Board of Examiners chair who shall send the next draft to the unit head to review for factual accuracy.

(d) The unit head shall submit written notification to the EPSB confirming receipt of the draft.

(e) The unit head shall submit to the EPSB and Board of Examiners chair within ten (10) working days either:

1. A written correction to the factual information contained in the report; or

2. Written notification that the unit head has reviewed the draft and found no factual errors.

(f) The Board of Examiners chair shall submit the final report to the EPSB and a copy to each member of the Board of Examiners.

(g) The final report shall be printed by the EPSB and sent to the institution and to the Board of Examiners members within thirty (30) to sixty (60) working days of the conclusion of the on-site visit.

(2) For a joint state/NCATE visit, the evaluation report shall be prepared and distributed as required by this subsection.[:]

(a) The NCATE chair shall be responsible for the preparation, editing and corrections to the NCATE report.

(b) The state chair shall be responsible for the preparation, editing and corrections of the state report in the same manner established in subsection (1) of this section for a state-only visit.

(c) The EPSB Board of Examiners report for state/NCATE continuing accreditation visits shall be prepared in accordance with the format prescribed by NCATE for State/NCATE accreditation visits and available on its Web site at <http://www.ncate.org/boe/boeResources.asp>.

Section 18. Institutional Response to the Evaluation Report.

(1)(a) The institution shall acknowledge receipt of the evaluation report within thirty (30) working days of receipt of the report.

(b) If desired, the institution shall submit within thirty (30) working days of receipt of the report a written rejoinder to the report which may be supplemented by materials pertinent to a conclusion found in the evaluation report.

(c) The rejoinder and the Board of Examiners report shall be the primary documents reviewed by the Accreditation Audit Committee and EPSB.

(d) An unmet standard or area of improvement statement cited by the team may be recommended for change or removal by the Accreditation Audit Committee or by the EPSB because of evidence presented in the rejoinder. The Accreditation Audit Committee or the EPSB shall not be bound by the Board of Examiners decision and may reach a conclusion different from the Board of Examiners or NCATE.

(2) If a follow-up report is prescribed through accreditation with conditions, the institution shall follow the instructions that are provided with the follow-up report.

(3) If the institution chooses to appeal a part of the evaluation results, the procedure established in Section 24 of this administrative regulation shall be followed.

(4) The institution shall make an annual report relating to the unit for educator preparation and relating to the programs of preparation as required by Section 5 of this administrative regulation.

Section 19. Accreditation Audit Committee. (1) The Accreditation Audit Committee shall be a committee of the EPSB, and shall report to the full EPSB. The EPSB shall appoint the Accreditation Audit Committee as follows:

(a) One (1) lay member;

(b) Two (2) classroom teachers, appointed from nominees provided by the Kentucky Education Association;

(c) Two (2) teacher education representatives, one (1) from a state-supported institution and one (1) from an independent educator preparation institution, appointed from nominees provided by the Kentucky Association of Colleges for Teacher Education; and

(d) Two (2) school administrators appointed from nominees provided by the Kentucky Association of School Administrators.

(2) The chairperson of the EPSB shall designate a member of the Accreditation Audit Committee to serve as its chairperson.

(3) An appointment shall be for a period of four (4) years except that three (3) of the initial appointments shall be for a two (2) year term. A member may serve an additional term if renominated and reappointed in the manner established for membership. A vacancy shall be filled as it occurs in a manner consistent with the provisions for initial appointment.

(4) A member of the Accreditation Audit Committee shall be trained by NCATE or in NCATE-approved training.

(5) Following an on-site accreditation visit, the Accreditation Audit Committee shall review the reports and materials constituting an institutional self-study, the report of the evaluation team, and the institutional response to the evaluation report. The committee shall then prepare a recommendation for consideration by the EPSB.

(a) The committee shall review procedures of the Board of Examiners to determine whether approved accreditation guidelines were followed.

(b) For each institution, the committee shall make a recommendation with respect to the accreditation of the institutional unit for educator preparation as well as for approval of the individual programs of preparation.

(c) For first accreditation, one (1) of four (4) recommendations shall be made:

1. Accreditation;
2. Provisional accreditation;
3. Denial of accreditation; or
4. Revocation of accreditation.

(d) For regular continuing accreditation, one (1) of four (4) recommendations shall be made:

1. Accreditation;
2. Accreditation with conditions;
3. Accreditation with probation; or
4. Revocation of accreditation.

(6) For both first and continuing accreditation, the Accreditation Audit Committee shall review each program report including a report from the Reading Committee, Board of Examiners team, and institutional response and shall make one (1) of three (3) recommendations for each individual preparation program to the EPSB:

- (a) Approval;
- (b) Approval with conditions; or
- (c) Denial of approval.

(7) The Board of Examiners Team Chair may write a separate response to the recommendation of the Accreditation Audit Committee's if the Accreditation Audit Committee decision differs from the Board of Examiners' evaluation report.

(8) The Accreditation Audit Committee shall compile accreditation data and information for each Kentucky institution that prepares school personnel. It shall prepare for the EPSB reports and recommendations regarding accreditation standards and procedures as needed to improve the accreditation process and the preparation of school personnel.

Section 20. Official State Accreditation Action by the Education Professional Standards Board. (1) A recommendation from the Accreditation Audit Committee shall be presented to the full EPSB.

(2) The EPSB shall consider the findings and recommendations of the Accreditation Audit Committee and make a final determination regarding the state accreditation of the educator preparation unit.

(3) Decision options following a first accreditation visit shall be "accreditation", "provisional accreditation", "denial of accreditation", or "revocation of accreditation".~~[include:]~~

(a) Accreditation.

1. This accreditation decision indicates that the unit meets each of the six (6) NCATE standards for unit accreditation. Areas for improvement may be cited, indicating problems warranting the institution's attention. In its subsequent annual reports, the professional education unit shall be expected to describe progress made in addressing the areas for improvement cited in the EPSB's action report.

2. The next on-site visit shall be scheduled five (5) years following the semester of the visit.~~[:]~~

(b) Provisional accreditation.

1. This accreditation decision indicates that the unit has not met one (1) or more of the NCATE standards. The unit has accredited status but shall satisfy provisions by meeting each previously-unmet standard. EPSB shall require submission of documentation that addresses the unmet standard or standards within six (6) months of the accreditation decision, or shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the provisional accreditation decision was granted. If the EPSB decides to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two (2) years. Following the focused visit, the EPSB shall decide to:

- a. Accredite; or
- b. Revoke accreditation.

2. If the unit is accredited, the next on-site visit shall be scheduled for five (5) years following the semester of the first accreditation visit.~~[:]~~

(c) Denial of accreditation. This accreditation decision indicates that the unit does not meet one (1) or more of the NCATE standards, and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates.~~[:]~~~~[or]~~

(d) Revocation of accreditation. This accreditation decision indicates that the unit has not sufficiently addressed the unmet standard or standards following a focused visit.

(4) Decision options following a continuing accreditation visit shall be "accreditation", "accreditation with conditions", "accreditation with probation", or "revocation of accreditation".~~[include:]~~

(a) Accreditation.

1. This accreditation decision indicates that the unit meets each of the six (6) NCATE standards for unit accreditation. Areas for improvement may be cited, indicating problems warranting the institution's attention. In its subsequent annual reports, the professional education unit shall be expected to describe progress made in addressing the areas for improvement cited in EPSB's action report.

2. The next on-site visit shall be scheduled for seven (7) years following the semester of the visit.~~[:]~~

(b) Accreditation with conditions.

1. This accreditation decision indicates that the unit has not met one (1) or more of the NCATE standards. If the EPSB renders this decision, the unit shall maintain its accredited status, but shall satisfy conditions by meeting previously unmet standards. EPSB shall require submission of documentation that addresses the unmet standard or standards within six (6) months of the decision to accredit with conditions, or shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the accreditation with conditions decision was granted. If the EPSB decides to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two (2) years. Following the focused visit, the EPSB shall decide to:

- a. Continue accreditation; or
- b. Revoke accreditation.

2. If the EPSB renders the decision to continue accreditation, the next on-site visit shall be scheduled for seven (7) years following the semester in which the continuing accreditation visit occurred.~~[:]~~

(c) Accreditation with probation.

1. This accreditation decision indicates that the unit has not

met one (1) or more of the NCATE standards and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates. As a result of the continuing accreditation review, the EPSB has determined that areas for improvement with respect to standards may place an institution's accreditation in jeopardy if left uncorrected. The institution shall schedule an on-site visit within two (2) years of the semester in which the probationary decision was rendered. This visit shall mirror the process for first accreditation. The unit as part of this visit shall address all NCATE standards in effect at the time of the probationary review at the two (2) year point. Following the on-site review, the EPSB shall decide to:

- a. Continue accreditation; or
- b. Revoke accreditation.

2. If accreditation is continued, the next on-site visit shall be scheduled for five (5) years after the semester of the probationary visit.~~[:]~~~~[or]~~

(d) Revocation of accreditation. Following a comprehensive site visit that occurs as a result of an EPSB decision to accredit with probation or to accredit with conditions, this accreditation decision indicates that the unit does not meet one (1) or more of the NCATE standards, and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates. Accreditation shall be revoked if the unit:

1. No longer meets preconditions to accreditation, such as loss of state approval or regional accreditation;
2. Misrepresents its accreditation status to the public;
3. Falsely reports data or plagiarized information submitted for accreditation purposes; or
4. Fails to submit annual reports or other documents required for accreditation.

(5) Notification of EPSB action to revoke continuing accreditation or deny first accreditation, including failure to remove conditions, shall include notice that:

(a) The institution shall inform students currently admitted to a certification or rank program of the following:

1. A student recommended for certification or advancement in rank within the twelve (12) months immediately following the denial or revocation of state accreditation and who applies to the EPSB within the fifteen (15) months immediately following the denial or revocation of state accreditation shall receive the certificate or advancement in rank; and

2. A student who does not meet the criteria established in subparagraph 1 of this paragraph shall transfer to a state accredited education preparation unit in order to receive the certificate or advancement in rank; and

(b) An institution for which the EPSB has denied or revoked accreditation shall seek state accreditation through completion of the first accreditation process. The on-site accreditation visit shall be scheduled by the EPSB no earlier than two (2) years following the EPSB action to revoke or deny state accreditation.

Section 21. Revocation for Cause. (1) If an area of concern or an allegation of misconduct arises in between accreditation visits, staff shall bring a complaint to the EPSB for initial review.

(2) After review of the allegations in the complaint, the EPSB may refer the matter to the Accreditation Audit Committee for further investigation.

(3)(a) Notice of the EPSB's decision to refer ~~[to]~~ the matter and the complaint shall be sent to the institution.

(b) Within thirty (30) days of receipt of the complaint, the institution shall respond to the allegations in writing and provide evidence pertaining to the allegations in the complaint to the EPSB.

(4)(a) The Accreditation Audit Committee shall review any evidence supporting the allegations and any information provided by the institution.

(b) Upon completion of the review, the Accreditation Audit Committee shall issue a report containing one (1) of the following four (4) recommendations to the EPSB:

1. Accreditation;
2. Accreditation with conditions;
3. Accreditation with probation; or
4. Revocation of accreditation.

(5) The institution shall receive a copy of the Accreditation

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Audit Committee's report and may file a response to the Accreditation Audit Committee's recommendation.

(6)(a) The recommendation from the Accreditation Audit Committee and the institution's response shall be presented to the EPSB.

(b) The EPSB shall consider the findings and recommendations of the Accreditation Audit Committee and make a final determination regarding the accreditation of the educator preparation unit.

Section 22. Program Approval Action Outside the First or Regular Continuing Accreditation Cycle. (1) Approval of a program shall be through the program process established in Section 11 of this administrative regulation except that a new program not submitted during the regular accreditation cycle or a program substantially revised since submission during the accreditation process shall be submitted for approval by the EPSB prior to admission of a student to the program.

(2) For a new or substantially revised program, the EPSB shall consider a recommendation by staff, including review by the Continuous Assessment Review Committee, Content Program Review Committee, and the Reading Committee.

(3) A recommendation made pursuant to subsection (2) of this section shall be presented to the full EPSB.

(4) Program approval decision options shall be:

(a) Approval, with the next review scheduled during the regular accreditation cycle unless a subsequent substantial revision is made;

(b) Approval with conditions, with a maximum of one (1) year probationary extension for correction of a specified problem to be documented through written materials or through an on-site visit. At the end of the extension, the EPSB shall decide that the documentation supports:

1. Approval; or
2. Denial of approval; or

(c) Denial of approval, indicating that a serious problem exists which jeopardizes the quality of preparation of school personnel.

(5) The EPSB shall order a review of a program if it has cause to believe that the quality of preparation is seriously jeopardized. The review shall be conducted under the criteria and procedures established in the EPSB "Emergency Review of Certification Programs Procedure" policy incorporated by reference. The on-site review shall be conducted by EPSB staff and a Board of Examiners team. The review shall result in a report to which the institution may respond. The review report and institutional response shall be used by the Executive Director of the EPSB as the basis for a recommendation to the full EPSB for:

- (a) Approval;
- (b) Approval with conditions; or
- (c) Denial of approval for the program.

(6) If the EPSB denies approval of a program, the institution shall notify each student currently admitted to that program of the EPSB action. The notice shall include the following information:

(a) A student recommended for certification or advancement in rank within the twelve (12) months immediately following the denial of state approval and who applies to the EPSB within the fifteen (15) months immediately following the denial of state approval shall receive the certification or advancement in rank; and

(b) A student who does not meet the criteria established in paragraph (a) of this subsection shall transfer to a state approved program in order to receive the certificate or advancement in rank.

Section 23. Public Disclosure. (1) After a unit ~~or~~and program approval decision becomes final, the EPSB shall prepare official notice of the action. The disclosure notice shall include the essential information provided in the official letter to the institution, including the decision on accreditation, program approval, standards not met, program areas for improvement, and dates of official action.

(2) The public disclosure shall be entered into the minutes of the board for the meeting in which the official action was taken by the EPSB.

(3) Thirty (30) days after the institution has received official notification of EPSB action, the EPSB shall on request provide a copy of the public disclosure notice to the Kentucky Education

Association, the Council on Postsecondary Education, the Association of Independent Kentucky Colleges and Universities or other organizations or individuals.

Section 24. Appeals Process. (1) If an institution seeks appeal of a decision, the institution shall appeal within thirty (30) days of receipt of the EPSB official notification. An institution shall appeal on the grounds that:

- (a) A prescribed standard was disregarded;
- (b) A state procedure was not followed; or
- (c) Evidence of compliance in place at the time of the review and favorable to the institution was not considered.

(2) An ad hoc appeals board of no fewer than three (3) members shall be appointed by the EPSB chair from members of the Board of Examiners who have not had involvement with the team visit or a conflict of interest regarding the institution. The ad hoc committee shall recommend action on the appeal to the EPSB.

(3) The consideration of the appeal shall be in accordance with KRS Chapter 13B.

Section 25. Approval of Alternative Route to Certification Programs. (1) Alternative route programs authorized under KRS 161.028(1)(s) or (t) shall adhere to the educator preparation unit accreditation and program approval processes established in this administrative regulation and in the EPSB policy and procedure entitled "Approval of Alternative Route to Certification Program Offered Under KRS 161.028" as a condition of offering an educator certification program or program leading to a rank change.

(2) The EPSB shall consider a waiver upon request of the institution offering the alternative route program. The request shall be submitted in writing no later than thirty (30) days prior to the next regularly-scheduled EPSB meeting. In granting the waiver, the board shall consider the provisions of this administrative regulation and any information presented that supports a determination of undue restriction.

Section 26. In compliance with the Federal Title II Report Card State Guidelines established in 20 U.S.C. ~~1022f and 1022g~~1022f and 1022g, the EPSB shall identify an educator preparation unit as:

(1) "At-risk of low performing" if an educator preparation program has received a:

- (a) State accreditation rating of "provisional"; or
 - (b) State accreditation rating of "accreditation with conditions";
- or

(2) "Low performing" if an educator preparation program has received a state accreditation rating of "accreditation with probation".

Section 27. The Education Professional Standards Board shall produce a state report card, which shall include:

(1) General information on the institution and the educator preparation unit;

(2) Contact information for the person responsible for the educator preparation unit;

(3) Type or types of accreditation the unit holds;

(4) Current state accreditation status of the educator preparation unit;

(5) Year of last state accreditation visit and year of next scheduled visit;

(6) Table of the unit's approved certification program or programs;

(7) Tables relating the unit's total enrollment disaggregated by ethnicity and gender for the last three (3) years;

(8) Tables relating the unit's faculty disaggregated by the number of full-time equivalents (FTE), ethnicity, and gender for the last three (3) years;

(9) Table of the number of program completers (teachers and administrators) for the last three (3) years;

(10) Table relating pass rates on the required assessments;

(11) Table relating pass rates for the Kentucky Teacher Internship Program;

(12) Table relating pass rates for the Kentucky Principal Internship Program (if applicable);

(13) Table indicating student teacher satisfaction with the

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preparation program;

(14) Table relating teacher intern satisfaction with the preparation program; **and**

(15) Table relating new teacher (**under three (3) [4] years**) and supervisor satisfaction with the preparation program.

Section 28. Approval of Off-site and On-line Programs. (1) Institutions in Kentucky with educator preparation programs shall seek approval from the Education Professional Standards Board before offering courses or whole programs at an off-campus site.

(a) The institution shall submit a written request to the board to begin offering courses at the off-site location describing the location and physical attributes of the off-campus site, resources to be provided, faculty and their qualifications, and a list of courses or programs to be offered.

(b) The off-site location shall be approved by the board before the institution may begin offering courses at the location.

(2)(a) Until May 31, 2008, initial and continuing on-line educator preparation programs shall be regionally or nationally accredited and accredited or approved, as applicable, by the program's state of origin.

(b) Beginning June 1, 2008, initial and continuing on-line educator preparation programs originating from outside Kentucky shall be regionally accredited, accredited or approved, as applicable, by the program's state of origin, and accredited by NCATE.

Section 29. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Professional Standards for the Accreditation of Teacher Preparation Institutions", 2008 Edition, National Council for Accreditation of Teacher Education;

(b) "Education Professional Standards Board Accreditation of Preparation Programs Procedure", August 2002;

(c) "Education Professional Standards Board Approval of Alternative Route to Certification Program Offered under KRS 161.028", August 2002;

(d) "Education Professional Standards Board Emergency Review of Certification Programs Procedure", September 2003;

(e) "Kentucky's Safety Educator Standards for Preparation and Certification", May 2004;

(f) "National Association of School Psychologists, Standards for School Psychology Training Programs, Field Placement Programs, Credentialing Standards", July 2000; and

(g) "Kentucky's Standards for Guidance Counseling Programs" derived from the Council for Accreditation of Counseling and Related Education Programs (CACREP) Standards, Education Professional Standards Board, November 2004.

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

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: January 10, 2011

FILED WITH LRC: January 11, 2011 at 4 p.m.

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

EDUCATION PROFESSIONAL STANDARDS BOARD (As Amended at ARRS, March 8, 2011)

16 KAR 6:010. [Written] Examination prerequisites for teacher certification.

RELATES TO: KRS 161.020, 161.028(1), 161.030(3), (4)

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3) and (4) requires

the Education Professional Standards Board to select the appropriate assessments required prior to teacher certification. This administrative regulation establishes the **[written]** examination prerequisites for teacher certification.

Section 1. A teacher applicant for certification shall successfully complete the appropriate written tests identified in this administrative regulation prior to Kentucky teacher certification.

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

(1) An applicant for Interdisciplinary Early Childhood Education certification (birth to primary) shall take "Interdisciplinary Early Childhood Education (0023)" with a passing score of 166.

(2) An applicant for Elementary certification (grades P-5) shall take "Elementary Education: Content Knowledge (0014)" with a passing score of 148.

(3) An applicant for certification at the middle school level (grades five (5) through nine (9)) shall take the content test or tests based on the applicant's content area or areas with the corresponding passing scores as identified in this subsection:

(a) Middle School English and Communications: "Middle School English Language Arts (0049)" - 158;

(b) Middle School Mathematics: "Middle School Mathematics (0069)" - 148;

(c) Middle School Science: "Middle School Science (0439)" - 144; or

(d) Middle School Social Studies: "Middle School Social Studies (0089)" - 149.

(4) An applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take the content test or tests corresponding to the applicant's content area or areas with the passing scores identified in this subsection:

(a) Biology: "Biology: Content Knowledge (0235)" - 146;

(b) Chemistry: "Chemistry: Content Knowledge (0245)" - 147;

(c) Earth Science: "Earth and Space Sciences: Content Knowledge (0571)" - 147;

(d) English:

1. "English Language, Literature and Composition: Content Knowledge (0041)" - 160; and

2. "English Language, Literature and Composition Essays (0042)" - 155;

(e) Mathematics:

1. "Mathematics: Content Knowledge (0061)" - 125; and

2. "Mathematics: Proofs, Models and Problems, Part 1 (0063)" - 141;

(f) Physics: "Physics: Content Knowledge (0265)" - 133; or

(g) Social Studies:

1. "Social Studies: Content Knowledge (0081)" - 151; and

2. "Social Studies: Interpretation of Materials (0083)" - 159.

(5) An applicant for certification in all grades shall take the content test or tests corresponding to the applicant's area or areas of specialization identified in this subsection, and, if a passing score is established in this subsection, the applicant shall achieve the passing score or higher:

(a) Art:

1. "Art: Content Knowledge (0133)" - 158; and

2. "Art Making (0131)" - 154;

(b) French:

1. Until August 31, 2011, "French: World Language (5174)" - no passing score; **or[and]**

2. Beginning September 1, 2011, "French: World Language (5174)" - 162(0174)";

(c) German:

1. Until August 31, 2011, "German: World Language (5183)" - no passing score; **or[and]**

2. Beginning September 1, 2011, "German: World Language (5183)" - 163(0183)";

(d) Health: "Health Education (0550)" - 630;

(e) Health and Physical Education:

1. a. Until August 31, 2011, "Health and Physical Education: Content Knowledge (0856)" - no passing score; **or[and]**

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b. Beginning September 1, 2011, "Health and Physical Education: Content Knowledge (0856)" - 156; and

2. "Physical Education: Movement Forms - Analysis and Design (0092)" - 151;

(f) Integrated Music:

1. "Music: Content Knowledge (0113)" - 154; and

2. "Music: Concepts and Processes (0111)" - 145;

(g) Instrumental Music:

1. "Music: Content Knowledge (0113)" - 154; and

2. "Music: Concepts and Processes (0111)" - 145;

(h) Vocal Music:

1. "Music: Content Knowledge (0113)" - 154; and

2. "Music: Concepts and Processes (0111)" - 145;

(i) Latin: "Latin (0600)" - 700;

(j) Physical Education:

1.a. Until August 31, 2012, "Physical Education: Content Knowledge (0091)" - 147; and

b. [2-] "Physical Education: Movement Forms-Analysis and Design (0092)" - 151; or

2. Beginning September 1, 2011, "Physical Education: Content and Design (0095)" - 169; [2]

(k) School Media Librarian: "Library Media Specialist (0311)" - 156;

(l) School Psychologist: "School Psychologist (0401)" - 161; or

(m) Spanish:

1. Until August 31, 2011, "Spanish: World Language (5195)" - no passing score; or [and]

2. Beginning September 1, 2011, "Spanish: World Language (5195)" - 168[(0495)].

(6) Except as provided in subsection (7) of this section, an applicant for certification for teacher of exceptional children in Communication Disorders, Learning and Behavior Disorders, Hearing Impaired, Hearing Impaired with Sign Proficiency, Visually Impaired, or Moderate and Severe Disabilities shall take the content test or tests based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:

(a) Communication Disorders:

1.a. Until August 31, 2012, "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; or

b. Beginning September 1, 2011, "Special Education: Core Content Knowledge and Applications (0354)" - 151; and

2. "Speech-Language Pathology (0330)" - 600;

(b) Hearing Impaired:

1.a. Until August 31, 2012, "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; or

b. Beginning September 1, 2011, "Special Education: Core Knowledge and Applications (0354)" - 151; [and]

2. "Education of Deaf and Hard of Hearing Students (0271)" - 167;

(c) Hearing Impaired With Sign Proficiency:

1.a. Until August 31, 2012, "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; or

b. Beginning September 1, 2011, "Special Education: Core Knowledge and Applications (0354)" - 151;

2. "Education of Deaf and Hard of Hearing Students (0271)" - 167; and

3. One (1) of the following tests with a passing score of Intermediate Level:

a. "Sign Communication Proficiency Interview (SCPI)"; or

b. "Educational Sign Skills Evaluation (ESSE)";

(d) Learning and Behavior Disorders:

1. Until August 31, 2012:

a. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and

b. [2-] "Education of Exceptional Students: Mild to Moderate Disabilities (0542)" - 172; or

2. Beginning September 1, 2011, "Special Education: Core Knowledge and [of] Mild to Moderate Applications (0543)" - 158;

(e) Moderate and Severe Disabilities:

1. Until August 31, 2012:

a. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and

b. [2-] "Education of Exceptional Students: Severe to Profound

Disabilities (0544)" - 156; or

2. Beginning September 1, 2011, "Special Education: Core Knowledge of Mild to Moderate Applications (0543)" - 158; or

(f) Visually Impaired:

1.a. Until August 31, 2012, "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; or

b. Beginning September 1, 2011, "Special Education: Core Knowledge and Applications (0354)" - 151; and

2. "Teaching Students with Visual Impairments (0281)" - 161.

(7) [(4)] A holder of an exceptional child certificate in Learning and Behavior Disorders or Moderate and Severe Disabilities who is seeking additional certification for any exceptional children teaching certificate listed in [this] subsection (6) of this section[,] shall not be required to take "Education of Exceptional Students: Core Content Knowledge (0353)" or "Special Education: Core Knowledge and Applications (0354)".

(8) [(7)] (a) Except as provided in paragraph (b) of this subsection, an applicant for Career and Technical Education certification to teach in grades five (5) - twelve (12) shall take the content test or tests corresponding to the applicant's area or areas of specialization identified in this paragraph, and, if a passing score is established in this paragraph, the applicant shall achieve the passing score or higher:

1. Agriculture: "Agriculture (0700)" - 520;

2. Business and Marketing Education:

a. Until August 31, 2011, "Business Education (0101)" - no passing score; or [and]

b. Beginning September 1, 2011, "Business Education (0101)" - 154;

3. Family and Consumer Science: "Family and Consumer Sciences (0121)" - 162; or

4. Engineering and Technology Education: "Technology Education (0050)" - 600.

(b) An applicant for Industrial Education shall take the content test or tests corresponding to the applicant's area or areas of specialization with the passing scores identified in 16 KAR 6:020.

(9) [(8)] An applicant for a restricted base certificate in the following area or areas shall take the content test or tests based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:

(a) English as a Second Language: "English to Speakers of Other Languages (0361)" - 157;

(b) Speech/Media Communications: "Speech Communication (0221)" - 146; or

(c) Theater: "Theatre (0640)" - 630.

(10) [(9)] An applicant for an endorsement in the following content area or areas shall take the content test or tests based on the applicant's area or areas of specialization with the passing scores identified in this subsection:

(a) English as a Second Language: "English to Speakers of Other Languages (0361)" - 157;

(b) Learning and Behavior Disorders, grades 8 - 12:

1. Until August 31, 2012, "Education of Exceptional Students: Mild to Moderate Disabilities (0542)" - 172; or

2. Beginning September 1, 2011, "Special Education: Core Knowledge and Mild to Moderate Applications (0543)" - 158;

(c) Literacy Specialist: "Reading Specialist (0300)" - 520;

(d) Gifted Education, grades primary - 12: "Gifted Education (0357)" - 152; or

(e) [(4)] Reading Primary through Grade 12:

1. Until August 31, 2011, "Teaching Reading (0204)" - no passing score; or [and]

2. Beginning September 1, 2011, "Teaching Reading (0204)" - 153.

Section 3. In addition to the content area test or tests established in Section 2 of this administrative regulation, each new teacher shall take the pedagogy test and meet the passing score identified in this section that corresponds to the grade level of certification sought. If a certified teacher is seeking additional certification in any area, the applicant shall not be required to take an additional pedagogy test.

(1) An applicant for Elementary certification (grades primary [preschool] - 5) shall take "Principles of Learning and Teaching:

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Grades Kindergarten - 6 (0522)", with a passing score of 161.

(2) An applicant for certification at the middle school level (grades five (5) through nine (9)) shall take "Principles of Learning and Teaching: Grades 5 - 9 (0523)", with a passing score of 161.

(3) An applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)", with a passing score of 161.

(4) An applicant for certification in all grades with a content area identified in Section 2(5) of this administrative regulation shall take either:

(a) "Principles of Learning and Teaching: Grades kindergarten - six (6) (0522)", with a passing score of 161;

(b) "Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)", with a passing score of 161; or

(c) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)", with a passing score of 161.

(5) An applicant applying only for certification for teacher of exceptional children shall not be required to take a separate pedagogy test established in this section. The content area test or tests established in Section 2 of this administrative regulation shall fulfill the pedagogy test requirement for a teacher of exceptional children.

(6) An applicant for Career and Technical Education certification in grades five (5) through twelve (12) shall take either:

(a) "Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)", with a passing score of 161; or

(b) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)", with a passing score of 161.

(7) An applicant for a restricted base certificate shall take one (1) of the following pedagogy tests corresponding to the grade range of the specific restricted base certificate:

(a) "Principles of Learning and Teaching: Grades kindergarten - six (6) (0522)", with a passing score of 161;

(b) "Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)", with a passing score of 161; or

(c) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)", with a passing score of 161.

Section 4. Assessment Recency. (1) A passing score on a test established at the time of administration shall be valid for the purpose of applying for certification for five (5) years from the test administration date.

(2) A teacher who fails to complete application for certification to the Education Professional Standards Board within the applicable recency period of the test and with the passing score established at the time of administration shall retake the appropriate test or tests and achieve the appropriate passing score or scores required for certification at the time of application.

(3) The test administration date shall be established by the Educational Testing Service or other authorized test administrator.

Section 5. (1) An applicant for initial certification shall take the assessments on a date established by:

(a) The Educational Testing Service; or

(b) The agency established by the Education Professional Standards Board as the authorized test administrator.

(2) An applicant shall authorize test results to be forwarded by the Educational Testing Service, or other authorized test administrator, to the Kentucky Education Professional Standards Board and to the appropriate teacher preparation institution where the applicant received the relevant training.

(3)(a) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration.

(b) An applicant shall seek information regarding the dates and location of the tests and make application for the appropriate examination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Education Professional Standards Board and processed in the normal certification cycle.

Section 6. An applicant shall pay the appropriate examination fee established by the Educational Testing Service or other authorized

test administrator for each relevant test required to be taken.

Section 7. An applicant who fails to achieve at least the minimum score on any of the appropriate examinations may retake the test or tests during one (1) of the scheduled test administrations.

Section 8. The Education Professional Standards Board shall collect data and conduct analyses of the scores and institutional reports provided by the Educational Testing Service or other authorized test administrator to determine the impact of these tests.

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: January 10, 2011

FILED WITH LRC: January 11 at 4 p.m.

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

FINANCE AND ADMINISTRATION CABINET Kentucky Teachers' Retirement System (As Amended at ARRS, March 8, 2011)

102 KAR 1:175_ Investment policies.

RELATES TO: KRS 161.430

STATUTORY AUTHORITY: KRS 161.310~~[(4)]~~, 161.430(1)

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

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

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

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

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

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

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

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

(d)1. The system may utilize the services of a consultant to advise the investment committee, as well as to assist in evaluating the effectiveness of investment counselors.

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

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

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

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

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

(b) The investment committee shall be provided a complete record of each investment transaction or holding;

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

(d) An "authorization for investment" shall be approved or denied by the executive secretary or the chief investment officer.

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

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

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

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

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

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

(e) More than thirty (30) ~~fifteen (15)~~ percent of the assets of the system shall not be invested in the stocks of companies domiciled outside of the United States. An amount of this type if ~~Any amount so~~ invested shall be included in the sixty-five (65) percent limitation established under this subsection.

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

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

(h)1. The amount invested in an additional category or categories of investments shall not equal more than fifteen (15) ~~ten (10)~~ percent of the assets of the system.

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

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

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

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

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

(c) ~~[Notwithstanding the provisions of this subsection,]~~ The fixed income investment portfolio as a whole shall maintain an average rating of investment grade by at least one (1) of the major

rating services ~~[equal to at least the second highest credit classification].~~

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

(4) A foreign debt purchase shall comply with ~~[(a) Debt obligations of Canadian government entities and Canadian-domiciled corporations shall not in aggregate equal more than five (5) percent of the assets of the system.~~

~~[(b) Other] [Foreign debt purchases shall not be subject to all other fixed income restrictions in this section. Foreign debt shall not in aggregate equal more than ten (10) percent [40%] of the assets of the system. [purchased unless approved by the board as an additional category of investment.]~~

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

(1)(a) The system's position in a single stock shall not exceed two and one-half (2.5) percent of the system's assets.

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

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

(3)(a) A real estate investment shall be judged on its total return potential.

(b) The system shall not acquire undeveloped land unless development plans are imminent.

(c) This provision shall not preclude investment in timberland.

(4) The system shall not buy bullion, stamps, rare coins, or other collectibles, unless approved by the board as an additional category of investment. The board shall approve these assets as an additional category of investment only in exceptional circumstances if there is a potential investment in these assets that provides a high value opportunity and lowers the risk of the portfolio overall.

MS. BARBARA STERRETT, Chair

APPROVED BY AGENCY:

FILED WITH LRC: January 14, 2011

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.

**GENERAL GOVERNMENT CABINET
Board of Pharmacy
(As Amended at ARRS, March 8, 2011)**

201 KAR 2:015. Continuing education.

RELATES TO: KRS 214.610, 315.065, 315.116, 315.120

STATUTORY AUTHORITY: KRS 315.110(1), 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.065(2) and (3) require the board to establish continuing education requirements for pharmacists. This administrative regulation establishes requirements for the continuing pharmacy education of registered pharmacists and requires all registered pharmacists holding a license issued by the board to participate in continuing pharmacy education as a means of renewal of their licenses.

Section 1. Definition. "Continuing education unit" or "CEU" is defined by KRS 315.010(7).

Section 2. (1) Continuing education hours for credit may be compiled in the following areas if the sponsor grants the participant a certificate of completion:

- (a) Cassette and audiovisual presentation;
- (b) In-company professional seminars;

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- (c) Accredited school of pharmacy continuing education programs;
 - (d) Postgraduate courses in pharmaceutical sciences;
 - (e) Correspondence courses;
 - (f) Programs granted continuing education credit by other states;
 - (g) The Accreditation [American] Council for Pharmacy Education [on Pharmaceutical Education];
 - (h) Continuing education television series;
 - (i) Programs sponsored by allied professional groups; or
 - (j) Professional society and association sponsored programs.
- (2) The board approval of each program shall expire at the end of three (3) years.

Section 3. Continuing education sponsors shall be responsible for submitting to the board for final accreditation continuing education programs for participants.

- (1) A sponsor shall be any person, school, association, company, corporation or group who wishes to develop a continuing education program.
- (2) Programs shall be submitted to the board at least sixty (60) days prior to planned participation so the participants can know the value of the experience prior to actual participation.
- (3) Program changes shall be made to and accredited by the board, or the evaluation and accreditation of the program shall be void.
- (4) Continuing education credit shall be given only once for each program per participant.
- (5) Sponsors shall retain a file of each participant's program completion for three (3) years.

Section 4. (1) Sponsors and pharmacists requesting approval of continuing pharmacy education shall submit Kentucky Board of Pharmacy Continuing Education Program Approval Form. Pharmacists shall keep valid records, receipts, and certifications of continuing pharmacy education programs completed for three (3) years, except the pharmacist shall keep a copy of his or her [his/her] HIV/AIDS CE certificate for ten (10) years, and submit the certification to the board on request.

(2) Submission of a fraudulent statement or certificate concerning continuing pharmacy education shall subject the pharmacist to discipline as provided in KRS 315.121.

Section 5. (1) A pharmacist shall:

- (a) Complete a minimum of one and five-tenths (1.5) CEU (fifteen (15) contact hours) annually between January 1 and December 31; and
- (b) Not transfer or apply excess hours or units for future years, (2) [; and
- (c) Submit a list of accredited continuing pharmacy education programs with their annual renewal.
- (2) If a licensee fails to submit a list of continuing pharmacy education programs by the 1st day of February, the executive director of the board shall notify the licensee at his last known address that his license may be suspended.
- (3) A pharmacist may be granted a deferral on a year-to-year basis at the discretion of the board for illness, incapacity, or other extenuating circumstances.
- (3) (4) A pharmacist first licensed by the board within twelve (12) months immediately preceding the annual renewal date shall be exempt from the continuing pharmacy education provisions.

Section 6. All pharmacists shall keep the board informed of their correct addresses.

Section 7. CEU may be transferred from another state to Kentucky if the transfer state recognizes Kentucky CEU.

Section 8. A licensee who failed to timely renew his license shall:

- (1) Comply with the applicable provisions of KRS 315.120(2) or (3); and
- (2) Complete fifteen (15) hours of continuing education for each year the applicant failed to renew his license, up to a maximum of seventy-five (75) hours.

Section 9. (1) At least once every ten (10) years, a pharmacist shall successfully complete a continuing education course of not less than one (1) contact hour (0.1 CEU) concerning HIV/AIDS that complies with KRS 214.610(1).

(2) The continuing education course shall be:

- (a) Approved by the Cabinet for Health and Family Services HIV/AIDS Branch; or
- (b) Conducted by a provider approved by the Accreditation [American] Council for Pharmacy [on Pharmaceutical] Education (ACPE).

Section 10. Incorporation by Reference. (1) The Kentucky Board of Pharmacy Continuing Education Program Approval Form, 2002, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, 23 Millcreek Park, Frankfort, Kentucky 40601-0230, Monday through Friday, 8 a.m. to 4:30 p.m.

JOEL THORNBURY, Board President

FILED WITH LRC: January 13, 2011 at 11 a.m.

APPROVED BY AGENCY: January 11, 2011

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

GENERAL GOVERNMENT CABINET Board of Dentistry (As Amended at ARRS, March 8, 2011)

201 KAR 8:571. Registration of dental assistants.

RELATES TO: KRS 214.615, 313.030, 313.045, 313.050, 313.080, 313.130

STATUTORY AUTHORITY: KRS 214.615(2), 313.021(1)(a), (b), 313.030(3), 313.045

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.045(1) requires the board to promulgate administrative regulations relating to requirements and procedures for registration, duties, training, and standards of practice for dental assistants. This administrative regulation establishes the requirements and procedures for registration, duties, training, and standards of practice for dental assistants.

Section 1. Definitions. (1) "Coronal polishing" means a procedure that is the final stage of a dental prophylaxis on the clinical crown of the tooth after a dentist or a hygienist has verified there is no calcareous material.

(2) "Dental assistant" mean a person who is directly involved with the care and treatment of a patient under the direct supervision of a dentist and performs reversible procedures delegated by dentist licensed in the Commonwealth.

Section 2. General Registration Requirements and General Training Requirements. (1) A dentist licensed in the Commonwealth shall register all dental assistants in his or her practice on the Application for Renewal of Dental Licensure incorporated by reference in 201 KAR 8:530.

(2) The dentist shall retain in the personnel file for the registered dental assistant the following:

- (a) A copy of the certificate of completion issued for the completion of the Coronal Polishing Course if the course has been taken by the dental assistant;
- (b) A copy of the certificate of completion issued for the completion of the Radiation Safety Course if the course has been taken by the dental assistant;
- (c) A copy of the certificate of completion issued for the completion of the Radiation Techniques Course if the course has been taken by the dental assistant;
- (d) A copy of the certificate of completion issued for the com-

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pletion of the Starting Intravenous Access Lines if the course has been taken by the dental assistant;

(e) A copy of proof of having current certification in cardiopulmonary resuscitation (CPR) that meets or exceeds the guidelines set forth by the American Heart Association, as incorporated by reference in 201 KAR ~~8:531~~**8:530**; and

(f) A statement of the competency of procedures delegated to the dental assistant from the delegated duties list that includes the ~~name of the following~~:

~~(i) [1. Name of the]~~ Individual trained; and

~~(ii) [2. Name of the]~~ Licensee attesting to the competency of the Dental Assistant;

Section 3. Coronal Polishing Requirements. (1) A registered dental assistant may perform coronal polishing. If coronal polishing is performed by a registered dental assistant, the assistant shall have:

(a) Completed the training described in subsection (2) of this administrative regulation; and

(b) Obtained a certificate from the authorized institution~~[-which shall be provided to the board for the assistant's file and maintained in the employee's personnel file at each place of employment].~~

(2) The required training shall consist of an eight (8) hour course taught at an institution of dental education accredited by the Council on Dental Accreditation to include the following:

(a) Overview of the dental team;

(b) Dental ethics, jurisprudence, and legal understanding of procedures allowed by each dental team member;

(c) Management of patient records, maintenance of patient privacy, and completion of proper charting;

(d) Infection control, universal precaution, and transfer of disease;

(e) Personal protective equipment and overview of Occupational Safety and Health Administration requirements;

(f) Definition of plaque, types of stain, calculus, and related terminology and topics;

(g) Dental tissues surrounding the teeth and dental anatomy and nomenclature;

(h) Ergonomics of proper positioning of patient and dental assistant;

(i) General principles of dental instrumentation;

(j) Rationale for performing coronal polishing;

(k) Abrasive agents;

(l) Coronal polishing armamentarium;

(m) Warnings of trauma that can be caused by improper techniques in polishing;

(n) Clinical coronal polishing technique and demonstration;

(o) Written comprehensive examination covering the material listed in this section, which shall be passed by a score of seventy-five (75) percent or higher;

(p) Completion of the reading component as required by subsection (3) of this administrative regulation; and

(q) Clinical competency examination supervised by a dentist licensed in Kentucky, which shall be performed on a live patient.

(3) A required reading component for each course shall be prepared by each institution offering coronal polishing education that shall:

(a) Consist of the topics established in subsection (2)(a) to (n) of this section;

(b) Be provided to the applicant prior to the course described in subsection (2) of this administrative regulation; and

(c) Be reviewed and approved by the board based on the requirements of subsection (2)(a) to (n) of this section.

(4) The institutions of dental education approved to offer the coronal polishing course in Kentucky shall be:

(a) University of Louisville School of Dentistry;

(b) University of Kentucky College of Dentistry;

(c) Western Kentucky University Dental Hygiene Program; **and**

~~(d) [Lexington Community College Dental Hygiene Program; and~~

~~(e)]~~ Kentucky Community Technical College System Dental Hygiene or Dental Assisting Programs.

Section 4. X-rays by Registered Dental Assistants. A registered dental assistant may take x-rays under the direct supervision of a dentist licensed in Kentucky. If a registered dental assistant takes x-rays under the direct supervision of a dentist licensed in Kentucky, the dental assistant shall have completed:

(1) A six (6) hour course in dental radiography safety; and

(2) Four (4) hours of instruction in dental radiography technique while under the employment and supervision of the dentist in the office~~[-] or [(-)]~~ a four (4) hour course in radiography technique.

Section 5. Requirements for Starting Intravenous Access Lines.

(1) An individual registered as a dental assistant in Kentucky and not subject to disciplinary action under KRS Chapter 313 who desires to start intravenous (IV) access lines while under the direct supervision of a dentist who holds a sedation or anesthesia permit issued by the board shall submit documentation to the licensed dentist for whom the registered dental assistant will be providing services proving successful completion of a board-approved course in starting IV access lines based on:

(a) Patient Safety Techniques;

(b) Anatomy and physiology of the patient;

(c) Techniques in starting and maintaining an IV access line; and

(d) Appropriate methods of discontinuing an IV access line.

(2) A registered dental assistant shall not start **an** IV access ~~line[lines]~~ if the individual has not completed a Board approved course in IV access lines.

Section 6. ~~A[Any]~~ dental assistant~~[personnel]~~ operating under this administrative regulation shall be under the direct supervision of the dentist licensed in the Commonwealth. The dentist licensed in the Commonwealth shall accept sole responsibility for the actions of the dental assistant or dental auxiliary personnel while in the performance of duties in the dental office.

Section ~~7.[43-]~~ Incorporation by Reference. (1) "Delegated Duty List", July 2010, is incorporated by reference.

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

C. MARK FORT, President, Kentucky Board of Dentistry

APPROVED BY AGENCY: November 30, 2010

FILED WITH LRC: November 30 at 10 a.m.

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

GENERAL GOVERNMENT CABINET Board of Dentistry (As Amended at ARRS, March 8, 2011)

201 KAR 8:581. Charity dental practices.

RELATES TO: KRS 313.254~~(8)~~

STATUTORY AUTHORITY: KRS 313.021, **313.060(1)**, 313.254~~(8)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.021(1) requires the board to exercise all of the administrative functions of the Commonwealth in the regulation of the profession of dentistry, KRS 313.060~~(1)~~ requires the board to promulgate administrative regulations relating to dental practices, and KRS 313.254~~(8)~~ requires the board to promulgate administrative regulations relating to the charitable practice of dentistry. This administrative regulation establishes requirements for charitable dental practices.

Section 1. Minimum Documentation Standards for All Dental Patients of a Charitable Dental Practice. Each patient record for a dental patient of a charitable dental practice in the Commonwealth

of Kentucky shall include at a minimum:

- (1) The patient's name;
- (2) The patient's date of birth;
- (3) The patient's medical history;
- (4) The patient's dental history;
- (5) The patient's current medications from all healthcare providers;
- (6) The date of current treatment;
- (7) The diagnosis;
- (8) The treatment options presented to the patient;
- (9) The tooth number and surfaces to be treated, which shall be included in the progress notes;
- (10) The patient's current blood pressure reading;
- (11) Informed consent by the patient; and
- (12) Signature or initials of the provider.

Section 2. Documentation of Infection Control Procedures. All charitable dental practices in the Commonwealth of Kentucky shall adhere to the universal precautions outlined in the ["Guidelines for Infection Control in Dental Health-Care Settings"] published by the Centers for Disease Control and Prevention and shall retain documentation proving that:

- (1) All workers have been educated in the charitable dental practice or post-disaster clinic procedures for infection control;
- (2) All workers involved in patient treatment of have received a Hepatitis B vaccination or have signed a waiver;
- (3) A policy is in place requiring all staff involved in clinical patient care to wear a fresh set of gloves for each patient;
- (4) A policy is in place to assure all staff change gloves between patients;
- (5) A policy is in place to assure all staff wears protective clothing during patient care;
- (6) A policy is in place to assure all staff wear masks~~[mask]~~ during procedures that may involve spatter;
- (7) The charitable dental practice contains the necessary supplies to comply with this administrative regulation;
- (8) All hand-pieces are sterilized following each patient treatment by one (1) of the following means:
 - (a) Autoclave;
 - (b) Dry heat; or
 - (c) Heat or chemical vapor;[-]
- (9) There is routine verification that sterilization methods are functioning properly;
- (10) Individual burs, hand instruments, and rotary instruments are either discarded or sterilized following each use;
- (11) A policy is in place that addresses the disinfection of all operatory equipment and surfaces between patients;
- (12) All surfaces that are difficult to disinfect shall be covered with a non-penetrable barrier;
- (13) A policy is in place requiring that all non-penetrable surfaces are changed between patients;
- (14) Disinfectant is used, including the name and type of the disinfectant;
- (15) A policy is in place that~~[which]~~ describes a separate place for the cleaning, disinfecting, and sterilization of items, with a mechanism of separation from the patient treatment area that may be:
 - (a) An enclosed instrument table;
 - (b) Curtains or wall separation; or
 - (c) Bagging of the instruments;
- (16) A policy is in place that~~[which]~~ provides for the protection of dental records, charts, and radiographs from biohazards while those items are in the patient treatment area, or if no protection exists, charts shall be readily reproducible with limited effort; and
- (17) An agreement exists with an agency to properly dispose of all medical waste and bio-hazardous material, including sharps, instruments, and human tissue.

Section 3. Infection Control Inspections. (1) The board or its designee may perform an infection control inspection of a charitable dental practice utilizing the ~~[(2)]~~ Infection Control Inspection Checklist[-].

(2) ~~A~~Any charitable dental practice that is found deficient upon an initial infection control inspection shall not be allowed to continue until the clinic coordinator provides proof to the board that

the charitable dental practice is in compliance.

Section 4. General Requirements for Charitable Dental Practices. All charitable dental practices in the Commonwealth shall comply with the following requirements:

- (1) The clinic coordinator, who shall supervise and oversee all charitable dental practice functions, shall be a Kentucky licensed dentist;
- (2) There shall be a functional radiograph machine on site;
- (3) Follow-up care provisions shall be in place for each patient requiring follow-up care;
- (4) A written blood-borne pathogen exposure control plan shall be kept on site;
- (5) A sharps stick protocol shall be followed in which:
 - (a) The entity that will collect specimens shall be identified prior to the start of the event; and
 - (b) The laboratory that will perform blood work analysis shall be identified prior to the start of the event;[-]
- (6) Post-operative instructions shall be delivered to the patient prior to the patient leaving;
- (7) ~~A~~No dentist shall not supervise more than six (6) students in a charitable dental practice or post-disaster clinic;
- (8) All procedures shall be concluded by the end date of the charitable dental practice unless a Kentucky licensed dentist has stated in writing that the licensee shall complete the procedure in a timely manner at his practice;
- (9) All charitable dental practices shall notify the board no less than thirty (30) days prior to the start of an event of the dates, locations, and host of the event;
- (10) A charitable dental practice shall provide the names and license numbers of all participating dentists and dental hygienists no later than fifteen (15) days post-event;
- (11) A prescription for a narcotic shall not be written during an event unless approved by a designated dental prescription coordinator who shall hold a full license to practice dentistry in the Commonwealth of Kentucky. The prescription shall be approved if it is medically appropriate;
- (12) A written emergency medical response plan shall be kept on site; and
- (13) All charitable dental practices larger than forty (40) chairs shall have at least one (1) Basic Life Support (BLS) ambulance on site for the duration of the event.

Section 5. Registered Dental Assistants and Auxiliary Personnel. (1) For the purpose of a charitable dental practice an individual performing a duty in the charity event~~[any individuals]~~ other than a licensed dentist or licensed dental hygienist, shall be restricted to the duties of a dental auxiliary; and

(2) A radiograph shall not be taken unless the person performing the x-ray has met the requirements of 201 KAR 8:571~~[8:570]~~.

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

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

C. MARK FORT, President, Kentucky Board of Dentistry

APPROVED BY AGENCY: November 29, 2010

FILED WITH LRC: November 30 at 10 a.m.

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

**GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, March 8, 2011)**

201 KAR 30:050. Examination~~[- continuing education,]~~ and experience requirement.

RELATES TO: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally-related transactions. KRS 324A.035(3)(d), (e), and (f) require the board to establish by administrative regulations requirements for experience ~~and~~ examination of applicants ~~and continuing education of appraisers~~. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the examination~~[- continuing education,]~~ and experience requirements for appraisers of real property in federally-related transactions.

Section 1. Examination. (1) An applicant for certification as a certified general real property appraiser, certified residential real property appraiser, or licensed real property appraiser shall pass an examination specific for the certification or license applied for and approved by:

- (a) The board; and
- (b) The Appraiser Qualifications Board of the Appraisal Foundation.

(2) ~~Under no circumstances shall~~ A score from an examination ~~shall no longer be acceptable for licensure after two (2) years from the date on which the applicant takes and~~ ~~Seees from the examinations shall~~ ~~[be acceptable longer than]~~ ~~[for] [two (2) years after the date on which the applicant]~~ passes the examination.

(3) An applicant shall ~~[have a period of two (2) years from the last day of the month in which the applicant passed the examination to]~~ complete all the education and experience requirements for the credential ~~[for]~~ which the individual is seeking prior to being approved to sit for the national appraisal examination ~~[has applied]~~.

(4)(a) An individual shall submit a complete Appraiser Licensure/Certification Application, incorporated by reference in 201 KAR 30:030, which documents the completed education and experience to the board prior to being approved to sit for the national appraisal examination.

(b) The applicant shall submit the following information with the application:

- 1. Proof of completion of the education required by 201 KAR 30:190;
- 2. Proof of completion of the required experience as specified in Section 2 of this administrative regulation including any reports identified by the board; and
- 3. The fee required by 201 KAR ~~30~~~~36~~:060.

(5)(a) An applicant shall verify experience credit on the Appraiser Assignment Log~~[in a form approved by the board]~~.

(b) An applicant shall submit satisfactory reports, file memoranda, and other documentation as required by the board to confirm the applicant's appraisal experience. ~~[The failure to complete all experience requirements within the two (2) year period specified in subsection (3) of this section shall require a new application to the board and completion of the education and the examination applicable at the time of the new application.]~~

Section 2. Required Experience. (1)(a) Prior to certification as a general real property appraiser, an applicant shall have acquired 3,000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than thirty (30) calendar months.

(b) Prior to certification as a residential real property appraiser, an applicant shall have acquired 2,500 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.

1. No more than fifty (50) percent of the residential experience shall be claimed for appraisal review or appraisal consulting assignments.

2. No more than fifty (50) percent of the residential experience shall be claimed for appraisal of vacant land.

3. At least fifty (50) percent of the residential experience claimed shall include development of the cost approach, sales comparison approach, and income approach.

4. No more than fifty (50) percent of the residential experience shall be claimed for restricted use appraisal reports.

(c) Prior to licensure as a licensed real property appraiser, an applicant shall have acquired 2,000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.

1. No more than fifty (50) percent of the residential experience shall be claimed for appraisal review or appraisal consulting assignments.

2. No more than fifty (50) percent of the residential experience shall be claimed for appraisal of vacant land.

3. At least fifty (50) percent of the residential experience claimed shall include development of the cost approach, sales comparison approach, and income approach.

4. No more than fifty (50) percent of the residential experience shall be claimed for restricted use appraisal reports.

(d) ~~[The appraisal experience required by this section may have been acquired in any calendar years, whether or not the calendar years are consecutive. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.]~~

(e) For certification as a general real property appraiser, at least 1,500 hours of appraisal experience shall consist of nonresidential appraisal experience.

1. No more than fifty (50) percent of the residential experience shall be claimed for appraisal review or appraisal consulting assignments.

2. No more than fifty (50) percent of the residential experience shall be claimed for appraisal of vacant land.

3. At least fifty (50) percent of the residential experience claimed shall include development of the cost approach, sales comparison approach, and income approach.

4. No more than fifty (50) percent of the residential experience shall be claimed for restricted use appraisal reports.

(e) The appraisal experience required by this section may have been acquired in any calendar years, whether or not the calendar years are consecutive. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(f) Real property appraisal assignments completed for experience credit shall be completed:

1. In compliance with the requirements of USPAP as incorporated in 201 KAR 30:040 and defined in KRS 324.010(7);

2. Under the supervision of a certified residential real property appraiser for experience of one (1) to four (4) unit residential properties; and

3. Under the supervision of a certified general real property appraiser for experience of all property uses other than residential properties.

(g) To count towards the requirements of this section, the experience shall be acquired while the applicant is licensed or certified by the board as one (1) of the types of appraisers identified in 201 KAR 30:030 Section 1(2), (3), or (4).

~~(2)(a) An applicant shall verify experience credit in a form approved by the board.~~

~~(b) The board may request reports, file memoranda, and other documentation, if necessary to confirm the applicant's appraisal experience.~~

~~(3) The requirements of USPAP shall not apply to the board, its agents, and employees when conducting an appraisal review for purposes of confirming an applicant's experience under this administrative regulation.~~

~~Section 3. [Continuing Education: Number of Hours Required. Certified general real property appraisers, certified residential real property appraisers, licensed real property appraisers, and associate real property appraisers shall:~~

~~(1) Complete fourteen (14) hours of approved continuing edu-~~

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cation each license year; and

(2) ~~Furnish the board with proof of compliance.~~

~~Section 4. Continuing Education. (1) Continuing education credit may be granted for:~~

~~(a) Approved continuing education courses; or~~

~~(b) Participation, other than as a student, in appraisal educational programs and processes not to exceed seven (7) hours of the required fourteen (14) hours of continuing education for each licensure year.~~

~~(2) Appraisal educational programs and processes shall include:~~

~~(a) Teaching;~~

~~(b) Program development;~~

~~(c) Authorship of textbooks; or~~

~~(d) Similar activities that are determined by the board to be equivalent to obtaining continuing education.~~

~~(3) Continuing education credit shall be granted if a course:~~

~~(a) Is at least two (2) hours in duration;~~

~~(b) Subject ensures that an appraiser's skill, knowledge, and competency in real estate appraisal will be maintained or increased; and~~

~~(c) Has been approved by the board.~~

~~(4) Application for continuing education credit shall be submitted to the board in writing and documented by the approved provider of instruction.~~

~~(5)(a) All credential holders shall successfully complete the 7-hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent, between January 1 and June 30 of each even-numbered year.~~

~~(b) Equivalency shall be determined through the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board.~~

~~(c) USPAP continuing education credit shall only be awarded when the class is instructed by an AQB-Certified Instructor who is also a State-Certified General Real Property Appraiser or a State-Certified Residential Real Property Appraiser.~~

~~(6) The board shall defer continuing education requirements for up to 180 days for credential holders returning from active military duty.~~

~~Section 5.] Incorporation by Reference. (1) "Appraiser Assignment Log", 8/09, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.~~

DORSEY HALL, Chair

APPROVED BY AGENCY: January 13, 2011

FILED WITH LRC: January 14, 2011 at noon

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 West Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (As Amended at ARRS, March 8, 2011)

201 KAR 30:150. Education provider approval.

RELATES TO: KRS 324A.035(3)(d), (f), 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(3)(d),

(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3)(d) and (f) require the board to establish requirements for education and continuing education of appraisers. This administrative regulation establishes the requirements for approval of education providers for real estate appraisers.

Section 1. Definitions. (1) "Approved instructor" means an

instructor who has been approved under 201 KAR 30:160 to teach continuing education on qualifying education.

(2) "Education provider" means a school or organization that teaches continuing education courses, programs, or seminars required by 201 KAR 30:~~125~~⁰⁵⁰ or qualifying education courses required by 201 KAR 30:~~125~~⁰⁵⁰ and 30:190.

Section 2. Education Provider Approval. (1) To apply for approval as a real estate appraiser education provider or to renew approval, a provider shall submit a:

(a) Completed Application for Real Estate Appraiser Education Provider, including the information required concerning curriculum, approved instructors, educational materials and policies;

(b) Copy of the Certificate of Approval from the State Board for Proprietary Education or the Kentucky Department of Education, if applicable;

(c) Sample schedule outlining how a course will be presented; and

(d) Completed course outline for each course, which shall include:

1. A Real Estate Appraisal Instructor Application for each instructor, as required by 201 KAR 30:160;

2. A copy of a contract or agreement signed by the student which outlines the class schedule, grading system, and attendance requirements;

3. A copy of the written material, including the textbook and other materials that will be used in the classroom;

4. A sample copy of a education provider brochure or information sheet promoting the education provider;

5. A copy of legal documentation required to support an answer made on the form, if applicable; and

6. A sample copy of an official transcript from the education provider.

(2) An approved real estate appraisal education provider shall include a statement in the education provider's application for admission into the program that informs the prospective students that a criminal conviction may prevent that person from qualifying for licensure by the Real Estate Appraisers Board. Failure to include this notification may result in suspension of an approved education provider's approval until the information is included in the application.

(3) Courses from institutions which have been accredited by a regional accrediting agency approved by the U.S. Department of Education or listed in the Transfer of Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers shall be[are] approved by the board without review.

(4) The applicant shall[will] be required to supply a syllabus or course outline to verify that the content of the course satisfies an area of study outlined in 201 KAR 30:190.

Section 3. Requirements for an Approved Education Provider.

(1) An approved education provider shall notify the board within fourteen (14) days of a material change in the information originally furnished on the application or in an attachment to the application.

(2) A renewal application shall be submitted by June 30 of each year.

(3) The curriculum offered by the education provider shall:

(a) Include a minimum of two (2) academic hours for a continuing education course;

(b) Include a minimum of fifteen (15) academic hours, including examination time, for each qualifying education course;

(c) Be conducted for a maximum of no more than eight (8) hours during a twenty-four (24) hour period; and

(d) Consist of courses covering the topics listed by the Real Estate Appraisers Board in 201 KAR 30:050, Section 3, or 201 KAR 30:190.

(4) An approved real estate appraisal education provider shall maintain accurate and permanent records on each student enrolled in a course.

(a) A permanent record shall include:

1. Each student's record of courses completed or attempted, academic hours awarded, and final grades; and

2. A board-approved Certificate of Completion form for each

student and proof that it was mailed to each student upon completion of a course.

(b) A permanent record shall:

1. Be maintained for five (5) years; and
2. Include student attendance records and test scores.

(c) The education provider shall submit to the board a roster with the names of the individuals who attended the course and each student's final examination grade with numerical score within ten (10) days of the completion of each course.

(5) An approved real estate appraisal education provider shall file with the board a Notification Form for Course Dates and Locations no later than ten (10) days prior to beginning a qualifying education course or a continuing education class.

(6) An approved real estate appraisal education provider shall permit an inspection and monitoring by the board or its designee to evaluate all aspects of the administration or operation of the education provider.

(7) Education provider status approval shall be withdrawn if the board determines that:

(a) Information contained on the application or renewal is inaccurate or misleading;

(b) The establishment or conduct of the education provider is not in compliance with this administrative regulation;

(c) The instruction is so deficient as to impair the value of the course; or

(d) The education provider failed to meet any policy or statement made in its application.

(8) If an education provider has been given notice of a deficiency under this section, the board shall give the education provider an opportunity to correct the deficiency within thirty (30) days.

(9) An effort made directly or indirectly by a education provider, official or employee, or a person on their behalf to reconstruct the national real property appraisal licensing or certification examination for any licensed or certified real property appraiser, or a portion of these examinations shall result in immediate revocation of education provider approval.

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

(a) "Application for Approved Real Estate Appraisal Education Provider", 2005;

(b) "Course Outline", 2005;

(c) "Certificate of Completion", 2005; and

(d) "Notification Form for Course Dates and Locations", 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

DORSEY HALL, Chair

APPROVED BY AGENCY: January 13, 2011

FILED WITH LRC: January 14, 2011 at noon

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 West Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

JUSTICE AND PUBLIC SAFETY CABINET

Parole Board

(As Amended at ARRS, March 8, 2011)

501 KAR 1:070. Conducting sex offender postincarceration supervision ~~[conditional discharge]~~ revocation hearings.

RELATES TO: KRS 439.330, 439.340(3), 439.341, 439.346, 439.430, 532.043, 532.060(3)~~[532.043, 532.060(3), 439.340(3)]~~

STATUTORY AUTHORITY: KRS 439.330(1)(e)~~[45A.460, 439.340(3), 439.430]~~~~[, Jones v. Commonwealth, 2007-SC-000922]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.330(1)(e) requires the board to issue warrants and conduct hearings for persons charged with violations of postincarceration supervision. KRS 439.340(3)(b) authorizes the

board to promulgate administrative regulations with respect to matters that come before it. This administrative regulation establishes the procedures for the revocation of sex offender postincarceration supervision and the issuance of warrants.~~[This administrative regulation contains the procedures for the revocation of sex offender conditional discharge and the issuance of warrants.]~~

Section 1. Preliminary Revocation Hearings. (1) Notice of the violation of one (1) or more of the conditions of a sex offender's postincarceration supervision shall be reported to the board by a probation and parole officer of the Department of Corrections by serving the board and the offender, if the offender's location is known, with a written notice of preliminary hearing which sets forth the alleged violation or violations.

(a) This notice may be amended at any time prior to the close of the record of the preliminary hearing, within the discretion of the administrative law judge, if a finding is made that the substantial rights of the offender will not be prejudiced by the amendment.

(b) If the notice is amended, a continuance of the proceeding may be granted if the interest of justice so requires.

(c) Failure to object to any defect in the notice prior to the close of the hearing shall be deemed a waiver of this objection.

(2) Any duly appointed probation and parole officer of the Commonwealth of Kentucky may appear before the board or its administrative law judge as representative of the Department of Corrections in matters relating to the revocation of sex offender postincarceration supervision; except that the probation and parole officer shall not make opening or closing arguments, conduct direct examination or cross-examination of witnesses, or take any other action that would constitute the unauthorized practice of law.

(3) A preliminary hearing shall not be conducted earlier than five (5) days after service of notice of the hearing, unless the waiting period is waived by the offender, in writing.

(4) The preliminary revocation hearing shall be an evidentiary hearing conducted on the record.

(a) The preliminary hearing shall be electronically recorded and maintained in accordance with the records retention schedule established by the Kentucky Department of Libraries and Archives.

(b) If requested by the board, the record of the proceeding shall be transcribed.

(c) At the preliminary hearing, the offender shall present all evidence the offender desires to make part of the administrative record.

(d) Except as provided by Section 3 of this administrative regulation, the record shall not be supplemented with any new or additional evidence after the conclusion of the preliminary hearing.

(5) The preliminary hearing shall be conducted by an administrative law judge of the Parole Board who meets the qualifications set forth in KRS 439.341.

(a) The administrative law judge may take judicial notice of acts of the Parole Board, including the conditions of sex offender postincarceration supervision and all other matters which may be judicially noticed in the courts of this Commonwealth pursuant to KRE 201.

(b) Witnesses appearing at the preliminary hearing to give testimony shall do so under oath, administered by the administrative law judge, and shall be available for examination by the other party or the administrative law judge, unless good cause dictates otherwise.

(c) Hearsay evidence may be presented and admitted into the record, at the discretion of the administrative law judge.

(d) The probation and parole officer shall bear the burden of proof in establishing the elements of the violation.

(e) The probation and parole officer shall present evidence first and the offender shall be given the opportunity to present evidence in defense or mitigation.

(f) Any further proceedings shall be conducted at the discretion of the administrative law judge.

(g) The offender may, within reasonable limits, present evidence solely for the purpose of mitigation of his conduct, including evidence of his mental condition. If presented, this evidence shall be subject to rebuttal by the probation and parole officer.

(h) The preliminary hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown.

(i) At the request of either party, the administrative law judge may, within his discretion, leave the record open for reception of additional evidence if no substantial rights are prejudiced.

(6) At the close of the hearing, or within a reasonable time thereafter, the administrative law judge shall make a determination, from the evidence produced at the hearing, as well as any evidence of which judicial notice is taken, whether there exists probable cause to believe that the offender has committed any or all of the violations alleged in the notice of preliminary hearing.

(a) If probable cause is found to exist:

1. Except as provided by paragraph (b) of this subsection, the case shall be referred to the Parole Board which shall then issue a sex offender postincarceration supervision violation warrant pursuant to Section 2(1)(a) of this administrative regulation, which shall cause the offender to be brought before the Parole Board for a final sex offender postincarceration supervision revocation hearing; and

2. The administrative law judge shall issue a written decision and may issue a recommendation, along with reasons in support of that recommendation, as to what action should be taken concerning the revocation of sex offender postincarceration supervision and return of the offender as a sex offender postincarceration supervision violator. This recommendation shall be advisory only and shall not be binding on the board.

(b) If the administrative law judge finds that there exist substantial mitigating factors, the administrative law judge may recommend that the offender not be returned as a sex offender postincarceration supervision violator.

1. If the administrative law judge makes that finding and recommendation, the case shall be referred to the Parole Board for their vote on the issuance of the sex offender postincarceration supervision violation warrant pursuant to Section 2(2) of this administrative regulation.

2. If the Parole Board votes to issue the warrant, the offender shall be brought before the Parole Board for a final sex offender postincarceration supervision revocation hearing in the same manner as provided in subsection (6)(a) of this section.

(7) A preliminary hearing shall not be required if the offender has received a new conviction for a crime committed while on sex offender postincarceration supervision. Proof of the conviction shall establish a presumption of probable cause of a violation of the conditions of the sex offender's postincarceration supervision.

(a) Upon receipt by the Parole Board from the Commissioner of the Department of Corrections or designee of a written request to schedule a final hearing because an offender has received a new conviction for a crime committed while on sex offender postincarceration supervision, the board may issue a warrant pursuant to Section 2 of this administrative regulation and schedule the offender for a final hearing under Section 3 of this administrative regulation.

(b) The written request for issuance of the warrant shall be accompanied by proof of the new criminal conviction for the offender's crime committed while on sex offender postincarceration supervision.

(c) At a final hearing scheduled by the board pursuant to paragraph (a) of this subsection, the board shall provide the offender a reasonable opportunity to present evidence in mitigation and evidence, if any, that the offender was not convicted of a crime while on sex offender postincarceration supervision.

(8) A preliminary hearing shall not be required for an offender who waives his right to a preliminary hearing and ad-

mits to one (1) or more alleged violations of the conditions of the offender's postincarceration supervision if:

(a) The offender appeared before an administrative law judge of the Parole Board and waived his right to a preliminary hearing on the record; or

(b) The offender was being supervised in another state or jurisdiction pursuant to the Interstate Compact when the alleged violation occurred, and it can be shown that the offender appeared before an administrative law judge, hearing officer, or other official authorized to conduct administrative hearings in the supervising state and waived his right to a preliminary hearing in a manner consistent with the requirements of the Interstate Compact and due process.

1. Upon receipt of notice and documentation from the commissioner of the Department of Corrections or designee that an offender supervised in another state pursuant to the Interstate Compact has waived his right to a preliminary hearing, the board shall forward the notice and documentation to an administrative law judge of the board.

2. The administrative law judge shall review the waiver to determine if the waiver meets the requirements of subsection (8)(b) of this section. If the administrative law judge determines that the waiver does not comply with subsection (8)(b) of this section, the Parole Board Chair or designee shall refer the matter back to the administrative law judge for a preliminary hearing or to the Division of Probation and Parole to request that action be taken to ensure compliance with this administrative regulation.

(9) An offender supervised in another state pursuant to the Interstate Compact at the time of a violation of the offender's postincarceration supervision who waives his right to a preliminary hearing in the supervising state and is subsequently returned to Kentucky to the custody of the Department of Corrections shall be deemed to have waived any right for the preliminary hearing to take place in or near any community outside Kentucky where the violation is alleged to have occurred, or at any location outside Kentucky where the offender was taken into custody.

(10) In any preliminary revocation hearing in which the releasing authority is other than the Kentucky Parole Board, upon a finding of probable cause, the matter may be referred to the releasing authority for further revocation consideration on the same basis as a case in which the Kentucky Parole Board is the releasing authority.

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

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

Section 2. Sex Offender Postincarceration Supervision Violation Warrants. Sex offender postincarceration supervision violation warrants shall be issued as follows:

(1) A vote of a majority of a quorum of the full board shall be required before a sex offender postincarceration supervision revocation warrant is issued, except that:

(a) If a case is referred to the Parole Board by the administrative law judge under Section 1(6)(a)1 of this administrative regulation for a final hearing, with a finding of probable cause of a violation of a condition of sex offender postincarceration supervision, the Parole Board chair or designee shall issue a sex offender postincarceration supervision violation warrant to bring the offender before the board for a final hearing.

(b) If it appears that an offender has absconded from sex offender postincarceration supervision, it otherwise appears that an offender is a fugitive from justice, or a sex offender postincarceration supervision violation warrant is necessary

to effect the return of the offender to the state of Kentucky, the Parole Board chair or designee may issue a warrant if:

1. The board receives documentation from the supervising probation and parole officer setting forth facts sufficient to conclude there are reasonable grounds to believe that some violation has occurred; and

2. The commissioner or designee submits to the board a recommendation that a warrant be issued.

(c) If a vote of the board would otherwise be required to issue a sex offender postincarceration supervision violation warrant, except there is not a quorum of the board present to vote whether probable cause exists and the warrant should be issued, any member of the Parole Board may issue a sex offender postincarceration supervision violation warrant if, upon review, the board member determines that probable cause exists to issue the warrant.

1. If a warrant is issued under these circumstances, the board shall vote, as soon as is reasonable, on whether or not to concur in the issuance of the warrant.

2. If a majority of a quorum of the board does not concur, the warrant shall be voided by the board.

(2) If a case is referred to the Parole Board by the administrative law judge under Section 1(6)(b) of this administrative regulation, with a recommendation that the offender not be returned to the institution for a violation of a condition of sex offender postincarceration supervision, the board may issue a sex offender postincarceration supervision violation warrant, if upon review a majority of a quorum of the board concurs that probable cause exists to believe a sex offender postincarceration supervision violation has taken place. If a majority of a quorum of the board votes to issue the warrant, the warrant shall be issued.

(3) If the offender is being supervised outside the state of Kentucky, a sex offender postincarceration supervision violation warrant may be issued if:

(a) There is a vote of the Parole Board based upon a written report from the supervising state setting forth facts sufficient to conclude that there are reasonable grounds to believe that a violation of a condition of sex offender postincarceration supervision has occurred; and

(b) The commissioner or designee submits to the board a request or recommendation that a warrant be issued.

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

(8) After the issuance of a warrant has been approved as provided by this section, any board member may sign the warrant.

Section 3. Final Revocation Hearings. At the final sex offender postincarceration supervision revocation hearing:

(1) The Parole Board shall determine what action should be taken concerning the revocation of sex offender postincarceration supervision and return of the offender as a sex offender postincarceration supervision violator.

(2) The charges specified in the warrant shall be explained to the offender and the offender shall be given the opportunity to admit or deny them.

(3) The evidence shall be limited to the administrative record made before the administrative law judge, except that if the offender wishes to present new or different evidence or information than the offender presented at the preliminary hearing:

(a) The board may consider any new evidence or information submitted by the offender in writing and in advance of the final revocation hearing.

(b) The offender may request a special hearing for the presentation of new or different evidence or information.

1. The request for a special hearing shall be made by the offender no later than at the beginning of the final hearing.

2. The grant or denial of a special hearing shall be totally

within the board's discretion.

3. The board may grant a request for a special hearing if the board finds that the new or different evidence or information is relevant to the proceeding, and that it could not have been presented at the preliminary hearing.

(4) If a request for a special hearing is granted by the board:

(a) A short continuance may be granted so that the special hearing can be scheduled.

(b) The special hearing shall take place at the central office of the board, unless the board designates another site.

(c) At the special hearing, the following order of proceedings shall be followed:

1. The offender, parole officer, and all witnesses shall be sworn in by the Parole Board.

2. The board shall present a short statement of the charges against the offender.

3. The parole officer shall present proof to substantiate the charges, subject to cross-examination by the offender.

4. The offender may present proof to rebut the parole officer's charges, subject to rebuttal evidence and testimony by the parole officer.

5. The parole officer may put on any rebuttal proof subject to cross-examination.

6. The board may question both the offender and the parole officer and any witnesses.

(d) After the conclusion of the special hearing, the board shall make a determination as to whether to revoke the offender's sex offender postincarceration supervision, and notify the offender in writing, as provided by subsection (5) of this section.

(5) At the conclusion of the final hearing, the board shall make a determination of whether to revoke the offender's sex offender postincarceration supervision or to return the offender to supervision.

(a) The offender shall be given written notification of the board's decision no later than twenty-one (21) days from the date of the decision. The time period may be extended by the board for good cause, in which case the board shall document the reason for the time extension.

(b) If the board votes to revoke the sex offender postincarceration supervision and return the offender as a sex offender postincarceration supervision violator, the offender shall be returned to the custody of the Department of Corrections for the remaining period of sex offender postincarceration supervision.

Section 4. Reconsideration. An offender whose sex offender postincarceration supervision is revoked by the board, or the offender's authorized legal representative, may request reconsideration review of the decision by the board.

(1) A request for reconsideration 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.

(2) The request shall be screened by the board chairperson or designee to decide if a reconsideration hearing shall be conducted by the full board.

(3) A reconsideration hearing shall not be granted except for one (1) or more of 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.

(4) A request based on an allegation of misconduct or significant procedural error shall clearly indicate the specific misconduct or procedural error.

(5) If the request for reconsideration is granted pursuant to this section, the following procedures shall apply:

(a) The case shall be set for a reconsideration hearing by the full board at a meeting at which a quorum of the board is present.

1. The reconsideration hearing shall be conducted from the record of the first hearing.

2. The appearance of the inmate shall not be necessary.

3. If a board member wishes to have additional testimony, an appearance hearing may be conducted.

(b) The board shall vote after reviewing the case.

1. A decision to change the result of the hearing that is the subject of the reconsideration shall require a majority vote of a quorum of the board.

2. The decision of the board shall be final.

Section 5. Modification of Conditions of Sex Offender Postincarceration Supervision. (1) If the board has established or imposed conditions of a sex offender's postincarceration supervision, the offender may request the modification or removal of a condition or fee through the offender's assigned probation and parole officer.

(2) Any request for modification or removal of a condition shall be decided by vote of a majority of a quorum of the full board.

(3) The offender shall be given written notification of the board's decision no later than twenty-one (21) days from the date of the decision. The time period may be extended by the board for good cause, in which case the board shall document the reason for the time extension. [Section 1. Preliminary Revocation Hearings. Preliminary Sex Offender Conditional Discharge revocation hearings shall be conducted by an administrative law judge of the Parole Board who shall have control over the proceedings and the reception of evidence at these hearings.

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

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

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

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

(5) The administrative law judges may take judicial notice of acts of the Parole Board, including the conditions of sex offender conditional discharge and all other matters which may be judicially noticed in the courts of this Commonwealth pursuant to KRE 201. Witnesses appearing at the preliminary hearing to give testimony shall do so under oath, administered by the administrative law judge, and shall be available for examination by the other party or the administrative law judge, unless good cause dictates otherwise. Hearsay evidence may be presented and admitted into the

record, at the discretion of the administrative law judge. The probation and parole officer shall bear the burden of proof in establishing the elements of the violation. The probation and parole officer shall present evidence first and the Offender shall be given the opportunity to present evidence in defense or mitigation. Any further proceedings shall be conducted at the discretion of the administrative law judge. The offender may, within reasonable limits, present evidence solely for the purpose of mitigation of his conduct, including evidence of his mental condition. If presented, this evidence shall be subject to rebuttal by the probation and parole officer.

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

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

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

or wholly involve criminal conduct.

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

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

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

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

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

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

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

(5) In all other cases sex offender conditional discharge violation warrants may be issued only upon majority vote of the board, except as set forth in subsection (7) of this section. If the board votes to issue any warrant, the warrant shall be issued.

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

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

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

VERMAN WINBURN, Chairman

APPROVED BY AGENCY: December 1, 2010

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

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.

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, March 8, 2011)**

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) 1. The registration certificate or racing permit issued by The Jockey Club for the horse is on file with the racing secretary; or

2. (e) 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.

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(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 reveal 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. (1) A horse shall not be stabled on the grounds of a licensed association or any training center under the jurisdiction of the commission [association grounds] unless within ten (10) days prior to arrival on the [associa-

tion] grounds, the horse has been examined by an accredited practicing veterinarian who shall certify:

(a)[(1)] The horse's identity [of the horse];

(b)[(2)] The horse's body temperature when examined[at the time of examination][Temperature when examined];

(c)[(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

(d)[(4)] Any other matters as may be required from time to time by the Kentucky State Veterinarian.

(2)[(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.[10-] 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 shall not weigh[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)[(9)] 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)(a) Any riding crop[(10)(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) ~~1.~~ The only additional feature that may be attached to the riding crop is a flap ~~that~~-

~~4. A flap~~ shall have a:

~~a. [4.1][a.]~~ Maximum length from the end of the shaft of one-half (1/2) inch; ~~and~~

~~b. [2.1][and b.]~~ Maximum width of one and six-tenths (1.6) inches, with a minimum width of eight-tenths (0.8) inch;

~~2. [3.1][2.]~~ The flap from the end of the shaft shall not contain any reinforcements or additions;

~~3. [4.1][3.]~~ There shall not be binding within seven (7) inches of the end of the flap;

~~4. [5.1][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

~~5. [6.1][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 shall be~~~~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 ~~or~~~~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;~~

~~(2) If~~~~[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 of **810 KAR 1:018; and**

~~(3) All licensees shall~~~~[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.]~~

Section 15. Incorporation by Reference. (1) "ISO 11784", 1996/Amd.1:2004, is incorporated by reference.

(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.

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.

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, March 8, 2011)**

810 KAR 1:027. Entries, subscriptions, and declarations.

RELATES TO: KRS 230.215, 230.240~~(2)~~, 230.290, 230.310, 230.320 ~~[230.3209]~~

STATUTORY AUTHORITY: KRS **230.215**, 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. KRS 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 810 KAR Chapter 1~~~~[these administrative regulations]~~~~under 810 KAR Chapter 1. An entry shall be made by the owner, the trainer, or a licensed autho-~~

ized 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 [4:018] 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 pursuant to 810 KAR Chapter 1.

(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 [antibleeder 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 or [by, or] trained by [,] 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.

Section 5. Mutuel Entries. (1)[No] More than two (2) horses having common ties through training shall be not 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 not 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, if [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 dis-

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tance 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 ~~8[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 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-eligible] 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 wish ~~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]

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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.

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PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, March 8, 2011)

810 KAR 1:140. Calculation of payouts and distribution of pools.

RELATES TO: KRS 230.210, 230.215, 230.260, 230.361, 230.3615, 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 810 KAR 1:001.

(2) "Breakage" is defined by 810 KAR 1:001.

(3) "Broken consolation price" means the profit per dollar, plus one (1) dollar, rounded down to the break point.

(4) "Carryover" is defined by 810 KAR 1:001.

(5) "Consolation payout" means a payout to individuals who do not correctly choose all of the selections in a multiple-pick wager, or a payout to individuals who wager on a horse in a multi-pick wager that is subsequently scratched.

(6) "Covered betting interest" means a betting interest or combination of betting interests that has been wagered upon.

(7) "Dead heat" is defined by 810 KAR 1:001.

(8) "Gross pool" means the sum of all wagers less refunds.

(9) "Individual" means a natural person, at least eighteen (18) years of age, except does not include any corporation, partnership, limited liability company, trust, or estate ~~is defined by 810 KAR 1:146].~~

(10) "Multi-commission pool" means a pari-mutuel pool where entities accepting wagers use different takeout rates.

(11) "Net pool" is defined by 810 KAR 1:001.

(12) "Payout" is defined by 810 KAR 1:001.

(13) "Performance" means a specified number of races on a given race day that constitutes a full card of racing.

(14) "Profit" means the net pool less the gross amount wagered ~~if [when]~~ using the standard price calculation procedure and the net pool less the net amount wagered ~~if [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 810 KAR 1:001.

(17) "Single commission pool" means a pari-mutuel pool where all entities accepting wagers use the same takeout rate.

(18) "Single price pool" means a pari-mutuel pool in which the entire profit is paid to holders of winning tickets after the deduction of the takeout.

(19) "Takeout" is defined by 810 KAR 1:001.

(20) "Unbroken consolation price" means the profit per dollar plus one (1) dollar.

Section 2. General requirements. (1) All pari-mutuel pools shall be separately and independently calculated and distributed. The takeout shall be deducted from each gross pool as stipulated by KRS 230.3615. The remainder of the pool shall be the net pool for distribution as payoff on winning pari-mutuel wagers.

(2)(a) Single commission pari-mutuel pools may be calculated using either the standard price calculation procedure or the net price calculation procedure.

(b) Multi-commission pari-mutuel pools shall be calculated using the net price calculation procedure.

(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 ~~shall be [is]~~ net pool less gross amount bet on all place finishers. Finishers shall split profit 1/2 and 1/2 (place profit), then divide by gross amount bet on each place finisher for two unique prices.

(c) Profit split – show pool. Profit ~~shall be [is]~~ net pool less gross amount bet on all show finishers. Finishers shall split profit 1/3 and 1/3 and 1/3 (show profit), then divide by gross amount bet on each show finisher for three unique prices.

(4) The net price calculation procedure shall be as follows:

(a) Single price pool – Win pool

Gross Pool	=	Sum of Wagers on all Betting Interests – Refunds
Takeout	=	Gross Pool x Percent Takeout for Each Source
Net Pool	=	Gross Pool - Takeout
Net Bet on Winner	=	Gross Amount Bet on Winner x (1 – Percent Takeout)
Total Net Pool	=	Sum of All Sources Net pools
Total Net Bet on Winner	=	Sum of All Sources Net Bet on Winner
Total Profit	=	Total Net Pool - Total Net Bet on Winner
Profit Per Dollar	=	Total Profit / Total Net Bet on Winner
\$1 Unbroken Base Price	=	Profit Per Dollar + \$1 for each source:
\$1 unbroken price	=	\$1 Unbroken Base Price x (1 - Percent Takeout)
\$1 Broken Price	=	\$1 Unbroken Price Rounded Down to the Break Point
Total Payout	=	\$1 Broken Price x Gross Amount Bet on Winner
Total Breakage	=	Net Pool - Total Payout

(b) Profit split – Place pool. Total profit ~~shall be [is]~~ the total net pool less the total net amount bet on all place finishers. Finishers shall split total profit 1/2 and 1/2 (place profit), then divide by total

net amount bet on each place finisher for two unique unbroken base prices.

(c) Profit split – Show pool. Total profit shall be the total net pool less the total net amount bet on all show finishers. Finishers shall split total profit 1/3 and 1/3 and 1/3 (show profit), then divide by total net amount bet on each show finisher for three unique unbroken base prices.

(5) Each association shall disclose the following in its license application:

(a) Which price calculation method it will use for single commission pari-mutuel pools;

(b) The ticket denominations for each type of pari-mutuel wager;

(c) The procedures for refunds of pari-mutuel wagers;

(d) The takeout for each type of pari-mutuel wager;

(e) Which pari-mutuel wagers will include carryover and consolation pools and the percentages of the net pool assigned to each; and

(f) For each type of pari-mutuel wagering involving more than one (1) live horse race, the procedures to be used if a race is cancelled.

(6) All minimum amounts for pari-mutuel wagers shall be approved by the commission.

(7) The individual pools described in this administrative regulation may be given alternative names by each association if prior approval is obtained from the commission.

(8) A mutuel entry or a mutuel field in any race shall be a single betting interest for the purpose of each of the wagers described in this administrative regulation and the corresponding pool calculations and payouts. If either horse in a mutuel entry, or any horse in a mutuel field, is a starter in a race, the entry or the field selection shall remain as the designated selection for any of the wagers described in this administrative regulation and the selection shall not be deemed scratched.

Section 3. Pools dependent upon entries for live horse races.

(1) Except as provided in subsection (4) of this section, when~~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) Except as provided in subsection (4) of this section, when~~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) Except as provided in subsection (4) of this section, when~~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.

(4) The commission may authorize an association to offer a subject wager with less than the number of horses required by this section if:

(a) Requested by the association; and

(b) The integrity of the wager would not be affected by the smaller field.

Section 4. Win Pools. (1) The amount wagered on the betting interest which finishes first shall be deducted from the net win

pool and the balance remaining shall be the profit. The profit shall be divided by the amount wagered on the betting interest finishing first and the result shall be 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, except~~but~~ if there are not any of those~~no such~~ wagers, then;

(b) To individuals whose selection finishes second, except~~but~~ if there are not any of those~~no such~~ wagers, then;

(c) To individuals whose selection finishes third, but if there are no such wagers, then;

(d) The entire pool shall be refunded on win wagers for that race.

(3)(a) If there is a dead heat for first involving horses representing the same betting interest, the win pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first involving horses representing two or more betting interests, the win pool shall be distributed as a profit split.

Section 5. Place pools. (1) The amounts wagered to place on the first two betting interests to finish shall be deducted from the net pool and the balance remaining shall be the profit. The profit shall be divided into two equal portions, with each portion assigned to each winning betting interest and divided by the dollar amount wagered to place on that betting interest. The result shall be the profit per dollar wagered to place on that betting interest.

(2) The net place pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses in a mutuel entry or mutuel field finish in the first two places, as a single price pool to individuals who selected the mutuel entry or mutuel field, otherwise;

(b) As a profit split to individuals whose selection is included within the first two finishers, except~~but~~ if there are not any of those~~no such~~ wagers on one of those two finishers, then;

(c) As a single price pool to individuals who selected the one covered betting interest included within the first two finishers, except~~but~~ if there are not any of those~~no such~~ wagers, then;

(d) As a single price pool to individuals who selected the third-place finisher, except~~but~~ if there are not any of those~~no such~~ wagers, then;

(e) The entire pool shall be refunded on place wagers for that race.

(3)(a) If there is a dead heat for first involving horses representing the same betting interest, the place pool shall be distributed as a single price pool.

(b) If there is a dead heat for first involving horses representing two or more betting interests, the place pool shall be distributed as a profit split.

(4)(a) If there is a dead heat for second involving horses representing the same betting interest, the place pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for second involving horses representing two or more betting interests, the place pool shall be divided, with one-half (1/2) of the profit distributed to place wagers on the betting interest finishing first and the remainder of the profit distributed equally among place wagers on the betting interests involved in the dead heat for second.

Section 6. Show Pools. (1) The amounts wagered to show on the first three betting interests shall be deducted from the net pool and the balance remaining shall be the profit. The profit shall be divided into three equal portions, with each portion assigned to each winning betting interest and divided by the amount wagered to show on that betting interest. The result shall be the profit per dollar wagered to show on that betting interest.

(2) The net show pool shall be distributed in the following precedence based on the official order of finish:

(a) If horses in a mutuel entry or mutuel field finish in the first three places, as a single price pool to individuals who selected the mutuel entry or mutuel field, otherwise;

(b) If horses of a mutuel entry or mutuel field finish as two of the first three finishers, the profit shall be divided with two-

thirds (2/3) distributed to individuals who selected the mutuel entry or mutuel field and one-third (1/3) distributed to individuals who selected the other betting interest included within the first three finishers, otherwise;

(c) As a profit split to individuals whose selection shall be included within the first three finishers, except if there are not any of those wagers on one of those three finishers, then;

(d) As a profit split to individuals who selected one of the two covered betting interests included within the first three finishers, except if there are not any of those wagers on two of those three finishers, then;

(e) As a single price pool to individuals who selected the one covered betting interest included within the first three finishers, except if there are not any of those wagers, then;

(f) As a single price pool to individuals who selected the fourth-place finisher, except if there are not any of those wagers, then;

(g) The entire pool shall be refunded on show wagers for that race.

(3)(a) If there is a dead heat for first involving two horses representing the same betting interest, the profit shall be divided with two-thirds (2/3) to individuals who selected the first-place finishers and one-third (1/3) distributed to individuals who selected the betting interest finishing third.

(b) If there is a dead heat for first involving three horses representing a single betting interest, the show pool shall be distributed as a single price pool.

(c) If there is a dead heat for first involving horses representing two or more betting interests, the show pool shall be distributed as a profit split.

(4)(a) If there is a dead heat for second involving horses representing the same betting interest, the profit shall be divided with one-third (1/3) distributed to individuals who selected the betting interest finishing first and two-thirds (2/3) distributed to individuals who selected the second-place finishers.

(b) If there is a dead heat for second involving horses representing two betting interests, the show pool shall be distributed as a profit split.

(c) If there is a dead heat for second involving horses representing three betting interests, the show pool shall be divided with one-third (1/3) of the profit distributed to show wagers on the betting interest finishing first and the remainder shall be distributed equally among show wagers on those betting interests involved in the dead heat for second.

(5)(a) If there is a dead heat for third involving horses representing the same betting interest, the show pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for third involving horses representing two or more betting interests, the show pool shall be divided with two-thirds (2/3) of the profit distributed to show wagers on the betting interests finishing first and second and the remainder shall be distributed equally among show wagers on those betting interests involved in the dead heat for third.

Section 7. Double Pools. (1) The double shall require the selection of the first-place finisher in each of two specified races.

(2) The net double pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose selections finished first in each of the two races, except if there are not any of those wagers, then;

(b) As a profit split to individuals who selected the first-place finisher in either of the two races, except if there are not any of those wagers, then;

(c) As a single price pool to individuals who selected the one covered betting interest that finished first in either race, except if there are not any of those wagers, then;

(d) As a single price pool to individuals whose selection finished second in each of the two races, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on the double wagers for those races.

(3)(a) If there is a dead heat for first in either of the races involving horses representing the same betting interest, the double pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first in either of the races involving horses representing two or more betting interests, the double pool shall be distributed as a profit split if there is more than one covered winning combination.

(4) If a betting interest in the first half of the double is scratched prior to the close of wagering on the first double contest, all money wagered on combinations including the scratched betting interest shall be deducted from the double pool and refunded.

(5) If a betting interest in the second half of the double is scratched prior to the close of wagering on the first double race, all money wagered on the combinations including the scratched betting interest shall be deducted from the double pool and refunded.

(6) If a betting interest in the second half of the double is scratched after the close of wagering on the first double race, all wagers combining the winner of the first race with the scratched betting interest in the second race shall be allocated a consolation payout.

(a) In calculating the consolation payout, the net double pool shall be divided by the total amount wagered on the winner of the first race and an unbroken consolation price obtained.

(b) The broken consolation price shall be multiplied by the dollar value of wagers on the winner of the first race combined with the scratched betting interest to obtain the consolation payout.

(c) Breakage shall not be 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) If there is 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 shall require the selection of the first two finishers, in their exact order, for a single race.

(2) The net Exacta pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses of a mutuel entry or mutuel field finish as the first two finishers, as a single price pool to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished in the correct sequence as the first two betting interests, except if there are not any of those wagers, then;

(c) As a single price pool to individuals whose combination included the betting interest that finishes first, except if there are not any of those wagers, then;

(d) As a single price pool to individuals whose combination included the betting interest that finished second, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on Exacta wagers for that race.

(3)(a) If there is a dead heat for first involving horses representing the same betting interest, the Exacta pool shall be distributed as a single price pool to individuals who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish.

(b) If there is a dead heat for first involving horses representing two or more betting interests, the Exacta pool shall be distributed as a profit split.

(4) If there is a dead heat for second involving horses representing the same betting interest, the Exacta shall be distributed as a profit split.

buted as if no dead heat occurred.

(5) If there is a dead heat for second involving horses representing two or more betting interests, the Exacta pool shall be distributed to ticket holders in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the first-place betting interest with any of the betting interests involved in the dead heat for second, except[but] if there is only one covered combination, then;

(b) As a single price pool to individuals combining the first-place betting interest with the one covered betting interest involved in the dead heat for second, except[but] if there are not any of those[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, except[but] if there are not any of those[no-such] wagers, then;

(d) The entire pool shall be refunded on Exacta wagers for that race.

Section 9. Quinella Pools. (1) The Quinella shall require[requires] the selection of the first two finishers, irrespective of order, for a single race.

(2) The net Quinella pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses of a mutuel entry or mutuel field finish as the first two finishers, as a single price pool to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished as the first two betting interests, except[but] if there are not any of those[no-such] wagers, then;

(c) As a profit split to individuals whose combination included either the first- or second-place finisher, except[but] if there are not any of those[no-such] wagers on one of those two finishers, then;

(d) As a single price pool to individuals whose combination included the one covered betting interest included within the first two finishers, except[but] if there are not any of those[no-such] wagers, then;

(e) The entire pool shall be refunded on Quinella wagers for that race.

(2)(a) If there is a dead heat for first involving horses representing the same betting interest, the Quinella pool shall be distributed to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish.

(b) If there is a dead heat for first involving horses representing two betting interests, the Quinella pool shall be distributed as if no dead heat occurred.

(c) If there is a dead heat for first involving horses representing three or more betting interests, the Quinella pool shall be distributed as a profit split.

(3) If there is a dead heat for second involving horses representing the same betting interest, the Quinella pool shall be distributed as if no dead heat occurred.

(4) If there is a dead heat for second involving horses representing two or more betting interests, the Quinella pool shall be distributed to individuals in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the winner with any of the betting interests involved in the dead heat for second, except[but] if there is only one covered combination, then;

(b) As a single price pool to individuals combining the winner with the one covered betting interest involved in the dead heat for second, except[but] if there are not any of those[no-such] wagers, then;

(c) As a profit split to individuals combining the betting interests involved in the dead heat for second, except[but] if there are not any of those[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, except[but] if there are not any of those[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 shall require[requires] the selection of the first place finisher in each of three specified races designated by the association and approved by the commission. Any changes to the Pick-3 format shall be approved by the commission before implementation.

(2) The net Pick-3 pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose selection finished first in each of the three races, except[but] if there are not any of those[no-such] wagers, then;

(b) As a single price pool to individuals who selected the first-place finisher in any two of the three races, except[but] if there are not any of those[no-such] wagers, then;

(c) As a single price pool to individuals who selected the first-place finisher in any one of the three races, except[but] if there are not any of those[no-such] wagers, then;

(d) The entire pool shall be refunded on Pick-3 wagers for those races.

(3)(a) If there is a dead heat for first in any of the three races involving horses representing the same betting interest, the Pick-3 shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first in any of the three races involving horses representing two or more betting interests, the Pick-3 pool shall be distributed as follows:

1. As a profit split to individuals whose selections finished first in each of the three races, except[but] if there are not any of those[no-such] wagers, then;

2. As a single price pool to individuals who selected the first-place finisher in any two of the three races, except[but] if there are not any of those[no-such] wagers, then;

3. As a single price pool to individuals who selected the first-place finisher in any one of the three races, except[but] if there are not any of those[no-such] wagers, then;

4. The entire Pick-3 pool shall be refunded.

(4) If[Should] a betting interest is[be] scratched from a leg of the Pick-3, all wagers with the scratched betting interest shall[will] be handled as follows:

(a) If the scratch was made prior to the start of the first leg, all wagers containing the[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 the[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 the[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 ~~shall~~will remain valid and shall be distributed in accordance with subsection (2) of this section.

(7) Individuals shall be notified immediately by immediate public announcement and immediate posting on the association's video monitors and website to hold all Pick-3 tickets if:

- (a) After the first race of the Pick-3, there are no wagers with the winner of the first leg; or
- (b) After the second race of the Pick-3, there are no wagers with the winners of the first two races; or
- (c) After the third race of the Pick-3, there are no wagers with the winners of the first three races.

(8) ~~If~~When the condition of the turf course warrants a change of racing surface in any races of the Pick-3, and ~~the~~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 ~~shall~~will assign the winner of that race to each Pick-3 ticket holder as their selection for that race.

Section 11. Pick-4 Pools. (1) The Pick-4 requires the selection of the first place finisher in each of four specified races designated by the association and approved by the commission. Any changes to the Pick-4 format shall be approved by the commission before implementation.

(2) The Pick-4 pari-mutuel pool consists of amounts contributed for a win only selection in each of four (4) races designated by the association. Each individual placing a Pick-4 wager shall designate the winning horse in each of four (4) races comprising the Pick-4.

(3) The net Pick-4 pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose selection finished first in each of the four races, ~~except~~but if there are ~~not any of those~~no such wagers, then;

(b) As a single price pool to individuals who selected the first-place finisher in any three of the four races, ~~except~~but if there are ~~not any of those~~no such wagers, then;

(c) As a single price pool to individuals who selected the first-place finisher in any two of the four races, ~~except~~but if there are ~~not any of those~~no such wagers, then;

(d) As a single price pool to individuals who selected the first-place finisher in any one of the four races, ~~except~~but if there are ~~not any of those~~no such wagers, then;

(e) The entire pool shall be refunded on Pick-4 wagers for those races.

(4) If for any reason one or two of the races comprising the Pick-4 is cancelled, the net amount of the pari-mutuel pool shall be distributed as provided above in subsections (3)(b), (c), (d), and (e) of this section.

(5) If for any reason three or more races comprising the Pick-4 are cancelled, the entire pool shall be refunded on Pick-4 wagers for those races.

(6) ~~If~~When the condition of the turf course warrants a change of racing surface in any races of the Pick-4, and ~~the~~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 ~~shall~~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 involv-

ing horses representing the same betting interest, the Pick-4 pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first in any Pick-4 race involving horses representing two or more betting interests, the Pick-4 pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

(8) ~~If~~Should a betting interest in any of the Pick-4 races ~~is~~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) ~~If~~In the event that the win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number.

(b) The totalizator shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.

(9) The Pick-4 pool shall be cancelled and all Pick-4 wagers for the individual performance shall be refunded if at least three races included as part of a Pick-4 are cancelled or declared "no contest."

(10)(a) Each association shall disclose in its license application whether it intends to schedule Pick-4 races and, if so, shall disclose:

1. The percentage of the pool to be retained for the winning wagers, and

2. The designated amount of any cap to be set on the pool to be retained for the winning wagers.

(b) Any changes to the Pick-4 scheduling ~~shall~~ 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 ~~shall~~will be frozen until it is won or distributed under the provisions of this administrative regulation.

(b) After the Pick-4 carryover is frozen, one hundred percent (100%) of the net pool, part of which ordinarily would be added to the Pick-4 carryover, shall be distributed to individuals whose selections finished first in the greatest number of Pick-4 races for that performance.

(12) An association may request permission from the commission to distribute the Pick-4 carryover on a specific performance. The request shall contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(13) If the Pick-4 carryover is designated for distribution on a specified date and performance, and no wagers correctly select the first-place finisher in each of the Pick-4 races, the entire pool shall be distributed as a single price pool to individuals whose selection finished first in the greatest number of Pick-4 races.

(14) The Pick-4 carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(a) Upon written approval from the commission as provided in subsection (7) of this section; ~~or~~

(b) Upon written approval from the commission ~~if~~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) ~~If~~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. ~~The[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 ~~shall require[requires]~~ selection of the first-place finisher in each of six (6) races designated by an association.

(2)(a) The major share of the net Pick-6 pool and the carryover, if any, shall be distributed to those who selected the first-place finisher in each of the Pick-6 contests, based upon the official order of finish.

(b) The minor share of the net Pick-6 pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick-6 contests, based upon the official order of finish.

(c) If there are no wagers selecting the first place finisher of all Pick-6 contests, the minor share of the net Pick-6 pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick-6 contests. The major share shall be added to the carryover.

(3)(a) If there is a dead heat for first in any of the Pick-6 races involving horses representing the same betting interest, the Pick-6 shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first in any of the Pick-6 races involving horses representing two or more betting interests, the Pick-6 pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

(4) At any time after wagering has begun on the Pick-6 and a betting interest is scratched, or declared a non-starter, the actual favorite, as evidenced by total amounts wagered in the win pool at the host association for the race at the close of wagering on that race, shall be substituted for the scratched betting interest for all purposes, including pool calculations.

(a) ~~If [in the event that]~~ the win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number.

(b) The totalizator shall produce reports showing each of the winning combinations with substituted betting interests that became winners as a result of the substitution, in addition to the normal winning combination.

(c) Pick-6 wagers on a mutuel entry or mutuel field from which a starter or starters may have been scratched shall be wagers upon the horse or horses remaining in ~~the[such]~~ entry or field.

(d) If no starter remains representing any mutuel entry or mutuel field, wagers upon ~~the[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) ~~If [When]~~ the condition of the turf course warrants a change of racing surface in any of the Pick-6 races, and ~~the[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 ~~shall[will]~~ assign the winner of that race to each Pick-6 ticketholder as their selection for that race.

(6) If at least one race included as part of a Pick-6 is cancelled or declared "no contest", ~~except[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. ~~The[Such]~~ distribution shall include the portion ordinarily retained for the Pick-6 carryover, ~~except[but]~~ not the carryover from previous performances.

(7) The Pick-6 pool shall be cancelled and all Pick-6 wagers for the individual performance shall be refunded if at least three races included as part of the Pick-6 are cancelled or declared "no contest."

(8)(a) Each association shall disclose in its license application whether it intends to schedule Pick-6 races and, if so, shall disclose:

1. The percentage of the pool to be retained for the winning wagers; and

2. The designated amount of any cap to be set on the pool to be retained for the winning wagers.

(b) Any subsequent changes to the Pick-6 scheduling ~~shall~~ 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 ~~shall[will]~~ be frozen until it is won or distributed under the provisions of this administrative regulation.

(b) After the Pick-6 carryover is frozen, one hundred percent (100%) of the net pool, part of which ordinarily would be added to the Pick-6 carryover, shall be distributed to those whose selection finished first in the greatest number of Pick-6 races for that performance.

(10) An association may request permission from the commission to distribute the Pick-6 carryover on a specific performance. The request shall contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(11)(a) On the final day of a meeting, an association shall make a final distribution of all accumulated carryovers along with seventy-five percent (75%) of the net pool of the Pick-6 pool conducted on the final day of the meeting to:

1. Individuals with tickets selecting the winners of all Pick-6 races, or, if ~~there are not any of those[no such]~~ wagers ~~[exist]~~, to;

2. Individuals with tickets selecting five winners and no more than one "all win" selection.

(b) Twenty-five percent (25%) of the net pool shall be distributed to the holders of the remaining tickets selecting the most winners.

(c) If there is no distribution in accordance with subsection ~~(11)~~(a) of this section on the last day of the meeting, the entire distributable pool and all monies accumulated therein shall be distributed to the holders of tickets correctly designating the most winning selections of the six races comprising the Pick-6 for that day.

(d) If the Pick-6 is canceled on the final day of a meeting, all money wagered into the Pick-6 pool that day shall be refunded and any carryover shall be retained and added to the Pick-6 pool on the first racing day of the next meeting.

(12) The Pick-6 carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(a) Upon written approval from the commission as provided in subsection (8) of this section; ~~or]~~

(b) Upon written approval from the commission ~~if[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) ~~If [When]~~ the Pick-6 is discontinued; or

(e) On the closing performance of the meeting or split meeting.

(13) If, for any reason, the Pick-6 carryover shall be held over to the corresponding Pick-6 pool of a subsequent meeting, the carryover shall be deposited in an interest-bearing account approved by the commission. The Pick-6 carryover plus accrued interest shall then be added to the net Pick-6 pool of the following meeting on a date and performance approved by the commission.

(14) Upon written approval of the commission, a sum of money up to the amount of any designated cap may be contributed by to the Pick-6 carryover by an association.

(15) Advertised added money or minimum distributions shall not apply to intermediate or final distributions, unless a wager correctly selects winners of all six designated races, or five winners and no more than one "all win" race of the Pick-6 pool.

(16) The association may supply information to the general public regarding the winning dollars in the Pick-6 pool. ~~The[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 ~~the[such]~~ tickets in addition to other disciplinary action.

Section 13. Trifecta Pools. (1) The Trifecta requires selection of the first three finishers, in their exact order, for a single race.

(2) For Trifecta price calculations only, the highest placed finisher of any part of a mutuel entry or mutuel field ~~shall be~~^{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 betting interests, ~~except[but]~~ if there are ~~not any of those[no such]~~ wagers, then;

(b) As a single price pool to individuals whose combination included, in correct sequence, the first two betting interests, ~~except[but]~~ if there are ~~not any of those[no such]~~ wagers, then;

(c) As a single price pool to individuals whose combination correctly selected the first-place betting interest only, ~~except[but]~~ if there are ~~not any of those[no such]~~ wagers, then;

(d) The entire pool shall be refunded on Trifecta wagers for that race.

(4)(a) If less than three betting interests finish and the race is declared official, payouts ~~shall~~^{will} be made based upon the order of finish of those betting interests that finish the race.

(b) The balance of any selection beyond the number of betting interests completing the race shall be ignored.

(5)(a) If there is a dead heat for first involving horses representing three or more betting interests, all of the wagering combinations selecting three betting interests that correspond with any of the betting interests involved in the dead heat shall share in a profit split.

(b) If there is a dead heat for first involving horses representing two betting interests, both of the wagering combinations selecting the two betting interests that finish in a dead heat, irrespective of order, along with the third-place betting interest shall share in a profit split.

(6) If there is a dead heat for second, all of the combinations correctly selecting the winner combined with any of the betting interests involved in the dead heat for second shall share in a profit split.

(7) If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence, along with any of the betting interests involved in the dead heat for third shall share in a profit split.

(8)(a) ~~[No]~~ Trifecta wagering shall ~~not~~ 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 ~~shall require~~^{requires} selection of the first four finishers, in their exact order, for a single race.

(2) The net Superfecta pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose combination finished in correct sequence as the first four betting interests, ~~except[but]~~ if there are ~~not any of those[no such]~~ wagers, then;

(b) As a single price pool to individuals whose combination included in correct sequence, the first three betting interests, ~~except[but]~~ if there are ~~not any of those[no such]~~ wagers, then;

(c) As a single price pool to individuals whose combination included, in correct sequence, the first two betting interests, ~~except[but]~~ if there are ~~not any of those[no such]~~ wagers, then;

(d) As a single price pool to individuals whose combination correctly selected the first-place betting interest only, ~~except[but]~~ if there are ~~not any of those[no such]~~ wagers, then;

(e) The entire pool shall be refunded on Superfecta wagers for that race.

(3)(a) If less than four (4) betting interests finish and the race is

declared official, payouts shall be made based upon the order of finish of those betting interests completing the race.

(b) The balance of any selection beyond the number of betting interests completing the race shall be ignored.

(4)(a) If there is a dead heat for first involving horses representing four or more betting interests, all of the wagering combinations selecting betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split.

(b) If there is a dead heat for first involving horses representing three betting interests, all of the wagering combinations selecting the three betting interests that finish in a dead heat, irrespective of order, along with the fourth-place betting interest shall share in a profit split.

(c) If there is a dead heat for first involving horses representing two betting interests, both of the wagering combinations selecting the two dead-heated betting interests, irrespective of order, along with the third-place and fourth-place betting interests shall share in a profit split.

(5)(a) If there is a dead heat for second involving horses representing three or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three betting interests involved in the dead heat for second shall share in a profit split.

(b) If there is a dead heat for second involving horses representing two betting interests, all of the wagering combinations correctly selecting the winner, the two dead-heated betting interests, irrespective of order, and the fourth-place betting interest shall share in a profit split.

(6) If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence, along with any two of the betting interests involved in the dead heat for third shall share in a profit split.

(7) If there is a dead heat for fourth, all wagering combinations correctly selecting the first three finishers, in correct sequence, along with any interest involved in the dead heat for fourth, shall share in a profit split.

(8) ~~[No]~~ Superfecta wagering shall ~~not~~ 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 ~~shall require~~^{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 ~~shall~~ 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, ~~except[but]~~ not the Super High-Five carryover pool.

(6) If a betting interest in the Super High-Five pool is scratched from the race, ~~there shall not be any more wagers~~^{wagers shall be} accepted selecting that scratched runner and all tickets previously sold designating ~~that[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 **there are not any of those[no such] wagers [exist], to;**

2. Individuals with tickets selecting the first four (4) finishers, in exact order, for the designated race, or, if **there are not any of those[no such] wagers [exist], to;**

3. Individuals with tickets selecting the first three (3) finishers, in exact order, for the designated race, or, if **there are not any of those[no such] wagers [exist], to;**

4. Individuals with tickets selecting the first two (2) finishers, in exact order, for the designated race, or, if **there are not any of those[no such] wagers [exist], to;**

5. Individuals with tickets selecting the winner for the designated race, or, if **there are not any of those[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 ~~shall require~~**requires** selection of the first two finishers, irrespective of order, in each of two designated races.

(a) Each winning ticket for the first Big Q race shall be exchanged for a free ticket on the second Big Q race in order to remain eligible for the second half Big Q pool.

(b) Exchange tickets shall be exchanged at attended ticket windows prior to the second race comprising the Big Q.

(c) There shall ~~not be a~~**be no** monetary reward for winning the first Big Q race.

(d) Each of the designated Big Q races shall be included in only one Big Q pool.

(2) In the first Big Q race only, winning wagers shall be determined using the following precedence based on the official order of finish for the first Big Q race:

(a) If a mutuel entry or mutuel field finishes as the first two finishers, those who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish shall be winners, otherwise:

(b) Individuals whose combination finished as the first two betting interests shall be winners, **except[but]** if there are **not any of those[no such] wagers, then;**

(c) Individuals whose combination included either the first- or second-place finisher shall be winners, **except[but]** if there are **not any of those[no such] wagers on one of the two finishers, then;**

(d) Individuals whose combination included the one covered betting interest included within the first two finishers shall be winners, **except[but]** if there are **not any of those[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 betting interests, the winning Big Q wagers shall be determined as if no dead heat occurred.

(c) In the first Big Q race only, if there is a dead heat for first

involving horses representing three or more betting interests, individuals whose combination included any two of the betting interests finishing in the dead heat shall be winners.

(4) ~~Except as set forth in subsection (16) of this section,~~ In the first Big Q race only, if there is a dead heat for second, the winners shall be those who combined the first place finisher with any of the runners involved in the dead heat for second.

(5) In the second Big Q race only, the entire net Big Q pool shall be distributed to individuals in the following precedence based upon the official order of finish for the second Big Q race:

(a) If a mutuel entry or mutuel field finishes as the first two finishers, as a single price pool to individuals who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished as the first two betting interests, **except[but]** if there are **not any of those[no such] wagers, then;**

(c) As a profit split to individuals whose combination included either the first- or second-place finisher, **except[but]** if there are **not any of those[no such] wagers on one of those two finishers, then;**

(d) As a single price pool to individuals whose combination included one of the covered betting interests included within the first two finishers, **except[but]** if there are **not any of those[no such] wagers, then;**

(e) As a single price pool to all exchange ticket holders for that race, **except[but]** if there are **not any of those[no such] wagers, then;**

(f) In accordance with subsection (2) of this section.

(6)(a) In the second Big Q race only, if there is a dead heat for first involving horses representing the same betting interest, the net Big Q pool shall be distributed to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish.

(b) In the second Big Q race only, if there is a dead heat for first involving horses representing two betting interests, the net Big Q pool shall be distributed as if no dead heat occurred.

(c) In the second Big Q race only, if there is a dead heat for first involving horses representing three or more betting interests, the net Big Q pool shall be distributed as a profit split to individuals whose combination included any two of the betting interests finishing in the dead heat.

(7) In the second Big Q race only, if there is a dead heat for second involving horses representing two or more betting interests, the Big Q pool shall be distributed to individuals in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the winner with any of the betting interests involved in the dead heat for second, **except[but]** if there is only one (1) covered combination, then;

(b) As a single price pool to individuals combining the winner with the one covered betting interest involved in the dead heat for second, **except[but]** if there are **not any of those[no such] wagers, then;**

(c) As a profit split to individuals combining the betting interests involved in the dead heat for second, **except[but]** if there are **not any of those[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, **except[but]** if there are **not any of those[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) ~~If [Should]~~ a betting interest in the second half of the Big Q ~~is [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 not any of those[no such] wagers, the net Big Q pool shall be distributed as described in subsection (2) of this section.

Section 17. Twin Trifecta Pools. (1) The Twin Trifecta requires the selection of the first three finishers, in their exact order, in each of two designated races.

(a) Each winning ticket for the first Twin Trifecta race shall be exchanged for a free ticket on the second Twin Trifecta race in order to remain eligible for the second half Twin Trifecta pool.

(b) The winning[Such] tickets may only be exchanged at attended ticket windows prior to the second Twin Trifecta race.

(c) Winning first half Twin Trifecta wagers shall receive both an exchange and a monetary payout.

(d) Both of the designated Twin Trifecta races shall be included in only one Twin Trifecta pool.

(2) After wagering closes for the first half of the Twin Trifecta, and the takeout has been deducted from the pool, the net pool shall then be divided into two separate pools: the first half Twin Trifecta pool and the second half Twin Trifecta pool.

(3) In the first Twin Trifecta race only, winning wagers shall be determined using the following precedence based upon the official order of finish for the first Twin Trifecta race:

(a) As a single price pool to individuals whose combination finished in the correct sequence as the first three betting interests, except[but] if there are not any of those[no such] wagers, then;

(b) As a single price pool to individuals whose combination included, in correct sequence, the first two betting interests, except[but] if there are not any of those[no such] wagers, then;

(c) As a single price pool to individuals whose combination correctly selected the first-place betting interest only, except[but] if there are not any of those[no such] wagers, then;

(d) The entire Twin Trifecta pool shall be refunded on Twin Trifecta wagers for that race and Twin Trifecta wagering on the second half shall be cancelled.

(4) Except as set forth in subsection (16) of this section, if no first half Twin Trifecta ticket selects the first three finishers of that race in exact order:

(a) [.] Exchange tickets for the second half Twin Trifecta pool shall not be distributed; and

(b) [.] In such case, The second half Twin Trifecta pool shall be retained and added to any existing Twin Trifecta carryover pool.

(5)(a) Tickets from the first half of the Twin Trifecta that correctly select the first three finishers shall be exchanged for tickets selecting the first three finishers of the second half of the Twin Trifecta.

(b) The second half Twin Trifecta pool shall be distributed to individuals in the following precedence based upon the official order of finish for the second Twin Trifecta race:

1. As a single price pool, including any existing carryover monies, to individuals whose combination finished in correct sequence as the first three betting interests except[but] if there are not any of those[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 except the ticket holder[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, except they[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, except they[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 shall[will] be frozen until it is won or distributed under the provisions of this administrative regulation.

(b) After the Twin Trifecta carryover is frozen, one hundred percent (100%) of the net Twin Trifecta pool for each individual race shall be distributed to winners of the first half of the twin Trifecta pool.

(14) A written request for permission to distribute the Twin Trifecta carryover on a specific performance may be submitted to the commission. The request shall contain:

(a) Justification for the distribution;

(b) An explanation of the benefit to be derived; and

(c) The intended date and performance for the distribution.

(15) If the Twin Trifecta carryover is designated for distribution on a specified date and performance, the following precedence shall[will] be followed in determining winning tickets for the second half of the Twin Trifecta after completion of the first half of the Twin Trifecta:

(a) As a single price pool to individuals whose combination finished in correct sequence as the first three betting interests, except[but] if there are not any of those[no such] wagers, then;

(b) As a single price pool to individuals whose combination included, in correct sequence, the first two betting interests, except[but] if there are not any of those[no such] wagers, then;

(c) As a single price pool to individuals whose combination correctly selected the first-place betting interest only, except[but] if there are not any of those[no such] wagers, then;

(d) As a single price pool to holders of valid exchange tickets, except[but] if there are not any of those[no such] wagers, then;

(e) As a single price pool to holders of outstanding first half

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winning tickets.

(16) For a performance designated to distribute the Twin Trifecta carryover, exchange tickets shall be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first half of the twin Trifecta.

(a) If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first- and second-place finishers.

(b) If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, exchange tickets shall be issued for combinations correctly selecting only the first-place finisher.

(c) If there are no wagers selecting the first-place finisher only in the first half of the Twin Trifecta, all first half tickets shall be winning tickets and shall be entitled to one hundred percent (100%) of that performance's net Twin Trifecta pool, and any existing Twin Trifecta 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 ~~if~~~~when~~ there is a change in the carryover cap or ~~if~~~~when~~ the Twin Trifecta is discontinued; or

(c) On the closing performance of the meeting or split meeting.

(18) If, for any reason, the Twin Trifecta carryover shall be held over to the corresponding Twin Trifecta pool of a subsequent meeting, the carryover shall be deposited in an interest-bearing account approved by the commission. The Twin Trifecta carryover plus accrued interest shall then be added to the second half Twin Trifecta pool of the following meeting on a date and performance so approved by the commission.

(19) Associations shall not provide information to any individual regarding covered combinations, the number of tickets sold, or the number of valid exchange tickets. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees from processing of pool data.

(20)(a) Each association shall disclose in its license application whether it intends to schedule Twin-Trifecta wagering and, if so, shall disclose:

1. The percentages of the net pool added to the first half pool and the second half pool; and

2. The amount of any cap to be set on the carryover.

(b) Any subsequent changes to the Twin Trifecta scheduling require prior approval from the commission or its designee.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 20, 2010

FILED WITH LRC: January 11, 2011 at 10 a.m.

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.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Health Policy

(As Amended at ARRS, March 8, 2011)

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 2011 Update to 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[2010] Update to the 2010-2012 State Health Plan", March 2011[April 20, 2011][October 13, 2010] [as amended April 20, 2011][October 13][August 1, 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.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Health Policy

(As Amended at ARRS, March 8, 2011)

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).

(4)(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, ~~or~~~~and~~ personal care.

(5)(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.

(6)(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.

(7)(8) "Year" means a calendar year from January 1 through December 31.

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Section 2. Entities Completing Surveys. ~~[(4)]~~ The following entities shall submit annual surveys:

- ~~(1)[(a)]~~ Licensed Ambulatory Surgery Centers;
- ~~(2)[(b)]~~ Licensed Hospitals performing ambulatory surgery services or performing outpatient surgical services;
- ~~(3)[(c)]~~ Licensed Home Health Agencies;
- ~~(4)[(d)]~~ Licensed Hospice Agencies;
- ~~(5)[(e)]~~ Licensed Hospitals;
- ~~(6)[(f)]~~ Licensed Private Duty Nursing Agencies;
- ~~(7)[(g)]~~ Facilities with licensed long term care beds;
- ~~(8)[(h)]~~ Entities that hold a certificate of need for MRI equipment;
- ~~(9)[(i)]~~ ~~Exempt Physicians that have MRI equipment;~~
- ~~(j)~~ Facilities with Megavoltage Radiation equipment;
- ~~(10)[(k)]~~ ~~Licensed Psychiatric Residential Treatment Facilities;~~ and
- ~~(11)[(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 3. ~~[(4)]~~ Entities completing surveys on a voluntary basis. Exempt physicians that have MRI equipment ~~may[shall]~~ submit surveys on a voluntary basis.

Section 4. ~~[(3)]~~ Annual Survey Submission. ~~[(4)]~~ 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 ~~and submitted~~ 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) ~~An additional extension~~~~[Additional extensions]~~ shall only be granted if circumstances beyond the entity's control prevents timely completion of ~~a survey~~~~[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 in-

cluded 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. ~~[(10)]~~ Magnetic Resonance Imaging Equipment Registration. ~~[Magnetic Resonance Imaging Equipment registration]~~ on a voluntary basis by exempt physicians that have MRI equipment.

(1) ~~An exempt physician who uses a Magnetic Resonance Imaging unit (MRI) may register the MRI equipment by disclosing the following information by telephone contact and followed up in writing to the Cabinet for Health and Family Services.~~
~~[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. ~~[(f) If the unit is mobile, the submission shall then]~~ also identify the number of days the unit is operational~~[(f)]~~.

~~[(2)]~~~~[(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";
- (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.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, March 8, 2011)

902 KAR 20:320. Level I and Level II psychiatric residential treatment facility operation and services.

RELATES TO: KRS 17.165, 17.500, 216B.105, 216B.450 – 216B.457, 311.858, 314.011, 314.042, 320.240, 439.3401, 645.020, 42 C.F.R. 441.156, 42 C.F.R. 483.350 – 483.376 [216B.010-216B.130, 216B.450-216B.459, 216B.990, 42 C.F.R. 441.466, 42 C.F.R. 483]

STATUTORY AUTHORITY: KRS 216B.042, 216B.455, 216B.457 [216B.405, 216B.450-216B.459, 314.011(8), 314.042(8), 320.240(14)] [-]

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. KRS 216B.457 requires the cabinet to promulgate administrative regulations establishing requirements for psychiatric residential treatment facilities. This administrative regulation provides minimum licensure requirements regarding the operation of and services provided in Level I or [and] Level II psychiatric residential treatment facilities.

Section 1. Definitions. (1) "BAMT" or "Blood Assay for Mycobacterium tuberculosis" means a diagnostic blood test that:

- (a) Assesses for the presence of infection with M. tuberculosis; and
- (b) Reports results [- 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 con-

version of 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.

(4) [(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.

(5) [(6)] "Directly Observed Therapy" or "DOT" means an adherence-enhancing strategy:

(a) In which a healthcare worker or other trained person watches a patient swallow each dose of medication; and

(b) Which [- DOT] is the standard care for all patients with TB disease and is a preferred option for patients treated for latent TB infection (LTBI).

(6) "DOPT" means Directly Observed Preventive Therapy, which is the 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 and is [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 and is [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) [(4)] "Freestanding" is defined by [in] KRS 216B.450(3).

(10) [(5)] "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 and which is measured in accordance with Section 17(1) of this administrative regulation. [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) 1. An individual with a minimum of a bachelor's degree in a mental health related field;
- 2. A registered nurse; or
- 3. 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:

1. A high school diploma or an equivalence certificate; and

2. 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 ~~in~~ 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 that may:

(a) Include:

1. ~~(a)~~ Burns;

2. ~~(b)~~ Lacerations;

3. ~~(c)~~ Bone fractures;

4. ~~(d)~~ Substantial hematoma; or

5. ~~(e)~~ Injuries to internal organs; and

(b) ~~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 that:

(a) ~~A TST~~ Is performed by using the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD); and

(b) ~~Has its 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 meets the descriptions established in Section 17(2) of this administrative regulation ~~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 in accordance with Section 17(3) of this administrative regulation. ~~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)(14) "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, as required by ~~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)1. The initial and annual fee for licensure as a Level II PRTF that has nine (9) beds to fifty (50) beds:

4-1 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 PRTF 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 requirements in this subparagraph shall apply. ~~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).

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(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 established ~~[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, ~~a[n]d~~ a person shall not 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, ~~or [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 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; and

(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. Another [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 criminal [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 in which the [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 at the time changes in policies and procedures occur; 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 [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 arrangements 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 of this subparagraph 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. The services provided shall include~~[- 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 established in KRS 216B.457(9) with regard to professional staff.

a. In accordance with KRS 216B.457(9)(c), the professional services provided by the licensed psychiatrist shall include 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.

b. [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.

1. The administration of the facility~~[governing body]~~ shall designate one (1) full-time:

a. ~~[1-]~~ Mental health professional as the clinical director for a Level I [the] PRTF; or

b. ~~[2-]~~ Qualified mental health professional as the clinical director for a Level II PRTF.

2. ~~[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.

3. ~~[b-]~~ ~~[2-]~~ The administration of the facility [governing body] shall define the authority and duties of the clinical director.

4. ~~[c-]~~ ~~[3-]~~ An individual may serve as both the clinical director and the program director if the qualifications of both positions are met.

5. ~~[d-]~~ ~~[4-]~~ The clinical director shall be responsible for:

a. ~~[4-]~~ ~~[a-]~~ The maintenance of the facility's therapeutic milieu; and

b. ~~[4-]~~ ~~[b-]~~ Assuring that treatment plans developed in accordance with Section 12[44](3) of this administrative regulation are implemented.

6. a. ~~[e-]~~ ~~[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.

~~b. [(iii)] A full-time qualified mental health professional designated as the clinical director of a Level II PRTF may serve 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.~~

~~c. [(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 adequate~~[continuous]~~ provision of [sufficient] regular and emergency supervision of all residents twenty-four (24) hours a day.

(b) ~~[4-]~~ Level I Direct-care staff shall:

1. 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)(c)(5) [(4)] 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 established in this paragraph.[:]

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 adequate~~[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)(c)(~~(4)~~) 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) A Level II facility shall submit, follow, and revise a written staffing plan as required by KRS 216B.457(10)(a) [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 or [and] Level II PRTF staff development programs shall be provided and documented for administrative, professional, direct-care, and support staff.

(b) Level I or [and] Level II PRTF ~~[full time]~~ professional and direct-care staff shall meet the continuing education requirements of their profession or, if there is not a continuing education requirement for that profession, 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 or [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.~~

~~(d) [8-] A Level I or [and] Level II PRTF shall develop and implement a plan for staff to obtain training in first aid and cardiopulmonary resuscitation.~~

~~(7) [(6)] Employment practices in a Level I or [and] Level II PRTF.~~

(a) A Level I or [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:

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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.

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.

~~(i)(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.

~~(i)(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. ~~Counseling actions;~~

7. ~~Disciplinary actions;~~

8. ~~Commendations;~~

9. ~~Employee incident reports; and~~

6. ~~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 or her 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 or her 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. The results of the tuberculosis testing required by Sections 19 and 20 of this administrative regulation; and[-]

(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:

1. Be completed following each professional service;

a. Daily; or

b. [except] If the service is provided daily to groups of residents, through a weekly summary;

2. [when weekly summaries may be used. Professional progress notes shall] Be signed and dated by the:

a.[1-] Mental health professional who provided the service in a Level I PRTF; or

b.[2-] Qualified mental health professional who provided the service in a Level II PRTF;[-]

(c)[4-] Direct-care progress notes which shall;

1. Record implementation of all treatment and any unusual or significant events which occur for the resident; ~~and~~;

2. ~~Direct care progress notes shall~~ Be completed at least by the end of each direct-care shift and summarized weekly; ~~and~~;

3. ~~Direct care notes shall~~ Be signed and dated by the direct-care staff making the entry; ~~and~~;

(d) Special clinical justifications for the use of ~~special and~~ unusual treatment procedures, including emergency safety interventions, and reports; ~~and~~;

(e) Discharge summary; ~~and~~;

(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; ~~and~~;

(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, as required by Sections 10(4) and 10(5) of this administrative regulation.

(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 or her 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 that are:

(a) Approved by the governing body; and

(b) ~~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 residents;

(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) Residency requirements. 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 attained 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 ~~or~~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 required by 902 KAR 2:060 ~~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 ~~shall~~ may be used to meet the requirement for a physical examination in paragraph (c) of this ~~subsection~~ 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 or her 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) 1. 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:

a. Be based on the comprehensive assessment of the resident's needs completed pursuant to subsection (2) of this section;

b.[] Include a substantiated diagnosis and the short-term and long-range treatment needs; and

c.[-and] Address the specific treatment modalities required to meet the resident's needs.

2. The comprehensive ~~4.-The~~ treatment plan of care shall:

a. Contain specific and measurable goals for the resident to achieve;

~~b. [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; **and**

~~c. [3. The treatment plan of care shall]~~ Specify criteria to be met for termination of treatment; **and**

~~d. [4. The treatment plan of care shall]~~ Include any referrals necessary for services not provided directly by the facility.

3.[5.] The resident shall participate to the maximum extent feasible in the development of his or her **comprehensive** treatment plan of care, and the participation shall be documented in the resident's record.

4.[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[master]** treatment plan of care.

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.

5. The comprehensive[7. The] treatment plan of care shall be reviewed and updated through multidisciplinary team conferences as clinically indicated and at least ~~within [7.]~~ thirty (30) days following the first ten (10) days of treatment. **The comprehensive treatment plan of care shall be reviewed[and] every thirty (30)[sixty (60)]** days thereafter and updated every sixty (60) days or earlier if clinically indicated.

6.[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 of care 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)[4. Pursuant to KRS 216B.457(13).]~~ A Level II PRTF shall develop and implement an initial treatment plan of care for each resident **as required by KRS 216B.457(13).**~~[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 and KRS 216B.457(14).~~

~~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.~~

~~e.] 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:

a. Contain specific and measurable goals for the resident to achieve;

b.[4. The comprehensive treatment plan of care shall] Describe the services, activities, and programs to be provided to the resident; **and**

c.[and shall] Specify staff members assigned to work with the resident and the time or frequency for each treatment procedure.

4.[6.] The resident shall participate to the maximum extent feasible in the development of his or her **comprehensive** treatment plan of care, and the participation shall be documented in the resident's record.

5.[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 of care.

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 **and documented as required by KRS 216B.457(15)**~~[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 or[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 of care.

(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 receiv-

ing 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 13.12. Services. A Level I or 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 or 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 in this paragraph 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. ~~[c.]~~

2. ~~[a.]~~ Planned on-site ~~verbal~~ therapies including ~~formal~~ individual, family, and group therapies as indicated by the comprehensive treatment plan of care.

~~[b.]~~ These therapies shall include psychotherapy, interventions, or 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 shall be excluded from this service. ~~[d.]~~

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 or Level II physical health services.

(a) The physical health services available through the Level I or Level II PRTF facility shall include the following services provided either listed below. Physical health services may be provided directly by the facility or ~~may be provided by~~ written agreement. ~~[c.]~~

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 assess-

ments 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 or 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 licensed dietician pursuant to KRS 310.021 ~~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 or 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.~~

~~(c) 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 monthly, with a written record kept of all practiced fire drills, detailing the date, time, and residents who participated in accordance with state fire administrative regulations.~~

~~(c) (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.

(d)(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 or (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 **established in this subsection.[-]**

(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)1. Medications shall not be given without a written order signed by a physician, **dentist, advanced practice registered nurse** or dentist if applicable, or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), **[or]** the rapeutically-certified optometrist as authorized in KRS 320.240(14), or physician assistant as authorized by KRS 311.858.

2. Telephone orders for medications shall be given only to licensed nurses or a pharmacist and signed by **a[the]** physician, dentist, advanced **practice** registered nurse **[practitioner]**, **[or]** the rapeutically-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 **if[when]** clinically indicated **[as one (1) facet of a program of therapy]**. The facility shall ensure that **[no]** **[stimulant or psychotropic]** medication is **not** administered solely for the purpose of program management or control, and that **[no]** medication is **not** 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 **if[when]** specifically ordered by the responsible **prescriber[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 or (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 **shall[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 **shall[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 educational[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 of care**.

(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 of care** and meet the **[following]** requirements **established in this paragraph.[-]**

1. Each resident's **comprehensive[master] treatment plan of care** 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 **shall[may]** be incorporated, **as applicable**, 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 Admissions[Admission] and Release Committee** meetings.

d. If allowed, the program director or designee shall attend all individualized **education[treatment] plan or Admissions[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 **school personnel and the PRTF[parties]**.

(f)1. The facility shall provide or arrange for vocational services for residents, as is age appropriate and is in accordance with the **comprehensive[master] treatment plan of care**.

2. The services shall be planned, implemented and supervised by a vocational counselor or appropriate therapist who **shall[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 implementation 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 resident's~~[residents']~~ treatment team physician is available, given only by that physician; and

~~(d) 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.

(5) A Level I or~~[and] Level II PRTF shall have a written plan approved by the governing body for the use of emergency safety ~~interventions~~~~[intervention]~~~~[special treatment procedures]~~ which at a minimum shall meet the following requirements:~~

(a) Any use of an emergency safety interven-~~tion~~~~[interventions]~~~~[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 is 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 the 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) ~~[8]~~ An order for restraint or seclusion shall not exceed the shortest of:

(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)~~[40]~~ 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 is trained in the use of emergency safety interventions~~[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)~~](b) Within one (1) hour of restraint or seclusion being initiated.

~~(10)~~(44) 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.

~~(11)~~(42)(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 ~~(10)~~(44) 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.

~~(12)~~(43)(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.

~~(13)~~(44)(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.

~~(14)~~(45) 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.

~~(15)~~(46)(44) Staff shall provide constant visual attention to a resident who is in seclusion, through physical presence or a window.

~~(16)~~(47)(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.

~~(17)~~(48)(46) A procedure shall not be used at any time in a manner that causes [~~undue physical discomfort~~], harm[,], or pain to a resident.

~~(18)~~(49)(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.

~~(19)~~(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 ~~if~~[~~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.

~~(20)~~(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.

~~(21)~~(22) Application of time out.

(a) A resident in ~~time out~~[~~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.

~~(22)~~(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, ~~or~~[~~and~~] investigational and experimental drugs.

~~(23)~~(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:

1. The rationale for use;

2.[.] Methods to be used;

3.[.] Specified time to be used;

4.[.] Who will provide the treatment;[,] and

5. 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.

~~(24)~~(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 or[~~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 environ-

ment.

(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 ~~for~~^{to} all services and program components.

Section 17. Tuberculosis Testing Requirements. (1) Induration Measurements. The diameter of the firm area shall be measured transversely to the nearest millimeter to gauge the degree of reaction, and the result shall be recorded in millimeters.

(a) A reaction of ten (10) millimeters or more of induration shall be considered highly indicative of tuberculosis infection in a healthcare setting.

(b) 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.

(2) Tuberculosis (TB) disease.

(a) A person shall be diagnosed as having tuberculosis (TB) disease if the infection 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) illness.

1. Tuberculosis that is found in the lungs shall be called pulmonary TB and may be infectious.

2. Tuberculosis that occurs at a body site outside the lungs shall be called extra pulmonary disease and may be infectious in rare circumstances.

(b) If the only clinical finding is specific chest radiographic abnormalities, the condition shall be termed "inactive TB" and may be differentiated from active TB disease, which shall be 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.

(3)(a) A TST conversion shall have occurred if there is a greater than ten (10) millimeters increase in the size of the TST induration during a two (2) year period in:

1. A health care worker with a documented negative (<10 mm) baseline two (2) step TST result; or

2. A person who is not a health care worker with a negative (<10 mm) TST result within two (2) years.

(b) A TST conversion shall be presumptive evidence of new M. tuberculosis infection and poses an increased risk for progression to TB disease.

Section 18. Admission of Residents under Treatment for Pul-

monary 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 shall be required~~(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 ~~sub-paragraph~~^{paragraph} 2. of this ~~paragraph~~^{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.

(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 resident who meets the criteria listed in subsection (1) of this section and who has~~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 **established** in Section 21 of this administrative regulation.

(3) A resident with an abnormal chest x-ray, consistent with TB disease, **shall be:**

(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:

(a) ~~(.)~~ The resident shall have a medical evaluation;

(b) ~~(.)~~ A chest x-ray shall be taken; ~~(.)~~ and

(c) 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 **required**~~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.

(4)~~(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.

(7)~~(6)~~ 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~~(.)~~.

(2)~~(4)~~ A chest x-ray shall be performed unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis disease.

(3)~~(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 **established** in Section 27 of this administrative regulation.

(4)~~(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.

(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.

(5)~~(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.

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(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 **the employee's anticipated return to work[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~~administrator~~ 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 ~~17[48]~~ 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~~administrator~~ 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 ~~if[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. ~~[(4)]~~ The following shall be reported to the local health department having jurisdiction by the program director or clinical director~~administrator~~ of the facility immediately upon becoming known:

~~(1)[(a)]~~ All residents and staff who have a TST of ten (10) millimeters or more induration;

~~(2)[(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;

~~(3)[(c)]~~ A positive BAMT at the time of admission of a resident or employment of a staff member who has direct contact with residents;

~~(4)[(d)]~~ TST conversions or BAMT conversions on serial testing or identified in a contact investigation;

~~(5)[(e)]~~ Chest x-rays which are suspicious for TB disease;

~~(6)[(f)]~~ Sputum smears positive for acid-fast bacilli;

~~(7)[(g)]~~ Sputum cultures positive for *Mycobacterium tuberculosis*; or

~~(8)[(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, **which may include an HIV test, and shall include a chest x-ray.**

(3)(a) Individuals who **meet the criteria listed in subsection (1) of this section** and 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 **Sections 20 or[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.

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CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, March 8, 2011)

902 KAR 20:330. Psychiatric residential treatment facilities.

RELATES TO: KRS ~~216B.105, 216B.450~~ – **216B.457**[~~216B.040-216B.130, 216B.450-216B.459, 216B.990~~]

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, **216B.455, 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. **KRS 216B.457 requires the cabinet to promulgate administrative regulations establishing requirements for psychiatric residential treatment facilities.** This administrative regulation establishes physical plant requirements for Level I and Level II psychiatric residential treatment facilities (PRTF), ~~and[. 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 processes established in this section shall be followed. [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 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.

(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.

(7) [(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; and [-]

(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, be [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, exclusive 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) For new construction, each:

1. Single occupancy bedroom shall 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 shall have a minimum floor area of eighty (80) square feet per bed, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules.

(d) 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; and

3. Two (2) sheets, a pillow, and bed covering of sufficient quality to maintain resident comfort.

(e) [(d)] Separate sleeping quarters shall be maintained for male and female residents.

(f) [(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.

(g) [(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.

(h) [(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 or fraction thereof 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

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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 ~~perimeter security system shall be provided 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. ~~(c) The perimeter security system shall:~~

4. ~~1~~ Be designed to prevent contraband smuggling; and

4. ~~2~~ Include provisions for monitoring and controlling visitor access and egress.

~~(c)(d)~~ Openings ~~(in the perimeter security system)~~, including windows or doors, shall be controlled by locks, which ~~shall~~ 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; and

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.

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(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.

(d) Hand-washing stations shall include liquid or foam soap dispensers.

(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 ~~shall~~**may** include:

[(a)]~~[(4-)]~~ Paper or cloth units enclosed to protect against dust or soil, and to ensure single-unit dispensing; or

[(b)]~~[(2-)]~~ Hot air dryers if the installation eliminates possible contamination by recirculation of the 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.

[(f)]~~[(a)]~~ 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;

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(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 shall:

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 ~~resident's~~~~[residents']~~ care.

(b) Provision shall be made for twenty-four (24) hour distribution of medicine to residents **and shall**~~[-; 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.~~[-]~~ Administration Area for Level I and Level II PRTF Facilities. ~~[Sufficient]~~ Space shall be available for administrative operations.

Section 10.~~[-]~~ 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.~~[-]~~ 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 Designated 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~~[with]~~ of three (3) feet eight (8) inches; ~~or~~~~[-]~~

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. [Section 14-] [44-] [Storage and Service Areas for Level I and Level II 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 Level II PRTF facility.]~~
- (2) Finishes.
 - (a) Floors shall be easily cleanable and shall have wear resistance appropriate for the location involved. Floors in the 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 the medication preparation [med 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 where water leakage could impact the safety or health of residents 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, 815 KAR 7:120, shall apply.

(2) (a) Except as provided in paragraph (b) of this subsection, 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.

(b) [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.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Information Systems
(As Amended at ARRS, March 8, 2011)

907 KAR 6:005. Electronic health record incentive payments.

RELATES TO: KRS 205.520(3); 42 U.S.C. 1396(a)(3)(F), (t); 42 C.F.R. 170.102, 495.4, 495.6, 495.8, 495.100, 400.203, 495.304, 405.306, 405.308, 495.312, 495.314, 495.368, 495.370

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

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. 42 U.S.C. 1396(a)(3)(F) authorizes states to establish a Medicaid electronic health record (EHR) incentive payment program to provide payments to Medicaid providers who acquire and implement electronic health records. This administrative regulation establishes Medicaid electronic health record incentive payment requirements and policies.

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

(2) "EHR" means electronic health record.

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

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

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

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

(7) "Program year" means[a]:

(a) A calendar year for eligible professionals; or[and]

(b) A federal fiscal year for eligible hospitals.

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

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

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

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

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

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

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

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

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

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

(d) Is not on the:

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

which is available at <http://oig.hhs.gov/fraud/exclusions/exclusions-list.asp>; or

2. Department's DMS List of Excluded Providers, which is available at <http://chfs.ky.gov/dms/provEnr>; and

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

1. Another state within the current program year; or

2. Kentucky within the current program year; or

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

(a) Is physically located in the Commonwealth of Kentucky;

[and]

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

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

(d) Is not on the:

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

which is available at <http://oig.hhs.gov/fraud/exclusions/exclusions-list.asp>; or

2. Department's DMS List of Excluded Providers, which is available at <http://chfs.ky.gov/dms/provEnr>; and

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

1. Another state within the current program year; or

2. Kentucky within the current program year.

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

(1) An eligible professional shall meet the:

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

(b) Requirements established in Section 2(1) of this administrative regulation; or

(2) An eligible hospital shall meet the:

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

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

Section 4. Establishing Patient Volume. (1) An eligible:

(a) Professional shall establish his or her patient volume in accordance with 42 C.F.R. 495.304 and 495.306(c)(1)[495.306(a)(4)]; or

(b) Hospital shall establish its patient volume in accordance with 42 C.F.R. 495.304 and 405.306(c)(2)[495.306(a)(2)].

(2)(a) The establishment of the patient volume of an eligible professional who practices predominantly in a federally-qualified health center (FQHC) or a rural health clinic (RHC) shall comply with 42 C.F.R. 495.304(c)(3) and 495.306(c)(3)[495.306(e)].

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

Section 5. Basis for Determining an EHR Incentive Payment.

[(4)] The department's basis for determining an incentive payment shall be in accordance with 42 C.F.R. 495.308.

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

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

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

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

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

(4) An eligible hospital may receive EHR incentive payments

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from Medicare and Medicaid in accordance with 42 C.F.R. 495.310(j).

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

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

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

(3) An EHR incentive payment to an eligible professional or eligible hospital shall be disbursed based on the criteria established in 42 C.F.R. 495.2 through **495.10[40]**.

(4) An EHR incentive payment to an eligible:

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

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

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

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

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

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

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

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

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

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

(a) The department; or

(b) The Centers for Medicare and Medicaid Services.

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

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

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

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

1. An incentive payment;

2. An incentive payment amount;

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

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

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

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

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

(b) Clearly identify each specific issue and dispute; **and**

(c) Clearly state the:

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

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

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

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

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

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

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

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

(a) Be conducted face to face; and

(b) Not be conducted via telephone.

(7) If an administrative hearing is requested at the dispute resolution meeting, the dispute resolution meeting transcript shall become part of the official record of the hearing pursuant to KRS 13B.130.

(8)(a) The department shall, within ten (10) calendar days of receipt of the request for a dispute resolution meeting, send a written response to the eligible professional or hospital:

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

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

(b) A dispute resolution meeting shall be held:

1. No sooner than ten (10) calendar days and no later than twenty (20) calendar days of receipt of the request for a dispute resolution meeting;

2. Sooner than ten (10) calendar days of receipt of the request for a dispute resolution meeting if both parties agree to the sooner date; or

3. At a date later than the date established in subparagraph 1. of this paragraph if [within forty (40) calendar days of receipt of the request, unless] a postponement is requested.

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

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

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

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

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

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

(11) **Within thirty (30) calendar days**~~[The department,]~~ after the dispute resolution meeting or the date the information to be considered was presented to the department as established in subsection (10) of this section, **the department** shall ~~[within thirty~~

~~(30) calendar days]:~~

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

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

1. The department's decision; and
2. The facts upon which the decision was based with reference to applicable statutes or administrative regulations.

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

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

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

1. Reason for the delay; and
2. Anticipated completion date of the review.

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

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

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

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

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

(b) Filed at the state level for program exclusion resulting from a criminal conviction by the court of competent jurisdiction, upon exhaustion or failure to timely pursue the judicial appeal process.

(4) The administrative hearing process shall be used to appeal:

- (a) An incentive payment;
- (b) An incentive payment amount;

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

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

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

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

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

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

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

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

- (a) The notice of action taken;
- (b) The statutory or regulatory basis for the action taken;
- (c) The department's decision following the dispute resolution meeting process; and
- (d) All documentary evidence provided by the:
 1. Eligible professional, eligible hospital, or provider; or
 2. The eligible professional's, eligible hospital's, or provider's billing agent, subcontractor, fiscal agent, or another individual au-

thorized by the eligible professional, eligible hospital, or provider to provide information regarding the matter to the department.

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

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

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

1. A mutual agreement between the:
 - a. Eligible profession, eligible hospital, or provider; and
 - b. The department; or
2. A continuance granted by the hearing officer.

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

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

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

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

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

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

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

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

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

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

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

(b) Issues directly raised during the dispute~~[disputed]~~ resolution meeting; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) May enact:

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

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

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

Section 16. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the policy; or

(2) Disapproves the policy.

NEVILLE WISE, Acting Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 20, 2010

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

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, March 8, 2011)

921 KAR 3:035. Certification process.

RELATES TO: 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, ~~274.2, 274.6, 274.12~~, 280.1, 7 U.S.C. 2014, 42 U.S.C. 5122, 5179, ~~Pub. L. 110-246~~

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4, ~~273.10~~

NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Supplemental Nutrition Assistance Program (SNAP) ~~Food Stamp Program~~ within the state. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate

with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes the certification process used by the cabinet in the administration of SNAP ~~the Food Stamp Program~~.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering a household's circumstance for the entire period for which each household is certified.

(2) Certification criteria shall be applicable to all households.

(3) Certain households shall require special or additional certification procedures as specified in Section 5 of this administrative regulation.

Section 2. Certification Periods. (1) In accordance with 7 C.F.R. 273.10(f), the cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided in subsection (3) ~~subsections (3) and (4)~~ of this section, a household shall be certified for at least twelve (12) ~~six (6)~~ months.

(3)(a) A household shall be certified for one (1) or two (2) months if the household meets criteria to:

1. Expedite benefits in accordance with 7 C.F.R. 273.2(i)(1); and

2. Postpone verification.

(b) At the end of a one (1) or two (2) month certification, a household may be recertified for a ~~six (6) month or~~ twelve (12) month certification as specified in subsection (2) ~~and (4)~~ of this section.

(4)(a) In accordance with 7 C.F.R. 273.12, a household shall complete an interim report using Form FS-2, SNAP 6-Month Report, during the sixth (6) month of the household's certification period unless all household members:

1. Are elderly or have a disability as defined in 921 KAR 3:010; and

2. Have no earned income.

(b) If a household fails to return a completed FS-2, SNAP 6-Month Report, or the required income verification, the cabinet shall take action in accordance with 7 C.F.R. 273.12(a)(5) [A household shall be certified for twelve (12) months if all members:

(a) Are either elderly or have a disability, as defined in 921 KAR 3:010; and

(b) Have no earned income].

Section 3. Certification Notices to Households. In accordance with 7 C.F.R. 273.10(g), the cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

(1) Notice of eligibility;

(2) Notice of denial; or

(3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process an application for recertification as specified in 921 KAR 3:030, Section 1, as follows:

(1) If a household files the application:

(a) By the 15th day of the last month of the certification, the cabinet shall:

1. Allow the household to return verification or complete a required action through the last calendar day of the application month; and

2. Provide uninterrupted benefits, if the household is otherwise eligible; or

(b) After the 15th day, but prior to the last day of the last month of the certification, the cabinet shall allow the household thirty (30) days to return verification or complete a required action; or

(2) If the household fails to provide information required for the cabinet to process the application for recertification within a time period established in subsection (1) of this section, the cabinet shall take action in accordance with 7 C.F.R. 273.14(e)(2).

Section 5. Certification Process for Specific Households. Pursuant to 7 C.F.R. 273.11, certain households have circumstances

that are substantially different from other households and therefore shall require special or additional certification procedures.

(1) A household with a self-employed member shall have its case processed as follows:

(a) Income is annualized over a twelve (12) month period, if self-employment income:

1. Represents a household's annual income; or
2. Is received on a monthly basis which represents a household's annual support.

(b) Self-employment income, which is intended to meet the household's needs for only part of the year, shall be averaged over the period of time the income is intended to cover.

(c) Income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year.

(d) The cabinet shall calculate the self-employment income on anticipated earnings if the:

1. Averaged annualized amount does not accurately reflect the household's actual circumstances; and
2. Household has experienced a substantial increase or decrease in business.

(2) A household with a boarder shall have its case processed as follows:

(a) Income from the boarder shall:

1. Be treated as self-employment income; and
2. Include all direct payments to the household for:

- a. Room;
- b. Meals; and
- c. Shelter expenses.

(b) Deductible expenses shall include:

1. Cost of doing business;
2. Twenty (20) percent of the earned income; and
3. Shelter costs.

(3) A household with a member ineligible due to an intentional program violation, or failure to comply with the work requirements or work registration requirements, shall be processed as follows:

(a) Income and resources of the ineligible member shall be counted in their entirety as income available to the remaining household members.

(b) Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions.

(c) The ineligible member shall not be included if:

1. Assigning benefit levels;
2. Comparing monthly income with income eligibility standards; and
3. Comparing household resources with resource eligibility standards.

(4) A household with a member ineligible due to failure to provide a Social Security number, or ineligible alien status, shall be processed as follows:

(a) All resources of an ineligible member shall be considered available to the remaining household members.

(b) A pro rata share, as described in 7 C.F.R. 273.11(c)(2)(ii), of the ineligible member's income shall be attributed to remaining household members.

(c) The twenty (20) percent earned income deduction shall be applied to the pro rata share of earnings.

(d) The ineligible member's share of dependent care and shelter expenses shall not be counted.

(e) The ineligible member shall not be included as specified in subsection (3)(c) of this section.

(5) A household with a nonhousehold member shall be processed as follows:

(a) With the exception of an ineligible member, the income and resources of a nonhousehold member shall not be considered available to the household with whom they reside.

(b) If the earned income of a household member and a non-household member are combined into one (1) wage, the cabinet shall:

1. Count that portion due to the household as earned income, if identifiable; or
2. Count a pro rata share of earned income, if the nonhouse-

hold member's share cannot be identified.

(c) A nonhousehold member shall not be included in the household size, if determining the eligibility and benefits for the household.

(6) The cabinet shall process the case of a drug or alcoholic treatment program resident, as described in 7 C.F.R. 271.2, as follows:

(a) An eligible household shall include:

1. a. A narcotic addict; or
- b. An alcoholic; and
2. A child of the narcotic addict or alcoholic.

(b) Certification shall be accomplished through use of the treatment program's[~~facility's~~] authorized representative.

(c) SNAP[~~Food stamp~~] processing standards and notice provisions shall apply to a resident recipient.

(d) A treatment program[~~center~~] shall notify the cabinet of a change in a resident's circumstance.

(e) Upon departure of the treatment program[~~center~~], the resident shall be eligible to receive remaining benefits, if otherwise eligible.

(f) The treatment program[~~organization or institution~~] shall be responsible for knowingly misrepresenting a household circumstance.

(7) The following case processing procedures shall apply to residents of a group living arrangement, as defined in 7 C.F.R. 271.2:

(a) Application shall be made by a resident or through use of the group living arrangement's[~~facility's~~] authorized representative.

(b) Certification provisions applicable to all other households shall be applied.

(c) Responsibility for reporting changes shall depend upon who files the application:

1. If a resident applies, the household shall report a change in household circumstance to the cabinet; or
2. If the group living arrangement acts as authorized representative, the group living arrangement shall report a change in household circumstance.

(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible.

(e) Unless the household applied on its own behalf, the group living arrangement shall be responsible for knowingly misrepresenting a household circumstance.

(8) A case of a resident in a shelter for battered women and children shall be processed as follows:

(a) The shelter shall:

1. Have FNS authorization to redeem SNAP[~~food~~] benefits at wholesalers; or
2. Meet the federal definition of a shelter as defined in 7 C.F.R. 271.2.

(b) A shelter resident shall be certified for benefits as established in 7 C.F.R. 273.11(g).

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(9) The case of an SSI recipient shall be processed as follows:

(a) An Application may be filed at the:

1. Social Security Administration (SSA) Office; or
2. Local Department for Community Based Services office.

(b) The cabinet shall not require an additional interview for applications filed at the SSA.

(c) The cabinet shall obtain all necessary verification prior to approving benefits.

(d) Certification periods shall conform to Section 2 of this administrative regulation.

(e) A household change in circumstance shall conform to Section 7 of this administrative regulation.

(10) A household with a member who is on strike shall have its eligibility determined by:

(a) Comparing the striking member's income the day prior to the strike, to the striker's current income;

(b) Adding the higher of the prestrike income or current income to other current household income; and

(c) Allowing the appropriate earnings deduction.

(11) Sponsored aliens.

(a) Income of a sponsored alien, as defined in 7 C.F.R.

273.4(c)(2), shall be:

1. Deemed income from a sponsor and sponsor's spouse which shall:

- a. Include total monthly earned and unearned income; and
- b. Be reduced by:

(i) The twenty (20) percent earned income disregard, if appropriate; and

(ii) The ~~SNAP[Food Stamp Program's]~~ gross income eligibility limit for a household equal in size to the sponsor's household;

2. Subject to appropriate income exclusions as specified in 921 KAR 3:020, Section 3; and

3. Reduced by the twenty (20) percent earned income disregard, if appropriate.

(b) If the sponsor is financially responsible for more than one (1) sponsored alien, the sponsor's income shall be prorated among each sponsored alien.

(c) A portion of income, as specified in paragraph (a) of this subsection, of the sponsor and of the sponsor's spouse shall be deemed unearned income until the sponsored alien:

1. Becomes a naturalized citizen;
2. Is credited with forty (40) qualifying quarters of work;
3. Meets criteria to be exempt from deeming, in accordance with 7 C.F.R. 273.4(c)(3);

4. Is no longer considered lawfully admitted for permanent residence and leaves the United States; or

5. Dies, or the sponsor dies.

(d) Effective October 1, 2003, deeming requirements shall no longer apply to sponsored alien children under eighteen (18) years of age, in accordance with 7 U.S.C. 2014.

Section 6. Disaster Certification. The cabinet shall distribute emergency ~~SNAP[food stamp]~~ benefits, pursuant to 42 U.S.C. 5122, to a household residing in a county determined to be a disaster area in accordance with 42 U.S.C.[.] 5179 and 7 C.F.R. 280.1.

Section 7. Reporting Changes. (1) Within ten (10) days of the end of the month in which the change occurs, a household shall report a change which causes:

(a) The household's gross monthly income to exceed 130 percent of poverty level based on household size; or

(b) A household member, who does not have an exemption from work requirements, as specified in 921 KAR 3:025, Section 3(8)(b), to work less than twenty (20) hours per week.

(2) An applying household shall report a change related to its ~~SNAP[food stamp]~~ eligibility and benefits:

(a) At the certification interview; or

(b) Within ten (10) days of the date of the notice of eligibility, if the change occurs after the interview, but prior to receipt of the notice.

Section 8. Incorporation by reference. (1) The "FS-2, SNAP 6-Month Review", edition 5/11[4/11], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 10, 2010

FILED WITH LRC: December 10, 2010 at 4 p.m.

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

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

TOURISM, ARTS, AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amended After Comments)

301 KAR 1:155. Commercial fishing requirements.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990, 217.015(20), ~~EO 2008-546~~

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(3), 50 C.F.R. 17(c), (h), 150.175(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, and to regulate the buying, selling, or transporting of fish and wildlife. KRS 150.175(3) authorizes the department to establish a commercial fishing license that allows the taking and selling of rough fish. 50 C.F.R. Part 17 protects the shovelnose sturgeon from harvest because following: similarity of appearance with the endangered pallid sturgeon. 150.175(3) authorizes the Department of Fish and Wildlife Resources to protect certain rough fishes as designated by administrative regulation. KRS 150.025(1)(c) and (h) authorizes the department to control, by administrative regulation, the buying, selling, and transporting of wildlife. EO 2008-546, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the new Tourism, Arts and Heritage Cabinet. This administrative regulation establishes commercial fishing requirements, protects certain species from overharvest, and regulates the buying and selling of paddlefish, shovelnose sturgeon, and bowfin as protected species and regulates the selling and buying of these roe-bearing species of rough fish.

Section 1. Definitions. (1) "Buyer's permit" means a Roe-bearing Fish Buyer's Permit.

(2) ~~"Closed areas" means all waters not listed in 301 KAR 1:150 as being open to commercial fishing.~~

(3) "Commercial fisherman" means a person holding a valid resident or nonresident commercial fishing license.

(3)(4) ~~"Commercial fishing gear" means the equipment described in 301 KAR 1:146.~~

(5) "Harvester's permit" means a Roe-bearing Fish Harvester's Permit.

(4) ~~"Immediate family member" means a person's spouse, mother, father, daughter, brother, sister, grandparent, or son, or daughter.~~

(5)(6) "Overflow lake" means a permanent or temporary body of water that receives overflow flood waters from an adjacent stream.

(6)(7) ~~"Restricted areas" means within fifty (50) yards of the outlet or inlet of an overflow lake or within fifty (50) yards of the mouth of a stream, except the mouth of the Ohio River as established in this administrative regulation, or within 200 yards of dams as established in KRS 150.445.~~

(8) "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin, regardless of the sex of the fish or the presence or absence or roe.

(7)(9) "Roe-bearing Fish Buyer's Permit" means a permit issued by the Department of Fish and Wildlife Resources that entitles the permittee to buy roe-bearing species or roe in accordance with this administrative regulation.

(8)(10) "Roe-bearing Fish Harvester's Permit" means a permit issued by the Department of Fish and Wildlife Resources to a licensed commercial fisherman that entitles the permittee to harvest and sell roe-bearing species in accordance with this administrative regulation.

(9)(11) "Sport fish" means those species so designated by 301 KAR 1:060.

(10)(12) "Unlicensed helper" means a person without a commercial fishing license who is assisting a commercial fisherman.

(11)(13) "Unprocessed roe" means roe that has been removed from a roe-bearing fish by a food-processing plant, as de-

fined by KRS 217.015(20), prior to its sale at a roe-bearing fish buyer's facility.

Section 2. Unlicensed Helpers. (1) A commercial fisherman shall not utilize more than two (2) unlicensed helpers while actively fishing.

(2) A commercial fisherman shall ensure that an unlicensed helper complies with all boating safety requirements established in KRS Chapter 235.

(3) An unlicensed helper shall:

(a) Be accompanied by a licensed commercial fisherman while using commercial fishing gear;

(b) Be permitted to transport roe or roe-bearing fish in the absence of a commercial fisherman with a Fish Transportation Permit as established in 301 KAR 1:125. ~~be accompanied by a licensed commercial fisherman while using commercial fishing gear;~~

Section 3. Tagging and Using Commercial Gear. A commercial fisherman shall:

(1) Tag commercial fishing gear pursuant to 301 KAR 1:146 ~~see that a conservation officer is able to find and read the commercial gear tag without undue difficulty;~~

(2) Not use commercial fishing gear within:

(a) ~~Within~~ Fifty (50) yards of the outlet or inlet of an overflow lake; or

(b) ~~Within~~ Fifty (50) yards of the mouth of a stream except the mouth of the Ohio River; and

(c) 200 yards of a dam, as established in KRS 150.445.

(3) Not use commercial nets from April 1 through October 31:

(a) In bays and inlets of Kentucky or Barkley Lakes; or

(b) Within a distance of 200 yards from the mouth of bays or inlets in Kentucky or Barkley Lakes.

Section 4. Roe-bearing Fish Harvester's Permit. (1) In order to retain their permit privilege, a Roe-bearing Fish Permit holder shall submit the following by September 15:

(a) A completed Application for Roe-bearing Fish Harvester's Permit; and

(b) The permit fee as established in 301 KAR 3:022.

(2) A mailed application and fee shall be postmarked on or before September 15.

(3) Prior to being issued a harvester's permit, a person must possess a valid commercial fishing license.

(4) A Roe-bearing Fish Harvester's Permit shall not be sold to a resident of a state that will not sell a nonresident harvester's permit, or its equivalent, to Kentucky residents.

(5) The maximum number of resident Roe-bearing Fish Harvester's Permits available each year shall be 101.

(6) The maximum number of nonresident Roe-bearing Permits available each year shall be eighteen (18).

(7) A Roe-bearing Fish Harvester permittee shall be eligible to transfer permit privileges to:

(a) An immediate family member; or

(b) An unlicensed helper who:

1. Has been employed by the permittee for a period of at least one (1) year in that capacity; and

2. Complies with the requirements of this administrative regulation.

(8) To transfer a permit, the harvester permittee shall send to the department:

(a) A notarized letter documenting the name and relationship of the transferee; and

(b) If an unlicensed helper, proof of employment of the unlicensed helper for a period of one (1) year.

(9) Transferability shall be voided if a commercial fishing license or harvester's permit is revoked or suspended as established in Section 13 of this administrative regulation.

Section 5. Roe-bearing Fish Harvester Permit Lottery. (1) There shall be a lottery for the unfilled harvester permits below the

quota.

(2) A person shall apply for the lottery by submitting the following to the department by September 15:

(a) A completed Roe-bearing Fish Harvester Permit Application; and

(b) The appropriate permit fee as established in 301 KAR 3:022.

(3) A mailed application shall be postmarked by September 15 to be eligible.

(4) A person chosen in the lottery shall first obtain a commercial fishing license prior to obtaining a Harvester's Permit.

(5) The department shall return all permit fees to those not chosen in the lottery.

(6) If the department receives fewer resident or nonresident harvester's permit applications than the number of available permits, then completed applications received after September 15 will be filled in the order they were received until the quota has been reached.

(7) If the number of Harvester Permit applications received on a day after September 15 exceeds the number of permits available, then a second lottery will be held to determine the recipients of the available permits.

Section 6. Roe-bearing Fish Harvester Permit Requirements.

(1) Commercial Roe-bearing Fish Harvester's Permit. (1) For the 2008 commercial fishing season:

(a) The department shall sell roe-bearing fish harvester's permits between the dates of October 6, 2008 and November 5, 2008 only to:

1. A resident of Kentucky who possesses a valid 2008 commercial fishing license; or

2. A person who possesses a valid nonresident 2008 commercial fishing license and previously:

a. Reported harvesting roe-bearing fish from March 1, 2006 to September 7, 2007; or

b. Purchased a chevelnose sturgeon permit for the 2006–2008 seasons;

(b) Initial permit applications.

1. An eligible licensed commercial fisherman shall submit to the department by November 5, 2008, a completed Application for a Roe-bearing Fish Harvester's Permit along with permit fees as established in 301 KAR 3:022.

2. Mailed applications shall be postmarked not later than November 5, 2008; and

(c) The number of harvester's permits sold after the 2008 season shall not exceed 120 percent of the total number of resident and nonresident harvester's permits sold in 2008.

(2) Beginning with the 2009 commercial fishing season:

(a) The number of resident permits available shall be 120 percent of the resident permits sold in 2008.

(b) The number of nonresident permits available shall be 120 percent of the nonresident permits sold in 2008.

(c) A permittee wishing to renew a harvester's permit shall:

1. Possess a valid commercial fishing license and submit to the department by September 15, a completed Application for a Roe-bearing Fish Harvester's Permit along with permit fees as established in 301 KAR 3:022; and

2. Mailed applications postmarked by September 15.

(d) A harvester permittee shall be eligible to transfer permit privileges to an immediate family member, or to an unlicensed helper who has been employed by the permittee for a period of at least one (1) year in that capacity and who complies with the requirements of this administrative regulation.

1. The harvester permittee shall send to the department a notarized letter documenting the name and relationship of the transferee and documents showing employment for a period of one (1) year for an unlicensed helper.

2. Transferability shall be voided if a commercial fishing license or harvester's permit is revoked or suspended as established in Section 11 of this administrative regulation; and

(e) If the number of either resident or nonresident harvester's applications is lower than the number issued in 2008, the unfilled permits shall be available using methods described in subsection (3) of this section.

(3) Lottery drawings for resident and nonresident harvester's permits.

(a) Harvester's permits shall not be sold to a resident of a state that will not sell a nonresident harvester's permit, or its equivalent, to a Kentucky resident.

(b) Unfilled harvester's permits.

1. A person wishing to apply for an unfilled resident or nonresident harvester's permit in the lottery drawings shall submit a completed Application for a Roe-bearing Fish Harvester's Permit to the department, by September 15, along with permit fees as established in 301 KAR 3:022.

2. Mailed applications shall be postmarked by September 15.

(c) A person chosen in the lottery drawing for an unfilled harvester's permit shall obtain a valid commercial fishing license prior to obtaining the harvester's permit.

(d) If a person is not chosen in the lottery drawing, permit fees shall be returned.

(e) If the department receives fewer resident or nonresident harvester's permit applications than the number of available permits, then those unused permits shall carry over to the next year.

(4) Roe-bearing fish harvester's permit requirements.

(a) A harvester's permit shall be required for a licensed commercial fisherman to harvest, transport, or sell roe fish or unprocessed roe.

(2) [(b)] A harvester's permit shall not be required for a special commercial fishing permittee to harvest and sell roe-bearing fish flesh or unprocessed roe from Kentucky and Barkley lakes during the special commercial fishing season, as established in 301 KAR 1:140.

(3) [(c)] A harvester's permit shall not be issued unless all monthly reports, as established in this Section and Section 12[(4)] of this administrative regulation, have been completed and submitted to the department.

(4) [(d)] A harvester permittee shall:

(a) [(4-)] Have the harvester's permit in possession while:

1. [(a-)] Fishing for roe-bearing fish; and

2. [(b-)] Transporting or selling roe-bearing fish or unprocessed roe;

(b) [(2-)] Only sell, ship, barter, or provide harvested roe from roe-bearing fish to a Kentucky permitted buyer as established in Section 7[(5)] of this administrative regulation;

(c) [(3-)] Possess a valid bill of lading if transporting unprocessed roe to a Kentucky permitted buyer;

(d) Properly report to the department by:

1. Completing a Daily Roe-bearing Fish Harvester's Transaction Report for each day of the month that roe-bearing fish are harvested or are sold to a Kentucky permitted buyer;

2. Submitting all daily reports that are completed within a calendar month to the department by the tenth day of the following month; and

3. Completing and submitting to the department a monthly report as established in Section 12 of this administrative regulation. [(4-)] Complete a Daily Roe-bearing Fish Harvester's Transaction Report as follows:

a. Complete and submit a Daily Roe-bearing Fish Harvester's Transaction Report for each day that roe-bearing fish are harvested or are sold to a Kentucky permitted buyer; and

b. All Daily Roe-bearing Fish Harvester's Transaction Reports that are completed within a calendar month shall be submitted to the department by the tenth day of the following month; and

5. Complete and submit to the department a monthly report as established in Section 10 of this administrative regulation.]

Section 7. Buyer's Permit Requirements. (1) [(5-)] Buyer's Permit Requirements. (1) Except as established in Section 4(4) of this administrative regulation,] A buyer's permit shall be required to buy, sell, barter, receive, or ship unprocessed roe from roe-bearing fish harvested in Kentucky.

(2) A person shall apply for a buyer's permit by submitting a completed Application for Commercial Roe-bearing Fish Buyer's Permit along with the appropriate permit fee to the department, as established in 301 KAR 3:022[permit fees, as established in 301 KAR 3:022, to the department].

(3) A buyer permittee shall:

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(a) Not knowingly purchase illegally taken fish or unprocessed roe from any state;

(b) Have in possession a valid buyer's permit while purchasing, receiving, or transporting unprocessed roe;

(c) Maintain for a period of three (3) years an accurate record of all unprocessed roe purchased from roe fish harvesters~~harvested~~ in Kentucky;

(d) Maintain for a period of three (3) years an accurate record of all unprocessed roe purchased from roe fish harvesters~~harvested~~ in another state including:

1. Name, address, and telephone number of the seller;
2. License number of the seller; and
3. Number of pounds of unprocessed roe purchased;

(e) Submit a completed Monthly Commercial Roe-bearing Fish Buyer's Report to the department by the tenth day of the following month;

(f) Sign the Daily Roe-bearing Fish Harvester's Transaction Report for each transaction with a harvester permittee prior to purchasing or receiving unprocessed roe from the harvester permittee;

(g) Retain a copy of the Daily Roe-bearing Fish Harvester's Transaction Report for each transaction with a harvester permittee for a period of three (3) years; and

(h) Allow a conservation officer access to all records and reports, as established in this section, upon request, during normal business hours.

Section 8.~~6.~~ Commercial Fishing Season and Size Limits. (1) The commercial fishing season shall be open year round in the waters listed in 301 KAR 1:150 except for:

(a) Kentucky and Barkley lakes as described in 301 KAR 1:140;

(b) The shovelnose sturgeon [~~Scaphirhynchus platyrhynchus~~]~~season, which shall extend from October 15 through May 15 in the Ohio River Basin only; and~~

(c) The paddlefish [~~Polyodon spathula~~]~~season which shall extend from:~~

1. November 1 through April 30 in all waters open to commercial fishing, except Barkley and Kentucky Lakes, as specified~~for all legal commercial fishing gear as established by 301 KAR 1:146 generally in all waters open to commercial fishing, except Barkley and Kentucky Lakes, which seasons are established~~ in 301 KAR 1:140; and

2. November 1 through May 31 for commercial trotlines in all waters open to commercial fishing~~May 1 through May 31 for commercial trotlines only in all waters open to commercial fishing~~ except the Ohio and Mississippi Rivers.

(2) There shall not be a size limit on any commercially-harvested rough fish~~[size limits on any commercially-harvested rough fish]~~ except that a commercial fisherman shall only harvest:

(a) Shovelnose sturgeon between twenty-four (24) and thirty-two (32) inches, as measured from the tip of snout to the fork of the tail fin; and

(b) Paddlefish that are thirty-two (32) inches or greater, as measured from the beginning of the eye to the fork of the tail fin, except for Kentucky and Barkley lakes as specified in 301 KAR 1:140.

(3) A harvester or buyer permittee shall not possess:

- (a) Unprocessed Paddlefish roe after June 5; or
- (b) Unprocessed Shovelnose sturgeon roe after May 20.

Section 9.~~7.~~ Fish Species Ineligible for Commercial Harvest.

(1) A commercial fisherman shall not harvest, and shall immediately release the following species~~take~~:

(a) Sport fish listed in 301 KAR 1:060;

(b) Pallid sturgeon~~Scaphirhynchus albus~~, a federally-endangered species;~~or~~

(c) Lake sturgeon;

(d) Shovelnose sturgeon caught in the Mississippi River; and

(e) All turtle species.

~~(2) Acipenser fulvescens.~~

~~(2) If a commercial fisherman catches a fish listed in subsection (1) of this section, the fish shall be immediately returned, without undue injury, to the waters where it was taken.~~

(3) A licensed commercial fisherman shall only sell roe-

bearing fish or unprocessed roe from roe-bearing fish harvested by commercial fishing methods established in and permitted by 301 KAR 1:146.

Section 10.~~8.~~ Tending Gear and Removing Fish. (1) A commercial fisherman shall:

(a)~~(1)~~ Tend and remove the fish from:

1.~~(a)~~ Baited hoop nets or slat traps at least every seventy-two (72) hours; and

2.~~(b)~~ Other commercial fishing gear at least every twenty-four (24) hours;

(b)~~(2)~~ Not possess eggs of any species of fish outside of the fish's body cavity while on the water or adjacent bank; and

(c)~~(3)~~ Remove commercial fishing gear from the water when finished fishing.

Section 11. Roe Fish Egg Checking Methodology. A commercial fisherman shall use a ten (10) gauge or smaller~~9. Roe Fish Egg Checking Methodology. A commercial fisherman may use a ten (10) gauge~~ needle to examine roe fish for the presence of eggs.

Section 12.~~10.~~ Reporting. A commercial fisherman shall report to the department his or her monthly catch for all months licensed, including months the licensee did not fish, by the tenth day of the following month by completing a Monthly Report of Commercial Fish Harvest in Kentucky form provided by the department.

Section 13.~~11.~~ License and Permit Suspension, Nonrenewal, and Revocation.

(1) The department shall suspend the commercial fishing license, harvester's permit, or buyer's permit, of a person who fails to complete and submit to the department any reports required by this administrative regulation by the following methods:

(a) The first time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive by mail a courtesy reminder letter.

(b) The second time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive a warning letter.

(c) The third and subsequent times during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the license or permit shall be suspended until all reports have been received.

(2) The department shall not renew the commercial fishing license or harvester's permit of a person who fails to complete and submit to the department all reports required by this administrative regulation.

(3) The department shall revoke the commercial fishing license or harvester's permit, for a period of two (2) years, of a person who has been convicted of a federal commercial fishing violation or the following state violations involving commercial fishing:

(a) Use of illegal commercial fishing gear;

(b) Knowingly placing commercial fishing gear in a restricted area, as established in Section 3(2) of this administrative regulation;

(c) Harvesting of prohibited species of fish;

(d) Commercially fishing in waters not open to commercial fishing as established by 301 KAR 1:150; or

(e) Knowingly falsifying commercial harvest data.

(4) The department shall revoke the buyer's permit, for a period of two (2) years, of a person~~who~~:

(a) ~~Has been~~ Convicted of a federal commercial fishing violation; or

(b) ~~Who~~~~Has~~ falsified data on the Monthly Commercial Roe-bearing Fish Buyer's Report.

(5) An individual whose permit or license has been denied, suspended, not renewed, or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section 14. Boundaries. The department shall make available on its Web site at fw.ky.gov the Global Positioning System (GPS) coordinates detailing the Kentucky and Ohio border~~12. Bounda-~~

ries. The department shall make available on its Web site at ~~www.kdwr.state.ky.us~~ Global Positioning System (GPS) coordinates detailing the boundary with Ohio,] on the Ohio River, for download to personal devices.

Section 15.143. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Commercial Roe-bearing Fish Harvester's Permit", 2008;
- (b) "Application for Commercial Roe-bearing Fish Buyer's Permit", 2008;
- (c) "Daily Roe-bearing Fish Harvester's Transaction Report", 2008;
- (d) "Monthly Commercial Roe-Bearing Fish Buyer's Report", 2008;
- (e) "Monthly Report of Commercial Fish Harvest in Kentucky"; and
- (f) List of GPS coordinates for Ohio River Boundary with Ohio, 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BENJY KINMAN, Deputy Commissioner for

DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: March 11, 2011

FILED WITH LRC: March 14, 2011 at 2 p.m.

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, extension 4507, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes commercial fishing requirements and regulates the buying and selling of roe-bearing species of rough fish.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect certain species from harvest, to establish reasonable limits on commercial fishing pressure, and to conserve the populations of roe-bearing fish species so as to provide a sustainable resource for the future.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to set seasons; establish bag or creel limits; and to regulate the buying, selling, or transporting of fish and wildlife. KRS 150.175(3) authorizes the establishment of a commercial fishing license that allows the taking and selling of rough fish. 50 C.F.R. 17 protects the shovelnose sturgeon from harvest in the Mississippi River because of similarity of appearance with the federally protected pallid sturgeon.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists the above statutes by establishing certain seasons, protecting certain species from harvest, and restricting the harvest of some species of rough fish that are susceptible to overharvest due to commercial activity, most notably roe-bearing fish species.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow a potential increase in the number roe-harvester permits issued since the previous version of this regulation did not allow anyone to apply for or purchase a roe-harvest permit after September 15. It will remove turtles from the list wildlife species that are allowed to be commercially harvested, and also protects sturgeons from any harvest in the Mississippi River due to a new federal rule. It also restricts the size of needles used to examine roe fish.

(b) The necessity of the amendment to this administrative

regulation: This amendment is necessary to extend the period of time when commercial fishermen may apply for roe-harvest permits, and to restrict the commercial harvest of turtles and protect those species from a growing export market that currently threatens turtle populations in other states and countries. It also is necessary to conform to new federal rules on sturgeon.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who commercial fish and harvest roe-bearing fish species within the state will potentially be affected. Currently, there are 101 resident and 18 nonresident commercial roe-harvest permits available annually. Any commercial fisherman who formerly harvested turtles would be affected, however, according to commercial fishing reports, no turtles have been harvested by fishermen during the past several years.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Commercial fishermen must not commercially harvest turtles. Commercial fishermen wanting to harvest roe-bearing fish species will be required to apply for a roe-harvest permit by September 15. Those applicants that were issued a roe-harvester's permit in the previous year will be issued a new permit. The remaining applicants will be given a permit if there are less than or equal to the maximum number of applicants. Commercial fishermen must comply with a 10-gauge or smaller needle to check for roe. If the number of permits issued is below the quota, commercial fishermen may apply for a lottery drawing for the unfilled permits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no change in the cost of permits for commercial fisherman and roe-harvesters as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who apply for a roe-harvest permit after September 15 will have a chance to receive the permit, whereas prior to this amendment, no one could apply for a permit after September 15.

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

(a) Initially: Initially, the number of permits issued after September 15 is expected to be less than 6. Therefore there will be a minimal increase in administrative cost to issue and track the permits.

(b) On a continuing basis: There will be no additional cost on a continuing basis after the first year of implementation.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established in this regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals who apply for a roe-harvest permit were treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government? Yes

2. What units, parts or divisions of state or local government will be impacted by this administrative regulation? The Department

of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the department to set seasons and creel limits, and to regulate the buying, selling, and transporting of wildlife. KRS 150.175 authorizes the department to establish a commercial fishing license allowing the take of rough fish. 50 C.F.R. Part 17 protects the shovelnose sturgeon and pallid sturgeon from harvest in the Mississippi River.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government for the first year? Approximately \$3,000 will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government for subsequent years? Approximately \$3,000 per year will be generated during subsequent years.

(c) How much will it cost to administer this program for the first year? Staff currently spends about 100 hours per year administering the program at a cost of about \$4,400. The number of permits is not expected to increase significantly.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program in subsequent years is \$4,400.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)**

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

RELATES TO: KRS Chapters 67, 67A, 74, 76, 96, 108, 220, 224.10-100, 224.70-100, 224.70-110, 424, [224.73, 224A.040, 224A.050, 224A.055, 224A.070, 224A.080,] 33 U.S.C. 1251-1387 [et seq.]

STATUTORY AUTHORITY: KRS 224.10-100, [224.16-050,] 224.70-100, 224.70-110, [224A.111, 224A.112, 224A.113,] 40 C.F.R. [25.4, Parts 35,] 130, 33 U.S.C. [4281, 4285,] 1288, 1313

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Energy and Environment [Environmental and Public Protection] Cabinet to develop a comprehensive plan for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. [The Clean Water Act, 33 U.S.C. 1281 et seq. and more specifically,] 33 U.S.C. 1313(e)[,] requires each state to establish and maintain [the implementation of] a continuing planning process [by governmental bodies] to provide for the control of water pollution. 33 U.S.C. 1288 requires the governor of the state or local officials to designate a boundary for areas within the state and a single representative organization [organizations] within each area [the areas] to develop a wastewater treatment management plan applicable to all wastewater [wastewaters] generated within an area. [40 C.F.R. Part 130 specifies further detail for compliance with Section 208 of the Clean Water Act, including the requirement that the state establish and maintain a continuing planning process that includes the process for incorporating elements of any applicable areawide wastewater treatment management plans under Section 208, applicable basin plans under Section 209 of the Clean Water Act, and a process for updating and maintaining water quality management plans, including schedules for revision,] 40 C.F.R. 130.6[(e) also] requires the state and areawide agencies to update the plans as needed to reflect changing water quality conditions, results of implementation

actions, and new requirements, or to remove conditions in prior conditional or partial plan approvals. This administrative regulation establishes Kentucky's regional facility [implements the required] planning process for publicly-owned wastewater treatment works that are, or result in, point sources of water pollution in designated planning areas, [for the Commonwealth of Kentucky in order to conform with federal requirements and provides for the preparation of wastewater treatment management plans by governmental agencies for point sources of pollution.]

Section 1. Applicability. (1) A governmental entity, such as a city, county, or other public body created by KRS 67, 67A, 74, 76, 96, 108, or 220, may apply for designation as a regional planning agency. **An applicant for designation as a regional planning agency shall submit [by submitting] a regional facility plan to the cabinet.**

(2) The cabinet shall designate a regional planning agency in accordance with 33 U.S.C. 1288(a)(2) and (3).

(3) The cabinet shall de-designate a regional planning agency if:

(a) The regional planning agency requests de-designation;

(b) The regional planning agency fails to meet its planning obligations as specified in a grant agreement, contract, or memorandum of understanding; or

(c) The regional planning agency no longer has the resources or the commitment to continue water quality planning activities within the designated boundary.

(4) If a regional planning agency is de-designated, the cabinet shall assume responsibility for continued water quality planning and oversight of implementation of planning activities within the regional planning area.

(5) The cabinet shall not designate an entity as a regional planning agency if that entity does not have authority to meet the requirements established in 33 U.S.C. 1288(c)(2)(A) through (I).

Section 2. Requirement to Submit a Regional Facility Plan. (1) **An applicant for designation as a new regional planning agency shall submit a regional facility plan to the cabinet.**

(2) An existing regional planning agency shall submit a regional facility plan if:

(a) A new wastewater treatment facility is proposed for construction within the planning area;

(b) An existing regional planning agency proposes to expand the average daily design capacity of an existing wastewater treatment facility by more than thirty (30) percent; or

(c) The equivalent population served by an existing wastewater collection system or a system with a Kentucky Inter-System Operating Permit is proposed for expansion by more than thirty (30) percent of the population served in the previously approved regional facility plan.

(3) A regional planning agency shall request a pre-planning meeting with the cabinet before submitting a regional facility plan.

(4) Two (2) paper copies and one (1) electronic copy of the regional facility plan shall be submitted to the cabinet. **One (1) copy shall be certified in a manner that meets the requirements established in 201 KAR 18:104.**

Section 3. Contents of a Regional Facility Plan. (1) A regional facility plan shall include adequate information to allow for an environmental assessment of the [primary] projects proposed in the regional facility plan **that are ready to begin construction within the first twenty-four (24) months of the planning period and to assure that a cost-effective and environmentally sound means of achieving the established water quality goals can be implemented.**

(2) A regional facility plan shall be consistent with the Regional Facility Plan Guidance and shall include:

(a) A regional facility plan summary;

(b) A statement of the purpose of and need for the regional facility plan, including documentation of existing water quality or public health problems related to wastewater in the planning area;

(c) Physical characteristics of the planning area;

(d) A description of the socioeconomic characteristics of the planning area;

(e) A description of the existing environment in the planning

area;

(f) A description of the existing wastewater collection and treatment facilities in the planning area;

(g) A forecast of flows and waste loads for the planning area;

(h) [This administrative regulation shall govern the regional planning process for the development of water quality management plans to control point sources of pollution in given areas throughout the Commonwealth. This administrative regulation establishes the process by which regional planning agencies and the Commonwealth shall comply with Sections 201, 205, 208, and 303(e) of the Clean Water Act to provide planning for wastewater control in particular areas for point sources of pollution.]

Section 2. Requirements. (1) No new regional facility shall be constructed, no average daily design capacity of an existing regional facility shall be expanded by more than thirty (30) percent, or no existing regional sewage collection system shall expand its equivalent population served by more than thirty (30) percent of the existing population, without the regional planning agency submitting a regional facility plan and the cabinet approving the plan. All regional facility plans shall be prepared by a registered professional engineer.

(2) A regional planning agency shall submit a regional facility plan if or regional facility plan update when the following occurs:

(a) A new regional facility is proposed to be constructed within the planning area;

(b) The average daily design capacity of an existing regional facility is proposed to be expanded by more than thirty (30) percent;

(c) The equivalent population served by an existing regional sewage collection system is proposed to be expanded by more than thirty (30) percent of the existing population served;

(d) A regional facility or other governmental agency applies for a grant from the U.S. EPA or applies for a loan from the federally assisted wastewater revolving fund pursuant to the requirements of 40 C.F.R. Part 35 and 200 KAR Chapter 17. A plan of study shall be submitted to the cabinet for the project to be eligible to be placed on the project priority list and receive priority points;

(e) A regional planning agency considers the submission of the plan to be in the best interest of the public and the environment; or

(f) It has been twenty (20) years since the regional planning agency or its successor has submitted a regional facility plan.

Section 3. Regional Planning Agencies. (1) Governmental entities such as cities, counties, and other public bodies that are created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220 may apply to the cabinet to become a regional planning agency, if they have not already been designated as a regional planning agency, by submitting a regional facility plan. The cabinet may designate the entity as a regional planning agency if it finds that the proposed area is not served by another regional planning agency; the development of this agency would be in the best interest of the public and the environment; or the agency has the legal, institutional, managerial, and financial capability, and specific activities necessary to carry out its responsibilities in accordance with Section 208(e)(2)(A) through (I) of the CWA.

(2) Designation. Regional planning agencies may be designated by the cabinet in accordance with Section 208(a)(2) and (3) of the CWA and this administrative regulation. Designations and redesignations shall be subject to approval by the U.S. EPA in accordance with Section 208(a)(7) of the CWA.

(3) De designation. The cabinet may modify or withdraw the planning designation of a regional planning agency if:

(a) The regional planning agency requests the cancellation;

(b) The regional planning agency fails to meet its planning requirements as specified in grant or loan agreements, contracts, or memoranda of understanding; or

(c) The regional planning agency no longer has the resources or the commitment to continue water quality planning activities within the designated boundaries.

(4) Impact of de designation. When a regional planning agency's designation has been withdrawn, the cabinet shall assume direct responsibility for continued water quality planning and oversight of implementation of planning activities within the area.

Section 4. Contents of Plan. The regional facility plan shall include the necessary information to allow for an environmental assessment and to assure that the most cost effective and environmentally sound means of achieving the established water quality goals can be implemented. These plans shall contain the following information:

(1) Maps showing the planning area. In the determination of a planning area, appropriate attention shall be given to include the entire area where cost savings, regionalization, other management advantages, or environmental gains may result from interconnection of individual sewage facilities or collective management of the systems. At least one (1) original seven and one half (7 1/2) minute USGS topographic map shall be submitted showing the planning area. Computer generated USGS data compatible with the cabinet's computer system may be substituted for the USGS map.

(2) A description of the existing regional facilities, including physical condition, hydraulic and organic design capacities, characteristics of wastewater, ability to meet permit limits, method of sludge handling and disposal, existing flows including average and peak flows, a waste load allocation for the proposed project, inflow and infiltration problems including location and frequency of bypasses or overflows, combined sewers if any, the collection system including location of pump stations and their capacities, and operation and maintenance problems. The location and identification of any other sewage treatment plants located in, or serving a part of, the planning area shall also be shown.

(3) A description of the planning area characteristics, including the location of wetlands, delineation of the 100 year floodplain area, topography, groundwater, surface streams, geology, soils with specific mention of suitability or unsuitability of soils, and topography for on-site sewage disposal systems.

(4) If there is a proposed project, a discussion of the need for the project including current compliance status, applicable permit limits, and if proposed sewers are involved, documentation as to why on-site systems are not acceptable. Discussions and documentation of any water quality or public health problems in the area shall be included. The applicant shall also describe any type of state or federal enforcement actions that may exist against any wastewater treatment plant within the area.

(5) A discussion of the current and projected population in the planning area including existing population in the current service area, twenty (20) year projected population in the current service area, existing population in unsewered parts of the planning area, and twenty (20) year projected population in the unsewered parts of the planning area. Current and projected industrial and commercial users of the system shall be included. When appropriate, these areas of the planning area not currently sewered should be divided into three (3) time frames: present to two (2) years, three (3) to ten (10) years, and eleven (11) to twenty (20) years. The current and projected populations shall be shown for each area on the planning area map. If available, a local planning and zoning land use map shall be included. The basis for the projected population change shall be identified.

(6) A detailed evaluation of alternatives, along with a twenty (20) year present worth cost analysis for each alternative. All wastewater management alternatives considered, including no action, and the basis for the engineering judgment [judgement] for selection of the alternatives chosen for detailed evaluation, shall be included. Sufficient detail shall be provided to allow for a thorough cost analysis to be conducted. Nonmonetary effectiveness criteria shall be limited to implementability, environmental impact, engineering evaluation, public support, and regionalization. The alternatives shall reflect a comprehensive regional plan for the planning area and shall minimize the number of point source discharges. Intended sources of funding shall be listed along with estimated user fees;

(i) Cross-cutter correspondence and mitigation;

(j) An evaluation of the recommended regional facility plan; and

(k) []

(7) In addition to the cost for the current project being proposed, cost estimates shall be given for the entire twenty (20) year planning period. Cost estimates shall be provided for each time frame identified in subsection (5) of this section and shall be bro-

ken down by the following categories: ~~secondary wastewater treatment, advanced wastewater treatment, inflow and infiltration correction, major sewer rehabilitation, new collector sewers, interceptor sewers, combined sewer overflow corrections, and storm water pollution corrections.~~

(8) Documentation of public participation.

1. A copy of the advertisement for the public hearing required by Section 5 of this administrative regulation, ~~and~~ a copy of the minutes of the public hearing, and ~~any~~ written comments and responses shall be submitted as part of the regional facility plan.

2. If more than one (1) public hearing ~~is~~ ~~was~~ held or if there ~~are~~ ~~were~~ public meetings or public notices ~~about~~ ~~of~~ the project, a ~~copy~~ ~~copies~~ of all documentation of these events shall be submitted as part of the regional facility plan.

3. At the required public hearing, the scope of the project, cost of the project, alternatives considered, and estimated user charges and hook-up fees shall be discussed.

(3) The items required in subsection(2)(f) through (h) of this section shall be prepared by, or under the direct supervision of, a professional engineer licensed in Kentucky.

Section 4. Requirement to Submit an Asset Inventory Report.

(1) An asset inventory report shall be submitted to the cabinet if:

(a) It has been ten (10) years since the regional planning agency submitted a regional facility plan or asset inventory report; ~~and~~

(b) Section 2(2) of this administrative regulation does not require the regional planning agency to submit a regional facility plan.

(2) The regional planning agency shall submit the following information on the Asset Inventory Report Form:

(a) Wastewater facility data;

(b) Revenue and expenses;

(c) Asset inventory

(d) Project prioritization;

(e) Funding plan;

(f) Copies of supporting documentation; and

(g) Certification statement from a designated official.

(3) The cabinet shall issue ~~[an assessment report]~~ to the regional planning agency **an assessment report** that provides recommendations related to facility planning, operation, and management that ensure continuing compliance and protection of surface water and groundwater.

(4) The cabinet shall **provide public notice of** ~~[publish]~~ its assessment of the Asset Inventory Report on its Web site for thirty (30) days.

(5) The public shall have an opportunity to comment on the cabinet's assessment of the asset inventory report and the period for comment shall remain open for thirty (30) days from the date of the first publication of the report.

(6)(a) If it has been ten (10) years or more since the approval of a regional planning agency's regional facility plan, the regional planning agency shall submit an asset inventory report to the cabinet by July 1, 2012.

(b) A subsequent asset inventory report shall be due to the cabinet ten (10) years from the approval date of the regional facility plan or asset inventory report, whichever is most recent.

Section 5. Public Notice, Public Comment, and Public Hearing Requirements. (1) Prior to final agency action on ~~[the approval of]~~ the regional facility plan ~~[or updates to the plan]~~, the regional ~~[facility]~~ planning agency shall publish ~~[give public]~~ notice of its draft plan and shall hold a public hearing on the draft plan. Public notice of the draft plan and the public hearing ~~[on the draft plan]~~ shall be provided ~~[given]~~ pursuant to KRS Chapter 424.

(2) A ~~[All]~~ public notice ~~[notice]~~ issued pursuant to ~~[under]~~ this administrative regulation shall contain the following information:

(a) The name and address of the regional planning agency ~~that is proposing~~ ~~[which drafted]~~ the plan;

(b) A brief description of the contents of the draft plan and the area to be served;

(c) The name, address, and telephone number of persons from whom interested persons may obtain further information ~~and a~~

copy~~[including copies]~~ of the draft regional facility plan;

(d) A brief description of the ~~[procedures for the]~~ public's right to comment on the draft regional facility plan and the procedures for ~~commenting~~ ~~[required by this administrative regulation];~~

(e) ~~[A reference to]~~ The date of ~~[any]~~ previous public notices relating to the draft regional facility plan;

(f) The date, time, and place of the public hearing on the draft plan; and

(g) A brief description of the nature and purpose of the hearing.

(3) The planning agency shall provide a copy of the public notice **and the draft plan** to the cabinet for publication on its Web site at least **thirty (30) days** ~~[two (2) weeks]~~ prior to the public hearing.

(4) The public shall ~~have~~ ~~[be given]~~ an opportunity to comment on the draft plan and the period for comment shall remain open for thirty (30) days from the date of the first publication of the notice of the public hearing or until the termination of the hearing, whichever is later. The regional planning agency may extend the public comment period, on request, if it believes additional public input is necessary.

(5) ~~A~~ ~~[Commentors may request longer comment periods, which may be granted by the regional planning agency, if appropriate.~~

(4) Any person may submit written or oral comments ~~[statements]~~ and data to the regional planning agency concerning the draft regional facility plan. **In the interest of time and efficiency, [Reasonable]** limits may be set up on the time allowed ~~[limit]~~ for oral statements and the submission of statements in writing may be required.

(6)~~(5)~~ All persons who believe any condition of the draft plan is inappropriate, inaccurate, incomplete, or otherwise not in the best interest of the public and the environment, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual background supporting their position, including all supporting materials, by the close of the public comment period.

Section 6. Regional Facility Plan Review. (1) The cabinet shall ~~prepare~~ ~~Action on the Plan.~~ (1) an environmental assessment report summarizing ~~[will be written by the cabinet which summarizes]~~ the regional facility plan.

(a) The cabinet shall ~~[will]~~ submit the environmental assessment report to the State Clearinghouse for review and comments to identify potentially adverse impacts resulting from the **proposed** ~~[primary]~~ projects **that are ready to begin construction within the first twenty-four (24) months of the planning period**~~[proposed]~~.

(b) The cabinet shall **provide public notice of** ~~[publish]~~ the environmental assessment report on its Web site for thirty (30) days.

(c) The public shall have an opportunity to comment on the environmental assessment report, and the period of comment shall remain open for thirty (30) days from the date of the first publication of the report.

(d) The cabinet may identify measures in the environmental assessment report to avoid, minimize, or reduce potentially adverse environmental impacts.

(2) The cabinet shall issue a determination to approve or deny a regional facility plan within 120 calendar days of receipt of a complete regional facility plan.

(3) If the regional facility plan is submitted consistent with the requirements of this administrative regulation and addresses water quality or public health problems related to wastewater, the cabinet shall approve the regional facility plan.

(4) KPDES and facility construction permit decisions shall be made in accordance with approved regional facility plans, as established in 40 C.F.R. 130.12(a) and (b).

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

(a) "Regional Facility Plan Guidance", February 2011 ~~[December 2010]~~; and

(b) "Asset Inventory Report Form", February 2011 ~~[December 2010]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained through the Division of Water's Web site at <http://water.ky.gov>. [Mitigative measures may be required to address any negative comments as a result of this review.]

(2) If the cabinet finds that the regional facility plan has been properly submitted and is in the best interest of the environment and the public, the cabinet will approve the plan.

~~Section 7. Consistency with Plans. Construction grant, loan, and permit decisions shall be made in accordance with certified and approved water quality management plans, including regional facility plans, as described in 40 C.F.R. 130.12(a) and (b) and this administrative regulation.~~

~~Section 8. Nonpoint Source Controls. Regional planning agencies may implement plans for nonpoint source controls, other than plans for agricultural nonpoint source controls, in their designated areas. Regional planning agencies may develop plans for agricultural nonpoint source controls in their areas, if the plans are developed in coordination with the Agriculture Water Quality Authority, established pursuant to KRS 224.71. These plans may be included in the comprehensive water quality management plan that may include the regional facility plan.]~~

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: February 28, 2011

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

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky's regional facility planning process for publicly-owned wastewater treatment works that are, or result in, point sources of water pollution in designated planning areas.

(b) The necessity of this administrative regulation: KRS 224.10-100 requires the cabinet to develop a comprehensive plan for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. 33 U.S.C. 1313(e) requires each state to establish and maintain a continuing planning process for the control of water pollution. 33 U.S.C. 1288 requires the governor of the state or local officials to designate a boundary for areas within the state and single representative organizations within the each area to develop a wastewater treatment management plan applicable to all wastewaters generated within an area. 40 C.F.R. 130.6 requires the state and areawide agencies to update the plans as needed to reflect changing water quality conditions, results of implementation actions, and new requirements, or to remove conditions in prior conditional or partial plan approvals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation requires regional planning agencies to perform facility planning for point sources of pollution in designated planning areas for maintaining, improving and protecting water quality. Also the facility planning process is a key element of the comprehensive plan for the management of water resources, as mandated by federal law and KRS 224.10-100.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation serves as an important component of the federally required continuing planning process and comprehensive plans for the management of water resources, as required by KRS 224.10-100.

(2) If this is an amendment to an existing administrative regula-

tion, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The proposed amendments to this administrative regulation decrease the financial burden to regional planning agencies, clarify language, and strike outdated federal citations. To reduce the costs to regional planning agencies, the regulation no longer requires the entire regional facility plan to be developed by an engineer; only those parts that are engineering work must be developed by professional engineer. The requirement to submit a revised regional facility plan is no longer automatically triggered by an application for federal funding or a twenty-year time lapse. For regional planning agencies that do not otherwise trigger the need to submit a regional facility plan, there is an option to submit an asset inventory report. Additionally, the regulation implements a 120 day review deadline for the Cabinet to approve or deny a regional facility plan.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to make the regional planning process more efficient and effective, and to allow flexibility for regional planning agencies that are experiencing little or no growth.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment will improve an important component of the federally required continuing planning process for maintaining, improving, and protecting the state's water resources.

(d) How the amendment will assist in the effective administration of the statutes: The proposed revisions to this administrative regulation incorporate by reference guidance documents, require the cabinet to post the environmental assessment reports online, which adds transparency, and clarify ambiguous language. These amendments will improve the effectiveness and efficiency of the regional facility planning and review process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 231 regional planning agencies (a governmental entity, such as a city, county, or other public body created by KRS 67, 67A, 74, 76, 96, 108, or 220) that will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A regional planning agency will be required to submit a regional facility plan when it is first formed, proposes to construct a new wastewater treatment facility, expands an existing wastewater treatment facility by thirty percent, or proposes to expand the population served by more than thirty percent. If a regional planning agency does not meet one of the triggers for a new regional facility plan, it will be required to submit an asset inventory report every ten years.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the revised administrative regulation will not result in increased costs to a regional planning agency. Regional planning agencies will be able to reduce their planning costs significantly because of the limited role of a professional engineer required in the revised facility plans. Additionally, the amendment to this administrative regulation gives a regional planning agency the option of submitting an asset inventory report, instead of a full regional facility plan. The asset inventory report is an abbreviated planning document that is appropriate for smaller regional planning agencies, or regional planning agencies in areas that are experiencing little or no growth.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendments to this administrative regulation will decrease the financial burden to regional planning agencies. To reduce the costs to regional planning agencies, the regulation no longer requires the entire regional facility plan to be developed by an engineer; only those parts that are engineering work must be developed by a professional engineer. The requirement to submit a revised regional facility plan is no longer automatically triggered by an application for federal fund-

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ing or a 20-year time lapse. For regional planning agencies that do not otherwise trigger the need to submit a regional facility plan, there is an option to submit an asset inventory report. The asset inventory report will give the regional planning agencies a tool to target capital investments toward critical assets and prolong the useful life of their assets. Additionally, the regulation implements a 120 day review deadline for the Cabinet to approve or deny a regional facility plan.

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

(a) Initially: There are no additional costs to implement the amendments to this administrative regulation.

(b) On a continuing basis: There are no additional costs to implement the amendments to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation is implemented and enforced using state general funds and federal funds provided by the Environmental Protection Agency through the Clean Water State Revolving Fund, Water Pollution Control Grant.

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

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

(9) TIERING: Is tiering applied? Tiering is applied to this amendment. A regional planning agency that is experiencing low growth or no growth will not be required to submit a full regional facility plan every twenty years. Instead, a regional planning agency has the option to submit an asset inventory report every ten years, which will reduce the costs of complying with this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Regional planning agencies, including city and county governments that have the overall responsibility for regional facility planning process within their designated planning boundaries.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 33 U.S.C. 1288, 1313, 40 C.F.R. 130, KRS 224.10-100, 224.70-100, 224.70-110

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

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

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

(c) How much will it cost to administer this program for the first year? The cabinet does not anticipate any additional costs to administer this program as a result of the proposed amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The cabinet does not anticipate any additional costs to administer this program as a result of the proposed amendments to this administrative regulation.

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

regulation.

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 33 U.S.C. 1288, 1313, 40 C.F.R. 130

2. State compliance standards. KRS 224.10-100, 224.70-100, 224.70-110.

3. Minimum or uniform standards contained in the federal mandate. 33 U.S.C. 1313 requires each state to establish and maintain a continuing planning process to provide for the control of water pollution. 33 U.S.C. 1288 requires the governor of the state or local officials to designate a boundary for areas within the state and single representative organizations within each area to develop a wastewater treatment management plan applicable to all wastewaters generated within an area. 40 C.F.R. 130.6 requires the state and areawide agencies to update the plans as needed to reflect changing water quality conditions, results of implementation actions, and new requirements, or to remove conditions in prior conditional or partial plan approvals.

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

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

PUBLIC PROTECTION CABINET Department of Insurance Consumer Protection Division (Amended After Comments)

806 KAR 2:150. Collection fee.

RELATES TO: KRS 91A.080, 91A.0804, ~~[KRS]~~304.3, ~~[KRS]~~304.10-120

STATUTORY AUTHORITY: KRS 91A.080(4), KRS 304.10-180
NECESSITY, FUNCTION, AND CONFORMITY: KRS 91A.080(4) requires the Department of Insurance to promulgate an administrative regulation to provide for a reasonable collection fee to be retained by the insurance company or its agent as compensation for collecting the local government premium tax. This administrative regulation sets forth the standards for a reasonable collection fee.

Section 1. Definitions. (1) "Collection fee" means the fee established in KRS 91A.080(4).

(2) "Insurance company" means:

(a) An entity holding a certificate of authority in accordance with KRS 304, Subtitle 3; and

(b) A surplus lines broker licensed in accordance with KRS 304.10-120.

(3) "Local government tax" or "tax" means the license fee or tax imposed by a local government in accordance with KRS 91A.080 ~~except for~~ ~~[and does not include]~~ the collection fee.

Section 2. Collection Fee. (1) An insurance company may charge to and collect from an insured a collection fee in addition to a local government tax.

(2) The maximum collection fee that an insurer may charge is set forth in KRS 91A.080(4).

(3) The collection fee shall be retained as compensation for collecting the local government tax by:

(a) The insurance company; or

(b) An agent in accordance with an agreement between the insurance company and its agent.

(4) The insurance company shall pay the full amount of the refund, including any collection fee that has been retained, to the

policyholder if a refund of a local government tax is owed:

(a) To an insured pursuant to KRS 91A.080(3), and the amount of the tax to be refunded is not owed to another local government; or

(b) To an insured pursuant to KRS 91A.080(3).

(5) A collection fee refunded in accordance with subsection (4) of this section shall be returned to the policyholder on pro rata basis in the same manner that the refund of the tax is made.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 8, 2011

FILED WITH LRC: March 10, 2011 at noon

CONTACT PERSON: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the standards for a reasonable collection fee.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement KRS 91A.080(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 91A.080 requires the Department of Insurance to promulgate an administrative regulation to provide for a reasonable collection fee to be retained by the insurance company or its agent as compensation for collecting the local government premium tax. This administrative regulation sets forth the standards for a reasonable collection fee.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will set forth the amount of a collection fee that can be charged and will clarify that the collection fee is in addition to the local government premium tax.

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 1,409 insurance companies that hold a certificate of authority in Kentucky and approximately 340 actively licensed surplus lines brokers that are subject to local government taxes.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be required to adhere to the standards in this regulation if they choose to charge and collect a collection fee from insureds as compensation for administering local government premium taxes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation sets forth a long-standing practice regarding collection fees. As insurers have already been complying in this manner, there is no cost to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, regulated entities will be charging reasonable collection fees in accordance with KRS 91A.080.

dance with KRS 91A.080.

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

(a) Initially: There will not be a cost to implement this administrative regulation.

(b) On a continuing basis: There will not be a continuing cost related to this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: If any costs are incurred, the budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies holding a certificate of authority in Kentucky and all licensed surplus lines brokers subject to local government taxes.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 91A.0810

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will not have an impact on the expenditures and revenues of the Department of Insurance.

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost to the Department of Insurance associated with this administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? There will not be a cost associated with this administrative regulation in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, MARCH 15, 2011

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division Of Student and Administrative Services
(Amendment)

11 KAR 15:090. Kentucky Educational Excellence Scholarship (KEES) Program.

RELATES TO: KRS 154A.130(4), 164.7871, 164.7874, 164.7877, 164.7879, 164.7881, 164.7885, 164.7889

STATUTORY AUTHORITY: KRS 164.7874, 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7877(3) requires the Authority to administer the Kentucky Educational Excellence Scholarship (KEES) trust fund to administer the funds appropriated to the trust fund for the program. KRS 164.7874(16) requires the Authority to determine the KEES curriculum's courses of study. KRS 164.7879(3)(d) requires the Authority to determine the eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award. KRS 164.7874(3) requires the Authority to establish a table to convert an SAT score to an ACT standard. KRS 164.7881(6) requires the Authority to establish a five (5) year postsecondary education program standard. KRS 164.7881(4)(a) requires the Authority to establish overall award levels for the program. KRS 164.7879(2)(c) requires the Authority to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record. KRS 164.7881(4)(c) requires the Authority to identify equivalent undergraduate programs of study. This administrative regulation establishes those requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution and shall not include summer sessions.

(2) "Accredited out-of-state high school" means a high school that is:

(a) Located in a state other than Kentucky or in another country; and

(b) A member of an organization belonging to the Commission on International and Trans-Regional Accreditation.

(3) "ACT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the ACT Corporation of Iowa City, Iowa.

(4) "Advanced placement" is defined by KRS 158.007(1).

(5) "Course" means, for purposes of the KEES curriculum, the equivalent of one (1) credit as determined by KDE in 704 KAR 3:305.

(6) "Cumulative grade point average" means the total grade point average for a postsecondary education student as reported by the postsecondary education institution where a student is currently enrolled.

(7)(6) "Department of Defense school" means a school operated by the U. S. Department of Defense for the purpose of providing a high school education to a child whose custodial parent or guardian is in active military or diplomatic service in a state other than Kentucky or in another country.

(8)(7) "Enrolled" means the status of a student who has completed the registration requirements, except for the payment of tuition and fees, at a participating postsecondary education institution that a student is attending.

(9)(8) "Free and Reduced Price Lunch" means the National School Lunch program established by the United States Department of Agriculture to provide subsidized meals to lower income students.

(10)(9) "GED" means a general educational development diploma awarded to a student.

(11)(10) "International baccalaureate course" is defined by KRS 158.007(10).

(12)(11) "KDE" means the Kentucky Department of Education authorized and established pursuant to KRS 156.010.

(13)(12) "SAT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the College Board.

Section 2. High School Grade Point Average Calculation and Reporting. (1) An eligible high school student's grade point average for an academic year shall be calculated using each grade awarded for all courses taken during an academic year.

(2)(a) Except as provided in paragraph (b) of this subsection, an eligible high school student's grade point average shall be calculated by:

1. Taking the number of units in a course multiplied by the course grade as expressed on a 4.0 point grading scale where 4.0 is an "A" and 0.0 is an "F";

2. Adding the total number of points accumulated for an academic year; and

3. Dividing the total number of points accumulated in subparagraph 2 of this paragraph by the total number of units for the academic year.

(b) For an eligible high school student taking an advanced placement or international baccalaureate course during the academic year, the grade assigned shall be calculated using a 5.0 point scale where 5.0 is an "A" and 1.0 is an "F".

(3) The grade point average reported for an eligible high school student for each academic year shall include all information as set forth in KRS 164.7885(1) be submitted to the authority in either an electronic or hard copy format.

(4) A high school student who participated in an educational high school foreign exchange program or the Congressional Page School that was approved by the student's local high school shall have the student's grade point average reported in accordance with KRS 164.7879(2)(b).

Section 3. High School Students of Custodial Parents or Guardians in Active Military Service. (1)(a) For purpose of determining eligibility under the provisions of KRS 164.7879(2)(c), a high school student shall establish that the custodial parent or guardian meets the requirements of KRS 164.7879(2)(c)1a and b and shall submit the "Home of Record Certification" to the Authority.

(b) The Authority annually shall notify the eligible high school student and the custodial parent or guardian of the student's eligibility.

(2)(a) A high school student, determined to be eligible for the KEES program under the terms of KRS 164.7879(2)(c) and subsection (1)(a) of this section, shall be responsible for:

1. Requesting grade and curriculum information from the local school; and

2. Requesting that the local school submit the information to the Authority using the "Curriculum Certification" Form and the "Data Submission" Form.

(b) The Authority, upon receipt of curriculum and grade information from an accredited out-of-state high school or Department of Defense school for a student determined to be eligible for the KEES Program under this section, shall:

1. Verify that the submitted curriculum meets the requirements of Section 4 of this administrative regulation;

2. Verify that the out-of-state high school or Department of Defense school is an accredited high school; and

3. Retain the "Curriculum Certification" on file until the student's eligibility has expired.

Section 4. Postsecondary Student Eligibility and KEES Curriculum. (1) A Kentucky postsecondary student shall be eligible to receive a base scholarship award if the student:

(a) Has earned a base scholarship award in high school;

(b) Has completed the KEES curriculum as set forth in subsection (2) of this section;

(c) Has graduated from a Kentucky high school except as provided in Section 2(4) or 3 of this administrative regulation; and

(d) Is enrolled in a participating institution in an eligible program.

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(2) Except as provided in subsection (4) of this section, the KEES curriculum shall consist of the courses and electives required by this subsection.

(a) For a student enrolled in high school who is required to meet the curriculum standards in 704 KAR 3:305, ~~[Section 2]~~ five (5) of the seven (7) electives required by 704 KAR 3:305, ~~[Section 2]~~ shall be taken in the areas and according to the standards established in paragraph (b) of this subsection.

(b) The following subject areas and standards shall be applicable for electives. An elective in:

1. Social studies, science, mathematics, English/language arts, ~~[or] arts and humanities, physical education, or health~~ shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060.

~~2. [Physical education or health shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060, and shall be limited to one-half (1/2) academic unit of credit for each area.~~

~~3.] Foreign languages shall be a course whose academic content includes teaching the spoken and written aspects of the language.~~

~~3.[4.] Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education or career pathways shall be a course whose academic content is beyond the introductory level in the vocational education areas of study as established by 703 KAR 4:060.~~

(3) A student who graduates from high school at the end of the fall semester of his or her senior year and who meets the requirements of KRS 164.7874(7) shall be eligible to earn a KEES award for that year upon:

- (a) Completion of no fewer than three (3) courses of study; and
- (b) Satisfying the provisions of KRS 164.7879.

(4) A high school may substitute an integrated, applied, interdisciplinary or higher level course for a required course or required elective if:

(a) The course provides the same or greater academic rigor and the course covers ~~[the minimum required content areas]~~ or exceeds the minimum required content areas established in 703 KAR 4:060, ~~and the document "Academic Expectations"; or~~

(b) The course is an honors course, cooperative education course, advanced placement course, international baccalaureate course, dual credit course, or a course taken at a postsecondary

education institution.

(5) As referenced in 4(b), beginning with the 2012-2013 academic year, only one (1) cooperative education course per academic year shall count for purposes of satisfying KEES curriculum requirements.

(6) A high school annually shall provide written documentation to a student on whether the student's schedule of coursework meets the requirements of the KEES curriculum.

Section 5. Eligible Postsecondary Education Programs. (1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the Authority.

(2) An eligible program at an out-of-state participating institution shall be limited to those programs that qualify through the Academic Common Market administered by the Southern Regional Education Board except as provided in subsection (4) of this section.

(3) Pursuant to KRS 164.7881(6), the following academic programs at Kentucky postsecondary education institutions shall be approved as five (5) year baccalaureate degree programs:

(a) Landscape architecture (04.0601); and

(b) For students that graduated from high school not later than the 2004-2005 academic year, engineering (14.0101, 14201, 14.0301, 14401, 14501, 14.0701, 14.0801, 14.0901, 14.1001, 14.1201, 14.1301, 14.1401, 14.1701, 14.1801, 14.1901, 14.2101, 14.2301, 14.2401, 14.2801, 14.9999.01, 14.3501).

(4) Pursuant to KRS 164.7881(4)(c)1, an academic program shall be designated as an equivalent undergraduate program of study if the student in the program of study:

(a) Has not received eight (8) semesters of a KEES award;

(b) Is classified by an institution as a graduate or professional student and is enrolled in one (1) of the following academic programs:

1. Pharm. D;

2. The optometry or veterinary medicine programs at an institution which is a part of the Kentucky Contract Spaces Program; or

3. A program contained on the Equivalent Undergraduate Programs List; and

(c) Has not completed a baccalaureate degree.

Section 6. SAT Conversion Table. Pursuant to KRS 164.7874(3), the following SAT to ACT Conversion Table shall be used:

SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite
1600	35-36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	14
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	34	1320	30	1090	24	860	18	630	13
1540	34	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	13
1520	34	1290	29	1060	23	830	17	600	13
1510	34	1280	29	1050	22	820	17	590	13
1500	33	1270	28	1040	22	810	17	580	12
1490	33	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	28	1010	21	780	16	550	12
1460	33	1230	27	1000	21	770	16	540	12
1450	32	1220	27	990	21	760	16	530	12
1440	32	1210	27	980	21	750	15	520	12
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15	500	11
1410	32	1180	26	950	20	720	15		
1400	31	1170	26	940	20	710	15		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

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This table can be used to relate SAT I V+M scores to ACT Composite scores.

The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.

Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).

January 1998

Section 7. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students. (1) A Kentucky resident who is a citizen, national or permanent resident of the United States and who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The date of the student's graduation is May 1999 or thereafter;
- (c) The student takes the ACT or SAT and has at least a minimum score as established by KRS 164.7879(3); and
- (d) The student enrolls in a participating institution within five (5) years after graduation from high school.

(2) A Kentucky resident who is a citizen, national or permanent resident of the United States and who has not graduated from either a certified Kentucky high school or a nonpublic Kentucky high school that is not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The student's 18th birthday occurs on or after January 1, 1999;
- (c) The student takes and receives a GED diploma in Kentucky within five (5) years of attaining eighteen (18) years of age;
- (d) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
- (e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.

(3) A student who graduates from or attends an accredited out-of-state high school or Department of Defense school shall qualify for a supplemental award if:

- (a) The parents meet the provisions of KRS 164.7879(2)(c)1a and b;
 - (b) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
 - (c) The student enrolls in a participating institution within five (5) years of graduating from or attending the accredited out-of-state high school or Department of Defense school.
- (4) A student requesting a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.
- (5)(a) Residency shall be determined by a participating institution in accordance with 13 KAR 2:045.
- (b) A participating institution shall determine a student's eligibility for a supplemental award under this section and shall notify the Authority of the student's eligibility.

Section 8. Supplemental Award. An eligible high school student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of obtaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

Section 9. Section 9. Supplemental Award for Achievement on Examinations. (1) Pursuant to KRS 164.7879(3)(c), a supplemental award shall be provided for achievement on Advanced Placement (AP) or International Baccalaureate (IB) examinations as defined in KRS 158.007 to an eligible high school student whose family was eligible for free and reduced price lunch during any year of high school.

(2)(a) An eligible high school shall report the status of each student as eligible or ineligible for free and reduced price lunch to the Authority on an annual basis.

(b) In determining a high school student's free and reduced price lunch eligibility, the high school shall utilize the income eligibility guidelines published each year by the United State Department of Agriculture, Food and Nutrition Service.

Section 10. Administrative Responsibilities and Expenses of Program. (1) The Authority annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the "Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund" described in KRS 164.7877(1) and (3).

(2) The Authority annually shall adopt a budget proposal indicating the amount of funds available and a detailed listing of the expenditures necessary to operate the program.

(3) The Authority shall develop an allotment schedule for the release of the administrative funds.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Home of Record Certification, June 2005;
- (b) "Curriculum Certification, June 2005;
- (c) "Data Submission, June 2005; and
- (d) "Equivalent Undergraduate Programs List ", June 2005.

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

KRISTI P. NELSON, Chair

APPROVED BY AGENCY: February 23, 2011

FILED WITH LRC: March 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 26th, 2011 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 May 2nd, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jo Carole Ellis, Director of Student Financial Aid

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the procedures for administering the Kentucky Educational Excellence Scholarship (KEES) Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program for the Kentucky Higher Education Assistance Authority (KHEAA).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.7877(3) requires KHEAA to administer the funds appropriated to the trust fund for the program; KRS 164.7874(14) requires KHEAA to determine the KEES curriculum's courses of study; KRS 164.7879(3)(c) requires KHEAA to determine the eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award; KRS

164.7874(3) requires KHEAA to establish a table to convert an SAT score to an ACT standard; KRS 164.7881(6) requires KHEAA to establish a five (5) year postsecondary education program standard; KRS 164.7881(4)(a) requires KHEAA to establish overall award levels for the program; KRS 164.7879(2)(c) requires KHEAA to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record; and KRS 164.7535 and 164.7881 (4)(c) require KHEAA to identify equivalent undergraduate programs of study. This administrative regulation established these requirements related to the KEES program.

(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 establishing program eligibility criteria for administration of the KEES program by KHEAA.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing regulation by adding "course" as a defined term, removing the reference to the "academic expectations" document which is no longer utilized by the Kentucky Department of Education in evaluating curricula, and clarifying that only one cooperative education course per academic year shall count for KEES purposes beginning in academic year 2012-2013.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary in order to further refine the provisions related to the high school KEES curriculum.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require KHEAA to develop regulations for administration of the KEES program. This amendment enhances the provisions pertaining to high school curricula under the KEES program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation will assist in the effective administration of the statutes by further describing the elective courses applicable to the KEES curriculum and clarifying how cooperative education courses shall be counted for purposes of satisfying the KESS curriculum requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All potential KEES recipients beginning with academic year 2012-2013 who might enroll in cooperative education courses could be impacted by this amendment.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: Beginning in 2012-2013, potential KEES recipients who enroll in cooperative education courses will be limited in that only one such course each academic year will be counted as satisfying KEES curriculum requirements.

(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 program recipients in complying with this amendment to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those high school students who enroll in cooperative education courses during academic year 2012-2013 or thereafter will have only one cooperative course per academic year counted for KEES purposes.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KEES program is funded through net lottery revenues transferred in accordance with KRS 154A.130.

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

tion, if new, or by the change, if it is an amendment: No increase in fees or funding will be necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor increase any existing fees. Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.7874; 164.7877(3); 164.7879(1), (2), (3); 164.7881(4)(a), (c), (6).

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

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

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

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY STATE BOARD OF ELECTIONS (Amendment)

31 KAR 6:030. Uniform definition of a vote.

RELATES TO: KRS 117.265, 117.379, 117.381, 42 U.S.C. 15481

STATUTORY AUTHORITY: KRS 117.015(1), 42 U.S.C. 15481(a)(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. 42 U.S.C. 15481(a)(6) requires each state to adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the state. This administrative regulation establishes those standards.

Section 1. Definitions. (1) "Accessibility device" means any mechanism used to aid the voter in casting his or her vote for a candidate or an answer to a question on a ballot and is approved pursuant to KRS 117.379 and 117.381.

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(2) "Ballot" is defined by KRS 117.375(6).

(3) "Ballot label" is defined by KRS 117.375(5).

(4) "Direct recording electronic voting system" or "DRE voting system" means a computer-driven unit that counts votes cast by a voter through the use of a touchscreen, a button, or an approved accessibility device, and that processes and records the data by means of internal memory devices.

(5) "First name" means an individual's name or names given at birth, as distinguished from a family name or surname.

(6) "Name" means one (1) or more first names coupled with one (1) or more surnames.

(7) "Nickname" means a shortened version of an individual's name or a descriptive or alternative name, in addition to or instead of the first name or surname of an individual.

(8) "[Optical] Scan voting system" means a tabulating device that reads paper ballots by detecting voters' marks by electronic means [using reflected or absorbed light].

(9) "Overvote" means a voter has made more than the permitted number of selections in a single race except when a voter casts a vote using a straight party option and votes for a candidate in a particular race.

(10) "Surname" means the family name bestowed at birth, acquired by marriage, or legally adopted by choice.

(11) "Touchscreen" means a screen on a DRE voting system that the voter touches to enter his or her selections in casting a ballot in an election.

(12) "Write-in vote" means a vote on a ballot on which the voter writes, types, or uses an approved accessibility device to record, the surname of an eligible write-in candidate in the space reserved on the ballot for write-in votes and, on a paper [an optical scan] ballot, properly marks the oval or box or connects the arrow according to the directions provided to the voter.

Section 2. A ballot may be paper or electronic.

Section 3. Definition of a Vote for the Direct Recording Electronic Voting System.

(1) A vote on a direct recording electronic voting system shall be the choice made when a voter selects a candidate, or the desired answer to a question, and touches the screen, presses a button, or uses an approved accessibility device to cast a ballot.

(2) To select a candidate or an answer to a question, the voter shall:

(a) Press the appropriate place on the touchscreen, press the button, or use an approved accessibility device to choose a candidate or answer to a question for which the voter desires to vote;

(b) Type on the touchscreen or use the scrolling device to select on the screen the letters for the name of a write-in candidate in accordance with the instructions for voting on the DRE voting system and press the appropriate place on the touchscreen or press the button to record the write-in vote; or

(c) Press the appropriate place on the ballot label to designate a write-in candidate and write in the name of an eligible candidate on the paper provided in the write-in candidate window.

(3) To cast a ballot, the voter shall:

(a) Press the place on the touchscreen or press the button designated for casting the ballot; or

(b) Use an approved accessibility device for the accessible voting unit to signify the voter's desire to cast the ballot.

Section 4. Definition of a Vote for the [Optical] Scan Voting System. (1) Automatic tabulation. If ballots are tabulated electronically, a vote cast on an [optical] scan voting system shall be the choice made by a voter by:

(a) Filling in the oval or box or connecting the arrow next to the candidate's name or the question choice; or

(b) Writing in the name of an eligible candidate in the designated write-in space and filling in the oval or box or connecting the arrow next to the designated write-in space.

(2) Manual tabulation. If ballots are tabulated manually, the following marks made by a voter shall constitute a vote for a candidate or question choice on an optical scan voting system:

(a) The majority of an oval, box, or arrow designating a candidate or question choice is filled in;

(b) The oval, box, or arrow next to the candidate's name or the question choice is circled or underlined;

(c) The candidate's name or the question choice is circled or underlined;

(d) The party, group, organization, or independent status abbreviation next to the candidate's name is circled or underlined;

(e) There is an "X", a check mark, a plus sign, an asterisk, a star, or any other mark indicating the intent of the voter next to the candidate's name or question choice; or

(f) There is a diagonal, horizontal, or vertical line:

1. A portion of which intersects two (2) points on the oval or arrow next to the candidate's name or the question choice; and

2. That does not intersect another oval or arrow at any two (2) points. ~~[(g) If a voter designates a choice to vote a straight political party ticket, and also designates a vote for an opposing candidate in a specific race, the vote shall be counted for the opposing candidate for that specific race and the remaining votes on the ballot shall be counted for the straight political party.]~~

(3) Manual tabulation of write-in voting.

(a) If write-in ballots are tabulated manually, the following shall constitute a valid vote for a candidate:

1. The oval, box, or arrow next to the area designated for the selection of a write-in candidate is marked consistent with subsection (2) of this section; and

2. The voter shall write the name of an eligible write-in candidate as provided in [under] KRS 117.265 [is written] in the area designated for the selection of a write-in candidate.

(b) If a voter designates a vote for a named candidate on the ballot and also writes in the name of a different person, these actions shall be considered an overvote, with neither candidate receiving credit for the vote, except as provided in Section 7 of this administrative regulation.

(4) Manual tabulation of other marks or words. If a choice is indicated in accordance with subsection (2) or (3) of this section, and another choice is similarly marked constituting an overvote, the voter may take one (1) of the following actions to cancel the overvote:

(a) If the voter used a pencil, the voter may erase the mark for the candidate he or she does not wish to select; or

(b) If the voter used ink, the voter may circle the name of the candidate he or she wishes to select.

Section 5. Definition of a Vote for a Paper Ballot. (1) Tabulation. The following marks made by a voter shall constitute a vote for a candidate or question choice on a paper ballot:

(a) The majority of an oval, a box, or space designating a candidate or question choice is filled in;

(b) The oval, box, or space next to the candidate's name or the question choice is circled or underlined;

(c) The candidate's name or the question choice is circled or underlined;

(d) The party, group, organization, or independent status abbreviation next to the candidate's name is circled or underlined;

(e) There is an "X", a check mark, a plus sign, an asterisk, a star, or any other mark indicating the intent of the voter next to the candidate's name or question choice; or

(f) There is a diagonal, horizontal, or vertical line:

1. A portion of which intersects two (2) points on the oval, box, or space next to the candidate's name or the question choice; and

2. That does not intersect another oval, box, or space at any two (2) points. ~~[(g) If a voter designates a choice to vote a straight political party ticket, and also designates a vote for an opposing candidate in a specific race, the vote shall be counted for the opposing candidate for that specific race and the remaining votes on the ballot shall be counted for the straight political party.]~~

(2) Write-in voting on a paper ballot.

(a) The following shall constitute a valid vote for a candidate:

1. The oval, box, or space next to the area designated for the selection of a write-in candidate is marked consistent with subsection (1) of this section; and

2. The name of an eligible write-in candidate as provided in [under] KRS 117.265 is written in the area designated for the selection of a write-in candidate.

(b) If a voter designates a vote for a named candidate on the

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ballot and also writes in the name of a different person, these actions shall be considered an overvote, with neither candidate receiving credit for the vote, except as provided in Section 7 of this administrative regulation.

(3) Other marks or words on a paper ballot. If a choice is indicated in accordance with subsection (1) or (2) of this section, and another choice is similarly marked constituting an overvote, the voter may take one (1) of the following actions to cancel the overvote:

- (a) If the voter used a pencil, the voter may erase the mark for the candidate he or she does not wish to select; or
- (b) If the voter used ink, the voter may circle the name of the candidate he or she wishes to select.

Section 6. Definition of a Vote for Write-in Voting Generally. (1) Only votes cast for eligible write-in candidates as provided in [under] KRS 117.265 shall be considered valid and counted.

(2) A write-in vote for a candidate whose name already appears on the ballot label as a candidate shall not be counted as a vote as provided in [under] KRS 117.265.

(3) The use of stickers, labels, rubber stamps, or other similar devices shall not be counted as write-in votes.

(4) Any minor misspelling of the name of a candidate shall be disregarded in determining the validity of a write-in vote as long as the intended candidate may be clearly determined.

(5) Writing in only the surname of an eligible candidate shall constitute a valid vote, unless there is more than one (1) filed candidate with the same surname for that office. If there is more than one (1) filed candidate with the same surname for that office, writing in only the last name or surname shall not constitute a vote.

(6) Writing in only the first name of an eligible candidate shall not constitute a valid vote.

(7) Writing in only the initials of a candidate shall not constitute a vote.

(8) Writing in only the nickname of an eligible candidate shall not constitute a valid vote.

(9) If the voter writes in any other name along with the surname of an eligible write-in candidate, the other name written by the voter shall comply with the variations of names listed by the candidate on SBE/SOS/01, SBE/SOS/02, or SBE/SOS/03, depending on the candidate, to constitute a valid vote.

(10) Writing in the surname of the candidate for Governor or the surname of the candidate for Lieutenant Governor shall be sufficient to cast a write-in vote for the slate.

(11) Writing in the surname of the candidate for President or the surname of the candidate for Vice President shall be sufficient to cast a write-in vote for the slate.

Section 7. Straight Party Voting. (1) For all voting systems and types of ballots, if a voter designates a choice to vote a straight political party ticket and also designates a vote for an opposing candidate whose name appears on the ballot or writes in the name of an eligible write-in candidate in a specific race, the vote shall be counted for the opposing candidate or the eligible write-in candidate for that specific race and the remaining votes on the ballot shall be counted for the straight political party.

(2) Straight party voting shall not be considered an overvote if cast in a manner consistent with subsection (1) of this section. [This administrative regulation shall not diminish the powers granted to the State Board of Elections and County Boards of Elections established by KRS Chapter 117.]

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

(a) SBE/SOS/01-"Declaration of Intent to be a Write-In Candidate", February 2011 edition~~(June 2007 edition)~~;

(b) SBE/SOS/02-"Presidential/Vice Presidential Candidates' Declaration of Intent to be Write-In Candidates", February 2011 edition~~(June 2007 edition)~~;

(c) SBE/SOS/03-"Governor/Lieutenant Governor Candidates' Declaration of Intent to be a Write-In Candidates", February 2011 edition~~(June 2007 edition)~~;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections,

140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

HON. ELAINE WALKER, Chair

APPROVED BY AGENCY: February 15, 2011

FILED WITH LRC: March 10, 2011 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on April 21, 2011, at 10:00 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 April 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 amendment to the 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 amendment to the administrative regulation. Written comments shall be accepted until May 2, 2011.

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 summary of:

(a) What this administrative regulation does: This administrative regulation provides a uniform and nondiscriminatory standard to define what constitutes a vote and what will be counted as a vote for each category of voting system used in the state.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with 42 U.S.C. 15481(a)(6).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the board to promulgate administrative regulations governing the conduct of elections. 42 U.S.C. 15481(a)(6) requires each state to adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the state. This administrative regulation establishes those requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a uniform and nondiscriminatory standard to define what constitutes a vote and what will be counted as a vote for each category of voting system used in the state ensuring that all eligible voters, registered voters, actual voters, election officials and boards and the general public will know what constitutes a vote.

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

(a) How the amendment will change this existing administrative regulation: The amendment to the administrative regulation will provide clarity for the language applied to straight party voting and more accurately defines what constitutes a write-in vote to safeguard against inconsistent results between automatic tabulation and hand counting in the event of a recount.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to safeguard against confusion on the part of election officials in counting straight party votes on election day and to avoid potential inconsistent results in election contests and recounts.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides a more accurate definition for what constitutes a write-in vote in conformity with 42 U.S.C. 15481(a)(6).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist election officials in counting straight party votes after each election and to conform to 42 U.S.C. 15481(a)(6), the Help America Vote Act.

(3) List the type and number of individuals, businesses, organi-

zations, or state and local governments affected by this administrative regulation: All eligible voters; all registered voters; all actual voters; all election officials and boards; all candidates for office, and the general public.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The election officials will have to follow this amendment when manually counting ballots after an election.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The groups will know what constitutes a vote for each category of voting system used in the state and, through this amendment, will have a more accurate definition for what constitutes a write-in vote.

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

(a) Initially: There are no costs associated with this administrative regulation or its amendment.

(b) On a continuing basis: There are no costs associated with this administrative regulation or its amendment.

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.015(1)(a) and 42 U.S.C. 15481(a)(6), the Help America Vote Act.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no costs associated with this administrative regulation.

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

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 15481(a)(6).

(2) State compliance standards: KRS 117.015(1) authorizes the board to promulgate administrative regulations governing the conduct of elections.

(3) Minimum or uniform standards contained in the federal mandate: 42 U.S.C. 15481(a)(6) requires each state to adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the state. This administrative regulation establishes those requirements.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: None

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:490. Licensed practical nurse intravenous therapy scope of practice.

RELATES TO: KRS 314.011(10)(a), (c)

STATUTORY AUTHORITY: KRS 314.011(10)(c), 314.131(1), 314.011(10)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.011(10)(c) authorizes the board to promulgate an administrative regulation to establish the scope of practice for administering medicine or treatment by a licensed practical nurse, and KRS 314.011(10)(a) requires that licensed practical nurses practice under the direction of a registered nurse, physician, or dentist. This administrative regulation establishes the scope of that practice as it relates to intravenous therapy.

Section 1. Definitions. (1) "Administration" means to initiate and infuse intravenous therapy.

(2) "Antineoplastic agent" means a medication that prevents the development, growth, or proliferation of malignant cells.

(3) "Bolus" means a concentrated medication or solution given rapidly over a short period of time.

(4) "Central venous access device" means a catheter that is inserted in such a manner that the distal tip is located in the superior vena cava, inferior vena cava, or heart, including a peripherally-inserted central catheter and an implanted port.

(5) "Direction" means a communication of a plan of care that is based upon assessment of a patient by an advanced practice registered nurse, a registered nurse, physician, or dentist that establishes the parameters for the provision of care or for the performance of a procedure.

(6) "Discontinuance" means to stop the infusion of the medication or fluid and does not include removal of the intravenous access device.

(7) "Fibrinolytic agent" means a pharmaceutical agent capable of dissolving blood clots.

(8) "Intravenous access device" means either a peripheral access device or a central venous access device.

(9) "Mix" or "mixing" means to combine two (2) or more medi-

cations or solutions, and includes reconstituting a powder into a liquid, and diluting a medication or solution.

(10) "Moderate sedation" means the administration of intravenous medications to produce a state that intentionally results in a depressed level of consciousness in a patient.

(11) "Peripheral access device" means a peripherally-inserted intravenous catheter or needle that is less than or equal to three (3) inches in length.

(12) "Pharmacology" means information on the classification of intravenous drugs, indications for use, pharmacological properties, monitoring parameters, contraindications, dosing, clinical mathematics, anticipated side effects, potential complications, antidotal therapy, compatibilities, stabilities, specific considerations for select intravenous drugs, and administration of intravenous medications to pediatric, adult, and geriatric populations.

(13) "Procedural sedation" means the administration of intravenous medications to produce a state that allows a patient to tolerate unpleasant procedures and results in a depressed level of consciousness.

(14) "Push" means administration of medication under pressure via a syringe.

(15) "Supervision" means the provision of guidance by a registered nurse, advanced practice registered nurse, physician or dentist for the accomplishment of a nursing task with periodic observation and evaluation of the performance of the task including validation that the nursing task has been performed in a safe manner.

(16) "Supervisor" means the registered nurse, advanced practice registered nurse, physician or dentist who provides supervision of the licensed practical nurse's practice as defined in subsection (15) of this section.

(17) "Therapeutic phlebotomy" means a clinical procedure whereby blood volume is reduced to achieve a therapeutic outcome.

(18) "Titration" means adjustment of a medication dosage or rate of solution infusion as prescribed within a therapeutic range that is based on the assessment of a patient.

(19) "Vesicant" means an agent capable of causing injury if it escapes from the intended vascular pathway into surrounding tissue.

Section 2. Education and Training Standards. (1) Prior to performing intravenous (IV) therapy, the licensed practical nurse (LPN) shall have completed education and training related to the scope of IV therapy for an LPN. This education and training shall be obtained through:

(a) A precicensure program of nursing for individuals admitted to the program after the effective date of this administrative regulation; or

(b) An institution, practice setting, or continuing education provider that has in place a written instructional program and a competency validation mechanism that includes a process for evaluation and documentation of an LPN's demonstration of the knowledge, skills, and abilities related to the safe administration of IV therapy. The LPN shall receive and maintain written documentation of completion of the instructional program and competency validation.

(2) The education and training programs recognized in subsection (1) of this section shall be based on "Policies and Procedures for Infusion Nursing" and shall include the following components:

(a) Technology and clinical applications;

(b) Fluid and electrolyte balance;

(c) Pharmacology and vesicants;

(d) Infection control;

(e) Transfusion therapy;

(f) Parenteral nutrition; and

(g) Legal aspects based on KRS Chapter 314 and this administrative regulation.

Section 3. Supervision Requirements. (1) An LPN performing IV therapy procedures shall be under the direction and supervision of a registered nurse (RN), advanced practice registered nurse (APRN), physician, or dentist.

(2) For a patient whose condition is determined by the LPN's supervisor to be stable and predictable, and rapid change is not

anticipated, the supervisor may provide supervision of the LPN's provision of IV therapy without being physically present in the immediate vicinity of the LPN, but shall be readily available.

(3) In the following cases, for the LPN to provide IV therapy, the LPN's supervisor shall be physically present in the immediate vicinity of the LPN and immediately available to intervene in the care of the patient:

(a) If a patient's condition is or becomes critical, fluctuating, unstable, or unpredictable;

(b) If IV medications or fluids are administered by push or bolus administration, except for saline or heparin to maintain patency of an IV access device;

(c) If a patient has developed signs and symptoms of an IV catheter-related infection, venous thrombosis, or central line catheter occlusion;

(d) If a patient is receiving blood, blood components, or plasma volume expanders; or

(e) If a patient is receiving peritoneal dialysis or hemodialysis.

Section 4. Standards of Practice. (1) An LPN shall perform only those IV therapy acts for which the LPN possesses the knowledge, skill, and ability to perform in a safe manner, except as limited by Section 6 of this administrative regulation and under supervision as required by Section 3 of this administrative regulation.

(2) An LPN shall consult with an RN or physician, physician assistant, dentist, or advanced practice registered nurse and seek guidance as needed if:

(a) The patient's care needs exceed the licensed practical nursing scope of practice;

(b) The patient's care needs surpass the LPN's knowledge, skill, or ability; or

(c) The patient's condition becomes unstable or imminent assistance is needed.

(3) An LPN shall obtain instruction and supervision as necessary if implementing new or unfamiliar nursing practices or procedures.

(4) An LPN shall follow the written, established policies and procedures of the facility that are consistent with KRS Chapter 314.

Section 5. Functions That May Be Performed. An LPN who has met the education and training requirements of Section 2 of this administrative regulation may perform the following IV therapy functions, except as limited by Section 6 of this administrative regulation and under supervision as required by Section 3 of this administrative regulation:

(1) Calculation and adjustment of the flow rate on all IV infusions;

(2) Observation and reporting of subjective and objective signs of adverse reactions to any IV administration and initiate appropriate interventions;

(3) For all IV access devices:

(a) Administration of IV fluids and medications via central venous and peripheral access devices as permitted by this Section and prohibited by Section 6 of this administrative regulation;

(b) Performance of site care and maintenance that includes:

1. Monitor access site and infusion equipment;

2. Change administration set, including add-on device and tubing;

3. Flushing; and

4. Change site dressing;

(c) Discontinuance of a medication or fluid infusion; and

(d) Conversion of a continuous infusion to an intermittent infusion;

(4) Insertion or removal of a peripheral access device;

(5) Administration, monitoring, and discontinuance of blood, blood components, and plasma volume expanders;

(6) Administration of IV medications and fluids that are mixed and labeled by an RN, APRN, physician, dentist, or pharmacist or are commercially prepared;

(7) Mixing and administration via push or bolus route of any of the following classifications of medications:

(a) Analgesics;

(b) Antiemetics;

(c) The antagonistic agents for analgesics;

- (d) Diuretics;
- (e) Corticosteroids; and
- (f) Saline or heparin to maintain patency of an IV access device;
- (8) Administration of glucose to patients fourteen (14) years of age or older via direct push or bolus route;
- (9) Administration, monitoring, and discontinuance of IV medications and fluids given via a patient controlled administration system;
- (10) Administration, monitoring, and discontinuance of parenteral nutrition and fat emulsion solutions;
- (11) Performance of dialysis treatment, including:
 - (a) Administering Heparin 1:1000 units or less concentration either to prime the pump, initiate treatment, or for administration throughout the treatment, in an amount prescribed by a physician, physician's assistant, or advanced registered nurse practitioner. The licensed practical nurse shall not administer Heparin in concentrations greater than 1:1000; and
 - (b) Administering normal saline via the dialysis machine to correct dialysis-induced hypotension based on the facility's medical protocol. Amounts beyond that established in the facility's medical protocol shall not be administered without direction from a registered nurse or a physician;
- (12) Collection of blood specimens from a peripheral IV access device only at the time of initial insertion;
- (13) Removal of a noncoring needle from an implanted venous port;
- (14) Titration of intravenous analgesic medications for hospice patients;
- (15) Administration of peripheral intravenous medications via a volumetric control device;
- (16) Administration of intravenous medications or solutions via a ready-to-mix intravenous solution infusion system; and
- (17) Aspiration of a central venous catheter to confirm patency via positive blood return.

Section 6. Functions that Shall Not be Performed. An LPN shall not perform the following IV therapy functions:

- (1) Administration of tissue plasminogen activators, immunoglobulins, antineoplastic agents, or investigational drugs;
- (2) Accessing of a central venous access device used for hemodynamic monitoring;
- (3) Administration of medications or fluids via arterial lines or implanted arterial ports;
- (4) Administration of medications via push or bolus route except as permitted by Section 5(7) or (8) of this administrative regulation;
- (5) Administration of a fibrinolytic agent to de clot any IV access device;
- (6) Administration of medications requiring titration, except as permitted by Section 5(14) of this administrative regulation;
- (7) Insertion or removal of any IV access device, except as permitted by Section 5(4) or (13) of this administrative regulation;
- (8) Accessing or programming an implanted IV infusion pump;
- (9) Administration of IV medications for the purpose of procedural sedation, moderate sedation, or anesthesia;
- (10) Administration of fluids or medications via an epidural, intrathecal, intraosseous, or umbilical route, or via a ventricular reservoir;
- (11) Administration of medications or fluids via an arteriovenous fistula or graft, except for dialysis;
- (12) Performance of the repair of a central venous access device;
- (13) Mixing of any medications other than those listed in Section 5(7) of this administrative regulation;
- (14) Insertion of noncoring needles into an implanted port; or
- (15) Performance of therapeutic phlebotomy;
- (16) Administration of medications or fluids via a percutaneously or surgically inserted nontunneled, nonimplanted central venous catheter;
- (17) Aspiration of an arterial line;
- (18) Withdrawal of blood specimens via a central venous catheter; or
- (19) Initiation and removal of a peripherally inserted central,

midclavicular, or midline catheter.

Section 7. Incorporation by Reference. (1) "Policies and Procedures for Infusion Nursing", Third Edition (2006), Infusion Nurses Society, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

CAROL A. KOMARA, RN, MSN, Board President

APPROVED BY AGENCY: February 11, 2011

FILED WITH LRC: March 3, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 21, 2011, at 10 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 14, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business May 2, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: It sets the scope of practice for IV therapy for LPNs, what they can and cannot do and the training/education they need.
 - (b) The necessity of this administrative regulation: The Board is required by statute to promulgate this regulation.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: By setting the scope of practice.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting the scope of practice.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: It clarifies when an LPN may collect blood specimens from a peripheral IV device.
 - (b) The necessity of the amendment to this administrative regulation: The regulation was unclear as to when an LPN may do this collection.
 - (c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set the scope of practice.
 - (d) How the amendment will assist in the effective administration of the statutes: By clarifying this issue.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: LPNs, approximately 15, 000.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is needed. LPNs need to be aware of the clarification to their scope of practice.
 - (b) In complying with this administrative regulation or amend-

ment, how much will it cost each of the entities identified in question (3): There is no cost to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no cost.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensure for Occupational Therapy (Amendment)

201 KAR 28:170. Deep physical agent modalities.

RELATES TO: KRS 319A.010(8), 319A.080(4), 319A.170(1)(c)

STATUTORY AUTHORITY: KRS 319A.070(3), 319A.080(4)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.080(4) allows the board to set forth guidelines for the training and instruction necessary for the use of deep physical agent modalities. KRS 319A.070 states that the board shall issue a certification to a person who qualifies under this administrative regulation. This administrative regulation sets forth the requirements for obtaining certification in deep physical agent modalities.

Section 1. Definition. "DPAM Specialty Certification" means the certification issued to a Kentucky-licensed occupational therapist or

licensed occupational therapist assistant who meets the standards set forth in KRS 319A.180 and this administrative regulation and who has been certified by the board.

Section 2. Application. A licensee, before utilizing deep physical agent modalities, shall submit an application to the board for a DPAM Specialty Certification.

(1) The application shall be accompanied by:

(a) Payment of the fee required by KRS 319A.170(1)(c).

(b) Proper documentation that the applicant has met all educational and clinical requirements for certification which include:

1. Successful completion of the requisite hours of training and instruction required by KRS 319A.080(4) for the level of licensure held by the applicant; and

2. Successful completion of the five (5) treatment sessions that meet the requirements specified in Section 4 of this administrative regulation.

(2) The documentation shall include:

(a) The names and addresses of the person or organization presenting the courses or training attended by the applicant;

(b) A copy of the course syllabus or a description of the workshop or seminar which includes a summary of the learning objectives and teaching methods employed in the workshop or seminar and the qualifications of the instructors;

(c) The name and address of the person who supervised the treatment sessions;

(d) A statement signed by the supervisor confirming that the applicant has completed five (5) supervised treatment sessions and that the criteria set forth in Section 4 of this administrative regulation have been met; and

(e) A statement signed by the designed program official confirming successful completion of the training or course of instruction.

(3) A DPAM Specialty Certification shall be issued by the board before the individual can begin using deep physical agent modalities except when a qualified licensee is performing those modalities as part of a supervised program to complete the supervised treatment sessions required for a DPAM Specialty Certification under this administrative regulation.

(4) The board shall maintain a roster of persons who have been issued DPAM Specialty Certification for the use of deep physical agent modalities.

(5) An OT/L or OTA/L who is also licensed by the Kentucky Board of Physical Therapy as a physical therapist or physical therapist assistant and who seeks a DPAM certification shall be certified by the board upon application.

Section 3. Training and Instruction. (1) The training and instruction shall be earned by direct personal participation in courses, workshops, or seminars.

(2) The content of the courses, workshops, or seminars shall include training and instruction in the following subject areas:

(a) Principles of physics related to specific properties of light, water, temperature, sound, and electricity;

(b) Physiological, neurophysiological, and electrophysiological changes which occur as a result of the application of each of the agents identified in KRS 319A.010(8);

(c) Theory and principles of the utilization of deep physical agents which includes guidelines for treatment or administration of agents within the philosophical framework of occupational therapy;

(d) The rational and application of the use of deep physical agents;

(e) The physical concepts of ion movement;

(f) Critical thinking and decision making regarding the indications and contraindications in the use of deep physical agents;

(g) Types selection and placement of various agents utilized;

(h) Methods of documenting the effectiveness of immediate and long-term effects of interventions;

(i) Characteristics of equipment including safe operation, adjustment, and care of the equipment; and

(j) Application and storage of specific pharmacological agents.

(3) ~~The programs shall be approved or recognized either by the American Occupational Therapy Association or the American Society of Hand Therapists or be approved by the board.~~

(4)] A person who is seeking board approval for training and instruction courses, workshops, or seminars which are intended to meet the requirements of KRS 319A.080(4) shall submit a "DPAM Course, Workshop or Seminar Provider Approval Application Form" to the board.

Section 4. Supervised Treatment Sessions. (1) The supervised treatment sessions required for certification shall be sufficiently detailed to allow the DPAM Specialty Certification supervisor to determine that the supervisee has demonstrated the following skills:

(a) The ability to evaluate or contribute to the evaluation of the client, depending upon the applicant's licensure status as an OT/L or an OTA/L and make an appropriate selection of the deep physical agent to be utilized;

(b) A thorough knowledge of the effects of the deep physical agent which is to be utilized;

(c) The ability to explain the precaution, contraindication, and rationale of the specific deep physical agent utilized;

(d) The ability to formulate and justify the occupational therapy intervention plan specifically delineating the adjunctive strategy associated with the use of each deep physical agent;

(e) The capability to safely and appropriately administer the deep physical agent;

(f) The ability to properly document the parameters of intervention which include the client's response to treatment and the recommendations for the progression of the intervention process; and

(g) The skills identified in paragraphs (d) and (f) of this subsection are not applicable to an OTA/L's practice and an OTA/L is not required to demonstrate the skill in a supervised treatment session.

(2) The supervised treatment sessions shall include one (1) session for each of the following areas:

(a) Iontophoresis;

(b) Ultrasound; and

(c) Electrical stimulation.

(3) The remaining two (2) sessions may cover any deep physical agent identified in KRS 319A.010(8).

(4) Supervised treatment sessions may be completed in a laboratory portion of an instructional course, provided that the instructor meets the board's requirements for a DPAM specialty certification supervisor and that all of the requirements of this administrative regulation have been met.

5. Treatment sessions shall be completed under the direct supervision of a person who meets the requirements of subsection (5) of this section and is approved by the board.

6. Before an individual may be a supervisor for the treatment sessions specified in this administrative regulation, he or she shall:

(a) Be licensed or certified by a state agency that has the authority to permit the use of deep physical agent modalities;

(b) Be licensed at a level which permits the individual to fully and independently evaluate the client;

(c) Be in good standing with that agency; and

(d) Have one (1) year of clinical experience in the use of deep physical agent modalities.

(7) The issuance of the DPAM specialty certification by the board only shows that the applicant has met the minimum requirements of KRS 319A.080(4)(a). It shall be the duty of the individual licensee to determine his or her competency to provide a specific DPAM for a client.

Section 5. An OTA/L certified to use DPAMs under this administrative regulation may only use DPAMs when supervised by an OT/L certified to use DPAMs under this administrative regulation.

Section 6. Incorporation by Reference. (1) "DPAM Course, Workshop or Seminar Provider Approval Application Form", March 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Occupational Therapy, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KELLY NASH, Chair

APPROVED BY AGENCY: March 3, 2011

FILED WITH LRC: March 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 21, 2011 at 3 p.m., at the Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 14, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 2, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Shannon Tivitt, Executive Director, Kentucky Board of Licensure for Occupational Therapy, 911 Leewood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for a specialty certification in deep physical agent modalities.

(b) The necessity of this administrative regulation: KRS 319A.080(4) allows the board to set forth guidelines for the training and instruction necessary for the use of deep physical agent modalities. KRS 319A.170 states that the board issues a certification to a person who qualifies under this regulation. This regulation sets forth those requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319A.070 and 319A.080(4) authorizes the board to set the requirements for the certification of licensees in the area of deep physical agent modalities.

(d) How this administrative regulation will assist in the effective administration of the statutes: The regulation specifies the requirements for certification in deep physical agent modalities, thus ensuring that the licensees know what is expected by the board to obtain certification.

(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 amendment to this administrative regulation establishes that providers shall be approved by the board.

(b) The necessity of the amendment to this administrative regulation: KRS 319A.080(4) allows the board to set forth guidelines for the training and instruction necessary for the use of deep physical agent modalities. KRS 319A.170 states that the board issues a certification to a person who qualifies under this regulation. This regulation sets forth those requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319A.070 and 319A.080(4) authorizes the board to set the requirements for the process of certification in the area of deep physical agent modalities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation informs providers of the requirements for approval.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment affects only the American Occupational Therapy Association and the American Society of Hand Therapists; the two providers previously exempted from the approval process.

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

(a) List the actions that each of the regulated entities identified

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in question (3) will have to take to comply with this administrative regulation or amendment: The American Occupational Therapy Association and the American Society of Hand Therapists will be required to file an application for approval of courses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No direct cost is associated with compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits which will accrue to the entities is that they will have their courses approved.

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

(a) Initially: The cost of reviewing the applications will be absorbed into the presently existing expenses by the board.

(b) On a continuing basis: There are no continuing costs associated with implementation of this regulation.

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure for Occupational Therapy.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319A.070(3), 319A.160(1)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

(c) How much will it cost to administer this program for the first year? No new costs are anticipated from the change of renewal dates.

(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:

GENERAL GOVERNMENT CABINET Board of Interpreters for the Deaf and Hard of Hearing (Amendment)

201 KAR 39:030. Application; qualifications for licensure; and certification levels.

RELATES TO: KRS 309.304(1), 309.312(1)(b)

STATUTORY AUTHORITY: KRS 309.304(3), 309.312(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

309.304(3) and 309.312(1)(b) require the Kentucky Board of Interpreters for the Deaf and Hard of Hearing to promulgate an administrative regulation establishing the requirements for an applicant for licensure as an interpreter for the deaf and hard of hearing. This administrative regulation establishes these requirements.

~~Section 1. [Definition. "RID" means the Registry of Interpreters for the Deaf.~~

~~Section 2.] Application. Each applicant for a license shall submit:~~

~~(1) A completed Application for Licensure or Application for Temporary Licensure form to the board; and~~

~~(2) Pay the application and license fee as set forth in 201 KAR 39:040; and[-]~~

~~(3) Proof of holding one (1) or more certifications of competence or completion of assessments for the applicant's respective interpreting track as specified in section 2; or~~

~~(4) Other certificates as described in 201 KAR 39:080 which pertains to reciprocity.~~

~~Section 2. Interpreter Track Requirements (1) Generalist Track: An individual applying on the generalist track shall provide proof of completion of or competence at a level of:~~

~~(a) NIC: Generalist, Advanced or Master; or~~

~~(b) RID: CSC, CT, CI, IC, TC, IC/TC, OTC, OIC:C, OIC:S/V, OIC:V/S, MCSC, SC:L or SC:PA; or~~

~~(c) NAD: Level IV or V; or~~

~~(d) TECUnit:TSC.~~

~~(2) Educational Track: An individual applying on the educational track shall provide proof of completion of or competence at a level of:~~

~~(a) RID: Ed:K-12; or~~

~~(b) Passage of the EIPA Knowledge Exam or NIC Knowledge Exam and EIPA performance score of three and five-tenths (3.5) or better.~~

~~(3) Deaf Specialist Track: An individual applying on the deaf specialist track shall provide proof of completion of or competence at a level of:~~

~~(a) RID: CDI, RSC or CLIP-R~~

~~Section 3: Incorporation by Reference. (1) "Application for Licensure", 2011, is incorporated by reference.~~

~~(2) "Application for Temporary Licensure", 2011, is incorporated by reference.~~

~~(3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Section 3. Certification Levels. In order to receive a license, an applicant shall submit with an application, proof of holding one (1) or more of the following certifications of competence or completion assessments:~~

~~(1) Current certification by the Registry of Interpreters for the Deaf in:~~

~~(a) Comprehensive Skills Certificate (CSC). Holders of this full certificate have demonstrated the ability to interpret between American Sign Language and Spoken English and to transliteralize between spoken English and an English-based sign language;~~

~~(b) Certificate of Transliteration (CT). Holders of this certificate are recognized as fully certified in transliteration and have demonstrated the ability to transliterate between English-based sign language and spoken English in both sign-to-voice and voice-to-sign. The transliterator's ability to interpret is not considered in this certification;~~

~~(c) Certificate of Interpretation (CI). Holders of this certificate are recognized as fully certified in interpretation and have demonstrated the ability to interpret between American Sign Language and spoken English in both sign-to-voice and voice-to-sign. The interpreter's ability to transliterate is not considered in this certification;~~

~~(d) Interpreting Certificate/Transliteration Certificate (IC/TC). Holders of this partial certificate demonstrated ability to transliterate between English and a signed code for English and the ability to interpret between American Sign Language and spoken English;~~

(e) ~~Reverse Skills Certificate (RSC). Holders of this full certificate demonstrated the ability to interpret between American Sign Language and English-based sign language or transliterate between spoken English and a signed code for English. Holders of this certificate are deaf or hard-of-hearing and interpretation/transliteration is rendered in American Sign Language, spoken English, a signed code for English or written English;~~

(f) ~~Certified Deaf Interpreter (CDI). Holders of this certification are interpreters who are deaf or hard-of-hearing and who have demonstrated a minimum of one (1) year experience working as an interpreter, completion of at least eight (8) hours of training on the RID Code of Ethics, and eight (8) hours of training in general interpretation as it relates to the interpreter who is Deaf or Hard-of-Hearing;~~

(g) ~~Certified Deaf Interpreter Provisional (CDI-P). Holders of this provisional certification are interpreters who are deaf or hard-of-hearing and who have demonstrated a minimum of one (1) year experience working as an interpreter, completion of at least eight (8) hours of training on the RID Code of Ethics, and eight (8) hours of training in general interpretation as it relates to the interpreter who is deaf or hard-of-hearing. Provisional certification is valid until one (1) year after the certified deaf interpreter written and performance test is available nationally. Provisional certificate holders shall take and pass the CDI examination in order to remain certified as a deaf interpreter;~~

(h) ~~Oral Transliteration Certificate (OTC). Holders of this generalist certificate have demonstrated ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing and the ability to understand and repeat the message and intent of the speech and mouth movements of the person who is deaf and hard-of-hearing;~~

(i) ~~Interpretation Certificate (IC). Holders of this partial certificate demonstrated ability to interpret between American Sign Language and spoken English;~~

(j) ~~Transliteration Certificate (TC). Holders of this partial certificate demonstrated the ability to transliterate between spoken English and a signed code for English;~~

(k) ~~Conditional Legal Interpreting Permit (CLIP). Holders of this conditional permit have completed a RID-recognized training program designed for interpreters and transliterators who work in legal settings. Generalist certification (CI and CT, or CSC) is required prior to enrollment in the training program. This permit is valid until one (1) year after the specialist certificate: legal written and performance test is available nationally. CLIP holders shall take and pass the new legal certification examination in order to maintain certification in the specialty area of interpreting in legal settings. Holders of this conditional permit are recommended for a broad range of assignments in the legal setting;~~

(l) ~~Conditional Legal Interpreting Permit-Relay (CLIP-R). Holders of this conditional permit have completed a RID-recognized training program designed for interpreters and transliterators who work in legal settings and who are also deaf or hard-of-hearing. Generalist certification for interpreters or transliterators who are deaf or hard-of-hearing (RSC or CDI-P) is required prior to enrollment in the training program. This permit is valid until one (1) year after the specialist certificate: legal written and performance test for deaf interpreters is available nationally. CLIP-R holders shall take and pass the new legal certification examination in order to maintain certification in the specialized area of interpreting in legal settings. Holders of this conditional permit are recommended for a broad range of assignments in the legal setting;~~

(m) ~~Master Comprehensive Skills Certificate (MCSC). The MCSC examination was designed with the intent of testing for a higher standard of performance than the CSC. Holders of this certificate were required to hold the CSC prior to taking this exam. Holders of this certificate are recommended for a broad range of interpreting and transliterating assignments;~~

(n) ~~Specialist Certificate: Legal (SC:L). Holders of this specialist certificate have demonstrated specialized knowledge of legal settings and greater familiarity with language used in the legal system. Generalist certification and documented training and experience is required prior to sitting for this exam. Holders of the SC:L are recommended for a broad range of assignments in the legal setting;~~

(e) ~~Provisional Specialist Certificate: Legal (Prov. SC:L). Holders of this provisional certificate hold generalist certification and have completed RID-approved training required prior to sitting for the SC:L exam. This provisional certification is valid until one (1) year after the specialist certificate: legal written and performance test is available nationally. Holders of this certificate are recommended for assignments in the legal setting;~~

(p) ~~Specialist Certificate: Performing Arts (SC:PA). Holders of this certificate were required to hold RID generalist certification (CSC) prior to sitting for this examination and have demonstrated specialized knowledge in performing arts interpretation. Holders of this certificate are recommended for a broad range of assignments in the performing arts setting;~~

(q) ~~Oral Interpreting Certificate: Comprehensive (OIC:C). Holders of this generalist certificate demonstrated the ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing and the ability to understand and repeat the message and intent of the speech and mouth movements of the person who is deaf or hard-of-hearing;~~

(r) ~~Oral Interpreting Certificate: Spoken to Visible (OIC:S/V). Holders of this partial certificate demonstrated the ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing. This individual received scores on the OIC:C examination which prevented the awarding of full OIC:C certification; or~~

(s) ~~Oral Interpreting Certificate: Visible to Spoken (OIC:V/S). Holders of this partial certificate demonstrated ability to understand the speech and silent mouth movements of a person who is deaf or hard-of-hearing and to repeat the message for a hearing person. This individual received scores on the OIC:C examination which prevented the awarding of full OIC:C certification.~~

(2) ~~Current certification by the National Association for the Deaf in:~~

(a) ~~Level V Masters;~~

(b) ~~Level IV Advanced; or~~

(c) ~~CUED Speech – National Training, Evaluation, and Certification Unit;~~

(3) ~~Other certifications as described in 201 KAR 39:080 or as required by federal law.~~

Section 4. ~~Incorporation by Reference. (1) "Application for License," 2001 is incorporated by reference.~~

(2) ~~This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

ARTIE GRASSMAN, Board Chair

APPROVED BY AGENCY: February 9, 2011

FILED WITH LRC: February 23, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011 at 9:00 a.m. at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until at the close of business on May 2, 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: Karen Lockett, Board Administrator, Kentucky Board of Interpreters for the Deaf and Hard of Hearing, PO Box 1370, Frankfort, Kentucky 40602, phone (502) 564-3296 ext. 222, fax (502) 696-1923.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes application requirements for one applying to be an interpreter.

(b) The necessity of this administrative regulation: This regulation is necessary to provide appropriate procedures for the application process for becoming a licensed interpreter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by ensuring that prospective licensees have a clear understanding of the process for obtaining a license and requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment streamlines the existing regulation to make requirements clearer to the prospective licensee.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is provide a clearer, more organized application process.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of interpreting.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify the requirements for obtaining a license to potential licensees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 300 full and temporarily licensed interpreters. This regulation only impacts those applying for initial licensure.

(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: Prospective licensees will need to meet the requirements for licensure specified 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): Possibly fees associated with the exam that the individual selects to become licensed and normal application and licensure fees as established by regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The prospective licensees will have the opportunity to become license if they meet the requirements of the regulation.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Interpreters for the Deaf and Hard of Hearing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.304(3)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Interpreters for the Deaf and Hard of Hearing
(Amendment)**

201 KAR 39:040. Fees.

RELATES TO: KRS 309.312(1)(a), (4), 309.314(1), (2), (4), (6)
STATUTORY AUTHORITY: KRS 309.304(3), 309.314(1), (2),

(4) NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessitated by KRS 309.304(3) and sets forth in detail all fees charged by the board.

Section 1. Fees for Licensure[Application Fee]. (1) The application fee for initial licensure shall be fifty (50) dollars. This fee is nonrefundable.

(2) The initial licensure fee shall be \$100 dollars. If the application for initial licensure is denied, the initial licensure fee may be refunded upon written request of the applicant.

(3) The annual renewal fee shall be seventy-five (75) dollars. Renewal fees shall not refundable. (2) The application fee for initial temporary license shall be fifty (50) dollars.

(3) Application fees shall not be refundable.]

Section 2. Fees for Temporary Licensure. (1) The application fee for initial temporary licensure shall be fifty (50) dollars. This fee is nonrefundable.[Initial Licensure Fee. (1) The initial licensure fee for licensure shall be \$100.]

(2) The initial licensure fee for a temporary license shall be fifty (50) dollars. If the application for initial temporary licensure is denied, the initial licensure fee may be refunded upon written request of the applicant.

(3) The annual fee to maintain or extend a temporary license shall be fifty (50) dollars. This fee shall be nonrefundable.

Section 3. (3) If the initial licensure application is denied the initial licensure fee may be refunded upon written request of the applicant.

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~~Section 3. Renewal and Extension Fees. (1) The annual renewal fee for licensure shall be seventy-five (75) dollars.~~

~~(2) The fee to extend a temporary license shall be fifty (50) dollars.~~

~~(3) Renewal fees and extension fees shall not be refundable.~~

~~Section 4.] Late Renewal and Extension Fees. (1) All licenses renewed during the sixty (60) day grace period shall require payment of a late renewal fee of sixty (60) dollars in addition to the current renewal fee set forth in Section 1(3)(3) of this administrative regulation.~~

~~(2) All temporary licenses extended during the sixty (60) day grace period shall pay a late fee of thirty-five (35) dollars in addition to the current extension fee set forth in Section 2(3)(3) of this administrative regulation.~~

~~(3) Late renewal and extension fees shall not be refundable.~~

~~Section 4.[5-] Reinstatement Fee. (1) The reinstatement fee for a license terminated pursuant to KRS 309.314(3) shall be \$125, in addition to the current renewal or extension fee as set forth in Section 1(3) or 2(3)(3) of this administrative regulation.~~

~~(2) The reinstatement fees shall not be refundable.~~

~~Section 5.[6-] Fee for a Reciprocal License. (1) The fee for a reciprocal license shall be \$250.~~

~~(2) The reciprocal license fee shall not be refundable.~~

~~Section 6.[8-] Duplicate License Fee. The fee for a duplicate license shall be ten (10) dollars.~~

ARTIE GRASSMAN, Board Chair

APPROVED BY AGENCY: February 9, 2011

FILED WITH LRC: February 18, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011, 9 a.m., at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until at the close of business on May 2, 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: Karen Lockett, Board Administrator, Kentucky Board of Interpreters for the Deaf and Hard of Hearing, PO Box 1370, Frankfort, Kentucky 40602, phone (502) 564-3296 ext. 222, fax (502) 696-1923.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes fees for licensure and temporary licensure as an interpreter.

(b) The necessity of this administrative regulation: This regulation is necessary to provide notice of fees for becoming a licensed interpreter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally and charge licensure fees specifically.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by ensuring that the board is properly funded to carry out its duties.

(2) If this is an amendment to an existing administrative regula-

tion, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment streamlines the existing regulation to make requirements and fees clearer to the prospective licensee.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to provide a clearer presentation of fees charged.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of interpreting.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify the fees for obtaining a license to potential licensees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 300 full and temporarily licensed interpreters.

(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: Prospective licensees will need to pay the appropriate fee as specified 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): The fees as promulgated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have the opportunity to become licensed.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation established but does not change fees from their current level.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Interpreters for the Deaf and Hard of Hearing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.304(3)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The amount of the licensure fees multiplied by the number of licensees at that time.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of the licensure fees multiplied by the number of licensees at that time.

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(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of the licensure fees multiplied by the number of licensees at that time.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Interpreters for the Deaf and Hard of Hearing (Amendment)

201 KAR 39:050. Renewal of licenses and extension of temporary licenses.

RELATES TO: KRS 309.304(5), 309.312, 309.314

STATUTORY AUTHORITY: KRS 309.304(3), 309.312, 309.314

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.314 establishes requirements for annual renewal of the license. KRS 309.312 establishes requirements for extension of temporary licenses. This administrative regulation sets forth that process in detail.

Section 1. ~~Definitions. (1) "CDI" means a Certified Deaf Interpreter.~~

~~(2) "EIPA" means Education Interpreter Performance Assessment.~~

~~(3) "ESSE- I" means Educational Signs Skills Evaluation: Interpreting.~~

~~(4) "ESSE- R" means Educational Signs Skills Evaluation: Receptive.~~

~~(5) "NAD" means National Association for the Deaf.~~

~~(6) "NIC" means National Interpreter Certification.~~

~~(7) "Nondegree applicant" means an individual who has either no degree or a degree other than an interpreter training program degree.~~

~~(8) "RID" means Registry of the Interpreters for the Deaf.~~

~~(9) "SCPI" means Sign Communication Proficiency Interview.~~

Section 2. ~~Renewal of Licenses.~~ A person licensed as an interpreter shall renew that license annually, as required by KRS 309.314(1) by submitting the following to the board:

(1) A completed "License Renewal Application" form;

(2) The renewal fee as established in 201 KAR 39:040~~[, Section 3]~~;

(3) Proof of current certification of the licensee as established in 201 KAR 39:030; and

(4) Documentation of completion of the continuing education requirement established in 201 KAR 39:090~~[, Section 2(4)]~~.

Section 2. Grace Period~~[3-]~~ A license not renewed by July 1, may be renewed during the following sixty (60) day period, in accordance with KRS 309.314~~(2)~~, by:

(1) Complying with the requirements established in Section 1 of this administrative regulation; and

(2) Submitting the late renewal fee established in 201 KAR 39:040~~[, Section 4(1)]~~.

Section 3. (1) Reinstatement~~[4-]~~ A license not renewed prior to the close of the sixty (60) day grace period, in accordance with KRS 309.314(4), may be reinstated upon:

(a) Payment of the renewal fee plus a reinstatement fee as established by 201 KAR 39:040, Section 4(1)~~(5(1))~~;

(b) Submission of a completed License Reinstatement Applica-

tion or Temporary License Reinstatement Application Form to the board;

(c) Submission of evidence of completion of continuing education as required by 201 KAR 39:090, Section 10; and

(d) Completion of the requirements of Section 5 of this administrative regulation.

(2) The board may in its discretion reinstate a temporary license if and only if the licensee submits proof sufficient to the board of:

(a) Medical disability of the licensee;

(b) Illness of the licensee or an immediate family member;

(c) Death or serious injury of an immediate family member; or

(d) For good cause shown.

(3) A request for reinstatement of a temporary license involving medical disability or illness shall be:

(a) Submitted by the person holding a license; and

(b) Accompanied by a verifying document signed by a licensed physician.

Section 4. Extensions of Temporary Licenses. To request an extension of a temporary license:

(1) A generalist track licensee shall submit:

(a) A completed "Temporary License Extension Application" form;

(b) The appropriate fee set forth in 201 KAR 39:040;

(c) Proof of completion of the continuing education requirements set forth in 201 KAR 39:090;

(d) A letter recommending extension written by the Mentor(s) of record for the previous licensure term which describes the progress achieved by the Mentee. The board may waive this requirement upon submission of proof by the licensee that the licensee has substantially met the goals stated in the plan of supervision; and

(e) A revised plan of supervision for the upcoming licensure year.

(2) An educational track licensee shall submit:

(a) A completed Temporary License Extension Application form;

(b) The appropriate fee set forth in 201 KAR 39:040;

(c) Proof of completion of the continuing education requirements set forth in 201 KAR 39:090;

(d) A letter recommending extension written by the Mentor of Record(s) for the previous licensure term which describes the progress achieved by the Mentee. The board may waive this requirement upon submission of proof by the licensee that the licensee has substantially met the goals stated in the plan of supervision; and

(e) A revised plan of supervision for the upcoming licensure year.

(3) A deaf specialist track licensee shall submit:

(a) Upon applying for a first, second, or third extension:

1. A completed "Temporary License Extension Application" form;

2. The appropriate fee set forth in 201 KAR 39:040;

3. Proof of completion of the continuing education requirements set forth in 201 KAR 39:090;

4. A letter recommending extension written by the Mentor(s) of Record which describes the progress achieved by the Mentee. The board may waive this requirement upon submission of proof by the licensee that the licensee has substantially met the goals stated in the plan of supervision; and

5. A revised plan of supervision for the upcoming licensure year.

(b) Upon applying for a fourth and subsequent extensions:

i. All requirements listed in paragraph (a) of this subsection; and

ii. Proof of passage of the RID CDI Knowledge Exam.

4. The extensions of temporary licenses under this section are subject to the term limitations imposed by 201 KAR 39:070(2).

~~[Section 5. Extensions of Temporary Licenses. Effective July 1, 2007, an application for extension of a temporary license for 2007/2008 shall be classified as a first renewal and the applicant's first request for an extension. Subsequent requests for extension~~

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shall meet the requirements of subsection 1, 2, or 3 of this section. An applicant who comes into the system after July 1, 2007 shall meet the applicable requirements for the first request for an extension.

~~(1) Requirements for graduates of a nondegree interpreter training program.~~

~~(a) A graduate of a baccalaureate or associate interpreter training program may apply on or before July 1, for a first extension of a temporary license by submitting:~~

~~1. A copy of the test results of either the RID written exam or the NIC written exam; or~~

~~2. Documentation of a valid NAD Level III certification.~~

~~(b) An extension shall be valid for one (1) year.~~

~~(c) In order to obtain a second one (1) year extension, a graduate shall submit, on or before July 1, proof that the graduate:~~

~~1. Has taken and passed either the RID written exam or NIC written exam; or~~

~~2. Holds a valid NAD III certification.~~

~~(d) In order to obtain a third and final one (1) year extension, a graduate shall submit, on or before July 1, proof that the graduate has taken either the RID performance exam or the NIC performance exam.~~

~~(e) An extension may be granted pending test results.~~

~~(2) Requirements for nondegree applicants.~~

~~(a) NAD III or SCPI: advanced certified.~~

~~1. A nondegree applicant who is either NAD III or SCPI: advanced certified and who interprets in both the community and a P-12 educational setting is entitled to a maximum of three (3) extensions.~~

~~2. To obtain the first extension, an applicant shall submit, on or before July 1, proof of:~~

~~a. Valid NAD III certification; or~~

~~b. Having passed the NIC or RID written exam.~~

~~3. To obtain a second extension, an applicant shall submit, on or before July 1, proof of:~~

~~a. Certification of NAD III or SCPI: advanced; and~~

~~b. Having taken either the RID or NIC performance exam.~~

~~4. To obtain a third and final extension, an applicant shall submit, on or before July 1, proof of:~~

~~a. NAD III certification; or~~

~~b. SCPI: advanced certification.~~

~~(b) Nondegree applicants who are not NAD III certified and work in a P-12 educational setting.~~

~~1. In order to obtain a first extension, an applicant shall submit, on or before July 1, proof of:~~

~~a. An EIPA score of three and five tenths (3.5) or higher;~~

~~b. An ESSE: I score of four and zero tenths (4.0) or higher and an ESSE: R score of four and zero tenths (4.0) or higher;~~

~~c. SCPI: advanced certification; or~~

~~d. Test results of either the RID written exam or the NIC written exam.~~

~~2. In order to obtain a second extension, an applicant shall submit, on or before July 1, proof that the applicant has taken and passed the RID written exam or the NIC written exam.~~

~~3. In order to obtain a third and final extension, an applicant shall submit, on or before July 1, proof of having taken either the RID performance exam or the NIC performance exam.~~

~~(c) Deaf applicants interpreting in the community and a P-12 educational setting.~~

~~1. In order to obtain a first extension, a deaf applicant shall submit, on or before July 1, a copy of the test results of the CDI written exam.~~

~~2. In order to obtain a second extension, a deaf applicant shall submit, on or before July 1 of the fifth year following the first extension, proof of having passed the CDI written exam.~~

~~3. In order to obtain a third and final extension, a deaf applicant shall submit, on or before July 1 of the fifth year following the second extension, proof of having taken the CDI performance exam.~~

~~Section 6. To request an extension of a temporary license a licensee shall submit to the board:~~

~~(1) A completed "Temporary License Extension Application" Form;~~

~~(2) A report from a supervisor describing the progress achieved by the person who was supervised and a recommendation from the supervisor as to whether the license should be extended;~~

~~(3) Proof of completion of the continuing education requirements as set forth in 201 KAR 39:090;~~

~~(4) An explanation of the need for the extension request; and~~

~~(5) The fee set forth in 201 KAR 39:040, Section 4(2).]~~

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

(a) "License Renewal Application, 2011[,-2004]" form;

(b) "License Reinstatement Application, 2011[2004]" form; and

(c) "Temporary License Extension Application, 2011[Temporary License Extension, 2004]" form].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ARTIE GRASSMAN, Board Chair

APPROVE BY AGENCY: February 9, 2011

FILED WITH LRC: February 23, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011 at 9 a.m. at 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until at the close of business on May 2, 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: Karen Lockett, Board Administrator, Kentucky Board of Interpreters for the Deaf and Hard of Hearing, PO Box 1370, Frankfort, Kentucky 40602, phone (502) 564-3296 ext. 222, fax (502) 696-1923.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes renewal and extension requirements for interpreters.

(b) The necessity of this administrative regulation: This regulation is necessary to provide notice of the process for renewing or extending ones license to interpret and the associated requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by ensuring that licensees are on notice of the requirements for renewal or extension of their licenses.

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

(a) How the amendment will change this existing administrative regulation: This amendment streamlines the existing regulation to make requirements clearer to the prospective licensee.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to provide a clearer presentation of the requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing

statute gives the board the ability to promulgate regulations generally related to the practice of interpreting.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify the fees for obtaining a license to potential licensees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 300 full and temporarily licensed interpreters.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will need to meet the requirements for renewal or extensions of their licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees as promulgated in 201 KAR 39:040 and any costs associated with testing as required. These costs have not changed as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have the opportunity to have their license renewed or extended.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation established but does not change fees from their current level.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Interpreters for the Deaf and Hard of Hearing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.304(3)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

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

GENERAL GOVERNMENT CABINET Board of Interpreters for the Deaf and Hard of Hearing (Amendment)

201 KAR 39:060. Reinstatement of license subject to disciplinary action.

RELATES TO: KRS 309.318

STATUTORY AUTHORITY: KRS 309.304(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.318

authorizes the board to discipline a licensee for violation of the statutes and administrative regulations governing the practice of interpreting. KRS 309.318(5) permits a person whose license has been revoked to apply for reinstatement after five (5) years. This administrative regulation establishes the requirements for reinstatement of a license that has been the subject of disciplinary action by the board.

~~Section 1. [Definition. "A license voluntarily surrendered as if revoked" means the process by which a person who holds a license issued by the board, knowingly and willingly, returns the license to the board, forfeiting all rights and privileges associated with that license, in settlement of a disciplinary action initiated by the board.~~

~~Section 2.] Reinstatement of a License Revoked by Disciplinary Action of the Board. (1) If a license has been revoked, an individual may apply for reinstatement by:~~

(a) Submitting a completed License Reinstatement Application Form;

(b) Paying the initial licensure fee as set forth in 201 KAR 39:040[~~Section 2~~] and the reinstatement fee as set forth in 201 KAR 39:040[~~Section 5~~];

(c) Submitting proof of qualification for licensure as set forth in 201 KAR 39:030[~~Sections 3 and 4~~]; and

(d) Show evidence of completion of fifteen (15) hours of continuing education for each year since the date of revocation in accordance with the requirements established in 201 KAR 39:090[~~Section 10(4)~~].

(2)(a) The board shall review the reinstatement request and determine whether to reinstate the license.

(b) Based upon the information submitted the board shall determine if the conditions for reinstatement listed in KRS 309.318(5) have been met.

(c) If the board finds that the conditions for reinstatement have been met, it shall reinstate the license.

(d) If the board finds that the conditions for reinstatement have not been met, or the applicant failed to comply with the requirements of this administrative regulation it shall refuse to reinstate the license. The applicant may then request, and the board shall grant a hearing on the denial conducted pursuant to KRS Chapter 13B.

~~Section 2.[3.] Reinstatement of a License which was Voluntarily Surrendered as if Revoked. (1) If a license has been voluntarily surrendered as if revoked, an individual may apply for reinstatement by:~~

(a) Meeting of all of the requirements of Section 1(1)[2(4)] of this administrative regulation; and

(b) Providing documentation of the successful completion of all requirements established in the agreed order that resulted in the voluntary surrender of the license as if revoked.

(2) For a request for reinstatement of a license voluntarily surrendered as if revoked, the board shall review the reinstatement request, make its determination, and provide for an appeal in accordance with Section 1(2)(a)[2(2)(a)] through (d) of this administrative regulation.

Section 3.[4.] Incorporation by Reference. (1) "License Reins-

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tatement Application", Form, 2011[2004], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Interpreters for the Deaf and Hard of Hearing, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

ARTIE GRASSMAN, Board Chair

APPROVED BY AGENCY: February 9, 2011

FILED WITH LRC: February 23, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011 at 9 a.m. at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until at the close of business on May 2, 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: Karen Lockett, Board Administrator, Kentucky Board of Interpreters for the Deaf and Hard of Hearing, PO Box 1370, Frankfort, Kentucky 40602, phone (502) 564-3296 ext. 222, fax (502) 696-1923.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation creates a procedure for the reinstatement of a licensed terminated based on a previous disciplinary action.

(b) The necessity of this administrative regulation: This regulation provides a procedure for the reinstatement of a licensed terminated based on a previous disciplinary action.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board by creating a procedure for the reinstatement of a licensed terminated based on a previous disciplinary action.

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

(a) How the amendment will change this existing administrative regulation: This amendment streamlines the existing regulation to make the procedure for the reinstatement of a licensed terminated based on a previous disciplinary action clearer to the prospective licensee.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to provide a clearer presentation of the procedure for the reinstatement of a licensed terminated based on a previous disciplinary action.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of interpreting.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify the procedure for the reinstatement of a licensed terminated based on a previous disciplinary action to potential licensees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 300 full and temporarily licensed interpreters.

(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: Prospective licensees will need to meet the requirements for reinstatement of their licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees as promulgated in 201 KAR 39:040 and any costs associated with testing as required. These costs have not changed as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have the opportunity to have their license reinstated if the requirements are met.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation established but does not change fees from their current level.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Interpreters for the Deaf and Hard of Hearing

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.304(3)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Interpreters for the Deaf and Hard of Hearing
(Amendment)**

201 KAR 39:070. Application and qualifications ~~and certification levels~~ for temporary licensure.

RELATES TO: KRS 309.312(1)(b), (3)

STATUTORY AUTHORITY: KRS 309.304(3), 309.312
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) and 309.312(1)(b) and (3) require the board to promulgate an administrative regulation establishing the requirements for an applicant for temporary licensure as an interpreter for the deaf and hard of hearing. This administrative regulation establishes the requirements regarding temporary licensure.

Section 1. ~~Definitions.~~ (1) "Board approved mentor" means a licensed interpreter:

(a) In this state or the resident of another state who can meet the requirements for licensure in this state as set forth in KRS Chapter 309 and the administrative regulations promulgated pursuant thereto;

(b) Who holds a valid certificate from the NAD Level IV or V, the RID, or the NAD-RID National Interpreter Certification (NIC) for a minimum of three (3) years prior to serving as a mentor; and

(c) Who has completed forty-five (45) hours of continuing education since obtaining certification.

(2) "NAD" means National Association for the Deaf.

(3) "RID" means Registry of the Interpreters for the Deaf.

(4) "SCPI" means Sign Communication Proficiency Interview.

Section 2. Application for Temporary Licensure. (1) Each applicant for the Generalist Track shall submit:

(a) A completed Application for Temporary Licensure form;

(b) The appropriate application and licensure fees as required by 201 KAR 39:040, Sections 1(2) and 2(2);

(c) A Plan of Supervision for a Temporary Licensee from a board approved mentor; ~~and~~

(d) Proof documenting passage of the NIC Knowledge Exam; and

(e) Proof of achieving one (1) of the following:

1. NAD Level III; or

2. SCPI Advanced or Better;

3. SLPI Advanced or Better;

4. ASLPI of three and a half (3.5) or Better.

(2) Each applicant for the Educational Track shall submit:

(a) A completed Application for Temporary Licensure Form;

(b) The appropriate application and licensure fees as required by 201 KAR 39:040;

(c) A Plan of Supervision for a Temporary Licensee from a board approved mentor; and

(d) Proof documenting passage of the NIC Knowledge or EIPA Knowledge Exam.

(3) Each applicant for the Deaf Specialist Track shall submit:

(a) A completed Application for Temporary Licensure Form;

(b) The appropriate application and licensure fees as required by 201 KAR 39:040;

(c) A Plan of Supervision for a Temporary Licensee from a board approved mentor;

(d) Proof of achieving one (1) of the following:

1. SCPI Advanced Plus or Better;

2. SLPI Advanced Plus or Better; or

3. ASLPI Score of three and a half (3.5) or better; and

(e) Proof of meeting the following continuing education requirements:

1. Three (3) hours focused on ethics;

2. Six (6) hours focused on CDI preparation;

3. Nine (9) hours focused on professional studies; and

4. Continuing education hours shall be earned within the two (2) years immediately prior to the initial application.

Section 2. Temporary Licensure Duration. (1) Individuals holding a Generalist or Educational Track license may hold temporary licensure for a maximum of five (5) years.

~~(2) Individuals holding a Deaf Specialist Track license may hold temporary licensure for a maximum of ten (10) years. [Certification of competence from the NAD in Level III Generalist.]~~

~~(2) A deaf or hard of hearing applicant shall submit:~~

~~(a) SCPI: advanced plus certification or an American Sign Language Proficiency Interview (ASLPI) score of four (4) or better;~~

~~(b) Certificate or proof of a minimum of eight (8) hours of RID-approved training on the role and function of the deaf interpreter; and~~

~~(c) Certificate or proof of a minimum of eight (8) hours of RID-approved training on the NAD-RID code of professional conduct or RID code of ethics.~~

~~(3) In lieu of the certification required in subsection (1)(d) of this section, an applicant working in a P-12 educational setting may submit proof of successful completion of the:~~

~~(a) SCPI—intermediate plus level or above; or~~

~~(b) Educational Interpreter Performance Assessment (EIPA) with a score of three and zero tenths (3.0) or above; or~~

~~(c) Educational Sign Skills Evaluation: Interpreting (ESSE: I) with a score of 3.5—3.9 and Educational Sign Skills Evaluation: Receptive (ESSE: R) with a score of 3.5—3.9;~~

~~(d) Eight (8) hours training on the role and function of an interpreter; and~~

~~(e) Certificate or proof of a minimum of eight (8) hours of ethics-related training.~~

~~(4) In lieu of the certification required in subsection (1)(d) of this section, an applicant working in a community setting shall submit proof of:~~

~~(a) 1. SCPI—advanced or above; or~~

~~2. American Sign Language Proficiency Interview score of four and zero tenths (4.0) or better; and~~

~~(b) Eight (8) hours of training on the role and function of an interpreter; and~~

~~(c) Certificate or proof of a minimum of eight (8) hours of ethics-related training.]~~

Section 3. Supervision Requirements. (1) Each applicant for a temporary license shall be trained and supervised by a board approved mentor.

(2) During the period of training and supervision the mentor shall meet with each licensee on a quarterly basis. One (1) of these meetings shall be on a face-to-face basis with each person being mentored. The remaining meetings may be through the use of video or video conferencing or any other method outlined in the approved plan of supervision.

(3) A mentor shall contract with no more than twenty (20) temporary licensees during a calendar year.

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

(a) "Application for Temporary License", 2011[2004]; and

(b) "Plan of Supervision for [a] Temporary Licensee[Licensee]" 2011[2004].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ARITE GRASSMAN, Board Chair

APPROVED BY AGENCY: February 9, 2011

FILED WITH LRC: February 23, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011 at 9:00 a.m. at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written com-

ments on the proposed administrative regulation. Written comments shall be accepted until at the close of business on May 2, 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: Karen Lockett, Board Administrator, Kentucky Board of Interpreters for the Deaf and Hard of Hearing, PO Box 1370, Frankfort, Kentucky 40602, phone (502) 564-3296 ext. 22, fax (502) 696-1923.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation creates application requirements for initial temporary licensure.

(b) The necessity of this administrative regulation: This regulation provides a procedure for obtaining and requirements for obtaining an initial temporary license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board by creating a procedure for obtaining a temporary license.

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

(a) How the amendment will change this existing administrative regulation: This amendment streamlines the existing regulation to make the procedure for obtaining a temporary license clearer to the prospective licensee.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to provide a clearer process for obtaining temporary licensure.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of interpreting.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify the procedure for obtaining temporary licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 300 full and temporarily licensed interpreters. This regulation only impacts those applying for initial temporary licensure.

(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: Prospective temporary licensees will need to meet the requirements for licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees as promulgated in 201 KAR 39:040 and any costs associated with testing as required. These costs have not changed as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have the opportunity to obtain temporary licensure if they meet the stated requirements.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

tion, if new, or by the change if it is an amendment: No fees will be required to implement this administrative regulation amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation established but does not change fees from their current level.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Interpreters for the Deaf and Hard of Hearing

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.304(3)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET

Board of Interpreters for the Deaf and Hard of Hearing (Amendment)

201 KAR 39:080. Reciprocity.

RELATES TO: KRS 309.304(1), 309.312(4)

STATUTORY AUTHORITY: KRS 309.304(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.312(4) requires the board to promulgate an administrative regulation governing the granting of a license through reciprocity. This administrative regulation establishes the requirements for licensure by reciprocity.

Section 1. An applicant for licensure by reciprocity shall:

(1) Hold a current, valid license in good standing to practice interpreting which has been granted by at least one (1) state, U.S. Territory, or the District of Columbia, or a Canadian province, which maintains an interpreter registration board;

(2) The standards or requirements for having granted that license shall meet or exceed the licensure requirements contained in KRS Chapter 309 and the accompanying administrative regulations;

(3) Not have a report of disciplinary action pending in another state or province; and

(4) Submit the reciprocity fee as set forth in 201 KAR 39:040[
~~Section 7.~~

ARTIE GRASSMAN, Board Chair

APPROVED BY AGENCY: February 9, 2011

VOLUME 37, NUMBER 10 – APRIL 1, 2011

FILED WITH LRC: February 18, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011, 9 a.m. (EST), at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until at the close of business on May 2, 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: Karen Lockett, Board Administrator, Kentucky Board of Interpreters for the Deaf and Hard of Hearing, PO Box 1370, Frankfort, Kentucky 40602, phone (502) 564-3296 ext. 222, fax (502) 696-1923.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets requirements for obtaining a license to interpret through reciprocity.

(b) The necessity of this administrative regulation: This regulation sets requirements for obtaining a license to interpret through reciprocity.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets requirements for obtaining a license to interpret through reciprocity.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies existing procedures and requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment clarifies existing procedures and requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of interpreting.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies existing procedures and requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 300 full and temporarily licensed interpreters. This regulation only impacts those applying for initial temporary licensure.

(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: Prospective licensees will need to meet the requirements for licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees as promulgated in 201 KAR 39:040 and any costs associated with testing as required. These costs have not changed as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have the opportunity to obtain licensure by reciprocity if they meet the stated requirements.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation established but does not change fees from their current level.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Interpreters for the Deaf and Hard of Hearing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.304(3)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Interpreters for the Deaf and Hard of Hearing (Amendment)

201 KAR 39:090. Continuing education requirements.

RELATES TO: KRS 309.304(5)

STATUTORY AUTHORITY: KRS 309.304(3), 309.314(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.314(7) authorizes the board to promulgate an administrative regulation that requires interpreters who apply for renewal or reinstatement to show evidence of completion of continuing education. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. ~~[Definition. "One (1) continuing education hour"~~

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~~means sixty (60) contact minutes of participating in continuing education experiences.~~

~~Section 2.]~~ Accrual of Continuing Education Hours Mandatory for Full Licensure; Computation of Accrual. (1) A person who is licensed as an interpreter shall have earned a total of fifteen (15) hours of approved continuing education during the compliance period, prior to renewal of his or her license for the next licensure period.

(2) A minimum of half of the fifteen (15) hours shall be from any of the following sources, alone or in combination~~[-which have been preapproved by the board]~~:

- (a) Alexander Graham Bell Association of the Deaf;
- (b) American Sign Language Teacher Association;
- (c) National Association of the Deaf;
- (d) National Educational Interpreters Conference;
- (e) Registry of Interpreters for the Deaf - Certificate Maintenance Program; or
- (f) Registry of Interpreters for the Deaf - Associate Continuing Education Training.

(3) A minimum of fifteen (15) continuing education hours shall be accrued by each licensee during the licensure period for renewal for the following year.

(4) A minimum of three (3) total continuing education hours shall be related to ethics.

~~Section 2.[3.]~~ Accrual of Continuing Education Hours Mandatory for Temporary Licensure; Computation of Accrual. (1) A person who holds a temporary license as an interpreter shall have earned a total of eighteen (18) hours of approved continuing education during the compliance period, prior to renewal or extension of his or her license for the next licensure period.

(2) A minimum of seven and one-half (7.5) of the eighteen (18) hours shall be from any of the following sources, alone or in combination~~[-which have been preapproved by the board]~~:

- (a) Alexander Graham Bell Association of the Deaf;
- (b) American Sign Language Teacher Association;
- (c) National Association of the Deaf;
- (d) National Educational Interpreters Conference;
- (e) Registry of Interpreters for the Deaf - Certificated Maintenance Program; or
- (f) Registry of Interpreters for the Deaf - Associate Continuing Education Training.

(3) A minimum of three (3) total continuing hours shall be related to ethics.

~~Section 3.[4.]~~ Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of an interpreter. The hours shall be earned by completing any of the following educational activities:

(1) Programs not requiring board review and approval. An educational program from any of the following providers shall be deemed to be relevant to the practice of interpreting and shall be approved without further review by the board:

- (a) A program sponsored or approved by the:
 - 1. Alexander Graham Bell Association of the Deaf;
 - 2. American Sign Language Teacher Association;
 - 3. National Association of the Deaf; or
 - 4. Registry of Interpreters for the Deaf; or

(b) An academic course offered by an accredited postsecondary institution that is directly related to interpreting. Credit shall only be granted for grades of "C" or above.

(2) Programs requiring board review and approval. A program from any of the following sources shall be reviewed and determined if the program is relevant and therefore subsequently approved by the board:

(a) Relevant programs, including home study courses and in-service training provided by other organizations, educational institutions, or other service providers approved by the board;

(b) Relevant programs or academic courses presented by the licensee. Presenters of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, not to exceed three (3) hours of continuing education

credits. Credit shall not be issued for repeated presentation of the same course.

(c) Authoring an article in a relevant, professionally-recognized, or juried publication. Credit shall not be granted for an article unless the article was published within the one (1) year period immediately preceding the renewal date. A licensee shall earn three (3) hours of continuing education credit toward the hours required for renewal. No more than one (1) publication shall be counted during a renewal period.

(d) A general education course, elective course, or a course designed to meet degree requirements offered by an accredited postsecondary institution. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals one (1) continuing education ten (10) continuing education hours[hour]. Credit shall only be granted for grades of "C" or above.

~~Section 4.[5.]~~ Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Any entity seeking to obtain approval of a continuing education program prior to its offering shall complete and submit the Application for Continuing Education Program Approval form to the board at least sixty (60) days in advance of the commencement of the program, stating the following:

(a) A published course or similar description containing educational objectives;

(b) Names and qualifications of the instructors;

(c) A copy of the program agenda indicating hours of instruction, coffee, and lunch breaks; and

(d) Number of continuing education hours offered~~[-and~~

~~(e) Official certificate of completion or college transcript from the sponsoring agency or college].~~

(2) A continuing education activity shall be qualified for approval if the board determines the activity being offered:

(a) Is an organized program of learning;

(b) Pertains to subject matters, which integrally relate to the practice of interpreting;

(c) Contributes to the professional competency of the licensee; and

(d) Is conducted by individuals who have educational training or experience acceptable to the board.

(3) A sponsor of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.

~~Section 5.[6.]~~ Responsibilities and Reporting Requirements of Licensees. A licensee shall be responsible for obtaining the required continuing education hours. He shall identify his own continuing education needs, take the initiative in seeking continuing education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding a license shall:

(1) Select approved activities by which to earn continuing education hours;

(2) Submit to the board, when applicable, a request for approval for continuing education activities not approved by the board as set forth in Section 7 of this administrative regulation;

(3) Maintain records of continuing education hours. Each licensee shall maintain all documentation verifying successful completion of continuing education hours for a period of two (2) years from the date of renewal. During each licensure renewal period, up to fifteen (15) percent of all licensees, chosen at random, shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period. Verification of continuing education hours shall not be otherwise reported to the board;

(4) Document attendance and participation in a continuing education activity in the form of official documents including transcripts, certificates, affidavits signed by instructors, receipts for fees paid to the sponsor, or less formal evidence including written summaries of experience that are not otherwise formally or officially documented in any way. The type of documentation required shall vary depending on the specific activity submitted to the board for approval; and

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(5) Fully comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 309.318(1)(e) and may result in the refusal to renew, suspension, or revocation of the licensure.

Section 6.~~[7-]~~ Procedures for Approval of Continuing Education Programs. A course, which has not been preapproved by the board, may be used for continuing education if approval is secured from the board for the course. In order for the board to adequately review a program, the following information shall be submitted:

- (1) A published course or similar description containing educational objectives; and
- (2) Names and qualifications of the instructors.

Section 7.~~[8-]~~ Carry Over of Continuing Education Hours. A licensee may carry over continuing education hours earned in excess of those required under Section 1.~~[2]~~ of this administrative regulation for one (1) renewal period, after which time they expire. All carry-over hours shall comply with the requirements of Sections 1.~~[2]~~ through 3.~~[4]~~ of this administrative regulation.

Section 8.~~[9-]~~ Board to Approve Continuing Education Hours; Appeal when Approval Denied. In the event of a denial, in whole or in part, of any application for approval of continuing education hours, the licensee shall have the right to request reconsideration by the board of its decision. The request shall be in writing, specifically stating the reasons for reconsideration, and shall be received by the board within thirty (30) days of the board's decision denying approval of continuing education hours.

Section 9.~~[40-]~~ Waiver or Extensions of Continuing Education. All requests for waiver or extension shall accompany the License Renewal Application.

(1) Upon written request, the board shall consider whether to grant a waiver of continuing education requirements or an extension of time within which to fulfill the requirements, in the following cases:

- (a) Medical disability of the licensee;
- (b) Illness of the licensee or an immediate family member;
- (c) Death or serious injury of an immediate family member; or
- (d) For good cause shown.

(2) A written request for a waiver or extension of time involving medical disability or illness shall be:

- (a) Submitted by the person holding a license; and
- (b) Accompanied by a verifying document signed by a licensed physician.

(3) A request for a waiver or extension of the continuing education requirements applies only to the current licensure year.

(a) Subsequent requests for waiver or extension of the continuing education requirements shall be made at the time of licensure renewal.

(b) There shall be no limit to the number of waivers or extensions that the board may grant, as long as the applicant meets the requirements set forth in subsections (1) and (2) of this section.

Section 10.~~[44-]~~ Continuing Education Requirements for Reinstatement of License. (1) A person requesting reinstatement of licensure shall submit evidence of completion of required hours of continuing education within the twelve (12) month period immediately preceding the date on which the request for reinstatement is submitted to the board.

(2) If the person seeking reinstatement does not meet the requirements established in subsection (1) of this section, the board may conditionally reinstate licensure, requiring the applicant to obtain required hours of continuing education within six (6) months of the date on which licensure is reinstated.

(3) The continuing education hours received in compliance with this section for reinstatement shall be in addition to the regular continuing education requirements established in Section 1 of this administrative regulation and shall not be used to comply with the requirements of that section.

Section 11.~~[42-]~~ Incorporation by Reference. (1) "Application for Continuing Education [Application]", 2011~~[2004]~~ form is incorpo-

rated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ARTIE GRASSMAN, Board Chair

APPROVED BY AGENCY: February 9, 2011

FILED WITH LRC: February 23, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011 at 9 a.m. at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until at the close of business on May 2, 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: Karen Lockett, Board Administrator, Kentucky Board of Interpreters for the Deaf and Hard of Hearing, PO Box 1370, Frankfort, Kentucky 40602, phone (502) 564-3296 ex. 222, fax (502) 696-1923.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation sets requirements for approval of continuing education courses and sets licensee requirements for acceptable continuing education.

(b) The necessity of this administrative regulation: This regulation sets requirements for approval of continuing education courses and sets licensee requirements for acceptable continuing education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets requirements for approval of continuing education courses and sets licensee requirements for acceptable continuing education.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies existing procedures and requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment clarifies existing procedures and requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of interpreting.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies existing procedures and requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 300 full and temporarily licensed interpreters. This regulation only impacts those applying for initial temporary licensure.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will need to meet the requirements for renewal of licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees as promulgated in 201 KAR 39:040 and any costs associated with testing or education as required. These costs have not changed as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have the opportunity to renew their license if they meet the stated requirements.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation established but does not change fees from their current level.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Interpreters for the Deaf and Hard of Hearing

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.304(3)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET

Board of Interpreters for the Deaf and Hard of Hearing (Amendment)

201 KAR 39:100. Complaint procedure.

RELATES TO: KRS 309.304(7), 309.316, 309.318

STATUTORY AUTHORITY: KRS 309.304(3), 309.316(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.316(2) authorizes the board to establish procedures for receiving and investigating complaints. KRS 309.318 delineates the causes for which disciplinary action may be taken against a licensee. This administrative regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.

Section 1.[Definitions. (1) "Case manager" means a member of the board appointed by the chair of the board to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint.

(2) "Chair" means the chair or vice chair of the board.

(3) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (5) of this section, issued by the board alleging a violation of a specified provision of KRS 309.300 to 309.319, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(4) "Complaint" means any written or videotaped allegation of misconduct by a licensed individual that might constitute a violation of KRS 309.300 to 309.319, the administrative regulations promulgated thereunder, or any state or federal statute regulating the practice of interpreting.

(5) "Complaint screening committee" means a committee consisting of three (3) persons on the board appointed by the chairman of the board to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint made up of board members, the executive director of the board, or another staff member.

(6) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal or civil action.

(7) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(8) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the Attorney General or the board.

Section 2.[Receipt of Complaints. (1) A complaint:

(a) May be submitted by an:

1. Individual;
2. Organization; or
3. Entity.

(b) Shall be:

1. In writing or contained on a videotape; and

2. ~~Include[Contain]~~ the signature, or stated name, address, and telephone, or videophone number of the person submitting the complaint; and

(c) May be filed by the board or board member based upon information in its possession.

(2)[A videotaped complaint shall be accompanied by a form provided by the board.

(3) Upon receipt of the complaint a copy of the complaint shall be sent to the licensee named in the complaint along with a request for the licensee's response to the complaint. The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written, videotaped, or other digital media response.

Section 2.[3.] Initial Review. (1) After the receipt of a complaint and the expiration of the period for the licensee's response, the case manager or the complaint screening committee shall consider the complaint, the licensee's response, and any other relevant material available and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a complaint is without merit, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and licensee of the board's decision.

(3) If the board determines that a complaint warrants a formal

investigation, it shall:

- (a) Authorize an investigation into the matter; and
- (b) Order a report to be made to the case manager or the complaint screening committee at the earliest opportunity.

Section 3.~~4.~~ Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a written report to the case manager or the complaint screening committee of the facts regarding the complaint. The case manager or the complaint screening committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there has been a prima facie violation of KRS 309.300 to 309.319 or the administrative regulations promulgated thereunder and if a formal complaint should be filed.

(2) If the board determines that a complaint does not warrant issuance of a formal complaint, it shall:

- (a) Dismiss the complaint; and
- (b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a violation has occurred but is not serious, the board may issue a written admonishment to the licensee in accordance with KRS 309.316(4).

(4) If the board determines that a complaint warrants the issuance of a formal complaint against a respondent, the board attorney in conjunction with the case manager or the complaint screening committee shall prepare a formal complaint which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the individual as required by KRS Chapter 13B.

(5) If the board determines that a person may be in violation of KRS 309.301(1), it shall:

- (a) Order the individual to cease and desist from further violations of KRS 309.301(1);
- (b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 309.301(1) with a request that appropriate action be taken under KRS 309.319; or
- (c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 309.301(1) pursuant to KRS 309.304(7).

Section 4.~~5.~~ Settlement by Informal Proceedings. (1) The board through counsel and the case manager or the complaint screening committee may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 5.~~6.~~ Notice and Service of Process. A notice required by KRS 309.300 to 309.319 or this administrative regulation shall be issued pursuant to KRS Chapter 13B.

Section 6.~~7.~~ Notification. The board shall make public:

(1) Its final order in a disciplinary action under KRS 309.316(3) ~~[with the exception of a written admonishment issued pursuant to Section 4(3) of this administrative regulation]; and~~

(2) An action to restrain or enjoin a violation of KRS 309.301(1).

Section 7.~~8.~~ Incorporation by Reference. (1) "Complaint Form", 2011.~~2004~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ARTIE GRASSMAN, Board Chair

APPROVED BY AGENCY: February 9, 2011

FILED WITH LRC: February 23, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011 at 9 a.m. at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business on May 2, 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: Karen Lockett, Board Administrator, Kentucky Board of Interpreters for the Deaf and Hard of Hearing, PO Box 1370, Frankfort, Kentucky 40602, phone (502) 564-3296 ext. 222, fax (502) 696-1923.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation creates the procedure for filing a disciplinary complaint with the board and sets the disciplinary process utilized by the board.

(b) The necessity of this administrative regulation: This regulation creates the procedure for filing a disciplinary complaint with the board and sets the disciplinary process utilized by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation creates the procedure for filing a disciplinary complaint with the board and sets the disciplinary process utilized by the board.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies existing procedures and requirements and increases transparency of board actions.

(b) The necessity of the amendment to this administrative regulation: This amendment clarifies existing procedures and requirements and increases transparency of board actions.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of interpreting.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies existing procedures and requirements and increases transparency of board actions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 300 full and temporarily licensed interpreters. This regulation only impacts those applying for initial temporary licensure.

(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: Aggrieved parties or members of the public will submit complaints in the same way that those complaints have been submitted.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The profession will be stronger

through the discipline of bad actors.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation established but does not change fees from their current level.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Interpreters for the Deaf and Hard of Hearing

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.304(3)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET

Board of Interpreters for the Deaf and Hard of Hearing (Amendment)

201 KAR 39:120. Code of ethics.

RELATES TO: KRS 309.304(3), 309.318(1)(e), (f)

STATUTORY AUTHORITY: KRS 309.304(3), 309.318(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.318(1)(e) and (f) authorizes the board to take disciplinary action against a licensee who violates any state statute or administrative regulation governing the practice of interpreting or violates the code of ethics, known as the Professional Code of Conduct, of the licensees' national certifying organization(s) [of the national organization]. This administrative regulation establishes the code of ethics in accordance with KRS 309.318(1)(f).

Section 1. A licensee shall abide by the following standards of professional and ethical conduct:

(1) A licensee shall keep all assignment-related information strictly confidential. From the moment of accepting the assignment, the interpreter holds a trustworthy relationship with the consumer, in which the interpreter is bound to confidentiality.

(a) All information obtained from the interpreter service shall be considered confidential. This applies whether the interpreter accepts or declines the assignment.

(b) All information about a consumer that is received from other interpreters shall be considered confidential and shall be exchanged in a manner which protects both the consumer and the assignment.

(c) The interpreter shall comply with the requirements of KRS 620.030 by reporting to the proper authorities the dependency, neglect, or abuse of a child if the interpreter reasonably believes that the dependency, neglect, or abuse of a child is ongoing or has occurred.

(2) A licensee shall faithfully convey the content and spirit of the speaker using language most readily understood by the persons whom they serve. Every interpretation shall be faithful to the message of the source text. A faithful interpretation should not be confused with a literal interpretation. The fidelity of an interpretation includes an adaptation to make the form, the tone, and the deeper meaning of the source text felt in the target language and culture.

(3) A licensee shall possess the knowledge and skills to support accurate and appropriate interpretation. A licensee works in a variety of settings and with a wide range of consumers and therefore shall be adept at meeting the linguistic needs of consumers, the cultural dynamics of each situation, and the spirit and content of the discourse.

(4) A licensee shall not counsel, advise, or interject personal opinions.

(a) An interpreter shall remain neutral, impartial, and objective. Should the interpreter find himself or herself unable to put aside personal biases or reactions which threaten impartiality, the interpreter is under an obligation to examine options and take actions to remedy the situation.

(b) An interpreter shall refrain from altering a message for political, religious, moral, or philosophical reasons, or for any other biased or subjective considerations.

(c) The interpreter shall advise the consumer that he or she assumes a position of neutrality in the relationship between all parties during an interpreting assignment. The interpreter shall not become personally involved in regards to the issues or persons present at the interpreting assignment.

(5) A licensee shall accept assignments using discretion with regard to skill, setting, and the consumers involved.

(a) An interpreter shall recognize the need for a deaf interpreter and advocate their participation as part of the interpreting team. A deaf interpreter may be necessary when working with individuals who use regional sign dialects, nonstandard signs, foreign sign languages, and those with emerging language use.

(b) An interpreter shall generally refrain from providing services in situations where family members, personal or business associations may affect impartiality. In an emergency situation, an interpreter may provide services for family members, friends or business associates. In those situations, the interpreter shall guard against allowing his personal involvement to affect his ability to interpret impartially. If the interpreter finds that he or she can no longer be impartial, the interpreter shall inform the parties involved and may assist in finding another interpreter.

(6) Prior to accepting an engagement for services, a licensee shall advise the party responsible for payment of the services to be provided of the amount of compensation to be charged for the services.

(7) A licensee shall not advertise his or her services in a false, deceptive or misleading manner.

(8) A licensee shall function in a manner appropriate to the situation. An interpreter shall attempt to become familiar with the anticipated discussion topic, type of activity, level of formality, expected behaviors, and possible presentational materials prior to commencement of the assignment.

Section 2. In addition to the standards delineated in Section 1 of this administrative regulation, a licensee shall abide by the code

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of ethics or code of professional conduct for their respective certification(s).

ARTIE GRASSMAN, Board Chair

APPROVED BY AGENCY: February 9, 2011

FILED WITH LRC: February 18, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011, at 9 a.m. (EST), at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until at the close of business on May 2, 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: Karen Lockett, Board Administrator, Kentucky Board of Interpreters for the Deaf and Hard of Hearing, PO Box 1370, Frankfort, Kentucky 40602, phone (502) 564-3296 ext. 222, fax (502) 696-1923.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation creates a code of conduct for interpreters.

(b) The necessity of this administrative regulation: This regulation creates a code of conduct for interpreters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation creates a code of conduct for interpreters.

(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 strengthens ethical standards by requiring licensees to meet the standards of their national certifying body in addition to those of the board.

(b) The necessity of the amendment to this administrative regulation: This amendment strengthens ethical standards by requiring licensees to meet the standards of their national certifying body in addition to those of the board.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of interpreting.

(d) How the amendment will assist in the effective administration of the statutes: This amendment strengthens ethical standards by requiring licensees to meet the standards of their national certifying body in addition to those of the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 300 full and temporarily licensed interpreters. This regulation only impacts those applying for initial temporary licensure.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will need to meet the ethical standards of the national certifying bodies to which they belong.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The profession will be stronger as licensees will be required to comply with additional ethical standards in some instances.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation established but does not change fees from their current level.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Interpreters for the Deaf and Hard of Hearing

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.304(3)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

RELATES TO: KRS 150.010, 150.177, 150.180, 150.390, 150.411(3), 150.990, 237.110

STATUTORY AUTHORITY: KRS 150.025(1), 150.170, 150.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish hunting sea-

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sons, bag limits, methods of taking, and to promulgate administrative regulations establishing hunting seasons, bag limits of taking wildlife. ~~KRS 150.170 exempts certain people[necessary to carry out the purpose of KRS Chapter 150. KRS 150.170 exempts landowners, servicemen, and other groups]~~ from hunting license and permit requirements. KRS 150.175 authorizes the kinds of licenses and permits to be issued by the department. This administrative regulation establishes deer hunting seasons and zones, legal methods of taking, and checking and recording requirements for deer hunting.

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

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

(3) "Antlerless deer" means a deer with no visible antler protruding above the hairline, and includes:

- (a) Female deer; and
- (b) Male fawns or button bucks.

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

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

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

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

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

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

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

(11) "Fully-automatic firearm" means a firearm that fires more than one (1) time with a single pull of the trigger.

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

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

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

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

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

(17) "Statewide deer requirements" means the season dates, zone descriptions, bag limits, and other requirements and restrictions for deer hunting established in this administrative regulation.

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

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

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

(2) In lieu of a statewide deer permit, a person possessing a valid junior statewide hunting license shall not use more than two (2) junior deer hunting permits.

(3) A bonus antlerless permit shall not be valid unless accompanied by a valid Kentucky hunting license and statewide deer permit.

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

- (a) Shall not take deer except during daylight hours;
- (b) Shall not use dogs, except leashed tracking dogs to recover

wounded deer;

(c) Shall not take a deer that is swimming; and

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

(e) Shall not possess or use a decoy or call powered by electricity from any source.

(2) A deer hunter shall not take a deer with any device except a firearm, crossbow, or archery equipment as authorized by Section 5 of this administrative regulation.

(3) A person shall not use any of the following items to take a deer:

- (a) Rimfire ammunition;
- (b) A fully-automatic firearm;
- (c) A firearm with a magazine capacity greater than ten (10) rounds;
- (d) Full metal jacketed ammunition;
- (e) Tracer bullet ammunition;
- (f) A shotshell containing larger than number two (2) size shot;
- (g) A broadhead smaller than seven-eighths (7/8) inch wide;
- (h) A barbed broadhead;
- (i) A crossbow without a working safety device;
- (j) A chemically-treated arrow;
- (k) An arrow with a chemical attachment;
- (l) Multiple projectile ammunition; or
- (m) Any weapon that is not consistent with the appropriate season established in Section 5 of this administrative regulation.

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

(2) During an elk firearm season as established in 301 KAR 2:132, a person hunting any species and any person accompanying a hunter within the elk restoration zone, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest except while hunting waterfowl.

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

- (a) May display a small section of another color; and
- (b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

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

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

(2) A deer hunter may take deer with a modern firearm statewide beginning the second Saturday in November:

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

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

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

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

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

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

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

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

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

(5) Youth firearm season. For two (2) consecutive days beginning on the second Saturday in October, a youth deer hunter shall:

- (a) Use any legal method to take antlered or antlerless deer;

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and

(b) Be required to follow all other statewide deer hunting requirements.

(6) There shall be a free youth weekend for two (2) consecutive days beginning on the Saturday after Christmas during which a youth shall:

(a) Not be required to have a hunting license or deer permit;

(b) Use any legal method to take antlered or antlerless deer; and

(c) Be required to follow all other statewide deer hunting requirements.

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

(2) Zone 2 shall consist of Allen, Bourbon, Boyd, Bullitt, Carter, Fayette, Fleming, Green, Greenup, Hardin, Hart, Henderson, Hopkins, Jessamine, Larue, Lawrence, Lewis, Logan, Mason, McLean, Mercer, Muhlenberg, Nelson, Nicholas, ~~Rowan~~, Todd, Union, and Webster Counties.

(3) Zone 3 shall consist of Adair, Barren, Bath, Boyle, Breckinridge, Butler, Casey, Clark, Cumberland, Daviess, Edmondson, Elliott, Estill, Grayson, Hancock, Johnson, ~~Lee~~, Lincoln, Madison, Marion, Meade, Menifee, Metcalf, Monroe, Montgomery, Morgan, Ohio, Powell, Rowan, Simpson, Taylor, Warren, and Wolfe Counties.

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

Section 7. Season and Zone Limits. (1) A person shall not take more than four (4) deer statewide in a license year except:

(a) As authorized in 301 KAR 2:111, 2:176, 2:178, and 3:100; and

(b) A person may take an unlimited number of antlerless deer in Zone 1 provided the person has purchased the appropriate bonus permits.

(2) A person shall not take more than one (1) antlered deer per license year, except as established in 301 KAR 2:111, ~~2:178~~, ~~2:176~~, and 3:100.

(3) In Zone 3, a person may take two (2) deer with a firearm.

(4) In Zone 4, a person may take:

(a) Only two (2) deer with a firearm; and

(b) Antlered deer only during:

1. Modern firearm season;

2. Early muzzleloader season; and

3. The first six (6) days of the December muzzleloader season.

(5) The aggregate bag limit for Zones, 2, 3, and 4 shall be four (4) deer per hunter.

Section 8. Supervision of Youth Firearm Deer Hunters. (1) An adult shall:

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

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

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

Section 9. Harvest Recording. (1) Immediately after taking a deer, and prior to moving the carcass, a person shall record, in writing:

(a) The species taken;

(b) The date taken;

(c) The country where taken; and

(d) The sex of the deer taken on one (1) of the following:

1. The hunter's log section on the reverse side of a license or permit;

2. The hunter's log produced in a hunting guide;

3. A hunter's log printed from the Internet;

4. A hunter's log available from any KDSS agent; or

5. An index or similar card.

(2) The person shall retain and possess the completed hunter's log when the person is in the field during the current hunting season.

Section 10. Checking a Deer. (1) A person shall check a harvested deer by:

(a) Calling the toll free telecheck number, (800) 245-4263, or completing the department's Web site at fw.ky.gov before midnight on the day the deer is recovered and prior to processing or removing the hide or head from the carcass;

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

(c) Writing the confirmation number given by the system on the hunter's log authorized in Section 9 of this administrative regulation.

(2) If a hunter transfers possession of a harvested deer, the hunter shall attach to the carcass a hand-made tag that contains the following information:

(a) The confirmation number;

(b) The hunter's name; and

(c) The hunter's telephone number.

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

Section 11. Transporting and Processing Deer. (1) A person shall:

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

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

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

1. Fur buyer;

2. Fur processor; or

3. Taxidermist.

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

(a) Not accept deer carcasses or any part of a deer without a valid disposal permit issued by the department pursuant to KRS 150.411(3) or a proper carcass tag as established in Section 10 of this administrative regulation.

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

HANK PATTON, Deputy Secretary

For DR. JOHNNATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: March 11, 2011

FILED WITH AGENCY: March 14, 2011 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 21, 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 Way, 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 May 2, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, extension 4507, fax (502) 564-9136.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes deer hunting seasons and zones, methods of taking, bag limits, harvest recording procedures, and checking requirements.

(b) The necessity of this administrative regulation: To allow for safe and effective harvest and related records-keeping for the long-term conservation and management of deer populations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations establishing hunting seasons, bag limits, and the methods to take wildlife. KRS 150.170 exempts certain people from hunting license and permit requirements. KRS 150.175 authorizes the kinds of licenses and permits that are issued by the department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 by establishing the seasons, limits, procedures, and requirements authorized by the statutes.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that the combined deer bag limit for zones 2, 3, and 4 is 4 deer and allows for use of a newly created online check-in system that can be used as an alternative to the telephone check system. Lee County changes from Zone 3 to Zone 4, and Rowan changes from Zone 2 to Zone 3.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to properly manage the deer herd, eliminate perception that a hunter can kill 4 deer each in zone 2, 3, and 4 (for a potential total of 12 deer) and to allow for internet check-in.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All deer hunters must comply with the requirements, seasons and limits in this regulation.

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

(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 need to understand and abide by the seasons and harvest restrictions in this regulation. Hunters will now have the option of checking deer via phone or internet.

(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 hunters as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Deer herd numbers should increase in all counties moving to a more conservative zone. Hunter satisfaction is directly related to the number of deer.

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

(a) Initially: There will be no additional cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the department 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: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not used because all deer hunters are subject to the same seasons, bag limits, and zone requirements for hunting.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, 150.170, 150.175.

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? Direct revenue from the sale of all deer permits for the 2009-10 deer season was \$4,164,235.

(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? Revenue during subsequent years is dependent on the number of permits sold, which has been stable to slightly decreasing each year.

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

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

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

Revenues (+/-): None; see 4(a) and (b) above.

Expenditures (+/-): No additional expenditures; see 4(c) and (d) above

Other Explanation:

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amendment)

401 KAR 51:052. Review of new sources in or impacting upon nonattainment areas.

RELATES TO: KRS 224.20-100(5), 224.20-110, 224.20-120, 40 C.F.R. Part 51 Appendix S, Part 51 Subpart I[4], 51.165, 51.166, 51.300, 51.307, 52.21, 60, 61, 70.6, Part 81[-] Subpart D, 81.318, 42 U.S.C. 7401-7671q[~~EO 2009-538~~]

STATUTORY AUTHORITY: KRS 224.10-100(5), 42 U.S.C. 7401-7671q[~~EO 2009-538~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) ~~requires~~ authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. [~~EO 2009-538, effective June 12, 2009, establishes the Energy and Environment Cabinet.~~] This administrative regulation establishes requirements for the construction or modification of stationary sources within, or impacting upon, areas where the national ambient air quality standards have not been attained. The provisions of this administrative regulation are not ~~neither different nor~~ more stringent than the federal regulation, 40 C.F.R. 51.165.

Section 1. Applicability. This administrative regulation shall

apply to the construction of a new major stationary source or a project that is a major modification at an existing major stationary source, which commences construction after September 22, 1982, and locates in or impacts upon an area designated nonattainment under 42 U.S.C. 7407(d)(1)(A)(i).

(1) The provisions of this administrative regulation relating to visibility protection shall also apply to major sources or major modifications in nonattainment areas that potentially have an impact on visibility in a mandatory Class I federal area.

(2) Applicability tests for projects. Except as provided in subsection (3) of this section, a project shall be a major modification for a regulated NSR pollutant only if the project causes a significant emissions increase and a significant net emissions increase, as provided in paragraphs (a) and (b) of this subsection.

(a) Prior to beginning actual construction, the owner or operator shall first determine if a significant emissions increase will occur for the applicable type of unit being constructed or modified according to subparagraphs 1 to 3 of this paragraph.

1. Actual-to-projected actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

2. Actual-to-potential test for projects that involve only construction of new emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the potential to emit from each new emissions unit following completion of the project equals or exceeds the significant amount for that pollutant.

3. Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the emissions increases for each emissions unit, using the methods specified in subparagraphs 1 and 2 of this paragraph as applicable for each emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Prior to beginning actual construction and after completing the applicable test in paragraph (a) of this subsection, the owner or operator shall determine for each regulated NSR pollutant if a significant net emissions increase will occur pursuant to 401 KAR 51:001, Section 1(144) and (218).

(3) For a plant-wide applicability limit (PAL) for a regulated NSR pollutant at a major stationary source, the owner or operator of the major stationary source shall comply with the applicable requirements of Section 11 of this administrative regulation.

Section 2. Initial Screening Analyses and Determination of Applicable Requirements. (1) Review of all sources for emissions limitation compliance.

(a) The cabinet shall examine each proposed major new source and proposed major modification to determine if the source or modification will meet all applicable emissions requirements in the Kentucky State Implementation Plan (SIP) and 40 C.F.R. Parts 60 and 61.

(b) If the cabinet determines from the application and all other available information that the proposed source or modification will not meet the applicable emissions requirements, the permit to construct shall be denied.

(2) Review of specified sources of air quality impact.

(a) The cabinet shall determine if a proposed major stationary source or major modification will be constructed in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i) for a pollutant for which the stationary source or modification is major.

(b) If a designated nonattainment area is projected to be an attainment area as part of an approved control strategy by the new source start-up date, offsets shall not be required if the new source will not cause a new violation.

(3) Fugitive emissions sources. Sections 4 and 10 of this administrative regulation shall not apply to a source or modification that will be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to one (1) of the following

categories:

- (a) Coal cleaning plants with thermal dryers;
- (b) Kraft pulp mills;
- (c) Portland cement plants;
- (d) Primary zinc smelters;
- (e) Iron and steel mills;
- (f) Primary aluminum ore reduction plants;
- (g) Primary copper smelters;
- (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) Hydrofluoric, sulfuric, or nitric acid plants;
- (j) Petroleum refineries;
- (k) Lime plants;
- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants, furnace process;
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140;
- (u) Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;
- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (w) Taconite ore processing plants;
- (x) Glass fiber processing plants;
- (y) Charcoal production plants;
- (z) Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
- (aa) Another stationary source category that, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

Section 3. Sources Locating in Designated Attainment or Unclassifiable Areas that Will Cause or Contribute to a Violation of a National Ambient Air Quality Standard. (1) This section shall apply only to new major stationary sources or new major modifications that will locate in designated attainment or unclassifiable areas, pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii), if the source or modification will cause impacts that exceed the significance levels, as listed in the table in this subsection, at a locality that does not or will not meet the national ambient air quality standards.

Pollutant	Annual Average	Averaging Time			
		24-Hour	8-Hour	3-Hour	1-Hour
Sulfur Dioxide	1.0 $\mu\text{g}/\text{m}^3$	5 $\mu\text{g}/\text{m}^3$	--	25 $\mu\text{g}/\text{m}^3$	--
PM ₁₀	1.0 $\mu\text{g}/\text{m}^3$	5 $\mu\text{g}/\text{m}^3$	--	--	--
Nitrogen Dioxide	1.0 $\mu\text{g}/\text{m}^3$	--	--	--	--
Carbon Monoxide	--	--	0.5 mg/m^3	--	2 mg/m^3

(2) Sources to which this section applies shall meet the requirements in Section 4(1), (2) and (4) of this administrative regulation and may be exempt from Section 4(3) of this administrative regulation.

(3) For sources of sulfur dioxide (SO₂), particulate matter, and carbon monoxide (CO), the determination that a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made on a case-by-case basis using the source's allowable emissions in an approved atmospheric simulation model listed in 40 C.F.R. Part 51, Appendix W, "Guideline on Air Quality Models".

(4) For sources of NO_x, the initial determination that a new major source or major modification will cause or contribute to a violation of the national ambient air quality standard for nitrogen

dioxide (NO₂) shall be made using an approved atmospheric simulation model assuming all the nitric oxide emitted is oxidized to NO₂ by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.

(5) For ozone, sources of VOCs or NO_x locating outside a designated ozone nonattainment area shall be presumed to not have a significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, the source shall be permitted pursuant to this administrative regulation and 401 KAR 52:020 until the area is designated nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i).

(6) The determination that a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made as of the start-up date.

(7) Applications for major new sources and major modifications locating in attainment or unclassifiable areas, the operation of which will cause a new violation of a national ambient air quality standard but will not contribute to an existing violation, may be approved only if the following conditions are met:

(a) The new source shall:

1. Meet an emissions limitation;
2. Meet a design, operational, or equipment standard; or
3. Control existing sources so that the new source will not cause a violation of a national ambient air quality standard.

(b) The new emissions limitations for the new and existing sources affected shall be state and federally enforceable in accordance with Section 6 of this administrative regulation.

Section 4. Sources Locating in a Designated Nonattainment Area. This section shall apply to a new major stationary source or major modification that will be constructed in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i) for a pollutant for which the stationary source or modification is major. Approval to construct may be granted only if the conditions of this section are met.

(1) The new major source or major modification shall be required to meet an emissions limitation that specifies the lowest achievable emissions rate (LAER) for the source.

(2) The applicant shall demonstrate that all existing major sources owned or operated by the applicant, or an entity controlling, controlled by, or under common control with the applicant, in the Commonwealth of Kentucky are in compliance with all applicable emissions limitations and standards specified in Title 401, Chapters 50 to 65, and 40 C.F.R. Parts 60 and 61 and 42 U.S.C. 7401-7626, or are in compliance with an expeditious state and federally enforceable compliance schedule or a court decree establishing a compliance schedule.

(3)(a) Except for VOCs or NO_x emissions, emissions from existing sources in the affected area of the proposed new major source or modification, whether or not under the same ownership, shall be reduced or offset at a ratio of at least 1:1, so that there will be reasonable further progress toward attainment of the applicable national ambient air quality standard (NAAQS). Only those transactions in which the emissions being offset are from the same criteria pollutant category shall be accepted.

(b) The ratio of total emissions reductions of VOCs or NO_x to total increased emissions of the same air pollutant shall be at least the ratio indicated for the following ozone nonattainment area classifications:

1. For marginal nonattainment areas, at least 1.1 to 1;
2. For moderate nonattainment areas, at least 1.15 to 1;
3. For serious nonattainment areas, at least 1.2 to 1;
4. For severe nonattainment areas, at least 1.3 to 1; and
5. For extreme nonattainment areas, at least 1.5 to 1.

(4) The emissions reductions shall provide a positive net air quality benefit in the affected area.

(a) Atmospheric simulation modeling shall not be required for VOCs and NO_x.

(b) Except as provided in Section 3(5) of this administrative regulation, compliance with subsection (3) of this section and Section 5(3)(e) of this administrative regulation shall be adequate to meet this condition.

(5) The proposed major stationary source or major modification

shall include in the application for a construction permit an analysis of the alternative sites, sizes, production processes, and environmental control techniques for the proposed source, which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Section 5. Determining Credit for Emissions Offsets. (1) The baseline for determining credit for emissions reductions or offsets shall be, considering that baseline actual emissions as defined in 401 KAR 51:001, Section 1(20), shall not be used for determining the baseline for emissions offsets:

(a) The emissions limitations in effect when the application to construct or modify a source is filed; or

(b) The actual emissions of the source from which offset credit is attained if:

1. The demonstration of reasonable further progress and attainment of ambient air quality standards for the SIP was based on actual emissions; or

2. The SIP does not contain an emissions limitation for that source or source category.

(2) Credit for emissions offsets. Credit for emissions offset purposes may be allowed for existing control if the existing control goes beyond the control required under 401 KAR Chapters 50 to 65 and applicable federal regulations.

(3) General provisions for calculating offset values.

(a) Offset calculations shall be made on a pound-per-hour basis if all facilities involved in the emissions offset calculations are operating at their maximum or allowed production rate.

(b) Offsets may be calculated on a tons-per-year basis if baseline emissions for existing sources providing the offsets are calculated using the actual annual operating hours for the previous two (2) year period.

(c) If the cabinet requires certain hardware controls instead of an emissions limitation, baseline allowable emissions shall be based on actual operating conditions for the previous two (2) year period in conjunction with the required hardware controls.

(d) If the emissions limitations required by the cabinet allow greater emissions than the uncontrolled emissions rate of the source, emissions offset credit shall be allowed only for control below the uncontrolled emissions rate.

(e) The owner or operator of a new or modified major stationary source shall comply with any offset requirement in effect under this administrative regulation to increase emissions of an air pollutant by obtaining emissions reductions of the air pollutant from:

1. ~~[Obtaining emissions reductions of the air pollutant from]~~ The same source or other sources in the same nonattainment area; or

2. A source~~[From sources]~~ in another nonattainment area if:

- a. The other area has an equal or higher nonattainment classification than the area in which the source is located; and
- b. Emissions from the other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.

(4) Calculating offsets if an applicable emissions limitation does not exist. If the Kentucky SIP does not contain an emissions limitation for a source or source category, the emissions offset baseline involving the source shall be actual emissions determined under actual operating conditions for the previous two (2) year period.

(5) Calculating offsets for existing fuel combustion sources.

(a) The emissions for determining emissions offset credit involving an existing fuel combustion source shall be the allowable emissions under the emissions limitation requirements of the cabinet for the type of fuel being burned when the new major source or major modification application is filed.

(b) If the existing source has switched to a different type of fuel at some earlier date, a resulting emissions reduction, either actual or allowable, shall not be used for emissions offset credit.

(c) If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable emissions for the fuels involved shall not be allowed unless the permit is conditioned to require the use of a specified alternative

control measure that will achieve the same degree of emissions reduction if the source switches back to a dirtier fuel at some later date.

(6) Calculating offsets for operating hours and source shutdowns.

(a) A source may be credited with emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels if the work force to be affected has been notified in writing of the proposed shutdown or curtailment.

(b) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours:

1. May be generally credited for offsets pursuant to 40 C.F.R. 51.165(a)(3)(ii)(C)(1) if:

a. The reductions are surplus, permanent, quantifiable, and federally enforceable; and

b. The shutdown or curtailment occurred after the last day of the base year for the SIP planning process.

(i) The cabinet may consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop an attainment demonstration explicitly includes the emissions from the previously shutdown or curtailed emission unit, pursuant to 40 C.F.R. 51.165(a)(3)(ii)(C)(1)(ii).

(ii) Credit shall not be given for a shutdown that occurred before August 7, 1977;

2. That do not meet the requirements of subparagraph 1.b. of this paragraph may be generally credited pursuant to 40 C.F.R. 51.165(a)(3)(ii)(C)(2) if:

a. The shutdown or curtailment occurred on or after the date the construction permit application is filed; or

b. The applicant establishes that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment meet the requirements of subparagraph 1.a. of this paragraph. [Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed shall not be used for emissions offset credit.]

(c) If an applicant ~~establishes~~ can establish that it shut down or curtailed production after August 7, 1977, or less than one (1) year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for the shutdown or curtailment may be applied to offset emissions from the new source.

(7) Calculating offsets for hydrocarbon substitution. An emissions offset credit shall not be allowed for replacing one volatile organic compound with another of lesser photochemical reactivity, unless the replacement compound is methane, ethane, 1,1,1-trichloroethane, or trichlorofluoroethane.

(8) Banking of emissions offset credit.

(a) New sources obtaining permits by applying offsets after the effective date of this administrative regulation may bank offsets that exceed the requirements of Section 5(3) of this administrative regulation.

(b) An owner or operator of an existing source that reduces its own emissions may bank a resulting reduction beyond those required by regulation for use under this administrative regulation, even if the offsets are applied immediately to a new source permit.

(c) Banked emissions offsets may be used under the preconstruction review program required in 42 U.S.C. 7401 to 7626, as long as these banked emissions are identified and accounted for in Kentucky's control strategy.

(9) Offset credit for meeting NSPS or NESHAPS.

(a) If a source is subject to an emissions limitation established in a New Source Performance Standard (NSPS) or a National Emissions Standard for Hazardous Air Pollutants (NESHAPS) and a different emissions limitation is required by the cabinet, the more stringent limitation shall be used as the baseline for determining credit for emissions offsets.

(b) The difference in emissions between NSPS or NESHAPS and other emissions limitations shall not be used as offset credit.

Section 6. Administrative Procedures for Emissions Offsets. (1) Emission reductions shall be enforceable by the cabinet and the

U.S. EPA, and shall be accomplished by the start-up date of the new source.

(a) If emissions reductions are to be obtained in a state that neighbors the Commonwealth for a new source to be located in the Commonwealth, the emissions reductions shall be enforceable by the neighboring state or local agencies and the U.S. EPA.

(b) The necessary emissions offsets may be proposed by the owner of the proposed source or by the cabinet.

(2) Source initiated emissions offsets.

(a) The owner or operator of a source may propose:

1. Internal emissions offsets, which involve reductions from sources controlled by the owner; or

2. External emissions offsets, which involve reductions from other sources, if the emissions offsets meet the requirements of this section and Section 4(3) of this administrative regulation.

(b) An internal emissions offset shall be included and made enforceable as a condition of the source's permit.

(c) An external emissions offset shall only be accepted if the cabinet requires the affected source to comply with a new emissions limitation to ensure that its emissions shall be reduced by a specified amount in a specified time; and the new emissions limitation shall be enforceable by the cabinet and the U.S. EPA.

(3) Cabinet initiated emissions offsets.

(a) The cabinet may commit to reducing emissions from mobile sources and other existing sources to provide a net air quality benefit in the impact area of a proposed new source to accommodate the proposed new source.

(b) This emissions reduction commitment shall be reflected in the emissions limitation requirements for the new and existing sources as required by this section.

Section 7. Source Obligation. (1) An owner or operator of a source or modification subject to this administrative regulation shall construct and operate the source or modification in accordance with the application submitted to the cabinet under this administrative regulation and 401 KAR 52:020 or under the terms of an approval to construct.

(2)(a) Approval to construct shall become invalid if construction:

1. Is not commenced within eighteen (18) months after receipt of the approval;

2. Is discontinued for a period of eighteen (18) months or more; or

3. Is not completed within a reasonable time.

(b) The cabinet may extend the eighteen (18) month period upon a satisfactory demonstration that an extension is justified.

1. An extension shall not apply to the time period between construction of the approved phases of a phased construction project; and

2. Each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve an owner or operator of the responsibility to comply fully with applicable provisions of 401 KAR Chapters 50 to 65 and other applicable requirements under local, state, or federal law.

(4) If a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in an enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, the requirements of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5)(a) The provisions of this subsection shall apply to projects at existing emissions units at a major stationary source other than projects at a source with a PAL, if:

1. There is a reasonable possibility that a project that is not part of a major modification may result in a significant emissions increase; and

2. The owner or operator uses the method specified in 401 KAR 51:001, Section 1(199)(b) to calculate projected actual emissions.

(b) Before beginning actual construction of a project specified in paragraph (a) of this subsection, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;
2. Identification of the emissions units for which emissions of a regulated NSR pollutant may be affected by the project; and
3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

- a. Baseline actual emissions;
- b. Projected actual emissions;
- c. Amount of emissions excluded in calculating projected actual emissions and an explanation for why that amount was excluded; and

- d. Any applicable netting calculations.

(c) For a project specified in paragraph (a) of this subsection, the owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by an emissions unit identified in paragraph (a)2 of this subsection; and

2. Calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for:

a. Five (5) years following resumption of regular operations after the change; or

b. Ten (10) years if the project increases the design capacity of or potential to emit for that regulated NSR pollutant at the emissions unit.

(d) If the unit is an existing EUSGU, before beginning actual construction, the owner or operator:

1. Shall provide a copy of the information in paragraph (b) of this subsection to the cabinet; and

2. Shall not be required to obtain a determination from the cabinet before beginning actual construction; and

3. Shall submit a report to the cabinet within sixty (60) days after the end of each year during which records are required to be generated under paragraph (b) of this subsection that contains the unit's annual emissions during the calendar year preceding report submittal.

(e)1. For an existing unit other than an EUSGU, the owner or operator shall submit a report to the cabinet if:

a. The annual emissions, in tons per year, from a project identified in paragraph (a) of this subsection exceed the baseline actual emissions, as documented and maintained pursuant to paragraph (b)3 of this subsection, by a significant amount for that regulated NSR pollutant; and

b. The emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (b)3 of this subsection.

2. The report shall be submitted to the cabinet within sixty (60) days after the end of the year during which records are required to be generated under paragraph (b) of this subsection and shall contain the following:

a. The name, address, and telephone number of the major stationary source;

b. The annual emissions as calculated pursuant to paragraph (c) of this subsection; and

c. Any other information that the owner or operator wishes to include in the report.

(f) The owner or operator of the source shall make the information required to be documented and maintained under this subsection available for review upon request for inspection by the cabinet or the general public pursuant to 401 KAR 52:100.

Section 8. Permit Condition Rescission. (1) An owner or operator holding a permit for a stationary source or modification that was issued pursuant to 401 KAR 51:050 or 51:051E may request that the cabinet rescind the applicable conditions.

(2) The cabinet shall rescind a permit condition if the owner or operator:

(a) Requests and demonstrates to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or to a portion of the source or modification if construction will have commenced after September 22, 1982; and

(b) Demonstrates that the rescission will not violate the requirements of Sections 4(3) and 7 of this administrative regulation.

Section 9. Class I Areas. (1) The following areas, which were

in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:

(a) International parks;

(b) National wilderness areas and national memorial parks which exceed 5,000 acres in size; and

(c) National parks that exceed 6,000 acres in size.

(2) Any other area, unless otherwise specified in the legislation creating the area, is designated Class II but may be redesignated as provided in 40 C.F.R. 51.166(g).

(3) The visibility protection requirements of this administrative regulation shall apply only to sources that may impact a mandatory Class I federal area.

(4) The following areas may be redesignated only as Class I or II:

(a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lake-shore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 10. Protection of Visibility. (1) New source review; applicability and exemptions.

(a) A stationary source or modification to which this section applies shall not begin actual construction without a permit that states the stationary source or modification shall meet the requirements of this section.

(b) This section shall apply to construction of a new major stationary source or major modification that will be constructed in an area designated as nonattainment under 42 U.S.C. 7407(d)(1)(A)(i) and potentially have an impact on visibility in a Class I area.

(c) This section shall apply to a major stationary source or major modification for each pollutant subject to regulation under 42 U.S.C. 7401 to 7626 that it will emit, except as provided in paragraphs (d) and (e) of this subsection.

(d) This section shall not apply to a particular major stationary source or major modification if:

1. The source or modification is a nonprofit health or nonprofit educational institution or a major modification will occur at the institution, and the Governor of the Commonwealth requests that it be exempt from the requirements of this section; and

2. The source is a portable stationary source that has previously received a permit under this section and will be temporarily relocated; and

(a) The emissions from the source will not exceed the allowable emissions;

b. The emissions from the source will not impact a Class I area or an area where an applicable increment is known to be violated; and

c. Reasonable notice is given to the cabinet prior to the relocation, identifying the proposed new location and the probable duration of operation at the new location. The notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet pursuant to this section.

(e) This section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

1. Will not impact a Class I area;

2. Will not impact an area where an applicable increment is known to be violated; and

3. Will be temporary.

(2) Visibility impact analyses. The owner or operator of a source shall provide an analysis of the impairment to visibility that will occur in a Class I area as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification.

(3) Federal land manager notification.

(a) The federal land manager and the federal official charged with direct responsibility for management of Class I areas shall have an affirmative responsibility to protect the visibility and other air quality related values of the Class I lands and to consider, in

consultation with the cabinet, if a proposed source or modification will have an adverse impact on these values.

(b) The cabinet shall provide written notification to all affected federal land managers and to the federal official charged with direct responsibility for management of lands within the Class I area of a permit application or an advanced notice of a permit application for a proposed new major stationary source or major modification that may affect visibility in a Class I area. The notification shall:

1. Include a copy of all information relevant to the permit application;
2. Be submitted pursuant to this paragraph within thirty (30) days of receipt of the permit application or advanced notice of permit application and at least sixty (60) days prior to a public hearing on the application for a permit to construct; and
3. Include an analysis of the proposed source's anticipated impacts on visibility in a Class I area.

(c)1. The cabinet shall consider an analysis by the federal land manager, provided within thirty (30) days of the notification and analysis required by paragraph (b) of this subsection, that the proposed new major stationary source or major modification may have an adverse impact on visibility in a Class I area.

2. If the cabinet finds that the analysis does not demonstrate, to the satisfaction of the cabinet, that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public hearing notice required in 401 KAR 52:100, either explain that decision or give notice as to where the explanation ~~may~~^{can} be obtained.

(d) Adverse impact on visibility as it applies to paragraph (c) of this subsection shall be determined on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and time of natural conditions that reduce visibility.

(4) Public participation. The cabinet shall follow the applicable procedures of 401 KAR 52:100 in processing applications under this section and shall follow the procedures at 40 C.F.R. 52.21(r), effective July 1, 2009, to the extent that the procedures of 401 KAR 52:100 do not apply.

(5) National visibility goal.

(a) The cabinet shall only issue permits to those sources for which emissions will be consistent with making reasonable progress toward the national goal of preventing future, and remedying existing, impairment of visibility in Class I areas which impairment results from manmade air pollution.

(b) In making the decision to issue a permit, the cabinet shall consider:

1. The costs of compliance;
 2. The time necessary for compliance;
 3. The energy and non-air quality environmental impacts of compliance; and
 4. The useful life of the source.
- (6) Monitoring.

(a) The cabinet may require monitoring of visibility in a Class I area near the proposed new stationary source or major modification using human observations, teleradiometers, photographic cameras, nephelometers, fine particulate monitors, or other appropriate methods as specified by the U.S. EPA.

(b) The monitoring method selected shall be determined on a case-by-case basis by the cabinet.

(c) The cabinet shall not undertake visibility monitoring in a Class I area without the approval of the federal land manager.

(d) Data obtained from visibility monitoring shall be made available to the cabinet, the federal land manager, and the U.S. EPA, upon request.

Section 11. Plant-wide Applicability Limit Provisions. The cabinet may approve the use of an actuals PAL (PAL) for an existing major stationary source if the PAL meets the requirements of this section.

(1) General provisions.

(a) An owner or operator may execute a project without triggering major NSR, if the source maintains its total source-wide emissions below the PAL level, meets the requirements in this section, and complies with the PAL permit. If these conditions are met, a

project:

1. Shall not be considered a major modification for the PAL pollutant;

2. Shall not have to be approved through Kentucky's major NSR program; and

3. Shall not be subject to the provisions of Section 7(4) of this administrative regulation concerning restrictions on relaxing enforceable emissions limitations that the major stationary source used to avoid applicability of the major NSR program.

(b) Except as provided under subparagraph (1)(a)3 of this section, the major stationary source shall continue to comply with all applicable federal or state requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the PAL.

(c) The cabinet shall not allow a PAL for VOC or NOx for any major stationary source located in an extreme ozone nonattainment area.

(2) Permit application requirements. The owner or operator of a major stationary source shall submit the following information to the cabinet for approval as part of an application for a permit or permit revision requesting a PAL:

(a) A list of all emissions units at the source designated as small, significant or major, based on their potential to emit;

(b) Identification of the federal and state applicable requirements, emissions limitations, and work practice requirements that apply to each emissions unit;

(c) Calculations of the baseline actual emissions for the emissions units with supporting documentation; and

(d) The calculation procedures the owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section.

(3) Establishing a PAL. The cabinet shall establish a PAL at a major stationary source in a federally enforceable permit pursuant to the requirements of this section.

(a) The PAL shall impose an annual emissions limitation in tons per year that is enforceable as a practical matter for the entire major stationary source, in which:

1. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the owner or operator shall demonstrate that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL as a twelve (12) month average, rolled monthly; and

2. For each month during the first eleven (11) months from the PAL effective date, the owner or operator shall demonstrate that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL;

(b) The PAL shall be established in a PAL permit that:

1. Meets the public participation requirements in subsection (4) of this section; and

2. Contains all the requirements of subsection (6) of this section;

(c) A PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source;

(d) Each PAL shall regulate emissions of only one (1) pollutant;

(e) Each PAL shall have a PAL effective period of ten (10) years;

(f) The owner or operator of a major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements of subsections (11) to (13) of this section for each emissions unit under the PAL through the PAL effective period; and

(g) Emissions reductions of a PAL pollutant that occur during the PAL effective period shall not be creditable as decreases for offsets under 40 C.F.R. 51.165(a)(3)(ii), unless:

1. The level of the PAL is reduced by the amount of the emissions reductions; and

2. The reductions would be creditable in the absence of the PAL.

(4) Public participation requirements. PALs for existing major stationary sources shall be established, renewed, or increased pursuant to this subsection and the applicable procedures of 401

KAR 52:100 for issuing permits or permit revisions. The cabinet shall:

(a) Provide the public with notice of the proposed approval of a PAL permit with at least a thirty (30) day period for submittal of public comment; and

(b) Address all material comments before taking final action on a PAL permit or permit revision.

(5) Setting the ten (10) year PAL level.

(a) The PAL level for a major stationary source shall be the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source during the chosen twenty-four (24) month period plus the applicable significant level for the PAL pollutant under the definition for "significant" in 401 KAR 51:001, Section 1 or under 42 U.S.C. 7401-7671q, whichever is lower.

(b) In establishing a PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units.

(c) A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(d) Emissions associated with units that were permanently shut down after the chosen twenty-four (24) month period shall be subtracted from the PAL level.

(e) Emissions from units for which actual construction began after the twenty-four (24) month period shall be added to the PAL level in an amount equal to the potential to emit of the units.

(f) The cabinet shall specify a reduced PAL level in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the cabinet is aware of prior to issuance of the PAL permit.

(6) Contents of the PAL permit. The PAL permit shall contain the following information:

(a) The PAL pollutant and the applicable source-wide emissions limitation in tons per year;

(b) The PAL permit effective date and the expiration date of the PAL or PAL effective period;

(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL under subsection (9) of this section before the end of the PAL effective period, the PAL shall remain in effect until a revised PAL permit is issued by the cabinet;

(d) A requirement that emissions calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions;

(e) A requirement that, once the PAL expires, the major stationary source shall be subject to the requirements of subsection (8) of this section;

(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section;

(g) A requirement that the major stationary source owner or operator shall monitor all emissions units in accordance with the provisions in subsection (12) of this section;

(h) A requirement that the owner or operator shall retain the records required under subsection (12) of this section on site. Records may be retained in an electronic format;

(i) A requirement for the owner or operator to submit, by the reports required under subsection (13) of this section by the required deadlines; and

(j) Any requirements necessary to implement and enforce the PAL.

(7) PAL effective period and reopening of a PAL permit.

(a) A PAL effective period shall be ten (10) years.

(b) The cabinet shall reopen a PAL permit to:

1. Correct typographical or calculation errors made in setting the PAL;

2. Reflect a more accurate determination of emissions used to establish the PAL;

3. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 C.F.R. 51.165(a)(3)(ii); or

4. Revise the PAL to reflect an increase in the PAL according to subsection (10) of this section.

(c) The cabinet may reopen the PAL permit, during the PAL effective period, to:

1. Reduce the PAL to reflect newly applicable federal requirements with compliance dates after the PAL effective date;

2. Reduce the PAL consistent with any other requirement:

a. That is enforceable as a practical matter; and

b. That may be imposed on the major stationary source under the SIP; and

3. Reduce the PAL if the cabinet determines that a reduction is necessary to avoid causing or contributing to:

a. A National Ambient Air Quality Standard (NAAQS) or PSD increment violation; or

b. An adverse impact on visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) All permit reopenings shall be carried out under the public participation requirements of subsection (4) of this section except for permit reopenings to correct typographical or calculation of errors that do not increase the PAL level.

(8) Expiration of a PAL. A PAL that is not renewed shall expire at the end of the PAL effective period and the requirements of this subsection shall then apply.

(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emissions limitation under a revised permit established as follows:

1. An owner or operator of a major stationary source using a PAL shall submit a proposed allowable emissions limitation for each emissions unit, or each group of emissions units, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL.

a. This proposal shall be submitted to the cabinet at least six (6) months before the expiration of the PAL permit but not sooner than eighteen (18) months before permit expiration.

b. If the PAL has not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection (9)(e) of this section, distribution of allowable emissions shall be made as if the PAL has been adjusted.

2. The cabinet shall provide the date and procedure the owner or operator shall use to distribute the PAL allowable emissions.

3. The cabinet shall issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the cabinet determines is appropriate.

(b) Each emissions unit shall comply with the allowable emissions limitation on a twelve (12) month rolling basis. The cabinet may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS if the alternate monitoring system demonstrates compliance with the allowable emissions limitation.

(c) The source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emissions limitation until the cabinet issues the revised permit incorporating allowable limits for each emissions unit or each group of emissions units.

(d) A major modification at the major stationary source shall be subject to major NSR requirements.

(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements eliminated by the PAL that applied during or before the PAL effective period, except for those emissions limitations established pursuant to Section 7(4) of this administrative regulation.

(9) Renewal of a PAL.

(a) Public participation requirements.

1. The cabinet shall follow the public participation procedures specified in subsection (4) of this section in approving a request to renew a PAL for a major stationary source.

2. The cabinet shall provide a written rationale for the proposed PAL level for public review and comment.

3. Any person may propose a PAL level for the source for consideration by the cabinet during the public review period.

(b) Application deadline.

1. A major stationary source owner or operator shall submit an application for renewal of a PAL at least six (6) months before the date of permit expiration but not earlier than eighteen (18) months

before permit expiration.

2. The deadline for application submittal shall ensure that the permit shall not expire before the permit is renewed.

3. If a complete application for renewal is submitted within the timeframe specified in subparagraph 1 of this paragraph, the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) Application requirements. The application to renew a PAL permit shall contain:

1. The information required in subsection (2) of this section;

2. A proposed PAL level;

3. The sum of the potential to emit of all emissions units under the PAL with supporting documentation; and

4. Any other information the owner or operator wishes the cabinet to consider in determining the appropriate level to renew the PAL.

(d) PAL adjustment.

1. A PAL shall not exceed the source's potential to emit. The cabinet shall adjust the PAL downward to a level not greater than the potential to emit if a source's potential to emit has declined below the PAL level.

2. The cabinet may renew the PAL at the same level as the current PAL without considering the factors specified in subparagraph 3 of this section, if the emissions level calculated according to subsection (5) of this section is equal to or greater than eighty (80) percent of the PAL level; or

3. The cabinet may set the PAL at a level that is determined to be:

a. More representative of the source's baseline actual emissions; or

b. Appropriate considering the following factors:

(i) Air quality needs;

(ii) Advances in control technology;

(iii) Anticipated economic growth in the area of the source;

(iv) The cabinet's goal of promoting voluntary emissions reductions; or

(v) Other factors as specifically identified by the cabinet in its written rationale for setting the PAL level.

4. The cabinet shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection (10) of this section.

(e) The PAL shall be adjusted in conjunction with the PAL permit renewal or Title V permit renewal, whichever comes first, if:

1. The compliance date for a state or federal applicable requirement that applies to the PAL source occurs during the PAL effective period; and

2. The cabinet has not already adjusted for the requirement.

(10) Increasing a PAL during the PAL effective period. The cabinet may increase a PAL emissions limitation during the PAL effective period if the major stationary source complies with the provisions of this subsection.

(a) Application procedures. To request an increase in the PAL limit for a PAL major modification, the owner or operator of the major stationary source shall submit a complete application, which shall include:

1. Identification of the emissions units contributing to the increase in emissions for the PAL major modification;

2. Demonstration that increased PAL, as calculated in paragraph (c) of this subsection exceeds the PAL, and:

a. The level of control that results from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis when the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years.

b. If an emissions unit currently complies with BACT or LAER, the assumed control level for that emissions unit shall be equal to the current level of BACT or LAER for that emissions unit; and

3. A statement that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) NSR permit and compliance requirement. The owner or operator shall obtain a major NSR permit for all emissions units

contributing to the increase in emissions for the PAL major modification.

1. A significant level shall not apply in deciding for which emissions units a major NSR permit shall be obtained; and

2. Emissions units that obtain a major NSR permit shall comply with any emissions requirements resulting from the major NSR process, even though the units shall also become subject to the PAL or shall continue to be subject to the PAL.

(c) Calculation of increased PAL. The cabinet shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the baseline actual emissions of the small emissions units.

(d) Public notice requirement. The public notice requirements of subsection (4) of this section shall be followed during PAL permit revision for an increased PAL level.

(11) Monitoring requirements for PALs.

(a) General requirements.

1. Each PAL permit shall contain enforceable requirements for the chosen monitoring system that accurately determines plant-wide emissions of the PAL pollutant in terms of mass per unit of time;

2. A monitoring system authorized for use in the PAL permit shall be:

a. Approved by the cabinet pursuant to this subsection; and

b. Based on sound science and meet generally-acceptable scientific procedures for data quality and manipulation;

3. The data generated by a monitoring system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit;

4. The PAL monitoring system shall employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in paragraph (b) of this subsection;

5. The cabinet may approve an alternative monitoring approach that meets the requirements of subparagraphs 1 to 3 of this paragraph; and

6. Failure to use a monitoring system that meets the requirements of this section shall render the PAL invalid.

(b) Minimum performance requirements for approved monitoring approaches. If conducted in accordance with the minimum requirements in paragraphs (c) to (i) of this subsection, the following shall be acceptable monitoring approaches:

1. Mass balance calculations for activities using coatings or solvents;

2. CEMS;

3. CPMS or PEMS; and

4. Emissions factors.

(c) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coatings or solvents shall:

1. Provide a demonstrated means of validating the published content of the PAL pollutant contained in or created by all materials used in or at the emissions unit;

2. If it cannot be accounted for in the process, assume that the emissions unit emits all of the PAL pollutant contained in or created by any raw material or fuel used in or at the emissions unit; and

3. If the vendor of the material or fuel from which the pollutant originates publishes a range, use the highest value of the published range of pollutant content to calculate the PAL pollutant emissions, unless the cabinet determines there is site-specific data or a site-specific monitoring program to support another pollutant content within the range.

(d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. CEMS shall comply with applicable Performance Specifications found in 40 C.F.R. Part 60, Appendix A; and

2. CEMS shall sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored

parameter and the PAL pollutant emissions across the range of operation of the emissions unit; and

2. While the unit is operating, each CPMS or PEMS shall sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the cabinet.

(f) Emissions factors. An owner or operator using emissions factors to monitor PAL pollutant emissions shall meet the following requirements:

1. All emissions factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

2. The emissions unit shall operate within the designated range of use for the emissions factor, if applicable; and

3. The owner or operator of a significant emissions unit that relies on an emissions factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emissions factor within six (6) months of PAL permit issuance if the cabinet determines that the testing is required and technically practicable.

(g) A source owner or operator shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during any period of time there is no monitoring data, unless another method for determining emissions during the periods is specified in the PAL permit.

(h) If an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, as an alternative to the requirements in paragraphs (c) to (g) of this subsection, in conjunction with permit issuance the cabinet shall:

1. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at operating points if a correlation cannot be demonstrated; or

2. If there is not a correlation between monitored parameters and the PAL pollutant emissions, determine that operation of the emissions unit during operating conditions is a violation of the PAL.

(i) Revalidation. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the cabinet. Validation testing shall occur at least once every five (5) years after issuance of the PAL.

(12) Recordkeeping requirements.

(a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions for five (5) years from the date of the determination.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

1. A copy of the PAL permit application and any applications for revisions to the PAL; and

2. Each annual certification of compliance pursuant to Title V and the data used to certify the compliance.

(13) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the cabinet in accordance with 401 KAR Chapter 52 that meet the following requirements:

(a) Semiannual report. The semiannual report shall be submitted to the cabinet within thirty (30) days of the end of each reporting period and shall contain:

1. The identification of owner and operator and the permit number;

2. Total annual emissions, in tpy, based on a twelve (12) month rolling total for each month in the reporting period recorded pursuant to subsection (12)(a) of this section;

3. All data used in calculating the monthly and annual PAL pollutant emissions, including any quality assurance or quality control data;

4. A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period;

5. The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and

span calibration checks, and any corrective action following a deviation;

6. A notification of permanent or temporary shutdown of any monitoring system including:

a. The reason for the shutdown;

b. The anticipated date that the monitoring system shall be fully operational or shall be replaced with another monitoring system;

c. If applicable, a statement that the emissions unit monitored by the monitoring system continued to operate without the monitoring system; and

d. The calculation of the emissions of the pollutant or the number determined according to subsection (11)(g) of this section that is included in the permit; and

7. A signed statement by the responsible official, as defined by 401 KAR 51:001, Section 1(210), certifying the truth, accuracy, and completeness of the information provided in the semiannual report.

(b) Deviation report. The major stationary source owner or operator shall submit reports of any deviation or exceedance of the PAL requirements, including periods monitoring is unavailable.

1. A report submitted pursuant to 40 C.F.R. 70.6(a)(3)(iii)(B) shall satisfy this deviation reporting requirement;

2. The deviation report shall be submitted within the time limits prescribed by the applicable program implementing 40 C.F.R. 70.6(a)(3)(iii)(B);

3. The deviation report shall contain the following information:

a. The identification of the owner, the operator, and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official, as defined by 401 KAR 51:001, Section 1(210), certifying the truth, accuracy, and completeness of the information provided in the report.

(c) Revalidation results. The owner or operator shall submit to the cabinet the results of any revalidation test or method within three (3) months after completion of the test or method.

(14) Transition requirements.

(a) After the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published at 67 Fed. Reg. 80186, December 31, 2002, the cabinet shall only issue a PAL that complies with the requirements of this section.

(b) The cabinet may supersede a PAL that was established before August 10, 2006, with a PAL that complies with the requirements of this administrative regulation.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: March 12, 2011

FILED WITH LRC: March 14, 2011 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 26, 2011, at 10:00 a.m. in Conference Room 201 B on the first floor of the Division for Air Quality at 200 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard shall be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on May 2, 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 listed below. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Laura Lund, Environmental Technologist II, Division for Air Quality, 1st Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3999, ext. 4428, fax (502) 564-4666, e-mail Laura.Lund@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Lund, Environmental Technologist II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes air quality permitting requirements for the construction or modification of major stationary sources located within, or impacting upon, areas where the national ambient air quality standards have not been demonstrated to be attained.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that the addition of stationary source emissions will not contribute significantly to Kentucky's achievement of reasonable further progress of a national ambient air quality standard for an area currently not attaining that standard. This administrative regulation provides for economic growth in a nonattainment area without impeding Kentucky's progress towards cleaner air and attainment of the applicable national ambient air quality standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the cabinet to provide for the prevention, abatement, and control of air pollution. 42 U.S.C 7503 requires air quality permits issued to sources located or impacting a nonattainment area to include provisions for the attainment of the national primary ambient air quality standards and reasonable further progress of the air quality, which are contained in this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the requirements for issuing permits to stationary sources in areas where the national ambient air quality standards have not been attained.

(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 allows emissions reductions from source shutdowns and curtailments in production or operating hours to be used as emissions offset credits for new construction projects, even if the permit application for the new construction is received after the emissions reductions have occurred. The current regulation only allows for emission offset credits if a permit application is received before a source shutdown or curtailment.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for consistency between the state regulation and corresponding federal regulation; thereby eliminating regulatory uncertainty for sources located in Kentucky. This amendment also eliminates the economic disadvantage that sources locating in Kentucky would have compared to sources in surrounding states by allowing the use of emissions reductions resulting from shutdowns or a curtailment occurring before the permit application is filed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the Cabinet to provide for the prevention, abatement, and control of air pollution. 42 U.S.C 7503 requires that permits issued in a nonattainment area contain provisions for the attainment of the national primary ambient air quality standards and reasonable further progress of the air quality, which are contained in this administrative regulation.

(d) How the amendment will assist in the effective administration of statutes: This amendment eliminates regulatory uncertainty by amending the administrative regulation to be consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation affects individuals, businesses, organizations, and state and local governments in Kentucky that are constructing or modifying major stationary sources that are within, or that impact upon, areas where the national ambient air quality standards have not been attained. This regulation does not affect sources in Jefferson County, which is regulated under the Louisville Metro Air Pollution Control District. There are currently 6 counties in Kentucky (not including Jefferson County) classified as nonattainment for the 1997 annual particulate matter national ambient air quality standard (Boone, Boyd, Bullitt, Campbell, Kenton, a portion of Lawrence).

(4) Provide an assessment 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:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No further action by the regulated community is required to comply with this regulation amendment. This amendment allows emissions from a shutdown or curtailment that occurred prior to the filing of a new application to be used as emissions offsets.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sources may be able to take credit for emissions reductions that were not creditable prior to this amendment. This amendment also eliminates the regulatory uncertainty due to the inconsistency between state and federal law. In addition, this amendment removes the disadvantage for economic development in areas of nonattainment by allowing the use of emissions reductions as offsets for shutdowns or curtailments occurring before a permit application for a new project is filed.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation and enforcement of this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. The applicability of this administrative regulation is tiered, dependent on emission thresholds of stationary sources and the classification of ozone nonattainment areas.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 7401-7626, specifically 7407(d), 7410, and 7501-7514a., provides the statutory mandate as promulgated in 40 C.F.R. 51.165.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5).

3. Minimum or uniform standards contained in the federal mandate. The federal mandate governing nonattainment New Source Review requires sources subject to this regulation to demonstrate that any construction or modification of a major stationary source will not cause a net increase in air pollution; that emissions resulting from the project will not create a delay in attainment of the national ambient air quality standards; and that the source will install and use control technology that achieves the lowest achievable emissions rate (LAER). The Clean Air Act is the federal mandate that requires states to possess a plan for the attainment of the national primary ambient air quality standards and reasonable further progress of the air quality. 40 C.F.R. 51.165 is the federal rule that provides authority for the Cabinet to establish a plan and promulgate administrative regulation requirements to ensure compliance.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation is

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no more stringent than the federal rule, codified in 40 C.F.R. 51.165, and no more stringent than the federal mandate established by 42 U.S.C. 7401-7626.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division for Air Quality will continue to implement and enforce the New Source Review (NSR) program. Also, state and local governments constructing or modifying a major stationary source in, or impacting upon, an area where the national ambient air quality standards have not been attained 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 224.10-100(5), 40 C.F.R. 51.165, and 42 U.S.C. 7401-7671q.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation generates no revenues.

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

(c) How much will it cost to administer this program for the first year? The cabinet's existing operating budget continues as the source of funding for the implementation of this program.

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

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

EDUCATION CABINET Kentucky Board of Education Department of Education (Amendment)

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070(2)

STATUTORY AUTHORITY: KRS 156.070(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(2) requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This administrative regulation designates an agent for high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures and rules of the agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the high school level in the

common schools, including a private school desiring to associate with KHSAA and to compete with a common school.

Section 2. To remain eligible to maintain the designation as the agent to manage interscholastic athletics, the KHSAA shall:

(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its governing body;

(2) Sponsor an annual meeting of its member schools;

(3) Provide for each member school to have a vote on constitution and bylaw changes submitted for consideration;

(4) Provide for regional postseason tournament net revenues to be distributed to the member schools in that region participating in that sport, utilizing a share approach determined by the schools within that region playing that sport;

(5) Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by October 31;

(6) Advise the Department of Education of all legal action brought against the KHSAA by October 31;

(7) Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;

(8) Employ a commissioner and evaluate that person's performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;

(9) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;

(10) Permit the Board of Control to assess fines on a member school;

(11) Utilize a trained independent hearing officer instead of an eligibility committee for an appeal;

(12) Establish a philosophical statement of principles to use as a guide in an eligibility case;

(13) Conduct field audits of the association's entire membership over a five (5) year period regarding each school's compliance with 20 U.S.C. Section 1681 (Title IX) and submit summary reports including the highlighting of any deficiencies in compliance on a regular (not less than three (3) times annually) basis to the Kentucky Board of Education as requested;

(14) As a condition precedent to membership, require each member school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);

(15) Conduct all meetings in accordance with KRS 61.805 through 61.850;

(16) Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, bylaws, and other rules governing the conduct of interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school prior to being made public; and

(17) Not punish or sanction, in any manner, a school, student, coach, or administrator for allowing a student to play in an athletic contest or practice with the team during a time when an order of a court of competent jurisdiction permits the student to participate or otherwise stays or enjoins enforcement of a KHSAA final decision on eligibility.

Section 3. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE by October 31:

(a) Draft budget for the next two (2) fiscal years, including the current year;

(b) End-of-year budget status report for the previous fiscal year;

(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;

(d) A summary report of operations including summaries of financial, legal, and administrative actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:

1. Athletic appeals and their disposition including the name of the individual, grade, school, and the action taken by KHSAA;

2. Eligibility rules;

3. Duties of school officials;

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4. Contests and contest limitations;
5. Requirements for officials and coaches; and

6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for vote by the member schools at the next legislative opportunity; and

(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.

(2) The KHSAA shall annually submit by December 31, audited financial statements with the KHSAA Commissioner's letter addressing exceptions or notes contained in management correspondence, if any.

Section 4. The bylaws, ~~tournament rules,~~ and due process procedures, Board of Control policies, membership renewal application, new member application, of the KHSAA Handbook, ~~Fall 2011, Fall 2009, September 10, 2007,~~ shall apply to high school interscholastic athletics in Kentucky.

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

- (a) "KHSAA Constitution", ~~Fall 2011~~[4/2009];
- (b) "KHSAA Bylaws", 4/2009;
- (c) "KHSAA Due Process Procedure", 4/2009;
- (d) "KHSAA Board of Control Policies", 4/2009;
- (e) "KHSAA Officials Division Guidebook", 4/2009;
- (f) "KHSAA Form BA101- Baseball Pitching Limitation", 4/3/2009;
- (g) "KHSAA Form BA106- Baseball Tournament Financial Report - District", 2/1/1998;
- (h) "KHSAA Form BA107- Baseball Tournament Financial Report - Regional", 4/1/1998;
- (i) "KHSAA Form BA108- Baseball Tournament Financial Report - Semi State", 4/7/2009;
- (j) "KHSAA Form BK105- Basketball Tournament Financial Report - District", 1/6/2009;
- (k) "KHSAA Form BK106- Basketball Tournament Financial Report - Regional", 1/6/2009;
- (l) "KHSAA Form FB102- Football Financial Report", 9/7/2009;
- (m) "KHSAA Form FB103- Football Spring Football Practice", 2/5/2009;
- (n) "KHSAA Form FB109- Football Scrimmage Report", 7/8/2009;
- (o) "KHSAA Form FB122- Football Contact Practice Log", 6/6/2009;
- (p) "KHSAA Form GE1- Membership Renewal", 7/9/2009;
- (q) "KHSAA Form GE2- New Membership Application", 4/9/2009;
- (r) "KHSAA Form GE3- Participation List", 4/9/2009;
- (s) "KHSAA Form GE4- Physician & Parental Permission Form", 4/9/2009;
- (t) "KHSAA Form GE6- Domestic Transfer", 6/8/2009;
- (u) "KHSAA Form GE7- Non Domestic Eligibility", 4/9/2009;
- (v) "KHSAA Form GE14- Contract for Athletic Contests", 4/9/2009;
- (w) "KHSAA Form GE15- Certification of Eligibility", 4/9/2009;
- (x) "KHSAA Form GE16- Statutory Waiver of Bylaw 3", 7/7/2009;
- (y) "KHSAA Form GE18- Survey for Sports Offerings", 4/8/2009;
- (z) "KHSAA Form GE19- 09-10 Title IX Procedures Verification", 4/9/2009;
- (aa) "KHSAA Form GE20- Heat Index Record", 4/9/2009;
- (bb) "KHSAA Form GE26- Financial Aid Report", 4/9/2009;
- (cc) "KHSAA Form GE35- Waiver - 20 Day Notice", 6/7/2009;
- (dd) "KHSAA Form GE36- Add. Info for Appeal", 6/7/2009;
- (ee) "KHSAA Form GE39- Report of Need Based Financial Aid Awarded", 9/1/2009;
- (ff) "KHSAA Form SB106- Softball Financial Report - District", 5/6/2009;
- (gg) "KHSAA Form SB108- Softball Financial Report - Region", 4/6/2009;
- (hh) "KHSAA Form SB111- Softball Transportation & Declara-

- tion Form", 4/6/2009;
- (ii) HSA Form SO101- Soccer Financial Report - District", 4/9/2009;
 - (jj) "KHSAA Form SO102- Soccer Financial Report - Region", 4/9/2009;
 - (kk) "KHSAA Form SO103- Soccer Financial Report - Sub-Sectional", 4/9/2009;
 - (ll) "KHSAA Form SO104- Soccer Financial Report - Sectional", 4/9/2009;
 - (mm) "KHSAA Form SO111- Soccer Hard Cast / Face Mask / Concussion", 7/6/2009;
 - (nn) "KHSAA Form SW105- Swimming Financial Report - Region", 1/6/2009;
 - (oo) "KHSAA Form SW119- Swimming Transportation & Declaration Form", 1/6/2009;
 - (pp) "KHSAA Form T1- Title IX Accom. Of Interests & Abilities", 4/9/2009;
 - (qq) "KHSAA Form T2- Title IX Accom. Of Interests & Abilities", 4/9/2009;
 - (rr) "KHSAA Form T3- Title IX Accom. Of Interests & Abilities", 10/8/2009;
 - (ss) "KHSAA Form T35- Title IX Actual Expenditures Comparison 1 + Booster Club", 4/9/2009;
 - (tt) "KHSAA Form T36- Title IX Actual Expenditures Comparison 2 + Booster Club", 4/9/2009;
 - (uu) "KHSAA Form T4- Title IX Accom. Of Interests & Abilities", 4/9/2009;
 - (vv) "KHSAA Form T41- Title IX Athletics Audit Checklist", 4/9/2009;
 - (ww) "KHSAA Form T50- Title IX Title IX Re-Visit", 4/1/2000;
 - (xx) "KHSAA Form T60- Title IX Corrective Action", 4/1/2000;
 - (yy) "KHSAA Form T61- Title IX Interscholastic Athletics Student Survey", 4/9/2009;
 - (zz) "KHSAA Form T63- Title IX Interscholastic Athletics Survey", 4/9/2009;
 - (aaa) "KHSAA Form T70- Title IX Participation Opportunities", 4/9/2009;
 - (bbb) "KHSAA Form T71- Title IX Benefits - Summary 1", 4/9/2009;
 - (ccc) "KHSAA Form T72- Title IX Benefits - Summary 2", 4/9/2009;
 - (ddd) "KHSAA Form T73- Title IX Re-Visit - Publicity Support Group", 4/9/2009;
 - (eee) "KHSAA Form VB101- Volleyball Financial Report", 8/6/2009;
 - (fff) "KHSAA Form WR101- Wrestling Permission Form", 12/5/2009;
 - (ggg) "KHSAA Form WR111- Wrestling Skin Condition & Unconscious", 9/8/2009;
 - (hhh) "KHSAA Form WR119- Wrestling Declaration Form", 1/1/1999; and
 - (iii) "KHSAA Form WR126- Wrestling Weight Certif. Program Assessor", 9/6/2009.
 - (jjj) "Kentucky High School Athletic Association Handbook", 5/2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal and Legislative Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

TERRY HOLLIDAY, PH.D., Commissioner
DAVID KAREM, Chairperson

APPROVED BY AGENCY: March 14, 2011

FILED WITH LRC: March 14, 2011 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on April 28, 2011, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky.

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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 May 2, 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, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 156.070 requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This regulation designates the Kentucky High School Athletic Association (KHSAA) as the agent to manage high school interscholastic athletics, and incorporates by reference the bylaws, procedures and rules governing interscholastic sports.

(b) The necessity of this administrative regulation: This regulation is necessary to designate the agency to provide the day-to-day management activities of interscholastic athletics in Kentucky; to set forth the financial, planning and review processes governing the agent; and to incorporate by reference the bylaws, procedures and rules of the agent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation designates the agency to manage interscholastic athletics, as authorized by the authorizing statute, and outlines the conditions under which this authority is granted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It designates the KHSAA as the agent to manage interscholastic athletics in the schools and districts, and publishes changes in bylaws, procedures and rules for affected schools and districts.

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

(a) How the amendment will change this existing administrative regulation: These amendments make changes to the document incorporated by reference, in the KHSAA Constitution and in KHSAA Bylaws 4, 6, 14, 25, 26 and 32 as adopted by the KHSAA Delegate Assembly.

(b) The necessity of the amendment to this administrative regulation: Pursuant to the KHSAA Constitution, which is incorporated by reference in this regulation, the members are required to have an annual meeting to discuss and recommend any needed changes to the Constitution and Bylaws. While they are not required to make changes to the Constitution and Bylaws, changes must be made through this process. This amendment incorporates changes approved at the annual meeting of the Delegate Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: The statute authorizes the KBE to designate an agency to manage high school interscholastic athletics. The regulation designates the KHSAA as that agent, and incorporates by reference the KHSAA Handbook, which consists of the KHSAA Constitution, Bylaws, and Due Process to provide rules and guidance to the member schools and districts governing sporting events. The amendments in the Bylaws are made annually, according to the process outlined in the Constitution, and reflect input member schools and districts on changes that need to be made to provide a more sound structure of governance.

(d) How the amendment will assist in the effective administration

tion of the statutes: See (c) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 175 School Districts

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be little impact because of the nature of the changes to the regulation.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KHSAA is funded through membership fees and dues, as well as from gate receipts from sporting events.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070 and 702 KAR 7:065.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expense to school districts

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

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

(c) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Financial Institutions Securities Division (Amendment)

808 KAR 10:010. Forms for application, registration, notice filing, reporting and compliance.

RELATES TO: KRS 292.327, 292.330, 292.331, 292.332, 292.333, 292.334, (2), (10), (13)(e), 292.350(2), 292.360(2), 292.370(2), 292.380(2), 292.410(1)(q), 292.430(1), (2)

STATUTORY AUTHORITY: KRS 292.327(1), 292.330, 292.331(1), (5), (6), 292.332, 292.333, 292.334, (2), (3), (10),

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292.350(2), 292.360(2), 292.370(2), 292.410(1)(q), 292.430(1), 292.500 (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.327(1), 292.331(1), (5), (6), 292.332, 292.333, 292.334, ~~292.330(2), (3)(c),~~ 292.350(2), 292.360(2), 292.370(2), 292.410(1)(q), and 292.430(1) and (2) require the commissioner ~~[executive director]~~ to prescribe the required forms for registration or renewal registration, for a notice filing, for a registration exemption, and for withdrawal of registration. This administrative regulation establishes the required forms and incorporates by reference those forms.

Section 1. (1) Pursuant to KRS 292.331(1) ~~292.330(1) and (2)~~, Form BD, Uniform Application for Broker-Dealer Registration, shall be completed to register as a broker-dealer in Kentucky.

(2) Pursuant to KRS 292.331(1) ~~292.330(1) and (2)~~, Form U-4, Uniform Application for Securities Industry Registration or Transfer, shall be completed to:

(a) Register as an agent or an investment adviser representative in Kentucky; or

(b) Transfer an agent's or representative's registration to another broker-dealer, issuer, or investment adviser.

(3) Pursuant to KRS 292.331(5) ~~292.330(10)~~, Form 33-e-1, Application for Renewal of Issuer Agent Registration, shall be completed to renew registration as an issuer agent in Kentucky.

(4) Pursuant to KRS 292.331(1) and 292.332 ~~292.330(1) and (2)~~, Form ADV, Uniform Application for Investment Adviser Registration, shall be completed electronically to register or notice file as an investment adviser or covered adviser in Kentucky.

(5) ~~Pursuant to KRS 292.330(10), Form 33-h-1, Application for Renewal of Investment Adviser and Representative Registration, shall be completed to renew registration as an investment adviser in Kentucky.~~

(6) Pursuant to KRS 292.350(2), 292.360(2), and 292.370(2) ~~292.380(2), and 808 KAR 10:280, Section 2(1)~~, Form U-1, Uniform Application to Register Securities, shall be completed to register a security for sale in Kentucky by coordination, qualification, or notification ~~[or as a small corporate offering]~~.

(6) ~~(7)~~ Pursuant to KRS 292.327(1), Form NF, Uniform Investment Company Notice Filing, shall be completed to make a notice filing in Kentucky.

(7) ~~(8)~~ Pursuant to KRS 292.327(2) ~~292.410(1)(q), 808 KAR 10:240, Section 1(3)(b)1, and 808 KAR 10:280, Section 2(1)~~, Form D, Notice of Sale of Securities Pursuant to Regulation D, under Section 18(b)(4)(D) of the Securities Act of 1933 ~~[Section 4(6), and/or Uniform Limited Offering Exemption]~~, shall be completed to file for an exemption or register an offering under 808 KAR 10:280, Section 2(1).

(8) ~~(9)~~

~~(a) File for an exemption from the registration of a security under KRS 292.410(1)(q); or~~

~~(b) Register an offering under 808 KAR 10:280, Section 2(1).~~

(9) Pursuant to KRS 292.430(1) and (2), Form U-2, Uniform Consent to Service of Process shall be completed by an issuer required to file a consent to service of process.

(9) ~~(10)~~ Pursuant to KRS 292.350(2)(b), 292.360(2)(c), and 292.370(2)(a), Form U-2A, Uniform Form of Corporate Resolution ~~shall be completed to register a security for sale by an issuer in Kentucky.~~

(10) ~~(11)~~ Pursuant to KRS 292.334(5) ~~292.330(13)(e)~~, Form BDW, Uniform Request for Broker-Dealer Withdrawal, shall be completed if a broker-dealer withdraws his registration in Kentucky.

(10) ~~(12)~~ Pursuant to 808 KAR 10:280, Form U-7, Small Company Offering Registration, shall be completed by a company who:

(a) Meets the eligibility requirements established in that administrative regulation; and

(b) Wants to register an offering pursuant to that administrative regulation.

(11) ~~(13)~~ Pursuant to KRS 292.334(5) ~~292.330(13)(e)~~, Form U5, Uniform Termination Notice for Securities Industry Registration, shall be completed to terminate registration as an agent or investment adviser representative.

Section 2. Incorporation by Reference. (1) The following ma-

terial is incorporated by reference:

(a) Form BD, Uniform Application for Broker-Dealer Registration, revised January 2008 ~~July 1999~~;

(b) Form U4, Uniform Application for Securities Industry Registration or Transfer, revised May 2009 ~~October 2006~~;

(c) Form 33-e-1, Application for renewal of Issuer Agent Registration, revised May 2002;

(d) Form ADV, Uniform Application for Investment Adviser Registration, revised October 2010 ~~January 2006~~;

(e) ~~Form 33-h-1, Application for Renewal of Investment Adviser and Representative Registration, revised May 2002;~~

(f) ~~(g)~~ Form U-1, Uniform Application to Register Securities, January 2006;

(f) ~~(g)~~ Form NF, Uniform Investment Company Notice Filing, January 2006;

(g) ~~(h)~~ Form D, Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption, September 2008 ~~June 2002~~;

(h) ~~(i)~~ Form U-2, Uniform Consent to Service of Process, January 2006;

(i) ~~(j)~~ Form U-2A, Uniform Form of Corporate Resolution, January 2006;

(k) ~~(m)~~ Form BDW, Uniform Request for Broker-Dealer Withdrawal, January 2008 ~~August 1999~~;

(j) ~~(k)~~ Form U-7, Small Company Offering, revised September 1999; and

(k) ~~(m)~~ Form U5, Uniform Termination Notice for Securities Industry Registration, revised May 2009 ~~October 2006~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the:

(a) Department ~~(Office)~~ of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Financial Industry Regulatory Authority (FINRA) ~~National Association of Securities Dealers (NASD)~~, 1735 K Street, N.W., Washington, D.C. 20006, or a regional FINRA ~~NASD~~ office.

(3) Form ADV may also be obtained from the Securities and Exchange Commission, Branch of BD and IA Registration, 100 F Street, NE, Washington, D.C. 20549.

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: March 14, 2011

FILED WITH LRC: March 15, 2011, at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011, at 10 a.m., EST, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by April 15, 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 2, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Simon Berry, Staff Attorney, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 232, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Simon Berry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies the forms to be used for the registration of broker-dealers, investment advisers, investment adviser repre-

sentatives, issuer agents and for the registration of securities to be offered for sale in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to advise the public of the forms required for various registrations and renewal of registrations with the Kentucky Department of Financial Institutions. In addition, it incorporates certain forms by reference.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.331(1) authorizes the Commissioner to promulgate administrative regulations necessary for persons to register as broker-dealers, agents, investment advisers, or investment adviser representatives. KRS 292.500(3) authorizes the Commissioner to promulgate, amend and repeal administrative regulations to accomplish the basic purposes of KRS Chapter 292.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation identifies the forms required for the registration of persons with the Kentucky Department of Financial Institutions and the registration of certain securities to be offered for sale in Kentucky. It also updates the references to the statutes to accurately reflect the current statutory numbering of KRS Chapter 292.

(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 reflects changes to the numbering of the statutes in KRS Chapter 292 as a result of the enactment of SB 130 and it eliminates certain forms that are no longer used for registration with the Kentucky Department of Financial Institutions.

(b) The necessity of the amendment to this regulation: This amendment is necessary to properly update the forms required for registration with the Kentucky Department of Financial Institutions and the statutes referenced in the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: This amendment updates the forms required for persons to register as broker-dealers, agents, investment advisers, investment adviser representatives, and the forms to register securities to be offered for sale in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment identifies the forms required for the registration of persons with the Kentucky Department of Financial Institutions and the registration of certain securities to be offered for sale in Kentucky. It also updates the references to the statutes to accurately reflect the current statutory numbering of KRS Chapter 292.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All broker-dealers, agents, investment advisers, and investment adviser representatives doing business in Kentucky and all persons seeking to raise money by selling securities in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will not be impacted because they are already required to fill out the forms incorporated by reference in the amendment as part of the application for registration with the Kentucky Department of Financial Institutions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will know which forms must be submitted as part of the application for registration with the Kentucky Department of Financial Institutions.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated cover the cost.

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

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

(9) TIERING: Is Tiering applied? Tiering is not applied because filing requirements should be the same for each entity required to file a certain form.

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 Financial Institutions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 292.327(1), 292.330, 292.331(1), (5), (6), 292.332, 292.333, 292.334, 292.350(2), 292.360(2), 292.370(2), 292.410(1)(q), 292.430(1), 292.500 (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 amendment will not have any impact on annual revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 because fees collected by the Kentucky Department of Financial Institutions cover any costs.

(d) How much will it cost to administer this program for subsequent years? None because fees collected by the Kentucky Department of Financial Institutions cover any costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Financial Institutions Securities Division (Amendment)

808 KAR 10:030. Conduct of broker-dealers, agents, and employees; investment advisers and representatives.

RELATES TO: KRS 292.330

STATUTORY AUTHORITY: KRS 292.336(6) ~~292.330(12)(f)~~, 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner ~~executive director~~ to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.336(5) ~~292.330(12)(f)~~ authorizes the commissioner ~~executive director~~ to promulgate administrative regulations regulating the conduct of business by broker-dealers and investment advisers. This administrative regulation establishes requirements relating to the conduct of a broker-dealer, agent, investment adviser, or representative.

Section 1. Definitions. (1) "Current brochure and current brochure supplement" means the most recent revision of the brochure or brochure supplement, including all amendments to date.

(2) "Sponsor of a wrap fee program" means an investment adviser that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the program.

(3) "Wrap fee program" means an advisory program under which a specified fee or fees not based directly upon transactions in a client's account is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of client transactions.

Section 2. Suitability. A broker-dealer, agent, investment adviser, or investment adviser representative who recommends to a customer the purchase, sale or exchange of a security shall have reasonable grounds to believe that the recommendation is not unsuitable for the customer on the basis of:

(1) information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs; and

(2) Other information known by the broker-dealer, agent, investment adviser or investment adviser representative.

Section 3.[2-] Supervision of Broker-dealer Agents. (1) Each agent shall be subject to the supervision of a supervisor designated by the broker-dealer employing the agent. The responsibilities of a designated supervisor with respect to each agent under his supervision shall include the prompt review and written approval of:

(a) The opening of each new customer account by the agent;

(b) Each securities transaction by the agent;

(c) All incoming or outgoing correspondence including postal mail, electronic mail, and faxes;

(d) All advertising, sales literature, and seminars; and

(e) The handling of any customer complaint.

(2) Either a registered principal of the broker-dealer or an agent's designated supervisor shall:

(a) Review outside business activity by the agent;

(b) Review any brokerage account owned by the agent;

(c) Periodically review customer accounts of the agent; and

(d) Regularly inspect the records of the agent at the agent's place of business.

Section 4.[3-] Written Supervisory Procedures. (1) Broker-dealers.

(a) Each broker-dealer shall establish, maintain and enforce written procedures that:

1. Are reasonably designed to detect and prevent violations of:

a. KRS Chapter 292, 808 KAR Chapter 10, and orders issued under that chapter;

b. The rules promulgated by the Securities and Exchange Commission pursuant to 15 U.S.C. 78w; and

c. If the broker-dealer is a member of a self-regulatory organization as defined in 15 U.S.C. 78c(a)(26), the rules of the self-regulatory organization pursuant to 15 U.S.C. 78s(b); and

2. Include the procedures adopted by the broker-dealer to comply with the requirements of Section 2 of this administrative regulation.

(b) The broker-dealer shall keep a copy of the procedures required by paragraph (a) of this subsection in each office where an agent transacts business in securities.

(2) Investment advisers.

(a) Except as provided in paragraph (b) of this subsection, each investment adviser shall:

1. Establish, maintain, and enforce written procedures that are reasonably designed to detect and prevent violations of KRS Chapter 292, 808 KAR Chapter 10, and orders issued under that chapter; and

2. Keep a copy of the procedures in each office where a representative provides investment advice to a client.

(b) The requirements established in paragraph (a) of this subsection shall not apply to an investment adviser that:

1. Has its principal place of business in a state other than Kentucky if the investment adviser is registered in that state and is in compliance with that state's written supervisory procedures re-

quirements; or

2. Has two (2) or fewer persons registered as an investment adviser representative of the investment adviser.

Section 5. Brochure and Brochure Supplement.[4- Written Disclosure Statement.] (1) An investment adviser shall furnish each advisory client and prospective advisory client with a brochure and one (1) or more brochure supplements that contain all information required by Part 2 of Form ADV as incorporated by reference in 808 KAR 10:010. ~~[written disclosure statement. This statement may be either a copy of Part II of its Form ADV or a written document containing at least the information required by Part II of the Form ADV.]~~

~~(2)[(a) Except as provided in paragraph (b) of this subsection,] An investment adviser must[shall deliver the statement required by this section to an advisory client or prospective advisory client]:~~

~~(a) Deliver to a client or prospective client its current brochure and current brochure supplement for a supervised person before or at the time of entering into an investment advisory contract with that client; and~~

~~(b) Deliver to each client annually, within 120 days after the end of the investment adviser's fiscal year and without charge, if there are material changes in the brochure since the last annual updating amendment:~~

~~1. A current brochure; or~~

~~2. The summary of material changes to the brochure as required by Item 2 of Form ADV, Part 2A that offers to provide the current brochure without charge, accompanied by the Web site address (if available) and an e-mail address (if available) and telephone number by which a client may obtain the current brochure, and the Web site address for obtaining information about the investment adviser through the Investment Adviser Public Disclosure (IAPD) system.~~

~~(c) Deliver the following to each client promptly after creating an amended brochure or brochure supplement, as applicable, if the amendment constitutes a material revision:~~

~~1. The amended brochure or brochure supplement, as applicable, along with a statement describing the material revision; or~~

~~2. A statement describing the material revision.~~

~~(3)(a) If an investment adviser is a sponsor of a wrap fee program, then the brochure that this section requires the investment adviser to deliver to a client or prospective client of the wrap fee program must be a wrap fee program brochure containing all the information required by Part 2A, Appendix 1 of Form ADV. Any additional information in a wrap fee program brochure must be limited to information applicable to wrap fee programs that the investment adviser sponsors.~~

~~(b) An investment adviser does not have to deliver a wrap fee program brochure if another sponsor of the wrap fee program delivers, to the client or prospective client of the wrap fee program, a wrap fee program brochure containing all the information required by Part 2A, Appendix 1 of Form ADV.~~

~~(c) A wrap fee program brochure does not take the place of any brochure supplements that the investment adviser is required to deliver under this section.~~

~~(4) If an investment adviser provides substantially different advisory services to different clients, the investment adviser may provide them with different brochures, so long as each client receives all information about the services and fees that are applicable to that client. The brochure delivered to a client may omit any information required by Part 2A of Form ADV if the information does not apply to the advisory services or fees that are provided or charged, or that are proposed to be provided or charged, to that client. [4- Not less than forty-eight (48) hours prior to entering into any written or oral investment advisory contract with the client or prospective client; or~~

~~2. At the time of entering into a contract, if the advisory client has a right to terminate the contract without penalty within five (5) business days after entering into the contract.~~

~~(b) Delivery of the statement required by paragraph (a) of this subsection shall not be required in connection with entering into an investment company contract or a contract for impersonal advisory services.~~

~~(3)(a) Except as provided in paragraph (b) of this subsection,~~

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an investment adviser shall, annually and without charge, deliver or offer in writing to promptly deliver upon written request, the statement required by this section to its advisory clients.

~~(b) The delivery or offer required by paragraph (a) of this subsection shall not be required for advisory clients receiving advisory services solely pursuant to an investment company contract or a contract for impersonal advisory services.~~

~~(4) If an investment adviser renders substantially different types of investment advisory services to different advisory clients, information required by Part II of the Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if the information is not applicable to services rendered to that client.]~~

(5) This section shall not relieve an investment adviser from an obligation, pursuant to a provision of KRS Chapter 292, 808 KAR Chapter 10, or other federal or state law, to disclose information to its advisory clients or prospective advisory clients not specifically required by this section.

Section 6.6. Multiple Registration. (1) A person shall not be concurrently registered as an agent of more than one (1) broker-dealer or issuer unless the person obtains prior written consent from the commissioner~~[executive director]~~.

(2) A person shall not be concurrently registered as an investment adviser representative of more than one (1) investment adviser unless the person obtains prior written consent from the commissioner~~[executive director]~~.

(3) A request for multiple registration shall be in writing and shall contain a statement by each employer that the employer:

(a) Consents to the multiple employment of the agent or representative; and

(b) Agrees to assume joint and several liability with all other employers for an act or omission of the agent or representative during the employment period that violates KRS Chapter 292, 808 KAR Chapter 10, or orders issued under that chapter.

(4) The commissioner~~[executive director]~~ shall consent to multiple registration pursuant to a request under subsection (3) of this section if the commissioner~~[executive director]~~ finds that:

(a) The multiple registration does not impair a determination of the supervisory responsibilities of each employer with respect to the employee; and

(b) The disciplinary histories of the person and each employer are not unfavorable.

(5) The commissioner~~[executive director]~~ may consent to multiple registration in other cases if the commissioner~~[executive director]~~ finds that the multiple registration does not impair determination of the respective supervisory responsibilities of each employer with respect to the employee. [Section 6. Incorporation by Reference. (1) Form ADV, Application for Registration of an Investment Adviser, revised May 31, 1997, is incorporated by reference.

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~

~~(3) This material may also be obtained from the Securities and Exchange Commission, Branch of BD and IA Registration, Washington, D.C. 20549.]~~

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: March 14, 2011

FILED WITH LRC: March 15, 2011, at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011, at 10 a.m., EST, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by April 15, 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is

made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 2, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Simon Berry, Staff Attorney, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 232, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Simon Berry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes specific standards of conduct that all broker-dealers, agents, investment advisers, and investment adviser representatives must adhere to in their dealings with clients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to make certain that all broker-dealers, agents, investment advisers, and investment adviser representatives understand the standard of conduct they must follow in dealing with their clients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.336(6) authorizes the Commissioner to promulgate administrative regulations to prescribe rules for the conduct of business by broker-dealers and investment advisers. KRS 292.500(3) authorizes the Commissioner to promulgate, amend and repeal administrative regulations to accomplish the basic purposes of KRS Chapter 292.

(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 specific standards of conduct that all broker-dealers, agents, investment advisers, and investment adviser representatives must adhere to in their dealings with clients.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the time when an investment adviser must provide its clients certain information about the investment adviser's business.

(b) The necessity of the amendment to this regulation: This amendment is necessary to make the regulation consistent with recent changes to Form ADV which is incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the content of the authorizing statute because it prescribes rules for the standard of conduct for all investment advisers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing specific standards of conduct that all investment advisers must adhere to in their dealings with clients.

(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 all broker-dealers, agents, investment advisers, and investment adviser representatives registered with the Kentucky Department of Financial Institutions which is approximately 1,127 investment advisers and 1,652 broker-dealer agents.

(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 investment advisers will have to provide their clients with certain information about their business in a timely manner to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to comply with this amendment cannot be esti-

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mated because it will depend upon how many clients the investment adviser must provide a brochure to each year and whether the brochures are delivered electronically or by mail.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will timely provide their clients with certain information about their business.

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

- (a) Initially: None
- (b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated cover the cost.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applicable because each broker-dealer, agent, investment adviser, and investment adviser representative should be required to adhere to the same standards of conduct in dealing with their clients.

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 Financial Institutions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 292.336(6) and 292.500(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 have an effect on expenditures and 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:

PUBLIC PROTECTION CABINET Department of Financial Institutions Securities Division (Amendment)

808 KAR 10:050. Application withdrawal.

RELATES TO: KRS 292.331 [Chapter 292]

STATUTORY AUTHORITY: KRS 292.331(6), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.331(6) authorizes the commissioner to promulgate administrative regulations that impose conditions on the registration of bro-

ker-dealers, investment advisers, investment adviser representatives, or agents. This administrative regulation ensures~~[To insure]~~ that applicants for registration as agents, broker-dealers, investment advisers, and investment adviser representatives diligently pursue the disposition of the application.

Section 1. An application for registration as agent, broker-dealer, investment adviser, or investment adviser representative shall be presumed to have been withdrawn if the applicant takes no affirmative action to consummate the registration for a period in excess of ninety (90) days from the date the application is received by the commissioner.

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: March 14, 2011

FILED WITH LRC: March 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011, at 10 a.m., in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by April 15, 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 2, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Simon Berry, Staff Attorney, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 232, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Simon Berry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the amount of time that must elapse before the Kentucky Department of Financial Institutions may deem an application for registration as a broker-dealer, investment adviser, investment adviser representative, or agent withdrawn.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the length of time a person has to complete an application for registration as a broker-dealer, investment adviser, investment adviser representative, or agent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.331(6) authorizes the Commissioner to promulgate administrative regulations that impose conditions on the registration of broker-dealers, investment advisers, investment adviser representatives, or agents. KRS 292.500(3) authorizes the Commissioner to promulgate, amend and repeal administrative regulations to accomplish the basic purposes of KRS Chapter 292.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists an applicant for registration as a broker-dealer, investment adviser, investment adviser representative, or agent by providing clarity regarding the length of time to complete the application. It also updates the references to the statutes to accurately reflect the current statutory numbering of KRS Chapter 292.

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

(a) How the amendment will change this existing administrative regulation: This amendment expands the types of registration applications that will be considered withdrawn if there is inactivity for

ninety (90) days.

(b) The necessity of the amendment to this regulation: This amendment makes the ninety (90) day time limit applicable to all applications for registration required by KRS 292.331(1).

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute because it imposes a ninety day time limit for a person to complete an application for registration as a broker-dealer, agent, investment adviser, or investment adviser representative.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists an applicant for registration as a broker-dealer, investment adviser, investment adviser representative, or agent by providing clarity regarding the length of time to complete the application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect every person seeking to register as a broker-dealer, agent, investment adviser, or investment adviser representative in Kentucky. Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities have to complete their applications for registration in a timely manner.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will timely complete their applications. Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated cover the cost.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applicable because each applicant should be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Financial Institutions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 292.331(6) and 292.500(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 have an effect on expenditures and 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:

PUBLIC PROTECTION CABINET Department of Financial Institutions Securities Division (Amendment)

808 KAR 10:200. Investment advisers' minimum liquid capitalization; bond.

RELATES TO: KRS 292.331(4), 292.336(6)~~[292.330(6)]~~, (7), (12)(f), 7 U.S.C. 6f

STATUTORY AUTHORITY: KRS 292.331(4), 292.336(6),~~[292.330(6), (7), (12)(f)]~~ 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner~~[executive director]~~ to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.331(4)~~[292.330(6)]~~ authorizes the commissioner~~[executive director]~~ to require a minimum liquid net capital for investment advisers. KRS 292.336(6)~~[292.330(7)]~~ ~~authorizes the executive director to require an investment adviser to post a surety bond in an amount up to \$25,000 and to determine the conditions of the bond. KRS 292.330(12)(f)]~~ authorizes the commissioner~~[executive director]~~ to prescribe rules for the conduct of business by investment advisers. This administrative regulation establishes the requirements for minimum liquid capitalization and bonding for an investment adviser.

Section 1. Definitions. (1) "Custody" means holding, directly or indirectly, client funds or securities, or having any authority to appropriate them or obtain possession, in accordance with the requirements established in Section 2 of this administrative regulation.

(2) "Independent party" means a person that:

(a) Is engaged by the adviser to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;

(b) Does not control and is not controlled by and is not under common control with the adviser; and

(c) Does not have, and has not had within the past two (2) years, a material business relationship with the adviser.

(3) "Independent representative" means a person who:

(a) ~~1. For an advisory client, acts as an agent [Acts as an agent for an advisory client]; or~~

2. For a pooled investment vehicle:

a. Acts as an agent for the limited partners of a limited partnership, for members of a limited liability company or for other beneficial owners of another type of pooled investment vehicle; and

b. By law or contract is obligated to act in the best interests of the advisory client or the limited partners, members, or other beneficial owners;

(b) Does not control, is not controlled by, and is not under common control with the adviser; and

(c) Does not have, and has not had within the past two (2) years, a material business relationship with the adviser.

(4) "Net worth" means an excess of assets over liabilities as determined by generally-accepted accounting principles, but shall not include as assets:

(a) Deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense or any other intangible asset;

(b) Home, home furnishings, automobiles, and any other items not readily marketable, if the adviser is an individual;

(c) Advances or loans to stockholders and officers or related parties of stockholders or officers, if the adviser is a corporation;

[and]

(d) Advances or loans to partners or related parties of partners, if the adviser is a partnership; and

(e) Advances or loans to members or related parties of members, if the adviser is a limited liability company.

(5) "Qualified custodian" means any of the following institutions or entities not controlling and not controlled by, nor under common control with, the adviser:

(a) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation;

(b) A registered broker-dealer holding the client assets in customer accounts;

(c) A registered futures commission merchant under Section 4f(A) [7 U.S.C. 6f(a)] of the Commodity Exchange Act, 7 U.S.C. 6f(a), holding the client funds in customer accounts, but only with respect to the client funds and futures contracts in those accounts or other securities incidental to transactions in the purchase or sale of a commodity for future delivery or options thereon; and

(d) A foreign financial institution that customarily holds financial assets for its customers, if the foreign financial institution keeps the advisory client's assets in customer accounts segregated from the institution's proprietary assets.

Section 2. Custody Standards. (1) Custody shall include:

(a) Possession of client funds or securities unless the funds or securities are:

1. Received inadvertently; and

2. Returned to the sender ~~[promptly]~~ within three (3) business days of the receipt of the funds or securities;

(b) Receipt of a check drawn by a client and made payable to an unrelated third party unless:

1. The check is forwarded to the third party within twenty-four (24) hours of receipt; and

2. The adviser maintains appropriate records to document the preceding;

(c) Any arrangement, including a general power of attorney, under which the adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian that are not excluded under subsection (2) of this section; ~~[or]~~

(d) Any capacity that gives the adviser access or legal ownership to client funds or securities, including if the adviser is a general partner of a limited partnership, managing ~~member~~partner of a limited liability company, or holds a comparable position for another type of pooled investment vehicle, or is trustee of a trust; or

(e) Any advance fee arrangement in which an adviser receives payment in excess of \$500 for work not to be completed within six (6) months of receipt of the payment from the client.

(2) Custody shall not include an arrangement for direct deduction of fees from a client account held with a qualified custodian if the adviser provides the following safeguards:

(a) The adviser has written authorization from the client to deduct advisory fees from the account;

(b) Each time a fee is directly deducted from a client account, the adviser concurrently:

1. Sends the qualified custodian notice of the amount of the fee to be deducted; and

2. Sends the client an invoice itemizing the fee, including the formula used to calculate the fee, the amount of assets under management that the fee is based on, and the time period covered by the fee; and

(c) At least quarterly, the qualified custodian ~~sends~~ shall send to the client~~;~~ an account statement identifying the amount of funds and each security in the account at the end of the period and setting forth all transactions in the account during that period.

Section 3. Capital Requirements. An investment adviser registered or required to register pursuant to the Securities Act of Kentucky, KRS Chapter 292, shall meet the net worth requirements established in this section:

(1) An adviser who has custody of client funds or securities, except an adviser having custody due entirely to advising pooled investment vehicles and complying with Section 4~~(5)~~(4) or 5(3) of this administrative regulation, shall maintain a minimum net worth as follows:

(a) For advisers with assets under management of \$25,000,000 or less, the minimum net worth required shall be \$35,000.

(b) For advisers with assets under management in excess of \$25,000,000, the minimum net worth required shall be fifteen-hundredths of one percent (.0015) of assets under management.

(c) An adviser may substitute all but \$10,000 of the net worth required under paragraphs (a) and (b) of this subsection with a surety bond for the substituted amount issued by a bonding company that is qualified to do business in Kentucky.

(2) An adviser who requires prepayment of advisory fees six (6) months or more in advance and in excess of \$500 per client shall also maintain capital as required in subsection (1) of this section.

(3) An adviser who has discretionary authority over client funds or securities, but does not have custody of client funds or securities shall maintain a net worth as follows:

(a) For advisers with assets under management of \$25,000,000 or less, the minimum net worth required shall be \$10,000.

(b) For advisers with assets under management in excess of \$25,000,000, the minimum net worth required shall be one-tenth of one percent (.001) of assets under management.

(c) An adviser may substitute, for any part of the net worth required under paragraphs (a) and (b) of this subsection, a surety bond for the substituted amount issued by a bonding company that is qualified to do business in Kentucky.

(4) An adviser shall maintain a positive net worth at all times.

(5) The commissioner may require that a current appraisal be submitted to establish the value of any material asset.

(6) An adviser shall compute its net worth at least once every month at the end of the month and shall maintain a record of each computation along with supporting documentation for a period of two (2) years. Each such computation shall be accompanied by documentation of the assets under management for the adviser at that point in time.

(7) If the computation of net worth results in an amount that is less than required by subsections (1) through (4) of this section, the adviser shall by the close of business on the next business day following the determination of a deficiency, notify the commissioner by facsimile or electronic mail. After transmittal of this notice, the adviser shall promptly file with the commissioner a report of its financial condition, including a balance sheet, a year-to-date income statement and copies of supporting documentation.

(8) An adviser shall not be deemed to be exercising discretion if the adviser places trade orders with a broker-dealer pursuant to a third party trading agreement if:

(a) The investment advisory contract specifically states that the client does not grant discretionary authority to the adviser and the adviser in fact does not exercise discretion with respect to the account; and

(b) A third party trading agreement is executed between the client and a broker-dealer which specifically limits the adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of adviser fees.

(9) An adviser that has its principal place of business in a state other than Kentucky shall maintain the minimum capital as required by the state in which the adviser maintains its principal place of business, if the adviser is licensed in that state and is in compliance with that state's minimum capital requirement. ~~[of \$35,000. An adviser may substitute up to \$25,000 of the net worth requirement with a bond for the substituted amount issued by a bonding company that is qualified to do business in Kentucky.]~~

(2) An adviser who has discretionary authority over client funds or securities, but does not have custody of client funds or securities shall maintain a minimum net worth of \$10,000 or be bonded for that amount by a bonding company that is qualified to do business in Kentucky.

(3) An adviser shall maintain a positive net worth.

(4) An adviser shall not be deemed to be exercising discretion if the adviser places trade orders with a broker-dealer pursuant to a third party trading agreement if:

(a) The adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third

party trading agreement will be executed to allow the adviser to effect securities transactions for the client in the client's broker-dealer account;

(b) The investment adviser contract specifically states that the client does not grant discretionary authority to the adviser and the adviser in fact does not exercise discretion with respect to the account; and

(c) A third party trading agreement is executed between the client and a broker-dealer which specifically limits the adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of adviser fees.

(5) An adviser that has its principal place of business in a state other than Kentucky shall maintain the minimum capital as required by the state in which the adviser maintains its principal place of business, if the adviser is licensed in that state and is in compliance with that state's minimum capital requirement.]

Section 4. Custody of Client Funds or Securities. An investment adviser registered or required to register pursuant to the Securities Act of Kentucky, KRS Chapter 292, shall comply with the requirements established in this section, if the adviser has custody of client funds or securities.

(1) The funds and securities shall be maintained by a qualified custodian:

(a) In a separate account for each client under that client's name; or

(b) In accounts that contain only the client's funds and securities, under the adviser's name as agent or trustee for the client.

(2) The adviser shall notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained promptly when the account is opened and following any changes to this information.

(3)(a) Account statements shall be sent to the client, either:

1. By the qualified custodian and the adviser shall have a reasonable basis for believing that the custodian sent an account statement, at least quarterly, to each of the adviser's clients for which it maintains funds or securities, identifying the amount of funds and each security in the account at the end of the period and setting forth all transactions in the account during that period; or

2. By the adviser, if the following conditions are met:

a. The adviser shall send an account statement, at least quarterly, to each client for whom the adviser has custody of funds or securities, identifying the amount of funds and each security of which it has custody at the end of the period and setting forth all transactions during the period;

b. An independent certified public accountant shall verify all client funds and securities by actual examination on an annual basis. The adviser shall file a copy of the accountant report and financial statements with the commissioner ~~executive director~~ within thirty (30) days of the completion of the examination, along with a letter from the accountant stating that it has examined the funds and securities and describing the nature and extent of the examination; and

c. The adviser, upon notice from the certified public accountant of finding any material discrepancies during the course of the examination, shall notify the commissioner ~~executive director~~ within one (1) business day of the finding, by means of a facsimile transmission or electronic mail, followed by certified first class mail.

(b) If the adviser is a general partner of a limited partnership, managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle, the account statement required by paragraph (a) of this subsection shall be sent to each limited partner, member, other beneficial owner, or their independent representative.

(4) A client may designate an independent representative to receive on his behalf notices and account statements as required under subsections (2) and (3) of this section.

(5) An adviser who has custody and who does not meet the exception established in Section 5(3) of this administrative regulation shall, in addition to the safeguards established in subsections (1) through (4) of this section, comply with the following:

(a) Hire an independent party to review all fees, expenses, and capital withdrawals from the pooled accounts; and

(b) Send all invoices or receipts to the independent third party

detailing the amount of the fees, expenses, or capital withdrawals and the method of calculation so that the independent party can:

1. Determine that the payment is in accordance with the pooled investment vehicle standards; and

2. Present to the qualified custodian approval for payment of the invoice with a copy provided to the adviser. [An adviser who has custody by any arrangement, including a general power of attorney, under which the adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian shall comply with all of the requirements established in subsection (3)(a)2 of this section.]

(6) An adviser who has custody and who does not meet the exception established in Section 5(3) of this administrative regulation shall, in addition to the safeguards established in subsections (1) through (4) of this section, comply with the following:

(a) Hire an independent party to review all fees, expenses, and capital withdrawals from the pooled accounts; and

(b) Send all invoices or receipts to the independent third party detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation so that the independent party can:

1. Determine that the payment is in accordance with the pooled investment vehicle standards; and

2. Present to the qualified custodian approval for payment of the invoice with a copy provided to the adviser.]

Section 5. Exceptions to Custody Requirements. The custody requirements in Section 4 of this administrative regulation shall not apply to the exceptions listed in this section:

(1) Shares of mutual funds. With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-5(a)(1), the adviser may use the company's transfer agent in lieu of a qualified custodian for purposes of complying with Section 4 of this administrative regulation.

(2) Certain privately offered securities.

(a) An adviser shall not be required to comply with the custody requirements with respect to securities that are:

1. Acquired from the issuer in a transaction or chain of transactions not involving a public offering;

2. Uncertificated, and ownership thereof is recorded on the books of the issuer or its transfer agent in the name of the client; and

3. Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(b) The exception provided in paragraph (a) of this subsection shall not be available with respect to securities held for the account of a limited partnership, limited liability company, or other pooled investment vehicle, unless the entity is audited on an annual basis. The adviser shall distribute the audited financial statements as required by subsection (3) of this section.

(3) Limited partnerships subject to annual audit. An adviser shall not be required to comply with Section 4~~(5)~~~~(6)~~ of this administrative regulation with respect to the account of a limited partnership, limited liability company, or other type of pooled investment vehicle that is subject to an annual audit and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners, members, or other beneficial owners, within 120 days of the end of its fiscal year.

(4) Registered investment companies. The adviser shall not be required to comply with Section 4 of this administrative regulation with respect to the account of an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 to 80a-64.

(5) Beneficial trusts. An adviser having custody due entirely to serving as trustee for a trust, the beneficial owner of the trust being a parent, grandparent, spouse, sibling, child, or grandchild of that person, including blood or step relationships in these categories, shall not be deemed as having custody of the trust funds for purposes of being required to comply with the safekeeping requirements of Section 4 of this administrative regulation or the net worth requirements of Section 3(1) of this administrative regulation. This exclusion shall not apply to any other trust not expressly excepted for which this person is serving as trustee. Any trust not expressly exempted and its trustees shall be in compliance with this adminis-

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trative regulation. This exclusion shall inure to the benefit of the employer of the registered person while an employment relationship exists.

ROBERT D. VANCE, Secretary
CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: March 14, 2011

FILED WITH LRC: March 15, 2011, at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011, at 10 a.m., EST, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by April 15, 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 2, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Simon Berry, Staff Attorney, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 232, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Simon Berry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the capitalization requirements of an investment adviser doing business in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the net worth requirements for investment advisers that maintain custody of client assets and for investment advisers that do not maintain custody of client assets.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.331(4) authorizes the Commissioner to establish minimum financial requirements for investment advisers registered in accordance with KRS Chapter 292. KRS 292.500(3) authorizes the commissioner to promulgate, amend and repeal administrative regulations to accomplish the basic purposes of KRS Chapter 292.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist investment advisers in Kentucky to insure they have sufficient net worth to conduct their business.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the calculation of an investment adviser's net worth and prescribes the steps an investment adviser must take if its net worth falls below the required amount.

(b) The necessity of the amendment to this regulation: This amendment is necessary to inform investment advisers of their net worth requirements.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute because it imposes minimum financial requirements for investment advisers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist investment advisers in Kentucky to insure they have sufficient net worth to conduct their business.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1,127 investment advisers registered

in accordance with KRS Chapter 292.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities have to maintain the net worth requirements 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): The costs are the net worth requirement, the fee for the surety bond if used, and any fee charged by a qualified custodian holdings the clients funds or securities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The investment advisers will understand their net worth requirements and how to properly calculate their net worth.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated cover the cost.

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

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

(9) TIERING: Is tiering applied? Yes. The net worth requirement is based on the amount of an investment adviser's clients' assets under management. Investment advisers with assets under management of \$25,000,000 or less have a lower net worth requirement than those with assets under management greater than \$25,000,000. The difference is appropriate because there is a greater risk of loss to clients of investment advisers with more than 25,000,000 of assets under management. Also, investment advisers that retain custody of their clients' funds or securities have a greater net worth requirement than those that do not retain custody. Again, the difference is attributable to the greater risk of loss to clients of investment advisers with more than 25,000,000 of assets under management.

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 Financial Institutions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 292.331(4) authorizes the commissioner to require a minimum liquid net capital for investment advisers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? There will be no additional cost as any fees generated will cover the costs.

(d) How much will it cost to administer this program for subse-

quent years? There will also be no additional cost to administer this program in subsequent years as any fees generated cover the costs.

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

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

**PUBLIC PROTECTION CABINET
Department of Financial Institutions
Securities Division
(Amendment)**

808 KAR 10:240. Registration exemptions - sale of business.

RELATES TO: KRS 292.410(1)(q)

STATUTORY AUTHORITY: KRS 292.410(1)(q), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner~~[executive director]~~ to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.410(1)(q) authorizes the commissioner~~[executive director]~~ to exempt from KRS 292.330 to 292.390 a transaction for which the commissioner~~[executive director]~~ finds that registration is not necessary or appropriate in the public interest or for the protection of an investor. This administrative regulation establishes an exemption for a sale of a business that meets the specified requirements.

Section 1. Pursuant to KRS 292.410(1)(q), the offer or sale of 100 percent of the ownership interest in a legal entity~~[corporation]~~ shall be exempt from the requirements established in KRS 292.330 to 292.390 if:

(1) 100 percent of the ownership interest in the legal entity~~[stock of the corporation]~~ is either offered or sold; and

(2) The ownership interest~~[stock]~~ is sold to one (1) individual or preexisting entity.

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: March 14, 2011

FILED WITH LRC: March 15, 2011, at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011, at 10 a.m., EST, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by April 15, 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 2, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Simon Berry, Staff Attorney, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 232, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Simon Berry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes an exemption from registration if the

entire ownership interest in a business is sold.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify that registration is not necessary if the entire ownership interest of a business is sold.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.410(1)(q) authorizes the commissioner to promulgate administrative regulations that exempt any transaction from registration. KRS 292.500(3) authorizes the commissioner to promulgate, amend and repeal administrative regulations to accomplish the basic purposes of KRS Chapter 292.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by clarifying that registration is not necessary if the entire ownership interest of a business is sold.

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

(a) How the amendment will change this existing administrative regulation: This amendment expands the types of business organizations that can use the exemption from registration.

(b) The necessity of the amendment to this regulation: This amendment is necessary to clarify that all business organizations are eligible to use the exemption from registration.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute because it establishes an exemption from registration.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by expanding the types of business organizations that may use the exemption.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all business owners that are selling all of their company to another person.

(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 undertake to comply with this administrative regulation or amendment: The entities will not have to take any actions to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will avoid registering their ownership interests with the Department of Financial Institutions.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated cover the cost.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applicable because all business organizations can rely on the exemption from registration.

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

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(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Financial Institutions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 292.410(1)q and 292.500(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 have an effect on expenditures and 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:

PUBLIC PROTECTION CABINET Department of Financial Institutions Securities Division (Amendment)

808 KAR 10:260. Examination requirement for individuals advising the public on securities, broker-dealers, and agents.

RELATES TO: KRS 292.310, 292.331(3), 292.337~~[KRS 292.330(5) (13)]~~ 292.500(3)

STATUTORY AUTHORITY: KRS 292.331(3), ~~[KRS 292.330(5), (13)(b)(6)]~~ 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.331(3) authorizes, ~~[KRS 292.330(5) and (13)(b)(6) authorizes]~~ the commissioner~~[executive director]~~ to require an examination as evidence of knowledge of the securities business as a condition of registration. This administrative regulation requires an individual who advises the public regarding securities to successfully complete a written examination that demonstrates knowledge of the requirements of the securities laws and exempts certain individuals from the examination requirement.

Section 1. Except as provided in Section 2 of this administrative regulation, an individual, including an investment adviser or an investment adviser representative, who advises the public regarding the value of a security or the advisability of investing in, purchasing, or selling a security shall demonstrate competence in the law of securities by providing the commissioner~~[executive director]~~ with proof of obtaining a passing score, as determined by the Financial Industry Regulatory Authority (FINRA)~~[National Association of Securities Dealers]~~, on one (1) of the following examinations:

(1) The Uniform Investment Advisor Law Examination (Series 65 examination); or

(2)(a) The General Securities Representative Examination (Series 7 examination); and

(b) The Uniform Combined State Law Examination (Series 66 examination).

Section 2. The following individuals shall not be required to take and pass the examination:

(1) An individual who registered as an investment adviser or investment adviser representative in a state on or before January 1, 2000 and has been continuously registered since that date, except that the commissioner may~~[executive director shall]~~ require

the examinations identified in Section 1 of this administrative regulation for an individual found to have violated a state or federal securities law as a condition of continued registration;

~~(2)[An individual (including an officer, partner, director, or clerical staff) employed by a registered investment adviser if the individual does not advise the public regarding the value of a security or the advisability of investing in, purchasing, or selling a security;~~

~~(3)]~~ An individual who currently holds one (1) of the following professional designations and is in compliance with all continuing education and other requirements of good standing for the designation:

(a) Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;

(b) Chartered Financial Consultant (ChFC) issued by The American College, Bryn Mawr, Pennsylvania;

(c) Personal Financial Specialist (PFS) granted~~[administered]~~ by the American Institute of Certified Public Accountants;

(d) Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research; or

(e) Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America; or

~~(3)[(4)]~~ An individual who was registered as a broker-dealer agent prior to January 1, 1988, has been continuously registered since that date and has had no reportable disclosures on Form U-4, as incorporated by reference in 808 KAR 10:010, [as of January 1, 2003:

(a) Had been engaged in the securities business as a licensed agent of a broker-dealer for at least fifteen (15) years; and

(b) Had no reportable disclosures on that person's Form U-4.]

Section 3. An individual not required to take and pass any examination because of holding a designation specified in Section 2(2) may be required to take such examination if that individual fails to maintain the designation in good standing.

Section ~~4.[3.]~~ A registered investment adviser shall not employ an individual as an investment adviser or as one who represents an investment adviser unless that individual has complied with this administrative regulation.

Section ~~5.[4.]~~ To register in Kentucky as a broker-dealer or agent, an individual or a principal, if the applicant is an entity~~[a corporation]~~, shall:

(1) Pass the appropriate examination, which depending on the proposed business, shall be one (1) of the following FI-NRA~~[National Association of Securities Dealers ("NASD")]~~ examinations: Series 1,2,6,7,11,17,22,24,26,39,40,52,53,~~[or]~~ 62 or 79; and

(2) Pass the North American Securities Administrators Association ("NASAA") Series 63 or Series 66 examination.

Section 6. An individual who has been unregistered for a period of time in excess of two (2) years shall be required to take and pass the examinations specified in Sections 1 and 5 of this administrative regulation unless the commissioner grants a waiver for good cause shown in response to a written request by the investment adviser, broker-dealer or issuer which the individual will represent.

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: March 14, 2011

FILED WITH LRC: March 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011, at 10 a.m., in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by April 15, 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed

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administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 2, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Simon Berry, Staff Attorney, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 232, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Simon Berry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the examination requirements for investment advisers, investment adviser representatives, broker-dealers and agents.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform individuals of the examination requirements they must complete to register with the Securities Division.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.331(3) authorizes the commissioner to promulgate an administrative regulation requiring individuals seeking to register with the Securities Division to pass a written examination as evidence of knowledge of the securities business. KRS 292.500(3) authorizes the commissioner to promulgate, amend and repeal administrative regulations to accomplish the basic purposes of KRS Chapter 292.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will insure that persons seeking to register with the Securities Division have demonstrated knowledge of the securities business. 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 updates the examination requirements for investment advisers, investment adviser representatives, broker-dealers and agents to register with the Securities Division.

(b) The necessity of the amendment to this regulation: This amendment is necessary to inform individuals of the examination requirements they must complete to register with the Securities Division.

(c) How the amendment conforms to the content of the authorizing statute: The amendment establishes which individuals must pass written examinations to register with the Securities Division as authorized by KRS 292.331(3).

(d) How the amendment will assist in the effective administration of the statutes: The amendment insures that individuals advising the public on securities have demonstrated knowledge of the securities business.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All investment advisers, investment adviser representatives, broker-dealers or agents in Kentucky who are required to register with the Securities Division in accordance with KRS Chapter 292. This number fluctuates on a monthly basis. Currently, there are approximately 1,127 investment advisers, 4,100 investment adviser representatives, 1,652 broker-dealers, 97,046 broker-dealer agents, and 86 issuer agents.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment does not change the written examination that must be passed by these entities. However, it does clarify that individuals who have not been registered in excess of two years must pass certain examinations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only cost is the cost established by FINRA to take the examinations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will demonstrate their competency to advise the public on securities.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated cover the cost.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. Each class of individuals seeking to register with the Securities Division is subject to the same examination requirements because the same level of competency should be applied uniformly.

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 Financial Institutions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 292.331(3) and 292.500(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 impact the expenditures and annual revenues of a state or local government.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Financial Institutions Securities Division (Amendment)

808 KAR 10:280. Qualifications, eligibility, and restrictions on the use of Form U-7, Small Corporate Offering Registration.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Depart-

ment[Office] of Financial Institutions "Department" has adopted Form U-7, Small Corporate Offering Registration. This[proposed] administrative regulation sets forth the qualifications, eligibility requirements, and restrictions upon legal entities[corporations] desiring to use Form U-7 to register securities.

Section 1. Qualification for Use of Form. To be eligible to use Form U-7, as incorporated by reference in 808 KAR 10:010, a company must comply with each of the following requirements:

(1) The company must be a legal entity[corporation] organized under the laws of one of the states or possessions of the United States which engages in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries. "Blind pool" offerings and other offerings for which the specific business or properties cannot now be described are not eligible to use Form U-7.

(2) The securities may be offered and sold only on behalf of the company, and Form U-7 may not be used by any selling security-holder (including purchase underwriters in a firm commitment underwriting) to register his securities for resale.

(3) The offering price for a share or other ownership interest[common stock] (and the exercise price, if the securities are options, warrants or rights for, and the conversion price if the securities are convertible into shares or other ownership interests[common stock]) must be equal to or greater than five (5) dollars [per share]. By execution of the application and filing of the Form U-7[in any state], the company thereby agrees not to dilute the value below five (5) dollars by any issuance of new shares or other ownership interests[with the office that the company will not split its common stock, or declare a stock dividend,] for two (2) years after the conclusion[effectiveness of] the registration[; provided, however, that in connection with a subsequent registered public offering, the company may upon application and consent of the office take such action].

(4) The company may engage selling agents to sell the securities. Commissions, fees, or other remuneration for soliciting any prospective purchaser in this state in connection with this offering may only be paid to persons who, if required to be registered, the company believes, and has reason to believe, are appropriately registered in this state.

(5) This form shall not be available for the securities of any company if the company or any of its officers, directors, persons with a ten (10) percent ownership interest[stockholders,] (or persons occupying similar status or performing similar functions), promoters or any selling agents of the securities to be offered, or any officer, director or partner (or person occupying similar status or performing similar functions) of such selling agent:

(a) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law within (5) ears prior to the filing of the application for registration hereunder;

(b) Has been convicted within ten(10)[five (5)] years prior to the filing of the application for registration hereunder of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, money laundering, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(c) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities department within five (5) years prior to the filing of the application for registration hereunder or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five (5) years prior to the filing of the application for registration hereunder;

(d) Is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with this offer, purchase, or sale of securities;

(e) Is currently subject to any order, judgment or decree of any court of competent jurisdiction temporarily or preliminarily restricting or enjoining, or is subject to any order, judgment or decree from any court of competent jurisdiction, permanently restraining or

enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five (5) years prior to the filing of the application for registration hereunder;

(f) The prohibitions of paragraphs (a) through (c) and (e) of this subsection shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed or registered in this state and the Form B-D₁ as incorporated by reference in 808 KAR 10:010, filed with this state discloses the order, conviction, judgment, or decree relating to such person. No person qualified under this subsection may act in a capacity other than that for which the person is licensed or registered; and

(g) Any disqualification caused by this section is automatically waived if the state securities department or agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that registration be denied. If any of the circumstances in paragrah[paragraphs(b,)] (c) or (e) of this subsection has occurred more than five (5) years from the date of the application for registration hereunder, these circumstances should be described in response to Question 45 of Form U-7 as a Miscellaneous Factor.

(6) Use of the Form U-7[form] is available to any offering of securities by a company, the aggregate offering price of which within or outside this state shall not exceed \$1,000,000, less the aggregate offering price for all other securities sold within the twelve (12) months before the start of, and during the offering of, these[the] securities[under SEC Rule 504 in reliance on any exemption under section 3(b) of the Securities Act of 1933 or in violation of section 5(a) of that Act]. The Form U-7[form] is not available to a company that is an investment company (including mutual funds) or other pooled investment vehicle, or is subject to the reporting requirements of section 13 or section 15(d) of the Securities Exchange Act of 1934. [(7) The company shall file with the SEC a Form D of Regulation D under the Securities Act of 1933 claiming exemption of the offering from registration under such act pursuant to Rule 504. A copy of the Form D with appropriate state signature pages shall be filed with the office at the same time as filed with the SEC.]

Section 2. General Requirements for Use of Form. (1) The fully completed Form U-7 shall be accompanied by:

(a) A letter stating
1. That registration is sought under 808 KAR 10:280;
2. That the applicant meets the qualifications specified in Section 1;

3. The total dollar amount of the securities to be sold anywhere in connection with this offering; and

4. The total dollar amount of the securities to be sold in this state;

(b) A consent to service of process, Form U-2 as incorporated by reference in 808 KAR 10:010;

(c) An opinion by an attorney licensed to practice in a state or territory of the United States that the securities to be sold in the offering have been duly authorized and when issued, upon payment of the offering price, will be legally and validly issued, fully paid, and nonassessable and binding on the company in accordance with their terms; and

(d) A check payable to the Kentucky State Treasurer for the amount specified as the filing fee in KRS 292.380(5) which consists of a registration fee and an examination fee.

(2) The Form U-7 constitutes the offering circular or prospectus. The Form U-7 must be delivered to each investor before a sale is made.

(3) The registration, once declared effective in this state, is effective for either the period specified in the Form U-7 or one (1) year, whichever is shorter. If the offering is not yet concluded after the initial one (1) year period, the registration may be renewed by payment of a new registration fee and filing of an updated Form U-7. [when properly filled in, signed and submitted, together with the exhibits scheduled below and a Form U-1, Uniform Application to

Register Securities, constitutes an application for registration for the states listed at the bottom of the cover page of the form. There should be filed with each state there listed a signed original of the form, together with an executed Form U-1 and a signed original of the consent to service of process constituting Exhibit 7. Any references in the Form U-1 to SEC registration and effectiveness should be disregarded and Questions 6 and 8(a) of the Form U-1 are inapplicable. The Form U-1 should set forth the amount of securities being registered in that state and the method of calculating the filing fee, and there should be enclosed a check for the amount of the filing fee. Each state must separately declare the registration effective by an order to that effect unless the state has some other procedure applicable to registration on Form U-7. Once registration is effective as to a given state, the effective date should be noted at the bottom of the cover page of the form. Any changed or revised disclosure document must also be signed. Each question in each paragraph of the form should be responded to. If the question or series of questions is inapplicable, so indicate. Each answer should be clearly and concisely stated and in the space provided, however, notwithstanding the specificity of the questions, responses should not involve nominal, immaterial or insignificant information. (3) If the provided space is insufficient, additional space should be created by cutting and pasting the form to add more lines or by putting the form on a word processor and adding more lines in this or a similar manner. Irrespective of which method is used, care should be taken to assure that the form is accurately and completely reproduced, smaller type size should not be used, and script or italic type styles should be avoided.

(4) There must be submitted to the office an opinion of an attorney licensed to practice in a state or territory of the United States that the securities to be sold in the offering have been duly authorized and when issued upon payment of the offering price will be legally and validly issued, fully paid and nonassessable and binding on the company in accordance with their terms.

(5) The disclosure document on Form U-7 constitutes the offering circular or prospectus and the form once filled out, filed and declared effective may be reproduced by the company by copy machine or otherwise for dissemination to potential investors. (The company is cautioned to control the copying and distribution to preclude inaccurate or unreadable copies from being used and to prevent other unauthorized uses for which the company may nevertheless be deemed responsible.) These instructions are not part of the disclosure document and should not be included. Reproduced copies should be on white paper and should be stapled or secured in the left margin without a cover of any type.

The company should expect that the office may have comments and questions concerning the answers set forth on the form and that changes may be required to be made to the answers before the registration is declared effective.

(7) No offers or sales may be made in this state until the registration has been declared effective by the office. To make offers or sales before the registration is effective could lead to a stop order or other proceeding which would preclude use of the form in this or any other state and could give rise to a right of rescission by investors enforceable against management, principal stockholders and the selling agents as well as the company. When the registration has been declared effective in this state, offers and sales may be made in this state even though registration in other states has not been declared effective. This disclosure document must be delivered to each investor before the sale is made, e.g.:

(a) Before any order is entered;

(b) Any subscription agreement is signed; or

(c) Any part of the purchase price is received. The registration statement will be effective only for the same time period specified in the order of the office, which may be different for different states; however, no registration statement shall remain effective in a particular state for a period greater than one (1) year.]

(4)(9) After the registration has been declared effective, and while the offering is still in progress, if any portion of the Form U-7 needs[form should need] to be changed or revised because of an[a material] event concerning the company or the offering to make the Form U-7 [it] accurate and complete, it shall be so changed, revised, or supplemented. An updated Form U-7[if changed, revised or supplemented (including an addition on the cover page of

another state in which the offering has been registered) the form as so changed, revised, or supplemented,], clearly marked to show the changes from the previously filed version, shall[should] be filed and cleared with the office of this state before use. If any of the changes or revisions are of such significance that they are material to the making of an investment decision [by an investor], and if the minimum proceeds have not been raised, [after filing with a clearance by the office,] the updated Form U-7 shall [disclosure document on this form as so changed, revised, or supplemented should] be recirculated to persons in this state that have previously subscribed, and they shall[should] be given the opportunity to either rescind or reconfirm their investment.

(5)(9) Options, warrants and similar rights to purchase securities constitute a continuous offering of the underlying securities during the exercise period and require [required] the securities to be registered and the Form U-7 [disclosure document] to be kept continuously current throughout the exercise period through the use of the [above amendment] procedure set forth in subsection (4) of this section or by means of a supplement, as appropriate. Upon any change, revision, or supplement to the Form U-7 [disclosure document], a copy shall[must] be promptly furnished to the holders of options, warrants and similar rights.

(6) Any supplemental literature or advertisements announcing the offering shall be cleared by the department prior to use. Advertisements and announcements mentioning the offering are governed by the guidelines for "tombstone" style statements generally used in registered offerings and shall contain a statement to the effect that "this announcement does not constitute an offer to sell or the solicitation of an offer to buy" the securities and that such an offer shall be made only by an official disclosure document. Any such materials meeting the requirements of 808 KAR 10:380, Section 1(d), will be acceptable. (10) Any and all supplemental literature or advertisements announcing the offering should be filed by the company and cleared with the securities department of each state prior to publication or circulation within that state. An announcement should not be a sales motivation device and should normally contain no more than the following:

(a) The name of the company;

(b) Characterization of the company as indicated on the cover page of the disclosure document;

(c) Address and telephone number of the company;

(d) A brief indication in ten (10) words or less of the company's business or proposed business;

(e) The number and type of securities offered and the offering price per security;

(f) The name, address, and telephone number of any selling agent authorized to sell the securities;

(g) A statement that the announcement does not constitute an offer to sell or solicitation of an offer to purchase and that any such offer must be made by official disclosure document;

(h) How a copy of the disclosure document may be obtained; and

(i) The company's corporate logo. Clip and return coupons requesting a copy of the disclosure document are permitted in printed announcements. (For example, an announcement in "tombstone" format with a black lined border and using the following language would ordinarily be acceptable: "50,000 shares, common stock; \$5 per share; (logo) XYZ Corporation, a development stage database computer software company now conducting operations; Middtown, Ohio; selling agent: ABC Securities, 1234 Main Street, Middtown, Ohio (312) 123 4567. This announcement does not constitute an offer to sell or the solicitation of an offer to buy the securities, which offer may be made only by means of an official disclosure document; a copy of the disclosure document may be obtained by contacting the selling agent at the above address and telephone number." Similarly, a classified advertisement using the following language would ordinarily be acceptable: "Common stock of XYZ Corporation, a development stage database computer software company now conducting operations; Middtown, Ohio. Price \$5 per share. Total offering 50,000 shares. This announcement does not constitute an offer to sell or the solicitation of an offer to buy the securities, which offer may be made only by means of an official disclosure document. A copy of the disclosure document may be obtained by contacting the company,

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~~Industrial Park, Suite 12B, 456 Mill Road, Middtown, Ohio (321) 324-4321.")~~

~~The issuance of any but routine press releases or the granting of interviews to news media during, or at about the same time of, an offering could constitute indirect advertising, which if not precleared with the securities department would be prohibited. Any unusual news article or news program featuring the company during the period, particularly if present or future earnings, or the pending offering, are mentioned, could delay or cause suspension of the effectiveness of the registration and disrupt the offering. Consequently any such news article or news program, no matter by whom it may be initiated, should generally be discouraged during this period.]~~

ROBERT D. VANCE, Secretary
CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: March 14, 2011

FILED WITH LRC: March 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on April 22, 2011, at 10 a.m., in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by April 15, 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 2, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Simon Berry, Staff Attorney, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 232, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Simon Berry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes which companies are eligible to use Form U-7 to register securities to be sold in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements that must be met by companies seeking to use Form U-7 to register securities to be sold in Kentucky.

(d) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.500(3) authorizes the commissioner to promulgate, amend and repeal administrative regulations to accomplish the basic purposes of KRS Chapter 292.

How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that companies seeking to sell securities in Kentucky register the securities using the appropriate form.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the types of companies that are qualified to use Form U-7 and explains the procedure for using Form U-7.

(b) The necessity of the amendment to this regulation: This amendment is necessary to clarify the requirements that must be met by companies seeking to use Form U-7 to register securities to be sold in Kentucky.

(c) How the amendment conforms to the content of the authorizing statute: This amendment clarifies which companies can use Form U-7 to register securities to be sold in Kentucky as authorized by KRS 292.500(3).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Kentucky Department of Financial Institutions to insure that companies seeking to sell securities in Kentucky register the securities using the appropriate form.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All companies desiring to use Form U-7 to register securities to be sold in Kentucky. Based on past years, the Department estimates that fewer than six (6) companies will use Form U-7 to register securities to be sold in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will have to use Form U-7 to register their securities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment does not change the cost of registering securities by using Form U-7.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will understand the eligibility and procedural requirements for use of Form U-7.

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

(a) Initially: The amendment does not increase the cost to implement this administrative regulation.

(b) On a continuing basis: The amendment does not increase the cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated cover the cost.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because all companies should satisfy the same eligibility requirements to use Form U-7.

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 Financial Institutions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 292.500(3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is uncertain how much revenue this amendment will generate because the number of companies using form U-7 to register securities for sale in Kentucky varies on a yearly basis. Based on previous years, the Department estimates that less than \$6,000 of revenue will be generated in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for subsequent years? It is uncertain how much revenue this amendment will generate because the number of companies using form U-7 to register securities for sale in Kentucky varies on a yearly basis. However, based on previous years, the Department estimates that less than \$6,000 of revenue per year will be generated in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as any fees generated will cover the costs.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years as any fees generated cover the costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET
Department of Financial Institutions
Securities Division
(Amendment)**

808 KAR 10:410. Life[Viatical] settlement investments [interests].

RELATES TO: KRS 292.340, 292.370, 292.410(1)(i)
STATUTORY AUTHORITY: KRS 292.330, 292.340, 292.370, 292.410(1)(i), 292.500(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner[executive director] to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.340 provides that it is unlawful to offer or sell a security unless the security is registered under KRS Chapter 292, or the security or transaction is exempt, or the security is a covered security. This administrative regulation establishes the requirements for the registration of life[viatical] settlement investments[interests]. KRS 292.330 provides that it is unlawful for an agent to transact[transaction] business in Kentucky unless registered under KRS Chapter 292. This administrative regulation establishes the requirements for registration of life[viatical] settlement investments[interests] and for registration of an agent selling life[viatical] settlement investments[interests].

Section 1. Definitions. (1) "Life settlement contract" is defined by KRS 304.15-020(17). "Viatical settlement contract" means a:

(a) ~~Written agreement between a viator or insured and a viatical settlement provider for the sale, assignment, transfer, devise, or bequest to the viatical settlement provider by the viator or insured of all or a portion of the death benefit or ownership of a life insurance policy, for consideration that is less than the expected death benefit of the life insurance policy; or~~

(b) ~~A contract for a loan or other financial transaction secured primarily by an individual or group life insurance policy, but does not include a contract for:~~

1. ~~A loan by a life insurance company under the terms of a life insurance contract;~~

2. ~~A loan secured by the cash value of a policy;~~

3. ~~The assignment of a life insurance policy as collateral for a loan to a bank, saving bank, savings and loan association, credit union, or other licensed lending institution;~~

4. ~~The exercise by the insured of an accelerated benefits provision under the terms of the life insurance contract; or~~

5. ~~The assignment, transfer, sale, devise, or bequest of a life insurance policy, for less than the expected death benefit, by the viator to a natural person if the person does not enter into more than one (1) agreement per calendar year.]~~

(2) "Life[viatical] settlement investments" is defined by KRS 292.310(2).

(3) "Life settlement provider" is defined by KRS 304.15-020(18). [interests] means the entire interest or a fractional interest

~~in a life insurance policy or in the death benefit under a life insurance policy that is the subject of a viatical settlement contract; but does not include the initial purchase from the viator by a viatical settlement provider.~~

(3) ~~"Viatical settlement provider" means a person, other than a viator or insured, that enters into a viatical settlement contract, including a person that:~~

(a) ~~Obtains financing for the purchase, acquisition, transfer or other assignment of a viatical settlement contract, viaticated policy, or viatical settlement interest; or~~

(b) ~~Sells, assigns, transfers, pledges, hypothecates, or disposes of a viatical settlement contract, viaticated policy, or viatical settlement interest.]~~

(4) "Life[Viatical] settlement purchase agreement" means a contract or agreement entered into by an investor to purchase a life[viatical] settlement investments[interests] for the purpose of deriving an economic benefit.

(5) "Life settlement policy" ~~["Viaticated policy"]~~ means a life[viatical] insurance policy that has been acquired by a viatical settlement provider under a life[viatical] settlement contract.

(6) "Owner" is defined by KRS 304.15-020(19). ~~"Viator" means the owner of a life insurance policy insuring the life of an individual who enters or who seeks to enter a viatical settlement contract, but does not include:~~

(a) ~~A viatical settlement provider; or~~

(b) ~~A person that acquires a viaticated policy or a fractional interest in a viaticated policy from a viatical settlement provider or a subsequent investor.]~~

Section 2. Registration of Life[Viatical] Settlement Investments[interests]. (1) In order to register ~~[an investment contract known as] a life[viatical] settlement investment[interest]~~ pursuant to KRS 292.370, the following activities shall be performed:

(a) A registration statement containing the information established in Section 3 of this administrative regulation is filed with and approved by the commissioner[executive director];

(b) The filing fee of \$500 is submitted to the commissioner;

(c) Each investor is provided with the documents established in Section 4 of this administrative regulation; and

(d) A consent to service of process, if required under KRS 292.430, is filed with the commissioner[executive director].

(2) Registration under this administrative regulation shall not be available to an issuer if the issuer; a predecessor or affiliate of the issuer; a director, officer, or general partner of the issuer; a beneficial owner of ten (10) percent or more of a class of the issuer's equity securities; a promoter of the issuer presently connected with the issuer in any capacity; an underwriter of the securities to be offered; or a partner, director, or officer of an underwriter of the securities to be offered:

(a) Has filed within the last five (5) years a registration statement that is the subject of a currently effective registration stop order entered by a state securities administrator or the Securities and Exchange Commission;

(b) Has been convicted within the last ten (10) ~~[five (5)]~~ years of a:

1. Felony;

2. Criminal offense involving fraud or deceit; or

3. Criminal offense in connection with the offer, purchase or sale of a security;

(c) Is currently subject to a state or federal administrative enforcement order entered within the last five (5) years finding fraud or deceit in connection with the purchase or sale of a security; or

(d) Is currently subject to an order, judgment or decree of a court of competent jurisdiction entered within the last five (5) years, temporarily, preliminarily, or permanently restricting or enjoining the subject of the order from engaging in or continuing to engage in a conduct or practice involving fraud or deceit in connection with the purchase or sale of a security.

(3) Upon termination of the effective period of a registration statement filed under subsection (1) of this section, or prior to renewal of a registration statement, the issuer shall file a sales report indicating the aggregate sales price of securities sold in Kentucky during the effective period of the registration statement.

Section 3. Filing Requirements - Registration Statement. (1) The registration statement required under Section 2(1)(a) of this administrative regulation shall contain the following information:

(a) The name, address, and telephone number of the issuer, and the name of the contact person of the issuer;

(b) The articles of incorporation of the issuer, if a corporation or similar organized documents for other business organizations;

(c) The name and address of each director and officer of the issuer along with the person's principal occupation for the past five (5) years;

(d) A general description of the program and securities offered by the issuer, but not including details of specific life settlement policies or life settlement contracts;

(e) A description of the nature and amount of commissions, finders' fees, or other remuneration paid directly or indirectly for soliciting a sale of a life settlement in Kentucky;

(f) The issuer's most recent audited income and expense statement and balance sheet;

(g) A blank copy of the Life Settlement Disclosure Document Parts A and B to be furnished under Section 4 of this administrative regulation to an investor;

(h) A copy of all offering materials including any prospectus, pamphlet, form letter, advertisement, or other sales literature used or intended to be used in connection with the offer or sale of a life settlement investment; and

(i) A statement indicating the procedures that the agents of the issuer will use to determine the suitability of the investment for an investor and a copy of any documents used to determine suitability.

(2) The issuer shall promptly amend its registration statement if any of the information becomes inaccurate or incomplete in any material respect.

(3) The effective period of a registration statement filed under this administrative regulation shall be established pursuant to KRS 292.380 (6).

(4) The information and documents required under KRS 292.370(2)(a) through (q) shall be omitted from a registration statement filed pursuant to this administrative regulation unless otherwise required in this administrative regulation.

(5) The commissioner may deny, suspend, or revoke a registration pursuant to KRS 292.390.

Section 4. Disclosure Requirements for Sale of Life Settlement Investments. (1) The following documents shall be provided to an investor in connection with the sale of an investment contract known as a life settlement investment:

(a) At least forty-eight (48) hours prior to the time a prospective investor executes a life settlement purchase agreement, the prospective investor shall receive a completed Life Settlement Disclosure Document Part A equivalent to Kentucky Form 10:410A.

(b) On or before the date when the investor is presented with a specific life settlement investment under an executed life settlement purchase agreement, the investor shall receive a completed Life Settlement Disclosure Document Part B equivalent to Kentucky Form 10:410B.

(2) The completed Life Settlement Disclosure Document Part A and B given to an investor shall reasonably conform to the formatting of Kentucky Forms 10:410A and 10:410B with respect to font size, boldface type, and line spacing.

Section 5. Rescission. (1) Investor's right of rescission.

(a) An investor shall have the right to rescind a life settlement purchase agreement at any time until ten (10) days after the investor executes a life settlement purchase agreement.

(b) A rescission by an investor under paragraph (a) of this subsection shall be sufficient if addressed to the entity designated in the Life Settlement Disclosure Document Part B to receive the notice and the notice is either postmarked or received by the entity within ten (10) days after the investor executes a life settlement purchase agreement.

(2) Required offer of rescission.

(a) Within ninety (90) days after the execution of a life settlement purchase agreement by an investor, the issuer shall make an offer of rescission to the investor if, during that period, the issuer has not identified a specific life settlement contract that is suitable for the investor and has not delivered a completed Life Settlement Disclosure Document Part B to the investor.

(b) The issuer shall notify the investor of the offer of rescission on Kentucky Form 10:410 or its equivalent. The notice of the offer of rescission shall reasonably conform to the formatting of Kentucky Forms 10:410 with respect to font size, boldface type, and line spacing.

(c) An acceptance by an investor of an offer of rescission shall be valid if the acceptance is either postmarked or received by the entity designated in the offer within ten (10) days after the investor receives the offer.

Section 6. Agent Registration. An agent of an issuer of an investment contract known as a life settlement investment shall be registered pursuant to KRS 292.331[292.330] as an agent of the issuer and shall submit a completed Form U-4 as incorporated by reference in 808 KAR 10:010 to the commissioner. The agent shall also:

(1) Pass the appropriate examination, which shall be one (1) of the following Financial Industry Regulatory Authority ("FINRA") examinations: Series 1, 2, 6, 7, 11, 17, 22, 24, 26, 39, 40, 52, 53, 62, or 79; and

(2) Pass the North American Securities Administrators Association ("NASAA") Series 63 or Series 66 examination, along with proof of passing one (1) of the following examinations administered by the National Association of Securities Dealers:

(1) The Series 63 Uniform Securities Law Examination; or
(2) The Series 66 Uniform Combined State Law Examination.

Section 7. Waiver of Life Settlement Investment Requirements. Upon the request of an issuer, the commissioner may by order waive a requirement of this administrative regulation if the commissioner determines the waiver to be in the public interest and that the requirement to be waived is not necessary for protection of investors. The issuer bears the burden of proof to satisfy the commissioner that the waiver is in the public interest and that the requirement to be waived is not necessary for protection of investors.

Section 8. Availability of KRS 292.410(1)(i) for Life Settlement Investments. An issuer may rely on the exemption provided in KRS 292.410(1)(i) for the offer or sale of a life settlement investment if the issuer:

(1) Otherwise meets the conditions and requirements of KRS 292.410(1)(i); and

(2) Prior to any sale in Kentucky, in reliance on this exemption, the issuer files with the commissioner a claim of exemption containing the information established in Section 3(1) of this administrative regulation.

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

(a) Form 10:410A (November 2010 ~~February 2004~~ edition), Life Settlement Disclosure Document Part A;

(b) Form 10:410B (November 2010 ~~February 2004~~), Life Settlement Disclosure Document Part B; and

(c) Form 10:410 (November 2010 ~~December 2000~~ edition), Offer of Rescission - Life Settlement Investment.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: March 14, 2011

FILED WITH LRC: March 15, 2011 at 11 a.m.

VOLUME 37, NUMBER 10 – APRIL 1, 2011

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011, at 10 a.m., in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by April 15, 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 2, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Simon Berry, Staff Attorney, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 232, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Simon Berry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure to register life settlement investments to be sold in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to insure that the sale of a life settlement investment is done in accordance with KRS Chapter 292.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.500(3) authorizes the commissioner to promulgate, amend and repeal administrative regulations to accomplish the basic purposes of KRS Chapter 292.

(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 statute by establishing the procedure to be followed by sellers of life settlement investments.

(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 defined terms to comply with recent legislative changes made to KRS Chapter 292 and Chapter 304.

(b) The necessity of the amendment to this regulation: This amendment is necessary to accurately reflect the defined terms set forth in KRS Chapter 292 and Chapter 304.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute because it amends the administrative regulation to incorporate the correct defined terms set forth in KRS Chapter 292 and Chapter 304.

(d) How the amendment will assist in the effective administration of the statutes: This amendment makes the administrative regulation accurately reflect the defined terms set forth in KRS Chapters 292 and 304.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons selling life settlement investments in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will not have to undertake any new activities as a result of the amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will comply with the registration requirements for the sale of life settlement investments in Kentucky.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated cover the cost.

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

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

TIERING: Is tiering applied? Tiering is not applied because all persons desiring to sell life settlement investments in Kentucky should be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Financial Institutions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 292.500(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 amendment will not impact revenues or expenditures.

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

(c) How much will it cost to administer this program for the first year? There will be no additional cost as any fees generated will cover the costs.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years as any fees generated cover the costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Financial Institutions Securities Division (Amendment)

808 KAR 10:440. Examples of dishonest or unethical practice for broker-dealers and agents.

RELATES TO: KRS 292.337(2)(h)[~~292.330(13)(a)7~~]

STATUTORY AUTHORITY: KRS 292.336(5), (6) [~~292.330(12)(e)~~], 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner of the Department of Financial Institutions to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.336(5) and (6) [~~292.330(12)(e) and (f)~~] authorize the commissioner to promulgate administrative regulations prohibiting unreasonable charges, profits, commissions, or other compensation for broker-dealers and agents and prescribing standards for the conduct of business by broker-dealers and agents which the commissioner finds appropriate in the public interest and for the protection of investors. This administrative regulation provides examples of dishonest and unethical practices by broker-dealers and agents and states the consequences of engaging in unacceptable conduct or practices.

Section 1. Broker-dealers shall observe high standards of commercial honor and just and equitable principles of trade in their dealings with customers and the conduct of their business. Acts and practices such as the following shall be considered contrary to these standards. Violations may result in a fine, suspension, or revocation in proportion to the seriousness of the offense, pursuant to KRS 292.337(1) [~~292.330(13)(a)~~]

(1) Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment of free credit balances reflecting completed transactions of any of its customers;

(2) Failing or refusing to furnish a customer, upon reasonable request, information to which the customer is entitled, or to timely respond to a formal written demand or complaint by a customer;

(3) Attempting to enforce a condition, stipulation, or provision against a customer in Kentucky if the result would:

(a) Leave the customer without the choice of a forum for dispute resolution in the state of Kentucky; or

(b) Limit the timeliness of an action to a period less than that established in KRS 292.480;

(4) Failing to segregate a customer's securities held in safekeeping;

(5) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission;

(6) Charging unreasonable and inequitable fees for services performed, such as:

(a) Collection of monies due for principal;

(b) Dividends or transfer of securities;

(c) Appraisals;

(d) Safekeeping; or

(e) Custody of securities and other services related to its securities business;

(7) Offering to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell, as the case may be, at the price and under the conditions as are stated when the offer is made;

(8) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom the broker-dealer is acting or with whom the broker-dealer is associated in the distribution, or any person controlled by, controlling, or under common control with the broker-dealer;

(9) Failing to disclose in writing that the broker-dealer is controlled by, controls, is affiliated with, or is under common control with the issuer of any security, the existence of this control before entering into any binding contract with or for a customer for the purchase or sale of the security;

(10) Failing to make a bona fide public offering of all the securities allotted to the broker-dealer for distribution, whether acquired directly as an underwriter or a selling group member or indirectly from an entity participating in the distribution as an underwriter or selling group member;

(11) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(12) Switching, churning, overtrading, or reloading of a security in a customer's account for the purpose of accumulating or increasing a commission;

(13) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon a reasonable [~~reasonably~~] inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(14) Failing to furnish to a customer purchasing securities in an offering, no later than the due date of confirmation of the transaction, either a formal prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

(15) Participating in the solicitation or offer for sale of a security without the use of an offering document [~~documents~~] or prospectus, if required, or making a statement contrary to or inconsistent with disclosure contained in the offering document or prospectus;

(16) Making a false, misleading, deceptive, or exaggerated representation or prediction in the solicitation or sale of a security, including:

(a) That the security will be resold or repurchased;

(b) That the security will be listed or traded on an exchange or established market;

(c) That the security will result in an assured, immediate or material increase in value, future market price or return on an investment;

(d) That there is a guarantee against risk of loss; or

(e) Any statement with respect to an issuer's financial condition, anticipated earnings, potential growth or success not supportable by information in the offering document or prospectus;

(17) Engaging or aiding in boiler room operations such as use of high pressure tactics to promote a speculative offering or promotion of a security in an intensive campaign in which the prospective purchaser is encouraged to make a hasty decision to buy a security irrespective of the purchaser's investment needs, objectives, or understanding of the security being offered;

(18) Executing a transaction on behalf of a customer without authorization to do so;

(19) Exercising any discretionary power effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the executing of orders;

(20) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement;

(21) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(22) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design or contrivance, which may include any of the following:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any [~~the~~] security, that has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; except, this subsection shall not prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others;

(23) Guaranteeing a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer;

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(24) Publishing or circulating, or causing the publication or circulation of, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless the broker-dealer reasonably believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for any security, unless the broker-dealer reasonably believes that the quotation represents a bona fide bid or offer;

(25) Using any advertising or conducting any sales practice in a deceptive or misleading manner;

(26) Entering into an agreement for a concession, discount, commission, or allowance as consideration for a service in connection with the distribution or sale of a security in Kentucky with a broker-dealer, agent, investment adviser, or investment adviser representative who is not either:

(a) Registered in Kentucky; or

(b) Exempted from the registration requirements for conducting a securities business in Kentucky;

(27) Lying to or otherwise misleading representatives of the Department of Financial Institutions conducting an authorized examination or investigation;

(28) Failing to make requested records available to or otherwise impeding a representative of the Department of Financial Institutions conducting an authorized examination or investigation;

(29) Failing to respond within the specified time period to a written request from an authorized representative of the Department of Financial Institutions for ~~information~~:

(a) Information

(b) An explanation of practices or procedures;

~~(c)(b)~~ A response to a complaint filed with the Department of Financial Institutions; or

~~(d)(e)~~ A response to a written statement of findings from an examination; and

(30) Committing any act involving a customer, a customer's account, or any business records which would constitute a criminal offense.

Section 2. Broker-dealer agents shall observe high standards of commercial honor and just and equitable principles of trade in their dealings with customers. The following acts and practices are considered contrary to these standards. Violations may result in a fine, suspension, or revocation in proportion to the seriousness of the offense, pursuant to KRS 292.337(1) ~~[292.330(13)(a)]~~:

(1) Sharing directly or indirectly in profits or losses in the account of a customer without the written authorization of the customer and the broker-dealer which the agent represents;

(2) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

(3) Effecting securities transactions not recorded on the regular books and records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(4) Engaging in the practice of lending to or borrowing from a customer either money or securities;

(5) Acting as custodian of a customer's money, securities, or an executed stock power; and

(6) Engaging in conduct specified in Section 1(11) through ~~(e)~~ (30) of this administrative regulation.

Section 3. Issuer agents shall observe high standards of commercial honor and just and equitable principles of trade in their dealings with customers. The following acts and practices are considered contrary to these standards. Violations may result in a fine, suspension, or revocation in proportion to the seriousness of the offense, pursuant to KRS 292.337(1) ~~[292.330(13)(a)]~~:

(1) Engaging in conduct specified in Section 1(2), (13), (15) through ~~(e)~~ (18), or (25) through ~~(e)~~ (30) of this administrative regulation; or ~~(f)~~

(2) Engaging in conduct specified in Section 2(3) or (4).

Section 4. The commissioner may determine that an activity not included in the examples identified in Sections 1 through 3 of

this administrative regulation constitutes a dishonest or unethical practice if the activity is similar to an enumerated activity.

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: March 14, 2011

FILED WITH LRC: March 15, 2011, at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011, at 10 a.m., EST, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by April 15, 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 2, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Simon Berry, Staff Attorney, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 232, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Simon Berry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides examples of dishonest and unethical practices by broker-dealers and agents.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards of conduct by broker-dealers and agents.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.336(5) and (6) authorizes the commissioner to promulgate administrative prescribing rules of conduct for broker-dealers including the prohibition of unreasonable charges. KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 292.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in protecting the public by establishing standards of conduct for broker-dealers and agents.

(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 reflects recent legislative changes to the statutes referenced in the administrative regulation and clarifies the items that the Department of Financial Institutions may request from a broker-dealer or agent.

(b) The necessity of the amendment to this regulation: This amendment is necessary to provide clarity to broker-dealers and agents regarding their standard of conduct.

(c) How the amendment conforms to the content of the authorizing statute: This amendment relates to the standards of conduct of broker-dealers and agents and it updates the statutes referenced in the administrative regulation to conform with recent legislative changes to KRS Chapter 292.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in protecting the public by establishing standards of conduct by broker-dealers and agents.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All broker-dealers, broker-dealer agents, and issuer agents who are registered in Kentucky. The number of such per-

sons fluctuates on a monthly basis. Currently, there are approximately 1,652 broker-dealers, 97,046 broker-dealer agents, and 86 issuer agents.

(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 year, the regulated entity must adhere to the standards of conduct listed 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): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The broker-dealers and agents will conduct their business in accordance with applicable standards of conduct.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated cover the cost.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because the administrative regulation applies the same standard of conduct to each broker-dealer and to each agent.

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 Financial Institutions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 292.500(3) and 292.336(5) and (6).

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 amendment will not have an impact on the expenditures or annual revenue of a state or local government agency.

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

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

(c) How much will it cost to administer this program for the first year? There will be no additional cost as any fees generated will cover the costs.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years as any fees generated cover the costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Financial Institutions Securities Division (Amendment)

808 KAR 10:450. Examples of Dishonest or unethical practice for investment advisers and investment adviser representatives.

RELATES TO: KRS 292.337(2)h, 292.336(5), (6) [292.330(13)(a)-7]

STATUTORY AUTHORITY: KRS 292.336(5), (6) [292.330(12)(e)], 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner of the Department of Financial Institutions to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.336(5) and (6) [292.330(12)(e) and (f)] authorize the commissioner to promulgate administrative regulations prohibiting unreasonable charges or other compensation of investment advisers and prescribing standards for the conduct of business by investment advisers and investment adviser representatives which the commissioner finds appropriate in the public interest and for the protection of investors. This administrative regulation provides examples of dishonest and unethical practices by investment advisers and investment adviser representatives and clarifies the consequences of engaging in unacceptable conduct or practices.

Section 1. Definitions. (1) "Advertisement" means any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any other medium, that offers any one of the following:

(a) Any analysis, report, or publication concerning securities;

(b) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;

(c) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(d) Any other advisory service with regard to securities.

(2) "Investment adviser solicitor" means a person or entity that, directly or indirectly, solicits a prospective client for, or refers a prospective client to, and investment adviser.

Section 2. A person who is an investment adviser or an investment adviser representative shall be a fiduciary and shall have a duty to act primarily for the benefit of its clients. An investment adviser or investment adviser representative shall not engage, either directly or indirectly, in unethical or dishonest practices. The following acts and practices shall be considered either a breach of fiduciary duty or a dishonest and unethical practice. Violations may result in a fine, suspension, or revocation in proportion to the seriousness of the offense:

(1) Recommending to a client to whom investment advisory, management, or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser;

(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account in light of the fact that an investment adviser or investment adviser representative in these situations can directly benefit from the number of securities trans-

actions effected in a client's account;

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so;

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client;

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;

(7) Loaning money or securities to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

(8)(a) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser;

(b) Misrepresenting the nature of the advisory services being offered or fees to be charged for the service; or

(c) Omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they were made, not misleading;

(9) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact;

(10) Charging a client an unreasonable advisory fee in light of the fee charged by other investment advisers providing similar services;

(11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser, or any of its employees including:

(a) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(b) The amount of any commissions to be received for executing transactions pursuant to advice given;

(12) Failing to disclose to clients in writing all potentially conflicting divisions of loyalty in connection with a transaction and obtaining the written consent of the client to proceed with the transaction.

(a) Any transaction in which a person acts as an investment adviser for one (1) party to that transaction and in which the person (or any person controlling, controlled by, or under common control with the adviser) acts as a broker-dealer for both the advisory client and another person on the other side of the transaction is subject to this disclosure and consent requirement and the client shall be provided a written confirmation for each such transaction which contains the following:

1. A statement of the nature of the transaction;

2. The date of the transaction;

3. An offer to furnish, upon written request, the time of the transaction; and

4. The source and amount of any other remuneration the adviser received or will receive in connection with the transaction. If the investment adviser is not participating in a distribution when the advisory client is purchasing the security or a tender offer when the advisory client is selling the security, the confirmation may state that the investment adviser has been or will be receiving other remuneration and that the source and the amount of such remuneration will be furnished upon the client's written request.

(b) The disclosure and consent requirements of paragraph (a) of this subsection apply to each such contemplated transaction and shall be complied with every time such a transaction occurs unless the adviser complies with the provisions of subsection (12)(c).

(c) If the disclosure and consent requirements of paragraph (a) of this subsection prospectively cover more than one transaction, the adviser is responsible for ensuring that the client receives at least annually, with or as part of a written statement or summary of the client's account, written disclosure of the following:

1. The total number of such transactions since the date of the last statement or summary;

2. The total amount of all commissions or other remuneration the adviser received or will receive in connection with the transactions; and

3. A conspicuous statement that the client may revoke the written consent previously given by providing written notice of such

revocation to the adviser.

(d) Any transaction in which the same adviser recommended the transaction to both a seller and a purchaser of a security is a dishonest or unethical practice regardless of any disclosure and consent.

(13) Failing to disclose to clients in writing before any advice is rendered any material fact with respect to the financial and disciplinary information required to be disclosed by 17 C.F.R. 275.206(4)-4 (SEC Rule 206(4)4);

(14)(43) Guaranteeing a client that a specific result will be achieved with advice which will be rendered;

(15)(44) Using any advertisement that does any of the following:

(a) Refers to any testimonial of any kind concerning any advice, analysis, report, or other service rendered by the adviser or representative;

(b) Refers to past specific recommendations of the adviser or representative that were or would have been profitable, except that an adviser or representative may furnish or offer to furnish a list of all recommendations made by the adviser or representative within the immediately preceding period of not less than one year if the list also includes the following:

1. The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security; and

2. A legend on the first page in prominent print or type that states that recommendations made in the future may not be as profitable as the securities on the list;

(c) Represents that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions without prominently disclosing in the advertisement the limitations and the difficulties with respect to its use;

(d) Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis or other service actually is or will be furnished free and without any direct or indirect condition or obligation;

(e) Represents that the Department of Financial Institutions has approved any advertisement; or

(f) Contains any untrue statement or omission of a material fact, or that is otherwise false or misleading;

(16)(45) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to in writing by the client;

(17)(46) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, if the investment adviser has custody or possession of the securities or funds when the adviser's action is subject to and does not comply with the provisions of 808 KAR 10:020 relating to the custody;

(18)(47) Entering into, extending, or renewing an advisory contract unless the contract is in writing and discloses the following:

(a) The nature of the advisory services to be provided;

(b) The time period that the contract remains in effect;

(c) The advisory fee and the formula for computing the fee;

(d) The amount of the prepaid fee to be returned in the event of contract termination or nonperformance;

(e) Whether the contract grants discretionary power to the adviser and, if so, the terms of the discretionary power;

(f) Whether the contract grants custody of client funds to the adviser and, if so, the terms of the custody; and

(g) That the adviser shall not assign the contract without the prior written consent of the client;

(19)(48) Including in an advisory contract any condition, stipulation, or provision binding any client to waive compliance with any provision of the [Kentucky] Securities Act of Kentucky, KRS Chapter 292, 808 Chapter 10, or of the Investment Advisors Act of 1940, 15 U.S.C. 80b;

(20)(49) Paying compensation, directly or indirectly, to an investment adviser solicitor unless the investment adviser makes

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the payment in accordance with the requirements of 17 C.F.R. 275.206(4)-3) (SEC Rule 206(4)-3);

~~(21)~~~~(20)~~ Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative contrary to the provisions of Section 206(4) of the Investment Advisors Act of 1940, whether or not the investment adviser is registered or required to be registered under Section 203 of the Act;

~~(22)~~~~(24)~~ Failing to provide all material information with respect to any dealings with or recommendations to any advisory client in violation of KRS 292.320;

~~(23)~~~~(22)~~ Committing any act involving a client, the client's assets, or any business records which would constitute a criminal offense;

~~(24)~~~~(23)~~ Lying to or otherwise misleading a representative of the Department of Financial Institutions conducting an authorized examination or investigation;

~~(25)~~~~(24)~~ Failing to make requested records available to or otherwise impeding a representative of the Department of Financial Institutions conducting an authorized examination or investigation; and

~~(26)~~~~(25)~~ Failing to respond in a timely manner to a written request from an authorized representative of the Department of Financial Institutions for [information];

(a) Information;

(b) An explanation of practices or procedures;

~~(c)~~~~(b)~~ A response to a complaint filed with the department; or

~~(d)~~~~(c)~~ A response to a written statement of findings from an examination.

Section 3. The provisions of this administrative regulation shall apply to federally covered advisers operating in Kentucky to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Market Improvement Act of 1996, 15 U.S.C. 78, and the Investment Advisors Act of 1940, 15 U.S.C. 80b.

Section 4. The commissioner may determine that an activity not included in the examples identified in Section 2 of this administrative regulation constitutes a dishonest or unethical practice if the activity is similar to an enumerated activity.

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: March 14, 2011

FILED WITH LRC: March 15, 2011, at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011, at 10 a.m., EST, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by April 15, 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 2, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Simon Berry, Staff Attorney, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 232, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Simon Berry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides examples of dishonest and unethical prac-

tices by investment advisers and investment adviser representatives.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards of conduct by investment advisers and investment adviser representatives.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.336(6) authorizes the commissioner to prescribe rules for the conduct of business by investment advisers. KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 292.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in protecting the public by establishing standards of conduct for investment advisers and investment adviser representatives.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes a new act that constitutes a breach of fiduciary duty or a dishonest and unethical practice and clarifies the items that the Department of Financial Institutions may request from investment advisers and investment adviser representatives.

(b) The necessity of the amendment to this regulation: This amendment is necessary to provide clarity to investment advisers and investment adviser representatives regarding their standard of conduct.

(c) How the amendment conforms to the content of the authorizing statute: This amendment prescribes rules of conduct for investment advisers in accordance with KRS 292.336(6).

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in protecting the public by establishing standards of conduct by investment advisers and investment adviser representatives.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All investment advisers and investment adviser representatives registered in Kentucky. The number of such person fluctuates on a monthly basis. Currently, there are approximately 1,127 investment advisers and 4,100 investment adviser representatives.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities must adhere to the standards of conduct listed 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): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The investment advisers and investment adviser representatives will conduct their business in accordance with applicable standards of conduct.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated cover the cost.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the administrative regulation requires all investment advisers and investment adviser representatives to adhere to the same standard

of conduct.

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 Financial Institutions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 292.500(3) and 292.336(5) and (6).

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 amendment will not have an impact on 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? There will be no additional cost as any fees generated will cover the costs.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years as any fees generated cover the costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, MARCH 15, 2011

**GENERAL GOVERNMENT CABINET
Board of Interpreters for the Deaf and Hard of Hearing
(New Administrative Regulation)**

201 KAR 39:010. Definitions.

RELATES TO: KRS 309.300(4), KRS 309.301

STATUTORY AUTHORITY: KRS 309.304(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) requires the Kentucky Board of Interpreters for the Deaf and Hard of Hearing to promulgate administrative regulations pertaining to the practice and licensure of interpreters, interpreter intern or student in training. This administrative regulation sets forth the definition of terms and phrases which will be used by the board in enforcing and interpreting the provisions of KRS Chapter 13A and the administrative regulations.

Section 1. Interpreting Tracks. (1) "Generalist Track" refers to individuals qualified to interpret in a broad range of assignments, including but not limited to community and educational settings.

(2) "Educational Track" refers to individuals qualified to interpret in P-12 educational settings only.

(3) "Deaf Specialist Track" refers to individuals who are deaf or hard of hearing and are qualified to interpret in a broad range of assignments, including but not limited to community and educational settings to provide enhanced language facilitation.

Section 2. Organizations and Individuals. (1) "NAD" means the National Association of the Deaf.

(2) "RID" means Registry of Interpreters for the Deaf, Inc.

(3) "TECUnit" means the National Training, Evaluation and Certification Unit.

(4) "Deaf Interpreter" means an individual who is deaf or hard of hearing holding temporary licensure, and is qualified for a broad range of assignments where an interpreter who is deaf or hard of hearing would be beneficial.

(5) "Board-approved mentor" means:

(a) A licensed interpreter in this state or the resident of another state who can meet the requirements for licensure in this state as set forth in KRS Chapter 309 and the administrative regulations promulgated pursuant thereto;

(b) Who holds a valid certificate meeting the requirements for full licensure for a minimum of three (3) years prior to serving as a mentor; and

(c) Who has completed forty-five (45) hours of continuing education since obtaining certification.

(6) "Case manager" means a member of the board appointed by the chair of the board to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint.

(7) "Chair" means the chair or vice-chair of the board.

(8) "Complaint screening committee" means a committee consisting of three (3) persons on the board appointed by the chairman of the board to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint or recommend action to the board.

(9) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint.

Section 3. Certifications and Assessments. (1) National Interpreter Certification (NIC). Individuals who achieve the NIC level have passed the NIC Knowledge exam as administered by RID. They have scored within the standard range on the interview and performance portions of the test.

(2) National Interpreter Certification (NIC Advanced). Individuals who achieved the NIC Advanced level have passed the NIC Knowledge exam as administered by RID; scored within the standard range on the interview portion; and scored within the high range on the performance portion of the test.

(3) National Interpreter Certification Master (NIC Master). Individuals who achieved the NIC Master level have passed the NIC Knowledge exam as administered by RID. They have scored within

the high range on both the interview and performance portions of the test.

(4) Comprehensive Skills Certificate (CSC) granted by RID. Holders of this certificate have demonstrated the ability to interpret between American Sign Language and Spoken English and to transliterate between spoken English and an English-based sign language.

(5) Certificate of Transliteration (CT) granted by RID. Holders of this certificate have demonstrated the ability to transliterate between English-based sign language and spoken English in both sign-to-voice and voice-to-sign. The transliterator's ability to interpret is not considered in this certification.

(6) Certificate of Interpretation (CI) granted by RID. Holders of this certificate have demonstrated the ability to interpret between American Sign Language and spoken English in both sign-to-voice and voice-to-sign. The interpreter's ability to transliterate is not considered in this certification.

(7) Interpreting Certificate/Transliteration Certificate (IC/TC) granted by RID. Holders of this certificate have demonstrated the ability to transliterate between English and a signed code for English and the ability to interpret between American Sign Language and spoken English.

(8) Interpretation Certificate (IC) granted by RID. Holders of this certificate have demonstrated ability to interpret between American Sign Language and spoken English/

(9) Transliteration Certificate (TC) granted by RID. Holders of this certificate have demonstrated the ability to transliterate between spoken English and a signed code for English.

(10) Master Comprehensive Skills Certificate (MCSC) granted by RID. Holders of this certificate have demonstrated a higher standard of performance than holders of the CSC. Holders of this certificate are recommended for a broad range of interpreting and transliterating assignments.

(11) Specialist Certificate: Legal(SC:L) granted by RID. Holders of this certificate have demonstrated specialized knowledge of legal settings and greater familiarity with language used in the legal system. Holders of the SC:L are recommended for a broad range of assignments in the legal setting.

(12) Specialist Certificate: Performing Arts (SC:PA) granted by RID. Holders of this certificate have demonstrated specialized knowledge in performing arts interpretation. Holders of this certificate are recommended for a broad range of assignments in the performing arts setting.

(13) Oral Transliteration Certificate (OTC) granted by RID. Holders of this certificate have demonstrated ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing and the ability to understand and repeat the message and intent of the speech and mouth movements of the person who is deaf and hard-of-hearing.

(14) Oral Interpreting Certificate, Comprehensive (OIC:C) granted by RID. Holders of this certificate have demonstrated the ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing and the ability to understand and repeat the message and intent of the speech and mouth movements of the person who is deaf or hard-of-hearing.

(15) Oral Interpreting Certificate, Spoken to Visible (OIC:S/V) granted by RID. Holders of this certificate have demonstrated the ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing.

(16) Oral Interpreting Certificate, Visible to Spoken (OIC:V/S) granted by RID. Holders of this certificate have demonstrated the ability to understand the speech and silent mouth movements of a person who is deaf or hard-of-hearing and to repeat the message for a hearing person.

(17) NAD Level V (Master). Holders of this certificate have demonstrated superior voice-to-sign skills and excellent sign-to-voice skills. Holders of this certificate are recommended for a broad range of interpreting assignments.

(18) NAD Level IV (Advanced). Holders of this certificate have demonstrated excellent voice-to-sign skills and above average sign-to-voice skills. Holders of this certificate are recommended for most situations.

(19) NAD Level III (Generalist). Holders of this certificate have demonstrated average voice-to-sign skills and good sign-to-voice skills. This individual has demonstrated the minimum competence needed to meet generally accepted interpreter standards but is not qualified for all situations.

(20) Educational Certificate: K-12 (Ed: K-12) granted by RID. Holders of this certificate have demonstrated the ability to interpret classroom content, discourse and the ability to interpret student sign language. Holders have demonstrated proficient expressive and receptive interpreting skills in all elementary and secondary school classroom settings.

(21) Education Interpreter Performance Assessment (EIPA) granted by Boys Town National Research Hospital: Holders of an EIPA assessment have demonstrated the ability to expressively interpret classroom content and discourse and the ability to receptively interpret student sign language. It is not limited to any one sign language or system. Holders are recommended to work with students who predominately use American Sign Language (ASL), Manually-Coded English (MCE) or Pidgin Sign English (PSE).

(22) Certified Deaf Interpreter (CDI) granted by RID. Holders of this certificate are interpreters who are deaf or hard of hearing and have passed comprehensive written and performance tests. Holders of this certificate are recommended for a broad range of assignments where an interpreter who is deaf or hard of hearing would be beneficial.

(23) Conditional Legal Interpreting Permit-Relay (CLIP-R) granted by RID. Holders of this conditional permit have completed a RID-recognized training program designed for interpreters and transliterators who work in legal settings and who are also deaf or hard-of-hearing. Holders of this conditional permit are recommended for a broad range of assignments in the legal setting.

(24) Reverse Skills Certificate (RSC) granted by RID: Holders of this certificate are deaf or hard of hearing and have demonstrated the ability to interpret between American Sign Language and English-based sign language or transliterate between spoken English and a signed code for English.

(25) American Sign Language Proficiency Interview (ASLPI) as administered by Gallaudet University. This assessment rates the ability to use American Sign Language grammar and vocabulary in most formal and informal conversations on social and work topics.

(26) Sign Language Proficiency Interview (SLPI) as developed by National Technical Institute for the Deaf. This assessment rates the ability to communicate expressively and receptively in a videotaped one-on-one interview/conversation with a trained interviewer.

(27) Sign Communication Proficiency Interview (SCPI) as developed by National Technical Institute for the Deaf. This assessment rates the ability to communicate expressively and receptively in a video-taped one-on-one interview/conversation with a trained interviewer.

(28) Transliteration Skills Certificate (TSC): Holders of this certificate have demonstrated skills that satisfy the TECUnit minimum standard of both knowledge and skills in cued language transliteration. Holders of this certificate are recommended for limited settings that require cued speech.

Section 4. Other Terms. (1) "One (1) continuing education hour" means sixty (60) contact minutes of participating in continuing education experiences.

(2) "Voluntary surrender" means the process by which a person who holds a license issued by the board, knowingly and willingly, returns the license to the board, forfeiting all rights and privileges associated with that license, in settlement of a disciplinary action initiated by the board.

(3) "Revoked" means the process by which the board terminates all rights and privileges associated with that license, in settlement of a disciplinary action initiated by the board.

(4) "Charge" means a specific allegation contained in a formal complaint issued by the board alleging a violation of a specified provision of KRS 309.300 to 309.319, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(4) "Complaint" means any written or videotaped allegation of misconduct by a licensed individual that might constitute a violation of KRS 309.300 to 309.319, the administrative regulations promul-

gated thereunder, or any state or federal statute regulating the practice of interpreting.

(6) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal or civil action.

(7) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

ARTIE GRASSMAN, Board Chair

APPROVED BY AGENCY: February 9, 2011

FILED WITH LRC: February 18, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011, 9 a.m. (EST), at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until at the close of business on May 2, 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: Karen Lockett, Board Administrator, Kentucky Board of Interpreters for the Deaf and Hard of Hearing, P.O. Box 1370, Frankfort, Kentucky 40602, phone (502) 564-3296 ex. 222, fax (502) 696-1923.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This defines terms for this regulatory chapter.

(b) The necessity of this administrative regulation: This defines terms for this regulatory chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This defines terms for this regulatory chapter.

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 300 full and temporarily licensed interpreters.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amend-

ment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulations will be clearer as a result of definitions in this section putting licensees on heightened notice as to all actions of the board.

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

(a) Initially: No new costs will be incurred.

(b) On a continuing basis: No new costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation established but does not change fees from their current level.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Interpreters for the Deaf and Hard of Hearing

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.304(3)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Financial Institutions Securities Division (New Administrative Regulation)

808 KAR 10:480. Books and records of firms employing issuer agents.

RELATES TO: KRS 292.336(1)(a), (b)

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.336(1)(a) requires firms employing issuer agents to make and keep books and records as prescribed by the com-

missioner. KRS 292.336(1)(b) requires all records to be preserved for three years and to be made available upon request of the commissioner. This administrative regulation establishes the books and records a firm employing issuer agents must maintain.

Section 1. Every firm employing issuer agents, who are either registered or required to be registered under the provisions of KRS Chapter 292, to effect transactions in its securities shall make and keep accurate, complete, and current the following books and records relating to these securities transactions:

(1) Records that track all receipts of funds from purchasers of the securities and all disbursements of those funds. The disbursement records shall provide sufficient detail to prepare an actual "Use of Proceeds" tabular display for comparison with the proposed "Use of Proceeds" tabular display required by the Offering Document Guidelines adopted by the department in February 2006. Records shall include bank statements which keep cash receipts and disbursements related to the securities offering separate from other receipts and disbursements of the issuer;

(2) Current financial statements, prepared according to generally accepted accounting principles, for the issuer for the most recent three (3) years (or the life of the issuer if less than three (3) years). These statements need not be audited, but must be verified as true and accurate within the actual knowledge of the issuer's chief financial officer (or chief executive officer if the issuer has no specified financial officer);

(3) Employment contracts with agents, if any;

(4) For any unregistered employees of the firm who contact investors or potential investors, documentation of the manner in which the employee is compensated. If the employee is compensated by salary and bonus, include documentation of the factors used in determining the amount of the bonus;

(5) Copies of any scripts or other materials used to train agents in the selling of the securities. Copies of any such materials used to train unregistered employees who contact investors or potential investors;

(6) Copies of any scripts or other materials prepared for use by agents in discussing the securities with potential purchasers. Copies of any such materials prepared for use by unregistered employees who contact investors or potential investors;

(7) Copies of any general advertising or promotional material utilized by the issuer during the period of the offering whether or not related directly to the securities offering;

(8) Copies of any prospectus or similar offering document used in the offer or sale of the issuer's securities and, if any such document was revised during the offering period, copies of all versions of the document with notation of the dates during which each document was utilized;

(9) All material contracts related to the offering (leases, employment contracts, supplier or vendor contracts, turnkey contracts, etc.);

(10) Any professional opinion letters related to the offering (from attorneys, accountants, experts, etc.);

(11) All subscription (or other requests to purchase) materials completed by offerees;

(12) All correspondence to or from potential investors;

(13) Customer files that document contact information for all purchasers of the issuer's securities and containing copies of all correspondence either received from or sent to such purchasers. These files shall also contain any other information necessary to determine that the sales complied with all requirements of any exemptions from registration of the securities claimed by the issuer and with any other applicable regulations, including that the investment is suitable for the purchaser;

(14) A file documenting compliance with the securities laws of all relevant jurisdictions (including the Securities and Exchange Commission if the offering is across state lines) both in the offering and selling of the securities, and in the payment of compensation to the agents; and

(15) A complaint file for the offering which shall contain:

(a) Copies of any written (including electronic transmissions) complaints related to the offering of securities;

(b) A written summary of any oral complaint related to the offering with contact information for the complainant;

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- (c) Copies of any written responses to complaints; and
- (d) A written summary of the disposition of each complaint.

Section 2. All books and records required under Section 1 of this administrative regulation shall be readily available for inspection by representatives of the department upon request without notice.

Section 3. The books and records required under Section 1 of this administrative regulation shall be maintained in a readily accessible format for a period of at least three (3) years after the conclusion of the securities offering.

Section 4. Incorporation by Reference. (1) "Offering Document Guidelines", revised April 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: March 14, 2011

FILED WITH LRC: March 15, 2011, at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011, at 10 a.m., EST, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by April 15, 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 2, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Simon Berry, Staff Attorney, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 232, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Simon Berry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the books and records requirements for firms employing issuer agents.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the types of books and records a firm employing issuer agents must keep.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.500(3) authorizes the commissioner to promulgate, amend and repeal administrative regulations to accomplish the basic purposes of KRS Chapter 292.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by insuring that firms employing issuer agents maintain certain books and records and that the books and records are available for inspection by the Department of Financial Institutions.

(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 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 affects all firms employing issuer agents registered in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to undertake to comply with this administrative regulation or amendment: The entities will have to maintain certain books and records.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost cannot be estimated because it depends on the number and size of securities offerings by the entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities should have increased compliance with state and federal securities laws.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated cover the cost.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because all firms employing issuer agents should be subject to the same books and records 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 Kentucky Department of Financial Institutions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 292.500(3) and 292.336(1)(a) and (b).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not have an effect on expenditures and 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:

**PUBLIC PROTECTION CABINET
Department of Financial Institutions
Securities Division
(New Administrative Regulation)**

808 KAR 10:490. Procedures for distributing and using funds from the Securities Fraud Prosecution and Prevention Fund.

RELATES TO: KRS 292.322

STATUTORY AUTHORITY: KRS 292.322(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.322(6) requires the commissioner to promulgate administrative regulations, in consultation with the Attorney General and local prosecutors, for the use of money in the Securities Fraud Prosecution and Prevention Fund. This administrative regulation establishes the procedures for distributing and using the money from the Securities Fraud Prosecution and Prevention Fund.

Section 1. Definitions. (1) "Department" is defined by KRS 292.310(7);

(2) "Commissioner" is defined by KRS 292.310(4);

(3) "Securities Fraud Prosecution and Prevention Fund" means the account established under KRS 292.322(1); and

(4) "Outside agency" means:

(a) The office of the Kentucky Attorney General;

(b) The office of the United States Attorney;

(c) The office of any county or commonwealth attorney in Kentucky; or

(d) Any other state or federal regulatory or criminal enforcement agency.

Section 2. Authorization for Use of Funds. (1) The commissioner is authorized to disburse funds held in the Securities Fraud Prosecution and Prevention Fund to cover the expenses of the department or an outside agency for the purposes of prosecuting or aiding the prosecution of fraudulent securities-related activities, whether arising from an investigation initiated or conducted by the department or from the independent investigation of an outside agency. In addition, the funds may be used to cover the expenses for training related to the prevention, detection, or investigation of securities-related fraud, and consumer education aimed at preventing victimization by securities-related fraud.

(2) Authorized expenses may relate to the following:

(a) Training and equipment;

(b) Investigation;

(c) Trial preparation and trial, including discovery;

(d) Witness expenses;

(e) Travel expenses;

(f) Sentencing;

(g) Appeal; or

(h) Consumer education initiatives.

Section 3. Application and Approval for Disbursement of Funds. (1) The department may utilize any of the following for application, approval, and disbursement of funds to an outside agency:

(a) A written agreement or memorandum of understanding with an outside agency covering actual expenses for a set period of time or the actual expenses for a particular prosecution, investigation, training, or initiative. Each agreement or memorandum of understanding shall be signed by the commissioner and an authorized representative of the outside agency and shall identify:

1. The effective period;

2. The expenses to be covered;

3. The dollar limit, if any; and

4. The manner and form of billing expenses and the process for disbursement of funds.

(b) A written application submitted to the department for payment of prosecution-related or other authorized expenses shall include the following information:

1. The agency applicant name, address, and contact information;

2. A detailed description and estimated amount of the ex-

penses sought to be covered, or if expenses have already been incurred, proof of incurrence of such expenses;

3. A detailed description of the cases, persons, and crimes being considered for prosecution, if applicable; and

4. A detailed description of the expenses, training, or initiative being proposed or sought for reimbursement.

(c) For funds sought to be utilized for the purposes set forth in Section 2 of this administrative regulation, the commissioner shall maintain an accounting and memorandum of all these expenditures which shall include the information required under paragraph (b) of this subsection.

(2) The commissioner shall approve or deny the application for funds in writing. The approval shall contain the terms of disbursement including the maximum amount to be reimbursed, the billing process to be implemented, and reporting requirements for the disbursement of funds.

(3) A completed invoice or voucher in a form acceptable to the commissioner shall be submitted for all expenses for which payment or reimbursement from the account is sought.

Section 4. Funding Criteria. Allocation of funds by the commissioner to other agencies shall be based on funds available in the account established under the provisions of KRS 292.322 and the following criteria:

(1) The likelihood that any investigation or inquiry will lead to criminal prosecution;

(2) Whether criminal prosecution is imminent; or

(3) A demonstration of need for funds to accomplish the purposes set forth in Section 2 of this administrative regulation.

Section 5. Disbursement Limitation. The commissioner is not required to disburse any funds unless the Securities Fraud Prosecution and Prevention Fund contains sufficient funds to cover the agreed disbursements. The commissioner and the department shall not be required to make disbursements from the department's own operating funds.

Section 6. Confidentiality of Information Provided in Funding Applications. The commissioner shall deem confidential and withhold from public inspection all information provided by outside agencies that:

(1) Is furnished to the department on the express condition that the information remain confidential; or

(2) The commissioner deems necessary to withhold to protect the public welfare by avoiding the premature or unwarranted disclosure of information concerning any criminal investigation, prosecution, or litigation.

(3) This is to certify that the persons signing below have reviewed or approved this administrative regulation, prior to its filing by the Department of Financial Institutions with the Legislative Research Commission as required by KRS 13A.220(6)(b).

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: March 14, 2011

FILED WITH LRC: March 15, 2011, at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2011, at 10 a.m., EST, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by April 15, 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 2, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

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CONTACT PERSON: Simon Berry, Staff Attorney, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 232, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Simon Berry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for distributing and using money from the Securities Fraud Prosecution and Prevention Fund.

(b) The necessity of this administrative regulation: KRS 292.322 requires the Department of Financial Institutions to establish procedures for distributing and using the funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.322(6) requires the Commissioner to promulgate administrative regulations for the use of the funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in ensuring that the funds from the Securities Fraud Prosecution and Prevention Fund are used to detect, prevent, and prosecute securities fraud in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: N/A

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

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

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation only establishes the procedures for administering the fund and, therefore, it does not affect individuals, businesses, organizations, or state and local governments.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fines and contributions generated by the Department of Financial Institutions, Division of Securities.

(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 implementation of this regulation will not require an increase in fees or funding.

(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 applicable. All entities requesting disbursement of funds from the Securities Fraud Prosecution and Prevention Account should use the same process.

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 Financial Institutions, the office of the Kentucky Attorney General, the office of any county or commonwealth attorney in Kentucky, and applicable state regulatory and criminal enforcement agencies.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 292.322.

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 or decrease 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? There will be no cost to administer this regulation the first year. Fines imposed by the Department will be used as the source of funding.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this regulation in subsequent years. Fines imposed by the Department will be used as the source of funding.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of MARCH 8, 2011

Call to Order and Roll Call

The March meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, March 8, 2011, at 10:00 a.m., in Room 149 of the Capitol Annex. Representative Johnny Bell, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the February 2011 meeting were approved.

Present were:

Members: Senators Joe Bowen, David Givens, and Joey Pendleton, and Representatives Johnny Bell, and Alice Forgy Kerr.

LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, and Laura Napier.

Guests: Amy Andrews, Amy Barker, Van Ingram, Heather Wainscott, Office of Drug Control Policy; Robert Brown, Alicia Sneed, Education Professional Standards Board; Beau Barnes, Kentucky Teachers' Retirement System; Michael Burleson, Board of Pharmacy; Brian Bishop, Board of Dentistry; Nathan Goldman, Board of Nursing; Larry Disney, Jim Grawe; Kentucky Real Estate Appraisers Board; Mark Cramer, Margaret Everson, Mark Mangot, Karen Waldrop, Department of Fish and Wildlife; John Cummings, Verman Winburn, Parole Board; Mark Guilfoil, Greg Lamb, Timothy West, Kentucky Horse Racing Commission; Carrie Banahan, Mary Begley, Allen J. Brenzel, Virginia Carrington, Elizabeth Caywood, Stephanie Brammer-Barnes, Bob Nowell, Stuart Owen, Cabinet for Health and Family Services; Bill Doll, Kentucky Medical Association; Michelle Sanborn and Caitlin Mudd, Brooklawn Child and Family Services.

The Administrative Regulation Review Subcommittee met on Tuesday, March 8, 2011, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

JUSTICE AND PUBLIC SAFETY CABINET: Office of Drug Control Policy: Kentucky Agency for Substance Abuse Policy

10 KAR 7:011. Repeal of 10 KAR 7:010, 10 KAR 7:020. Amy Barker, assistant general counsel, and Van Ingram, executive director, represented the agency.

EDUCATION PROFESSIONAL STANDARDS BOARD: Educator Preparation

16 KAR 5:010. Standards for accreditation of educator preparation units and approval of programs. Robert Brown, director, Division of Professional Learning and Assessment, and Alicia A. Sneed, director, Division of Legal Services, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 26 to correct a statutory citation; and (2) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 12, 13, 17, 20, 21, 22, 23, and 27 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Assessment

16 KAR 6:010. Examination prerequisites for teacher certification.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Kentucky Teachers' Retirement System: General Rules

102 KAR 1:175. Investment policies. Beau Barnes, deputy executive secretary of operations and general counsel, represented the system.

In response to questions by Senator Givens, Mr. Barnes stated that the allowable percentage of investment in foreign stock trust

funds was being raised from fifteen (15) to thirty (30) percent, the allowable percentage of investment in other investment categories was being raised from ten (10) to fifteen (15) percent, and investment parameters for bonds were being lowered from the top two (2) average ratings to the top four (4) average ratings. Lowering the bond rating requirements added flexibility to the bond portfolio and allowed for investment in more corporate, rather than primarily government, bonds. The changes were initiated by Kentucky, not by federal revisions, to address recent market changes.

In response to questions by Co-Chair Bowen, Mr. Barnes stated that internal and external finance managers recommended the amendments. Stakeholders had not expressed opposition to the changes, and the changes were commensurate with those of other pension programs this size in other states.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 4 to provide criteria for board approval for investing in bullion, stamps, rare coins, or collectibles. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Pharmacy: Board

201 KAR 2:015. Continuing education. Michael Burleson, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 4 and 5 to correct minor drafting errors. Without objection, and with agreement of the agency, the amendments were approved.

Board of Dentistry: Board

201 KAR 8:571. Registration of dental assistants. Brian Bishop, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to make formatting changes; (2) to amend the STATUTORY AUTHORITY paragraph to insert a statutory citation; and (3) to amend Sections 2 through 6 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.

201 KAR 8:581. Charity dental practices.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 2 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing: Board

201 KAR 20:056. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization. Nathan Goldman, general counsel, represented the board.

Kentucky Real Estate Appraisers Board: Board

201 KAR 30:050. Examination and experience requirement. Larry Disney, executive director, and James J. Grawe, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 30:070. Grievances.

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201 KAR 30:125. Continuing education for appraisers.

201 KAR 30:150. Education provider approval.

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.

201 KAR 30:190. Educational requirements for certification.

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

301 KAR 2:132. Elk depredation permits, landowner cooperation permits, and quota hunts. Margaret Everson, assistant attorney general; Mark Mangeot, legislative liaison; and Karen Waldrip, wildlife division director, represented the department.

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. Amy Barker, assistant general counsel, and Van Ingram, executive director, represented the office.

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. John Cummings, staff attorney, and Verman Winburn, chairman, represented the board.

In response to questions by Co-Chair Bell, Mr. Cummings stated that a violation of terms of post-incarceration supervision subjected the violator to the possibility of being re-incarcerated. Because sex offender sentences tended to be shorter prison sentences, this administrative regulation insured treatment after re-entry into society.

In response to a question by Co-Chair Bowen, Mr. Winburn stated that most treatment facilities were in metropolitan areas, and it potentially could be a burden to arrange transportation to the treatment facility. Mr. Cummings stated that the Department of Corrections oversaw the location of the various programs.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 and 2 to: (a) conform to HB 463 from this session of the General Assembly; (b) clarify board procedures for preliminary revocation hearings, warrants, and final revocation hearings; and (c) include provisions on reconsideration and modification of revocation decisions; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Thoroughbred Racing

810 KAR 1:012. Horses. Greg Lamb, supervisor of parimutuel wagering, and Tim West, assistant general counsel, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend Section 14 to incorporate by reference the standard governing microchips used for horse identification; and (2) to amend Sections 2, 6, 11, 13, and 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:027. Entries, subscriptions, and declarations.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph

and Sections 3, 5, 7, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:140. Calculation of payouts and distribution of pools.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 17 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: State Health Plan

900 KAR 5:020 & E. State health plan for facilities and services. Carrie Banahan, executive director, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to correct the title and edition date of the material incorporated by reference; and (2) to amend the material incorporated by reference to: (a) correct typographical errors; and (b) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Certificate of Need

900 KAR 6:060 & E. Timetable for submission of Certificate of Need applications.

900 KAR 6:125. Certificate of Need annual surveys, and registration requirements for new Magnetic Resonance Imaging units.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4, 6 through 8, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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. Mary Begley, inspector general, and Allen J. Brenzel, M.D., medical director, Department for Behavioral Health, Development and Intellectual Disabilities, represented the division. Caitlin Mudd, staff, Brooklawn Child and Family Services, and Michelle Sanborn, interim president, Children's Alliance, appeared in support of these administrative regulations.

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 26 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 20:330 & E. Psychiatric residential treatment facilities.

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 through 6, 9, 13, 14, 15, 17, and 18 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 Medicaid Services: Division of Information Systems: Electronic Health Record Incentive Payments

907 KAR 6:005 & E. Electronic health record incentive payments. Bob Nowell, director, information services, and Stuart Owen, regulation coordinator, represented the division.

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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 through 5, 7, 8, 12, 13, 14, and 16 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to amend Section 13 to specify the timelines for holding a dispute resolution meeting. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Family Support: Food Stamp Program

921 KAR 3:035. Certification process. Virginia Carrington, branch manager, and Elizabeth Caywood, policy analyst, represented the program.

A motion was made and seconded to approve the following amendments: (1) to amend Section 8 to update a form; and (2) to amend the SNAP 6-Month Review form, FS-2: (a) for clarity; and (b) to make the form compatible with the eligibility data system. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the April 12, 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.

Office of Income Taxation: Income Tax; General Administration

103 KAR 15:190. Endow Kentucky Tax Credit.

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 Inspector General: 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 Protection and Permanency: Child Welfare

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

The Subcommittee adjourned at 10:50 a.m. until April 12, 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.

HOUSE STANDING COMMITTEE ON TRANSPORTATION
Meeting of February 8, 2011

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Transportation for its meeting of February 8, 2011, having been referred to the Committee on February 2, 2011, pursuant to KRS 13A.290(6):

601 KAR 1:018 & E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 8, 2011 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

SENATE STANDING COMMITTEE ON TRANSPORTATION
Meeting of February 9, 2011

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Transportation for its meeting of February 9, 2011, having been referred to the Committee on February 2, 2011, pursuant to KRS 13A.290(6):

601 KAR 1:018 & E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative

regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 9, 2011 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

SENATE STANDING COMMITTEE ON EDUCATION
Meeting of March 1, 2011

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Education for its meeting of March 1, 2011, having been referred to the Committee on February 2, 2011, pursuant to KRS 13A.290(6):

16 KAR 3:050
102 KAR 1:225
102 KAR 1:230
102 KAR 1:245

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

HOUSE STANDING COMMITTEE ON EDUCATION
Meeting of March 1, 2011

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Education for its meeting of March 1, 2011, having been referred to the Committee on February 2, 2011, pursuant to KRS 13A.290(6):

16 KAR 3:050
102 KAR 1:225
102 KAR 1:230

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102 KAR 1:245

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 1, 2011 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

J - 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

J - 14

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

J - 28

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

J - 29

The Subject Index is a general index of administrative regulations published in VOLUME 37 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	36 Ky.R. Page No.	Effective Date	Regulation Number	36 Ky.R. Page No.	Effective Date
VOLUME 36					
The administrative regulations listed under VOLUME 36 are those administrative regulations that were originally published in Volume 36 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2010 bound Volumes were published.					
SYMBOL KEY:			31 KAR 3:010		
* Statement of Consideration not filed by deadline			Amended	1095	
** Withdrawn, not in effect within 1 year of publication			As Amended	1434	
*** Withdrawn before being printed in Register			31 KAR 6:010		
**** Emergency expired after 180 days			Amended	2110-M	
(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.			As Amended	2176	6-4-10
			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
101 KAR 2:066E			200 KAR 5:314		
Resubmitted	1860	1-4-10	Amended	1300	
Withdrawn		7-19-10	As Amended	2177	6-4-10
201 KAR 16:030E			200 KAR 5:315		
Resubmitted	2280	5-13-10	Amended	616	
401 KAR 8:010E			Withdrawn	**	Date
Resubmitted	2281	4-20-10	201 KAR 10:050		
Replaced		(See 37 Ky.R.)	Amended	1301	
503 KAR 1:140E	1871	1-5-10	As Amended	2047-M	
Replaced	2178	6-4-10	Withdrawn		7-8-10
505 KAR 1:160E			201 KAR 16:030		
Resubmitted	1180	11-13-09	Amended	2353	
703 KAR 5:180E			Withdrawn		11-5-10
Resubmitted	2020-M	1-15-10	201 KAR 20:240		
810 KAR 1:025E			Amended	2071-A	6-16-10
Resubmitted	2158	3-26-10	201 KAR 20:450		
Replaced		(See 37 Ky.R.)	Amended	527	
810 KAR 1:037E	2165	3-17-10	201 KAR 20:490		
Replaced		(See 37 Ky.R.)	Amended	2073-A	
810 KAR 1:100E			As Amended	2312	6-16-10
Resubmitted	2168	3-17-10	201 KAR 20:510	2402	(See 37 Ky.R.)
Replaced		(See 37 Ky.R.)	201 KAR 22:020		
811 KAR 1:037E	2169	3-17-10	Amended	2208	
Replaced		(See 37 Ky.R.)	Withdrawn		6-15-10
811 KAR 1:070E			201 KAR 22:045		(See 37 Ky.R.)
Resubmitted	2023-M	1-15-10	Amended	2209	
811 KAR 1:230			201 KAR 22:135		(See 37 Ky.R.)
Resubmitted	2172	3-17-10	Amended	2211	
Replaced		(See 37 Ky.R.)	201 KAR 30:050		
811 KAR 2:130			Amended	152	
Resubmitted	2174	3-17-10	Amended	569	
815 KAR 20:050E			301 KAR 1:140		(See 37 Ky.R.)
Resubmitted	992	10-01-09	Amended	2212	
Replaced	2067-M	6-4-10	301 KAR 2:049		(See 37 Ky.R.)
906 KAR 1:180E			Amended	2215	
Resubmitted	1184	11-13-09	301 KAR 2:132		(See 37 Ky.R.)
Replaced	2197	6-4-10	Amended	2075-A	
921 KAR 2:530E			Amended	2335	
Resubmitted	2294	5-14-10	301 KAR 2:172		
Expired			Amended	2080-A	
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11 KAR 5:145			301 KAR 2:178		
Amended	1508		Amended	2082-A	
11 KAR 12:060			As Amended	2316	6-3-10
Amended	2055-A	7-12-2010	401 KAR 5:045		(See 37 Ky.R.)
13 KAR 1:020			Amended	2112-M	
Amended	2347	9-3-10	401 KAR 5:070		
			Amended	2114-M	8-5-10

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401 KAR 5:075		(See 37 Ky.R.)	Amended	2227	
Amended	2119-M		Withdrawn		6-15-10
Amended	2339		781 KAR 1:020		
401 KAR 8:010			Amended	2230	(See 37 Ky.R.)
Amended			781 KAR 1:030		
401 KAR 8:020			Amended	2232	(See 37 Ky.R.)
Amended	2088-A		781 KAR 1:040		
As Amended	2321	6-3-10	Amended	2235	
401 KAR 8:070			Withdrawn		6-15-10
Amended	2092-A		803 KAR 30:010		(See 37 Ky.R.)
401 KAR 8:150		(See 37 Ky.R.)	Amended	2238	
Amended	2094-A		804 KAR 11:030		
401 KAR 8:200			Amended	2112-A	
Amended	2097-A		Amended	2344	
As Amended	2323	6-3-10	Withdrawn		7-7-10
401 KAR 8:250			810 KAR 1:025		
Amended	2099-A		Amended	2244	(See 37 Ky.R.)
As Amended	2324		810 KAR 1:037	2261	(See 37 Ky.R.)
401 KAR 8:300			810 KAR 1:100	2264	(See 37 Ky.R.)
Amended	2100-A		811 KAR 1:037	2265	(See 37 Ky.R.)
As Amended	2324	6-3-10	811 KAR 1:070		
401 KAR 8:510			Amended	2127-M	6-4-10
Amended	2101-A		As Amended	2187	
As Amended	2324	6-3-10	811 KAR 1:230	2268	(See 37 Ky.R.)
401 KAR 8:550			811 KAR 2:130	2269	(See 37 Ky.R.)
Amended	2103-A		815 KAR 7:070		(See 37 Ky.R.)
As Amended	2325	6-3-10	Amended	2251	
401 KAR 11:010			815 KAR 8:070	2004	
Amended	2094		As Amended	2194	6-4-10
401 KAR 11:030		(See 37 Ky.R.)	815 KAR 8:080	2006	
Amended	2105-A		Amended	2048-A	
401 KAR 47:090		(See 37 Ky.R.)	As Amended	2195	6-4-10
Amended	620		815 KAR 8:090	2008	
401 KAR 59:015			As Amended	2196	6-4-10
Amended	2355	(See 37 Ky.R.)	815 KAR 10:060		
405 KAR 8:010			Reprint	1857	
Amended	2360	(See 37 Ky.R.)	815 KAR 20:018	2271	(See 37 Ky.R.)
503 KAR 1:140			815 KAR 20:050		
Amended	1989		Amended	1134	
As Amended	2178	6-4-10	As Amended	2067-M	6-4-10
503 KAR 3:010			815 KAR 20:191		
Amended	2373	(See 37 Ky.R.)	Amended	2135-M	
503 KAR 3:040			As Amended	2327	(See 37 Ky.R.)
Amended	2379	(See 37 Ky.R.)	815 KAR 2	5:080	
503 KAR 3:110			Amended	2114-A	
Amended	2383	(See 37 Ky.R.)	As Amended	2333	
601 KAR 1:200		(See 37 Ky.R.)	900 KAR 5:020		
Amended	2220		Amended	2255	(See 37 Ky.R.)
601 KAR 1:220	1571		900 KAR 6:020		
Amended	2058-M		Amended	2256	(See 37 Ky.R.)
As Amended	2184	6-4-10	900 KAR 6:060		
601 KAR 2:020			Amended	2258	(See 37 Ky.R.)
Amended	2388	(See 37 Ky.R.)	900 KAR 6:125	260	
601 KAR 12:060			Withdrawn		11-13-09
Amended	1116		902 KAR 20:400	1572	
As Amended	2325	6-4-10	Amended	2049-A	(See 37 Ky.R.)
603 KAR 4:045			906 KAR 1:180	1403	
Amended	2124-M		Amended	2103-M	
As Amended	2184		As Amended	2197	6-4-10
702 KAR 3:030			910 KAR 1:240		
Amended	2108-A		Amended	2391	(See 37 Ky.R.)
As Amended	2326		910 KAR 1:260		
702 KAR 3:246			Amended	1997	
Amended	2225	(See 37 Ky.R.)	As Amended	2201	6-4-10
703 KAR 5:060			921 KAR 1:410		
Amended	2109-A	(See 37 Ky.R.)	Amended	2395	(See 37 Ky.R.)
703 KAR 5:180	2144-M				
704 KAR 3:540	2260	(See 37 Ky.R.)			
725 KAR 1:061					

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EMERGENCY ADMINISTRATIVE REGULATIONS:			815 KAR 1:025E		(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	363	9-3-10
			810 KAR 1:026E	18	6-15-10
			Replaced	1649	2-4-11
			810 KAR 1:037E		(See 36 Ky.R.)
			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
			811 KAR 1:230		(See 36 Ky.R.)
			Replaced	372	9-3-10
			811 KAR 1:240E	927	9-15-10
			811 KAR 2:150E	931	9-15-10
			811 KAR 2:020E	22	6-15-10
			811 KAR 2:130E		(See 36 Ky.R.)
			Replaced	374	9-3-10
			811 KAR 2:140E	30	6-15-10
			900 KAR 5:020E	1384	10-18-10
			900 KAR 6:060E	1385	10-18-10
			902 KAR 20:320E	1387	10-18-10
			902 KAR 20:330E	1404	10-18-10
			902 KAR 20:410E	935	9-1-10
			902 KAR 30:001E	257	7-15-10
			Replaced	1659	2-4-11
			902 KAR 30:110E	260	7-15-10
			Replaced	1661	2-4-11
			902 KAR 30:120E	265	7-15-10
			Replaced	1665	2-4-11
			902 KAR 30:130E	274	7-15-10
			Replaced	1673	2-4-11
			902 KAR 30:150E	279	7-15-10
			Replaced	1677	2-4-11
			902 KAR 30:160E	283	7-15-10
			Replaced	1680	2-4-11
			902 KAR 30:180E	286	7-15-10
			Replaced	1682	2-4-11
			902 KAR 30:200	289	7-15-10
			Replaced	1685	2-4-11
			902 KAR 45:005E	939	9-8-10
			Withdrawn		10-18-10
			902 KAR 45:110E	942	9-8-10
			Withdrawn		10-18-10
			907 KAR 1:012E	295	7-1-10
			Replaced	1446	12-1-2010
			907 KAR 1:014E	298	7-1-10
			907 KAR 1:015E	302	7-1-10
			Replaced	1447	12-1-2010
			907 KAR 1:019E	305	7-1-10
			Replaced	1449	12-1-2010
			907 KAR 1:479E	312	7-1-10
			Replaced	1455	12-1-2010
			907 KAR 6:005E	1954	1-3-2010
			907 KAR 1:677E	318	7-1-10
			Replaced	1460	12-1-2010
			907 KAR 1:825E	323	7-1-10
			Replaced	1464	12-1-2010
			907 KAR 3:090E	333	7-1-10
			Replaced	1479	12-1-2010
			907 KAR 3:100E	348	7-1-10
			Replaced	1489	12-1-2010
			907 KAR 3:215E	1164	10-1-10
			907 KAR 5:005E	352	7-1-10
			921 KAR 2:040E	672	7-23-10
			921 KAR 3:030E	674	7-23-10
			922 KAR 1:420E	1960	1-3-11
31 KAR 4:130E	4	6-15-10			
Replaced	680	10-1-10			
31 KAR 4:140E	6	6-15-10			
Replaced	682	10-1-10			
31 KAR 5:010E	2128	2-1-11			
31 KAR 6:030E	2352	3-10-11			
32 KAR 1:030E	1381	11-2-10			
32 KAR 1:190E	1382	11-2-10			
32 KAR 2:130E	2130	2-7-2011			
101 KAR 2:210E	916	9-15-10			
Replaced	1000	1-3-2011			
101 KAR 5:015E	211	7-13-10			
Withdrawn		8-13-10			
Resubmitted	664	8-13-10			
102 KAR 1:320E	212	7-15-10			
102 KAR 1:330E	215	7-15-10			
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105 KAR 1:190E	217	7-15-10			
201 KAR 8:007E	224	7-15-10			
201 KAR 8:390E	225	7-15-10			
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201 KAR 8:500E	228	7-15-10			
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201 KAR 8:510E	231	7-15-10			
Replaced	1627	2-4-11			
201 KAR 8:520E	233	7-15-10			
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201 KAR 8:530E	235	7-15-10			
Withdrawn	**	2-8-11			
201 KAR 8:550E	2143	2-2-11			
201 KAR 8:540E	239	7-15-10			
Replaced	1629	2-4-11			
201 KAR 8:560E	241	7-15-10			
Withdrawn	**	2-8-11			
201 KAR 8:570E	245	7-15-10			
Withdrawn		10-15-00			
201 KAR 8:580E	248	7-15-10			
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301 KAR 2:222E	1160	10-15-10			
Replaced	1341	2-4-11			
301 KAR 2:225E	917	8-18-10			
Replaced	1029	1-3-2011			
302 KAR 20:115E	252	7-2-10			
Replaced	955	10-13-10			
302 KAR 21:005E	254	7-2-10			
Replaced	955	10-13-10			
401 KAR 51:052E	2352				
405 KAR 8:010E		(See 36 Ky.R.)			
Replaced	689	9-2-10			
501 KAR 1:070E	1619	12-1-10			
503 KAR 1:110E	9	6-10-10			
601 KAR 1:018E	666	8-12-10			
702 KAR 7:130E	255	6-23-10			
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803 KAR 25:091E	920	9-15-10			
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Replaced	1646	2-4-11			

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4 KAR 1:030	875	12-3-2010	102 KAR 1:225		
4 KAR 1:040	877		Amended	1322	
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10 KAR 7:011 (r)	2096		102 KAR 1:230		
11 KAR 3:100			Amended	1323	
Amended		10-1-10	As Amended	1965	
Amended	1736		102 KAR 1:245		
11 KAR 4:080			Amended	1327	
Amended	1746		As Amended	1968	
As Amended	2150		102 KAR 1:320	606	
11 KAR 5:145			Amended	989	
Amended	84	10-1-10	As Amended	1170	11-8-2010
11 KAR 15:090			102 KAR 1:330	609	
Amended	2440		As Amended	1172	11-8-2010
11 KAR 19:010	1923		103 KAR 3:010		
As Amended	2150		Amended	2258	
11 KAR 19:020	1925		103 KAR 3:020		
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11 KAR 19:030	1927		As Amended	1172	12-3-2010
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13 KAR 2:060			Amended	2263	
Amended	2250		103 KAR 3:040		
16 KAR 2:150			Amended	2273	
Amended	1317		103 KAR 3:050		
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16 KAR 3:050			103 KAR 15:180	1107	
Amended	1500		Amended	1490	
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Amended	2027		103 KAR 18:070		
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16 KAR 6:020			As Amended	945	11-5-10
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16 KAR 6:030			As Amended	683	10-1-10
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31 KAR 4:130			As Amended	1177	11-22-2010
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As Amended	680	10-1-10	Amended	1505	
31 KAR 4:140			As Amended	2154	
Amended	94		109 KAR 15:020		
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31 KAR 5:010			As Amended	1178	11-17-10
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31 KAR 6:030			As Amended	1627	2-4-11
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32 KAR 1:030			As Amended	1411	1-3-2011
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32 KAR 1:190			Amended	1507	
Amended	1504		As Amended	1969	
32 KAR 2:130			201 KAR 1:140		
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40 KAR 2:350			As Amended	1969	
Amended	96		201 KAR 2:015		
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201 KAR 8:006			Repealed	224	7-15-10
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201 KAR 8:015			Repealed	224	7-15-10
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201 KAR 8:070			Repealed	224	7-15-10
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201 KAR 8:130			Withdrawn	**	2-8-11
Repealed	224	7-15-10	201 KAR 8:510	616	
201 KAR 8:135			As Amended	1627	2-4-11
Repealed	224	7-15-10	201 KAR 8:520	618	
201 KAR 8:140			As Amended	1628	2-4-11
Repealed	224	7-15-10	201 KAR 8:530	620	
201 KAR 8:150			Withdrawn	**	2-8-11
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Repealed	224	7-15-10	As Amended	1629	2-4-11
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Repealed	224	7-15-10	201 KAR 8:560	626	
201 KAR 8:180			Withdrawn	**	2-8-11
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201 KAR 8:220			201 KAR 8:580	633	
Repealed	224	7-15-10	Withdrawn		9-14-10
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Repealed	224	7-15-10	201 KAR 10:050		
201 KAR 8:250			Amended	1510	
Repealed	224	7-15-10	As Amended	1970	
201 KAR 8:260			201 KAR 12:083		
Repealed	224	7-15-10	Amended	2282	
201 KAR 8:265			201 KAR 17:030		
Repealed	224	7-15-10	Amended	1003	
201 KAR 8:270			As Amended	1412	12-15-2010
Repealed	224	7-15-10	201 KAR 18:150		
201 KAR 8:277			Amended	768	
Repealed	224	7-15-10	As Amended	1178	12-3-2010
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201 KAR 8:290			Amended	1215	
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201 KAR 8:355			Amended	426	10-20-10
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201 KAR 8:400			Amended	428	10-20-10
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Repealed	224	7-15-10	201 KAR 20:225		
201 KAR 8:430			Amended	429	10-20-10
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Amended	436	10-20-10	Amended	1539	
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Amended	438	10-20-10	As Amended	1987	
Amended	1748		201 KAR 28:010		
201 KAR 20:490			Amended	1005	
Amended	2446		As Amended	1420	12-15-2010
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Amended	776		201 KAR 30:050		
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Amended	1332		Amended	780	12-15-2010
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201 KAR 23:075			Amended	783	
Amended	1335		Withdrawn		12-14-2010
Amended	1692		201 KAR 39:010	2507	
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201 KAR 26:115			Amended	2451	
Amended	1511		201 KAR 39:040		
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Amended	1513		Amended	444	11-5-10
201 KAR 26:125			Amended	2455	
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Amended	1516		Amended	2459	
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201 KAR 26:155			Amended	2460	
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Amended	1520		Amended	2464	
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201 KAR 26:175			Amended	2466	
Amended	1523		201 KAR 40:040		
201 KAR 26:180			Amended	784	11-16-2010
Amended	1526		201 KAR 40:050		
201 KAR 26:185			Amended	786	
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201 KAR 26:190			Amended	787	
Amended	1529		As Amended	1187	11-16-2010
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201 KAR 26:200			Amended	789	
Amended	1532		As Amended	1188	11-16-2010
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Amended	1009		Amended	1338	
Amended	1695		301 KAR 2:222		2-4-11
As Amended	1988		Amended	1341	
201 KAR 42:020			301 KAR 2:225		1-3-2011
Amended	1011		Amended	1029	
Amended	1696		301 KAR 2:251		11-4-10
As Amended	1989		Amended	797	
201 KAR 42:030			301 KAR 3:012	1934	
Amended	1012		As Amended	2155	
As Amended	1989		301 KAR 3:022		
201 KAR 42:035			Amended	1754	
Amended	1013		301 KAR 3:100		
Amended	1697		Amended	2287	
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201 KAR 42:040			Amended	1345	
Amended	1015		302 KAR 20:020		
Withdrawn		9-15-10	Amended	448	
Amended	1699		As Amended	953	10-13-10
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201 KAR 42:050			Amended	450	
Amended	1016		As Amended	954	10-13-10
Amended	1700		302 KAR 20:065		
As Amended	1992		Amended	1031	
201 KAR 42:060			As Amended	1630	2-4-11
Amended	1018		302 KAR 20:066		
Amended	1702		Amended	1035	
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201 KAR 42:070			302 KAR 20:115		
Amended	1020		Amendment	451	
Amended	1704		As Amended	955	10-13-10
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201 KAR 42:040			As Amended	684	9-8-10
Amended	796		302 KAR 29:050		
Withdrawn		9-14-10	Amended	114	
201 KAR 42:110			As Amended	686	9-8-10
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300 KAR 2:040	195		302 KAR 34:020		
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301 KAR 1:010			Withdrawn		
Amended	446		304 KAR 1:040		
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301 KAR 1:201			As Amended	956	11-5-10
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301 KAR 1:410			Amended	1346	
Amended	107		Withdrawn	*	12-15-10
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301 KAR 1:155			Amended	1757	
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Withdrawn		12-9-2010	Amended	991	1-3-2011
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Amended	1752		As Amended	50	8-5-10
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Amended	2061		401 KAR 11:030		(See 36 Ky.R.)
301 KAR 2:172			As Amended	51	8-5-10
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Amended	1707		601 KAR 9:015		
401 KAR 51:001			Amended	484	
Amended	452		As Amended	968	11-5-10
Amended	1222	1-3-2011	601 KAR 9:140		
401 KAR 51:052			Amended	1354	2-4-11
Amended	2470		601 KAR 9:205	1116	
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Amended	469		601 KAR 9:210		
Amended	1245	1-3-2011	Amendment	1761	
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Amended	390		As Amended	1428	1-3-2011
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500 KAR 2:020			Amended	135	
Amended	474		As Amended	1430	1-3-2011
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500 KAR 3:020			Amended	2480	
Amended	478		702 KAR 7:125		
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501 KAR 1:030			As Amended	969	10-6-10
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501 KAR 6:090			Amended	1015	2-4-11
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502 KAR 31:020			As Amended	969	11-5-10
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503 KAR 1:170			787 KAR 1:090		
Amended	801		Amended	814	
As Amended	1190	12-3-2010	As Amended	1196	12-3-2010
503 KAR 3:010		(See 36 Ky.R.)	787 KAR 1:320		
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601 KAR 1:101			Amended	146	
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803 KAR 2:400			As Amended	972	11-5-10
Amended	1055		806 KAR 9:070		
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803 KAR 2:402			As Amended	972	11-5-10
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803 KAR 2:412			806 KAR 12:150		
Amended	1061		Amended	1084	
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803 KAR 2:413			806 KAR 12:170		
Amended	1065	1-3-2011	Amended	1087	
803 KAR 2:414			Amended	1714	3-4-11
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Amended	1069		806 KAR 15:090	881	1-3-11
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803 KAR 2:418			Amended	500	11-5-10
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803 KAR 2:419			Amended	1494	2-4-11
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803 KAR 2:423			As Amended	973	
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803 KAR 2:430			Amended	507	11-5-10
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As Amended	1440	1-3-2011	Amended	2482	
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811 KAR 1:005			As Amended	2017	
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SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, not in effect within 1 year of publication

*** Withdrawn before being printed in Register

(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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The 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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