ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 37, NUMBER 11
SUNDAY, MAY 1, 2011

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The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet May 10, 2011 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **2519-2520** 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
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201 KAR 8:531. Licensure of dentist. (Deferred from April)
201 KAR 8:561. Licensure of dental hygienists. (Deferred from April)

Board of Hairdressers and Cosmetologists

Board

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Board

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201 KAR 39:040. Fees.
201 KAR 39:050. Renewal of licenses and extension of temporary licenses.
201 KAR 39:060. Reinstatement of license subject to disciplinary action.
201 KAR 39:070. Application and qualifications for temporary licensure.
201 KAR 39:080. Reciprocity.
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Department of Financial Institutions
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808 KAR 10:030. Conduct of broker-dealers, agents, and employees; investment advisors and representatives.
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808 KAR 10:200. Investment advisers' minimum liquid capitalization bond.
808 KAR 10:240. Registration exemptions - sale of business.
800 KAR 10:260. Examination requirement for individuals advising the public on securities, broker-dealers, and agents.
808 KAR 10:280. Qualifications, eligibility, and restrictions on the use of Form U-7, Small Corporate Offering Registration.
808 KAR 10:410. Life settlement investments.
808 KAR 10:440. Examples of dishonest or unethical practice for broker-dealers and agents.
808 KAR 10:450. Examples of dishonest or unethical practice for investment advisers and investment adviser representatives.
808 KAR 10:480. Books and records of firms employing issuer agents.
808 KAR 10:490. Procedures for Distributing and Using Funds from the Securities Fraud Prosecution and Prevention Fund.

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810 KAR 1:011. Pari-mutuel wagering. (Not Amended After Comments) (Deferred from November)
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Board
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201 KAR 8:550 & E. Anesthesia and sedation. ("E" expires 8/1/2011) (Comments Received, SOC ext)

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505 KAR 1:130. Department of Juvenile Justice policies and procedures; juvenile services in community. (Comments Received, SOC ext)

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Medicaid Services
907 KAR 1:715. School-based health services. (Comments Received, SOC ext)

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

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

STATEMENT OF EMERGENCY
101 KAR 2:095E

This emergency amendment is necessary for the implementation of the new Kentucky Human Resource Information System (KHRIS). The amendments codify the use of the Personnel Action Form, which will be utilized after April 1, 2011, with the implementation of KHRIS. Previously, the Personnel Action Form P-1 Form was utilized and incorporated by reference with this regulation. In KHRIS, P-1 Forms are eliminated and replaced by the Personnel Action Notification, which is incorporated by reference. The emergency amendment is necessary to delete the reference to the P-1 Form and replace it with the Personnel Action Notification. Other amendments include the recognition of the forty (40) hour work week schedule for state employees and that an employee's last regular work day can also be a day in which the employee was on sick leave, as well as the other types of leave indicated. An ordinary amendment to the administrative regulation is not sufficient as the P-1 form currently incorporated will no longer be in existence upon the implementation of KHRIS on April 1, 2011. The emergency amendment will be replaced by an ordinary amended administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on March 31, 2011. This emergency administrative regulation is identical to the ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
TIM LONGMEYER, Secretary
DINAH T. BEVINGTON, Executive Director

PERSONNEL CABINET
(Emergency Amendment)

101 KAR 2:095E. Classified service administrative regulations.

RELATES TO: KRS 18A.030(2), 18A.110
STATUTORY AUTHORITY: KRS 18A.030, 18A.110
EFFECTIVE: March 31, 2011
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate administrative regulations which govern the maintenance of employee records, the maintenance of other records and reports in the cabinet, and for other conditions of employment. This administrative regulation establishes those requirements.

Section 1. Definitions. (1) "Approved charitable federation" means a charitable organization which:

(a) Qualifies as a charitable federation with a substantial Kentucky presence; and

(b) Has been approved by the Secretary of Personnel for participation in the campaign pursuant to Section 8(3) of this administrative regulation.

(2) "Charitable federation" means a legally constituted grouping, made up of or supporting at least ten (10) health and human welfare organizations, all of which:

(a) Qualify as exempt voluntary charitable organizations under 26 U.S.C. 501(c)(3); and

(b) Have a substantial Kentucky presence.

(3) "Designated nonprofit agency" means an organization with proof of tax-exempt status under 26 U.S.C. 501(c)(3) which is written in on a pledge card by a state employee as a choice to receive contributions.

(4) "State employee" means, for purposes of Section 8 of this administrative regulation, a person, including an elected public official, who is employed by a department, board, agency or branch of state government, except one (1) relating to a state college or university.

(5) "Substantial Kentucky presence" means a facility, staffed by professionals or volunteers, available to provide its services and open at least fifteen (15) hours a week and with a regional or statewide presence that meets the requirements of Section 8(2) of this administrative regulation.

Section 2. Attendance; Hours of Work. (1) The number of hours a full-time employee shall be required to work shall be thirty-seven and one-half (37 1/2) hours per week <u>or forty (40) hours per week,</u> unless specified otherwise by the appointing authority or the statutes.

(2) The normal work day shall be from 8 a.m. to 4:30 p.m., local time, Monday through Friday.

(3) An appointing authority may require an employee to work hours and days other than regular days and hours, including an overtime or inclement weather schedule if it is in the best interest of the agency.

(4) An employee who works for an agency which requires more than one (1) shift or seven (7) days a week operation may be reassigned from one shift to another or from one post to another or alternate days off by the agency to meet staffing requirements or to maintain security or provide essential services of the agency.

(5) An employee shall give reasonable notice in advance of absence from a work station.

Section 3. Work Station and Temporary Assignment. (1) Each employee shall be assigned a work station by the appointing authority.

(2) A work station may be changed to better meet the needs of the agency.

(3) An employee may be temporarily assigned to a different work station in a different county for a period of up to sixty (60) calendar days. Temporary assignment may be renewed with the approval of the Secretary of Personnel. A temporarily reassigned employee shall be reimbursed for travel expenses in accordance with regulatory provisions and the appointing authority shall notify the employee in writing prior to the effective date of the action.

(4) An appointing authority may assign an employee to work in a different site within the county of employment.

Section 4. Dual Employment. (1) An employee holding a full-time position with the Commonwealth shall not hold another state position except upon recommendation of the appointing authority and the written approval of the secretary.

(2) A complete list of all employees holding more than one (1) state position shall be furnished to the Legislative Research Commission quarterly by the secretary.

Section 5. Notice of Resignation and Retirement. (1) An employee who desires to terminate his service with the state shall submit a written resignation or notice of retirement to the appointing authority.

(2) A resignation or notice of retirement shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be attached to the personnel action effecting the separation and be filed in the employee's service record in the agency and the Personnel Cabinet.

(3) Failure of an employee to give fourteen (14) calendar days notice with his resignation or notice of retirement may result in forfeiture of accrued annual leave.

(4) The effective date of a separation shall be the last work day unless the employee has been approved for the use of annual,[~~or~~] compensatory<u>, or sick</u> leave prior to termination.

Section 6. Records and Reports. (1) An appointing authority shall <u>provide a request to the Personnel Cabinet for a personnel action or status change.</u>

<u>(a) The Secretary of the Personnel Cabinet shall determine which personnel actions warrant a Personnel Action Notification to the employee.</u>

<u>(b) The secretary shall provide a Personnel Action Notification to eh appointing authority.</u>

(c)[~~use the Request for Personnel Position Action Form P-1 to report a personnel action or status change. The secretary shall inform an appointing authority which personnel actions or status changes shall be reported.~~] The appointing authority shall provide

a copy of a Personnel Action Form to the employee affected by the action.

(2) The secretary shall maintain a leave record showing for each employee:

(a) Annual leave earned, used and unused;

(b) Sick leave earned, used and unused;

(c) Compensatory leave earned, used and unused; and

(d) Special leave or other leave with or without pay.

Section 7. Telecommuting. (1) Telecommuting shall be a work arrangement where a selected state employee is allowed to perform the normal duties and responsibilities of his position through the use of computer or telecommunications at home or another place apart from the employee's usual work station.

(2) An appointing authority may establish a telecommuting program for all or any part of the agency.

(3) Eligibility and selection for participation in a telecommuting program shall be the decision of the agency, with no implied or specific right to participation being granted to an employee.

(4) The telecommuter's conditions of employment shall remain the same as for a nontelecommuting employee.

(a) Employee salary, benefits and employer-sponsored insurance coverage shall not change as a result of telecommuting.

(b) The telecommuter shall be responsible for the security and confidentiality of data, as well as the protection of state-provided equipment, used and accessed during telecommuting.

(c) The telecommuter shall agree to maintain a clean, safe workplace.

(d) An on-site visit by the employer for monitoring of safety issues shall be arranged in advance.

Section 8. Requirements for the Kentucky Employees Charitable Campaign. (1) General purpose. The purpose of the Kentucky Employees Charitable Campaign shall be to:

(a) Provide an opportunity for employees to contribute to eligible Kentucky organizations through the state's payroll deduction process;

(b) Ensure accountability for participants in regard to the funds raised;

(c) Encourage the involvement of state employees as responsible citizens;

(d) Give recognition to state employee volunteers; and

(e) Minimize workplace disruption and administrative costs to Kentucky taxpayers by allowing only one (1) statewide payroll deduction charitable solicitation per year.

(2) An organization shall be considered to have a substantial Kentucky presence if the requirements established in this subsection are met.

(a) Services shall be available to state employees in the local community.

(b) Services shall directly benefit human beings whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically disabled.

(c) Services shall consist of:

1. Care, research, education or prevention in the fields of human health or social adjustment and rehabilitation;

2. Relief for victims of natural disasters and other emergencies; or

3. Assistance to those who are impoverished and in need of food, shelter, clothing and basic human welfare services.

(3) The secretary shall approve a charitable organization for participation in the campaign if the charitable organization demonstrates:

(a) Proof of tax exempt status under 26 U.S.C. 501(c)(3);

(b) Proof of current registration and compliance with the reporting requirements of the Secretary of State and the Office of the Attorney General;

(c) Proof of financial responsibility, including:

1. Adoption of a detailed annual budget;

2. Use of generally accepted accounting principles and procedures;

3. The board of directors' approval for deviations from the approved budget; and

4. An annual financial audit;

(d) Proof of direction by an active volunteer board of directors which meets regularly and whose members serve without compensation;

(e) A written nondiscrimination policy;

(f) Public disclosure of fund raising administrative costs with a statement demonstrating that, if fund and administrative expenses are in excess of twenty-five (25) percent of total support and revenue, actual expense for those purposes are reasonable under all the circumstances in its case; and

(g) Publication of an annual report available to the general public, which includes a full description of the organization's Kentucky activities including fundraising activities.

(4) A federation may apply on behalf of all their member organizations if both the federation and all federation members meet the criteria established in subsection (3) of this section.

(5) Authority of the Secretary of Personnel.

(a) The Secretary of Personnel shall have the full authority over the procedures and policies relating to the operation of the Kentucky Employees Charitable Campaign.

(b) The secretary shall designate a group of state employees to compose the Kentucky Employees Charitable Campaign Committee to make recommendations on related matters.

(c) The committee shall be composed of a cross-section of state employees, involving the large cabinets and small agencies.

(d) The chair of the committee shall be appointed by the secretary.

(6) Functions of the committee. The committee shall make recommendations on the following:

(a) Designation of a campaign administrator.

1. The campaign administrator shall serve for a minimum period of two (2) years.

2. The campaign administrator shall be charged to manage and administer the charitable fund campaign for the Commonwealth, subject to the direction and control of the Secretary of Personnel. The campaign administrator shall have statewide workplace campaign experience and have the necessary staff and volunteer support to administer the Kentucky Employee Charitable Campaign;

(b) Establishment of minimum amount, based on cost effectiveness, that an employee may authorize to be deducted for each approved federation;

(c) The format of the brochure, pledge card and other promotional materials for the annual campaign;

(d) The dates and duration of the campaign;

(e) The annual campaign budget submitted by the campaign administrator; and

(f) The costs of the campaign, which shall be detailed in the budget, shall be borne by each recipient organization proportionally.

(7) Charitable federations to apply for statewide campaign.

(a) A federation desiring inclusion shall make application by February 15 of each year.

(b) A federation that has previously participated in the campaign shall update its application with a letter and a copy of the most recent year's audit.

(c) A charitable organization that has previously participated in the campaign shall be eligible if it fulfills all conditions of eligibility.

(8) The campaign administrator. The campaign administrator shall:

(a) Provide staffing to manage and administer the annual campaign. This shall include preparing drafts of campaign materials for consideration by the Secretary of Personnel;

(b) Serve as the central accounting point for both campaign cash and for payroll deductions received from the Personnel Cabinet including:

1. The preparation and submission of an annual campaign budget. Costs of the campaign shall be divided among recipient organizations; and

2. A separate account maintained for managing the income and expenses of the campaign;

(c) Distribute campaign funds received from the Personnel Cabinet to participating organizations in accordance with agreed upon time periods. This shall include distribution of funds to designated nonprofit agencies;

(d) Provide an end-of-campaign report to the Secretary of Personnel and to participating organizations; and

(e) Annually furnish a financial statement prepared by a certified public accountant.

Section 9. Workplace Violence Policy. (1) Workplace violence shall be prohibited and include:

(a) The attempted, threatened, or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or

(b) A threatening statement, harassment or behavior that gives a state employee or member of the general public reasonable cause to believe that his health or safety is at risk.

(2) Examples of prohibited workplace violence shall include:

(a) Threats of harm;

(b) Brandishing or displaying a weapon or an object that looks like a weapon in a manner which would present a safety risk to a state employee or a member of the general public or threatens or intimidates them;

(c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;

(d) Stalking;

(e) Striking, slapping or otherwise physically attacking another person; and

(f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions which create a risk to the health or safety of a state employee or the public or threatens or intimidates them.

(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

Section 10. Issuance of Paychecks to State Employees. (1) A paycheck shall be issued to a state employee on the 15th and 30th day of each month.

(2) If the regularly scheduled pay date falls on a weekend, a paycheck shall be issued on the preceding Friday.

(3) If the regularly scheduled pay date falls on a state holiday as defined in KRS 18A.190, a paycheck shall be issued on the workday preceding the holiday.

Section 11. Incorporation by Reference. (1) Personnel Action Notification, PAN-0901, 2011,[~~Request for Personnel Position Action Form P-1, July 1998,~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor,[~~200 Fair Oaks Lane, 5th Floor,~~] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: March 31, 2011

FILED WITH LRC: March 31, 2011 at 2 p.m.

CONTACT PERSON: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements governing employee records, the maintenance and handling of these records, and other conditions of employment.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the oversight and maintenance of the state merit system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to satisfy the statutory requirement of establishing for the state a system of personnel administration based on merit principles. The regulation assists in the consistent application and treatment for classified employees on all matters related to state employment.

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

(a) How the amendment will change this existing administrative regulation: The amendments codify the use of the Personnel Action Form, which will be utilized after April 1, 2011 with the implementation of the Kentucky Human Resource Information System (KHRIS). Previously, the Personnel Action Form (P-1 Form) was utilized and incorporated by reference with this regulation. In KHRIS, P-1 Forms are eliminated and replaced by the Personnel Action Notification, which is incorporated by reference. The emergency amendment is necessary to delete the reference to the P-1 Form and replace it with the Personnel Action Notification. Other amendments include the recognition of the 40-hour work week schedule for state employees and that an employee's last regular work day can also be a day in which the employee was on sick leave, as well as the other types of leave indicated. The necessity of the amendment to this administrative regulation: This amendment is necessary for the implementation of KHRIS. An ordinary amendment to the administrative regulation is not sufficient as the P-1 form currently incorporated will no longer be in existence upon the implementation of KHRIS on April 1, 2011.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation sets forth the requirements governing employee records, the maintenance and handling of these records, and other conditions of employment. These amendments are necessary for the regulation to accurately reflect these requirements and changes due to KHRIS. These amendments are authorized pursuant to the authority provided in KRS 18A.110 and 18A.030(2).

(d) How the amendment will assist in the effective administration of the statutes: These amendments are necessary for the regulation to accurately reflect the handling of employee records and employee notices regarding these records, as required by KRS 18A.030 and 18A.110.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A classified employees and other individuals subject to the provisions of 101 KAR 2:095 will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All actions which are required to comply with the amendments to the regulation have been taken by the Personnel Cabinet during the implementation of KHRIS. Agencies will now be required to forward on the Personnel Action Notification (PAN), as opposed to the P-1 form currently in existence.

(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 anticipated to each of the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue that do not otherwise exist.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional

fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. All merit, classified employees are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 18A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030 (2) and 18A.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? No revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments within this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments within this regulation.

STATEMENT OF EMERGENCY
101 KAR 2:102E

This emergency amendment is necessary for the implementation of the new Kentucky Human resource Information System (KHRIS). The amendments include clarification on the maximum amount of compensatory leave that can be accrued before an automatic reduction and payment for fifty (50) hours of compensatory leave. This automatic payment is commonly referred to as a block fifty (50). With the implementation of KHRIS, this amount cannot total more than 239.99, or an automatic block fifty (50) will occur. An additional amendment creates a new title and separate section for funeral leave, which is now referred to as "Funeral and Bereavement Leave," and utilized within KHRIS. There are no changes to the amount of leave available or the instances in which an employee may utilize funeral leave. Other amendments include clarification surrounding any annual leave balances that remain once an employee resigns and receives pay for the maximum amount of annual leave. Any remaining annual leave, as is currently the case, is not paid and is removed from the balance automatically within KHRIS. Finally, there are additional calculations on the maximum carry-over amount for those employees on a forty (40) hour work schedule included within the amendments, and clarification regarding FMLA protections for the birth or placement of a child. An ordinary amendment to the administrative regulation is not sufficient as the regulation will conflict with the handling of employee leave within the KHRIS system once KHRIS is implemented April 1, 2011. The emergency amendment will be replaced by an ordinary amended administrative regulation. This emergency administrative regulation is identical to the ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
TIM LONGMEYER, Secretary of Personnel Cabinet
DINAH T. BEVINGTON, Executive Director

PERSONNEL CABINET
(Emergency Amendment)

101 KAR 2:102E. Classified leave administrative regulations.

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394, 344.030, 29 U.S.C. 201, et. seq., 2601, et seq.

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 344.030, 29 U.S.C. 201, et seq., 2601, et seq.

EFFECTIVE: March 31, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave. This administrative regulation establishes the leave requirements for classified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits and returns to state service, shall not receive credit for months of service prior to retirement.

(g) A part-time employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.

(h) An employee who is eligible for state contributions for health benefits under the provisions of KRS Chapter18A shall have worked or been on paid leave, other than educational leave, during any part of the previous pay period.

(i) Annual leave may be carried from one (1) calendar year to the next as provided in this paragraph:

Months of Service	Maximum Amount	37.5 Hour Week Equivalent	40 Hour Week Equivalent
0-59	30 workdays	225 hours	240 hours
60-119 months	37 workdays	277.50 hours	296 hours
120-179 months	45 workdays	337.50 hours	360 hours
180-239 months	52 workdays	390 hours	416 hours
240 months and over	60 workdays	450 hours	480 hours

(j) Leave in excess of the maximum amounts specified in paragraph (i) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(k) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a) If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2)(i) of this section. Following payment of annual leave at resignation any remaining annual[~~,~~] leave[~~remaining~~] after the payment of the maximum[~~provided~~] shall not be paid to the employee or converted to sick leave and shall be removed from the balance.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns one (1) day and is employed the next workday, shall retain his accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and

2. The successor employer has agreed to credit him with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) A former employee who has been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee who is appointed, reinstated or reemployed, other than a former employee receiving benefits under a state retirement system, shall be credited with the unused sick leave balance credited to him upon separation.

(j) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) An appointing authority shall grant or may require the use of sick leave with or without pay if an employee:

1. Is unable to work due to medical, dental or optical examination or treatment;

2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested. The appointing authority may also require an employee to produce a certificate from an appropriate medical health professional certifying the employee's fitness to return to duty before the employee is permitted to return to work;

3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor's statement certifying the employee's need to care for a family member; or

4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others[~~; or~~

~~5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this subparagraph shall be limited to three (3) days~~].

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) An employee eligible for state contributions for life insurance under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than education leave, during any part of the previous month.

(d) An employee who is eligible for state contributions for health benefits under the provisions of KRS Chapter 18A shall have worked or been paid leave, other than educational leave, during any part of the previous pay period.

(e) Sick leave shall be used in increments of hours or one-quarter (1/4) hours.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.

(g) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff or retirement.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and

2. The employee has used or been paid for all accumulated annual, sick and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status.

(c) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(d) An appointing authority may grant sick leave without pay to an employee who does not qualify for family and medical leave due

to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay;

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave;

3. Is unable to return to his former position;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he is qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during service in the classified service.

(4) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, an employee shall notify the immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601, et seq., and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of[~~accumulated annual or sick leave,~~] unpaid family and medical leave[~~, or a combination thereof,~~] for the birth, placement, or adoption of the employee's[~~a~~] child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, upon the employee's request, the agency shall permit:

(a) The employee to reserve ten (10) days of accumulated sick leave and be placed on FMLA leave; or

(b) The employee to use accrued paid leave concurrently with FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, or administrative agency or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes[~~Statues~~] and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 to 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next work week following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of the regular work schedule.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be:

1. 239.99 hours by an employee in a non policy-making position; or

2. 240 hours by an employee in a policy-making position[~~240 hours~~].

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An appointing authority may require an employee who has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours.

(c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment for fifty (50) hours at the regular rate of pay. If the appointing authority or the designee approves the payment, an employee's leave balance shall be reduced accordingly.

(d) An employee who is not in a policy-making position shall be paid for fifty (50) hours at the regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(e) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(f) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(g) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United State Public Health Service Reserve, or the Kentucky National Guard shall be relieved from the civil duties, to serve under order or training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of the duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 8. Funeral and Bereavement Leave. (1) An employee who has lost an immediate family member by death may utilize not more than three (3) days of accrued sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof, if approved by the appointing authority.

(2) For purposes of funeral and bereavement leave, an immediate family member includes the employee's spouse, parent, grandparent, child, brother or sister, or the spouse of any of them, and may be granted to include other relatives of close association if approved by the appointing authority.

Section 9. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relates to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(a) Leave shall not exceed sixty (60) working days.

(b) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(c) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(d) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

Section 10.[~~9.~~] Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provision of the Fair Labor Standards Act; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned the employment.

Section 11.[~~10.~~] Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early in the event of adverse weather conditions such as tornado, flood, blizzard, or ice storm, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory or sick leave shall charge leave as originally requested.

(3) If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or

compensatory leave is available.

(b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shutdown shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 12.[~~11.~~] Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

Section 13.[~~12.~~] Incorporation by Reference. (1) "Overtime Compensation Form", September 1999, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: March 31, 2011

FILED WITH LRC: March 31, 2011 at 2 p.m.

CONTACT PERSON: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation details the various types of classified leave available to state employees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the various types of leave available for state classified employees, and the requirements for these types of leave.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the consistent application and treatment for classified employees on all employment leave matters.

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

(a) How the amendment will change this existing administrative regulation: The amendments include clarification on the maximum amount of compensatory leave that can be accrued before an automatic reduction and payment for 50-hours of compensatory leave. This automatic payment is commonly referred to as a "block-50." With the implementation of the Kentucky Human Resource Information System (KHRIS), this amount cannot total more than 239.99, or an automatic "block-50" will occur. An additional amendment creates a new title and separate section for funeral leave, which is now referred to as "Funeral and Bereavement Leave," and utilized within KHRIS. There are no changes to the amount of leave available or the instances in which an employee may utilize funeral leave. Other amendments include clarification surrounding any annual leave balances that remain once an employee resigns and receives pay for the maximum amount of annual leave. Any remaining annual leave, as is currently the case, is not paid and is removed from the balance automatically within KHRIS. Finally, there are additional calculations on the maximum carry-over amount for those employees on a 40-hour work schedule included within the amendments, and clarification regarding FMLA protections for the birth or placement of a child.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for the implementation of KHRIS. An ordinary amendment to the administrative regulation is not sufficient as the regulation will conflict with the handling of employee leave within the KHRIS system once KHRIS is implemented April 1, 2011.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave.

(d) How the amendment will assist in the effective administration of the statutes: These amendments are necessary for the regulation to accurately reflect the handling of employment leave with KHRIS, and are required by KRS 18A.030 and 18A.110.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A classified employees and other individuals subject to the provisions of 101 KAR 2:102 will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All actions which are required to comply with the amendments to the regulation have been taken by the Personnel Cabinet during the implementation of KHRIS.

(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 anticipated to each of the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue that do not otherwise exist.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional

fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. All merit, classified employees are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 18A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2) and 18A.110(7)(g).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments within this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments within this regulation.

STATEMENT OF EMERGENCY
101 KAR 3:015E

This emergency amendment is necessary for the implementation of the new Kentucky Human Resource Information System (KHRIS). The amendments include clarification on the maximum amount of compensatory leave that can be accrued before an automatic reduction and payment for 50-hours of compensatory leave. This automatic payment is commonly referred to as a "block-50." With the implementation of KHRIS, this amount cannot total more than 239.99, or an automatic "block-50" will occur. An additional amendment creates a new title and separate section for funeral leave, which is now referred to as "Funeral and Bereavement Leave," and utilized within KHRIS. There are no changes to the amount of leave available or the instances in which an employee may utilize funeral leave. Other amendments include clarification surrounding any annual leave balances that remain once an employee resigns and receives pay for the maximum amount of annual leave. Any remaining annual leave, as is currently the case, is not paid and is removed from the balance automatically within KHRIS. Finally, there are the additional calculations on the maximum carry-over amount for those employees on a 40-hour work schedule included within the amendments, and clarification regarding FMLA protections for the birth or placement of a child. An ordinary amendment to the administrative regulation is not sufficient as the regulation will conflict with the handling of employee leave within the KHRIS system once KHRIS is implemented April 1, 2011. The emergency amendment will be replaced by an ordinary amended administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on March 31, 2011. This emergency administrative regulation is identical to the ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
TIM LONGMEYER, Secretary
DINAH T. BEVINGTON, Executive Director

PERSONNEL CABINET
(Emergency Amendment)

101 KAR 3:015E. Leave administrative regulations for the unclassified service.

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394, 344.030, 29 U.S.C. 201 et. seq., 2601 et seq.

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 344.030, 29 U.S.C. 201 et seq., 2601 et seq.

EFFECTIVE: March 31, 2011

NECESSITY, FUNCTION, AND CONFORMITY; KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. This administrative regulation establishes the leave requirements for unclassified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits and returns to state service, shall not receive credit for months of service prior to retirement.

(g) A part-time or interim employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during

any part of the previous month.

(h) An employee who is eligible for state contributions for health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous pay period.

(i) Annual leave may be carried from one (1) calendar year to the next as provided in this paragraph:

Months of Service	Maximum Amount	37.5 hour week equivalent	40 hour week equivalent
0-59	30 workdays	225 hours	240 hours
60-119 months	37 workdays	277.50 hours	296 hours
120-179 months	45 workdays	337.50 hours	360 hours
180-239 months	52 workdays	390 hours	416 hours
240 months and over	60 workdays	450 hours	480 hours

(j) Leave in excess of the maximum amounts specified in paragraph (i) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(k) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a) If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2)(i) of this section. Following payment of annual leave at resignation any remaining annual, leave [~~remaining~~] after the payment of the maximum[~~provided~~] shall not be paid to the employee or converted to sick leave and shall be removed from the balance.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns or is terminated one (1) day and is employed the next workday, shall retain his accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and

2. The successor employer has agreed to credit him with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service. An employee with 240 or more months of service as of August 25, 1999 shall have the additional ten (10) days credited to the sick leave balance.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) A former employee who has been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee, other than a former employee receiving benefits under a state retirement system, who is appointed to an unclassified position, shall be credited with the unused sick leave balance upon separation.

(j) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) An appointing authority shall grant or may require the use of accrued sick leave with pay if an employee:

1. Is unable to work due to medical, dental or optical examination or treatment;

2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested;

3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor's statement certifying the employee's need to care for a family member;

4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others[~~; or~~

~~5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this subparagraph shall be limited to three (3) days~~].

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) An employee eligible for state contributions for life insurance under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than education leave, during any part of the previous month.

(d) An employee who is eligible for state contributions for health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous pay period.

(e) Sick leave shall be used in increments of hours or one-quarter (1/4) hours.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.

(g) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff or retirement.

(h) The duration of an interim employee's appointment shall not be extended by the use or approval for sick leave with or without pay.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay to an employee for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and

2. The employee has used or been paid for all accumulated annual, sick and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status.

(c) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or

without reasonable accommodation.

(d) An appointing authority may grant sick leave without pay to an employee, other than an interim employee, who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay;

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave;

3. Is unable to return to his former position;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he is qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during his service in the classified service.

(4) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If he is too ill to work, an employee shall notify his immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 20 U.S.C. 2601, et seq., and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of[~~accumulated annual or sick leave,~~] unpaid family and medical leave[~~, or a combination thereof,~~] for the birth, placement, or adoption of the employee's[~~a~~] child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, the agency shall not designate the leave as FMLA leave until:

(a) The employee's leave balance has been exhausted; or

(b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, or administrative agency or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 to 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next workweek following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of his regular work schedule.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be:

1. 239.99 hours by an employee in a non policy-making position; or

2. 240 hours by an employee in a policy-making position.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his com-

pensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An appointing authority may require an employee who is not in a policy-making position and has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours.

(c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. If the appointing authority or his designee approves the payment, an employee's leave balance shall be reduced accordingly.

(d) An employee who is not in a policy-making position shall be paid for fifty (50) hours at his regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(e) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, he shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(f) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(f) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties, to serve under order on training duty without loss of his regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of the duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 8. Funeral and Bereavement Leave. (1) An employee who has lost an immediate family member by death may utilize not more than three (3) days of accrued sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof, if approved by the appointing authority.

(2) For purposes of funeral and bereavement leave, an immediate family member includes the employee's spouse, parent, grandparent, child, brother or sister, or the spouse of any of them, and may be granted to include other relatives of close association if approved by the appointing authority.

Section 9. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months or the conclusion of the administration in which the employee is serving, whichever comes first.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relates to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3)(a) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(b) Leave shall not exceed sixty (60) working days.

(c) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(d) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(e) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether he has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

Section 10.[~~9.~~] Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for his absence to his supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provision of the Fair Labor Standards Act; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned his employment.

Section 11.[~~10.~~] Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early in the event of adverse weather conditions such as tornado, flood, blizzard or ice storm, shall have the time of his absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory or sick leave shall charge leave as originally requested.

(3) If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within four (4) months of the

occurrence of the absence. If it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available.

(b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 12.[~~11.~~] Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave. An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

Section 13.[~~12.~~] Incorporation by Reference. (1) Overtime Compensation Form, September 1999, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: March 31, 2011

FILED WITH LRC: March 31, 2011 at 2 p.m.

CONTACT PERSON: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation details the various types of unclassified leave available to state employees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the various types of leave available for state unclassified employees, and the requirements for these types of leave.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the consistent application and treatment for unclassified employees on all employment leave matters.

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

(a) How the amendment will change this existing administrative regulation: The amendments include clarification on the maximum amount of compensatory leave that can be accrued before an automatic reduction and payment for 50-hours of compensatory leave. This automatic payment is commonly referred to as a "block-50." With the implementation of the Kentucky Human Resource Information System (KHRIS), this amount cannot total more than 239.99, or an automatic "block-50" will occur. An additional amendment creates a new title and separate section for funeral leave, which is now referred to as "Funeral and Bereavement Leave," and utilized within KHRIS. There are no changes to the amount of leave available or the instances in which an employee may utilize funeral leave. Other amendments include clarification surrounding any annual leave balances that remain once an employee resigns and receives pay for the maximum amount of annual leave. Any remaining annual leave, as is currently the case, is not paid and is removed from the balance automatically within KHRIS. Finally, there are additional calculations on the maximum carry-over amount for those employees on a forty (40)-hour work schedule included within the amendments, and clarification regarding FMLA protections for the birth or placement of a child.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for the implementation of KHRIS. An ordinary amendment to the administrative regulation is not sufficient as the regulation will conflict with the handling of employee leave within the KHRIS system once KHRIS is implemented April 1, 2011.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave.

(d) How the amendment will assist in the effective administration of the statutes: These amendments are necessary for the regulation to accurately reflect the handling of employment leave with KHRIS, and are required by KRS 18A.030 and 18A.110.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A unclassified employees and other individuals subject to the provisions of 101 KAR 3:015 will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All actions which are required to comply with the amendments to the regulation have been taken by the Personnel Cabinet during the implementation of KHRIS.

(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 anticipated to each of the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue that do not otherwise exist.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

tion, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. All non-merit, unclassified employees are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 18A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2) and 18A.110(7)(g).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments within this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments within this regulation.

STATEMENT OF EMERGENCY
103 KAR 15:195E

This emergency administrative regulation is being promulgated in order to provide Kentucky taxpayers with information necessary to comply with Kentucky tax laws that govern the Endow Kentucky Tax Credit. This administrative regulation must be filed as soon as possible in order to incorporate by reference the application form and instructions as may be needed by taxpayers and their representative to apply for the credit that applies to taxable years beginning on or after January 1, 2011. This administrative regulation also provides guidance to taxpayers on the application approval process. An ordinary administrative regulation is not sufficient, because the public relies on these forms and instructions in order to make a timely application for the Endow Kentucky Tax Credit during the calendar year ending December 31, 2011. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
THOMAS B. MILLER, Commissioner

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

103 KAR 15:195E. Endow Kentucky Tax Credit.

RELATES TO: KRS 141.438, 147A.310

STATUTORY AUTHORITY: KRS 131.130(1), 141.438(8)(a)1

EFFECTIVE: April 1, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.438 establishes a nonrefundable tax credit for a taxpayer making an endowment gift to a permanent endowment fund of a qualified community foundation, or county-specific component fund, or affiliate community foundation, which has been certified under KRS 147A.325. KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation establishes the requirements for the department's allocation of the $500,000 tax credit that may be awarded each fiscal year under the provisions of KRS 141.438(6) and establishes the filing requirements for a taxpayer to obtain preliminary authorization and final approval of the tax credit from the department.

Section 1. Definitions. (1) "Affiliate community foundation" is defined by KRS 147A.310(1).

(2) "Applicant" means a taxpayer that files an application with the department to obtain preliminary authorization for the Endow Kentucky tax credit as required by KRS141.438(7).

(3) "Application" means Revenue Form 41A720-S85, Application for Preliminary Authorization of the Endow Kentucky Tax Credit.

(4) "County-specific component fund" is defined by KRS 147A.310(3).

(5) "Department" means the Kentucky Department of Revenue.

(6) "Endowment gift" is defined by KRS 147A.310(4).

(7) "Final approval" means the applicant has received written notice from the department that proof of the endowment gift has been verified, as required by KRS 141.438(8)(c).

(8) "Identification number" means:

(a) A Social Security number for individuals;

(b) A Federal Employer Identification number for general partnerships, estates, or trusts; or

(c) A Kentucky Corporation/LLET Account Number for corporations or limited liability pass-through entities.

(9) "Preliminary authorization" means the applicant has received written notice from the department that the application is in compliance with KRS 141.438.

(10) "Qualified community foundation" is defined by KRS 147A.310(6).

(11) "Received" means the application has been delivered in accordance with Section 2(2) of this administrative regulation and time stamped as received by the Office of Income Taxation, Division of Corporation Tax, Tax Credit Section.

(12) "Tax credit" means the credit established by KRS 141.438(3).

(13) "Tax credit cap" means the amount provided by KRS 141.438(6).

Section 2. Application for Preliminary Authorization of the Endow Kentucky Tax Credit.

(1) An applicant that seeks to obtain preliminary authorization of a tax credit shall file an application with the department.

(2) The application shall be delivered to the department by one of the following methods:

(a) By fax to (502) 564-0058;

(b) By electronic mail sent to the department's mailbox at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov; or

(c) Hand-delivered to the Department of Revenue, 1st floor security desk at 501 High Street, Frankfort, Kentucky 40601. Security personnel shall notify the Office of Income Taxation, Division of Corporation Tax, Tax Credit Section, who shall stamp the application at the security desk as received.

(3) The department shall review the applications received via the methods prescribed in subsection (2) of this section as prescribed by this subsection.

(a) 1. Applications for the fiscal year ending June 30, 2011 delivered to the department beginning at midnight Eastern Time on April 11, 2011 through 11:59 a.m. Eastern Time on April 15, 2011 shall be considered for approval and shall be treated as having been filed at the same time.

2. If the tax credit cap is exceeded for applications received

within the time prescribed by clause 1. of this subparagraph, the tax credit amounts receiving preliminary authorization shall be prorated by the fraction prescribed by paragraph (b) of this subsection.

(b) Tax credit amounts receiving preliminary authorization that are required to be prorated under paragraph (a)2. of this subsection shall be multiplied by a fraction, the numerator of which shall be the tax credit cap and the denominator of which shall be the total tax credit amounts receiving preliminary authorization for applications received during the time frame prescribed in paragraph (a)1. of this subsection.

(c) A fiscal year 2011 application filed prior to April 11, 2011, shall be considered as received at midnight Eastern Time on April 11, 2011.

(d)1. If the remaining tax credit cap is not fully allocated for the fiscal year ending June 30, 2011 for applications received during the period described in paragraph (a)1. of this subsection, a second period for accepting applications shall commence on April 18, 2011 and end on April 22, 2011.

2. All applications received during the time frame prescribed by clause 1. of this subparagraph shall be treated as having been received at the same time.

3. If the tax credit cap is exceeded for applications received by the department within the time period prescribed by clause 1. of this subparagraph, the tax credit amounts receiving preliminary authorization shall be prorated by the fraction prescribed by clause 4. of this subparagraph.

4. Tax credit amounts receiving preliminary authorization that are required to be prorated under the provisions of clause 3. of this paragraph shall be multiplied by a fraction, the numerator of which shall be the portion of the tax credit cap not allocated under paragraph (a) of this subsection and the denominator of which shall be the total tax credit amounts receiving preliminary authorization for applications delivered during the time prescribed in clause 1. of this subparagraph.

5. Any tax credit cap for the fiscal year ending June 30, 2011 that is not fully allocated by the close of the period prescribed in clause 1. of this subparagraph shall be allocated on a first-come, first-serve basis beginning with applications received on or after April 25, 2011.

(4)(a) For fiscal years beginning on or after July 1, 2011, applications received by the department beginning at midnight Eastern Time on July 1 through 11:59 p.m. Eastern Time on July 7 shall be treated as having been filed at the same time.

(b) If the tax credit cap is exceeded for applications received by the department within the time prescribed by paragraph (a) of this subsection, the tax credit amounts receiving preliminary authorization shall be prorated by the fraction prescribed by paragraph (c) of this subsection.

(c) Tax credit amounts receiving preliminary authorization that are required to be prorated under the provisions of paragraph (b) of this subsection shall be multiplied by a fraction, the numerator of which shall be the tax credit cap and the denominator of which shall be the total tax credit amounts receiving preliminary authorization for applications delivered during the time period prescribed in paragraph (a) of this subsection.

(d) If the tax credit cap is not fully allocated for a fiscal year that begins on or after July 1, 2011 for applications received during the period described in paragraph (a) of this subsection, a second period for accepting applications shall commence on July 8 of the fiscal year and end on July 14 of the fiscal year.

(e) All applications received during the time frame prescribed by paragraph (d) of this subsection shall be treated as having been filed at the same time.

(f) If the remaining tax credit cap is exceeded for applications received by the department within the time prescribed by paragraph (d) of this subsection, the tax credit amounts receiving preliminary authorization shall be prorated by the fraction prescribed by paragraph (g) of this subsection.

(g) Tax credit amounts receiving preliminary authorization that are required to be prorated under the provisions of paragraph (f) of this subsection shall be multiplied by a fraction, the numerator of which shall be the portion of the tax credit cap not allocated during the first time period under paragraph (a) of this subsection and the denominator of which shall be the total tax credit amounts receiving preliminary authorization for applications delivered during the time prescribed in paragraph (d) of this subsection.

(h) For fiscal years beginning on or after July 1, 2011, any tax credit cap not allocated under paragraphs (a) to (g) of this subsection shall be allocated on a first-come, first-serve basis beginning with applications received on or after July 15 of the fiscal year. If the tax credit cap is met under the provisions of this paragraph, subsequent applications shall be denied.

(5) An application shall not be submitted prior to July 1st for each fiscal year beginning on or after July 1, 2011. If July 1st falls on a Saturday, Sunday or state holiday, the first day an application may be filed shall be the first business day after July 1st.

(6) The department shall notify the applicant within thirty (30) calendar days after receipt of the application whether preliminary authorization of the tax credit is denied or approved.

(a) If the department denies preliminary authorization of the tax credit, the applicant shall be notified in writing by the department of the reason for the denial.

(b) If the department approves the tax credit application, a copy of the application shall be returned to the applicant with written notice of the department's preliminary authorization.

(7) Any restored tax credit cap described in KRS 141.438(8)(d) shall be re-allocated to the pool of applications received during the same time period in which the application was received from the applicant that had the preliminary approval voided. Any restored tax credit cap shall be re-allocated based on the applicable requirements prescribed by subsections (3) or (4) of this section. The other applicants from the same pool shall receive amended preliminary approvals reflecting the re-allocation.

(8) The percentage of proration for the pool of applicants described in subsection (3)(d)1. of this section shall not exceed the percentage of proration for the pool of applicants described in subsection (3)(a)1. of this section. Further, the maximum tax credit amount for the pool of applicants described in subsection (3)(d)5. of this section shall not exceed the maximum tax credit amount received by the pool of applicants described in subsections (3)(a)1. and (3)(d)1. of this section.

(9) The percentage of proration for the pool of applicants described in subsection (4)(d) of this section shall not exceed the percentage of proration for the pool of applicants described in subsection (4)(a) of this section. Further, the maximum tax credit amount for the pool of applicants described in subsection (4)(h) of this section shall not exceed the maximum tax credit amount received by the pool of applicants described in subsections (4)(a) and (4)(d) of this section.

Section 3. Information Required on or Attached to the Application. The following information shall be required on or attached to the application:

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

(2) The entity type of the applicant for Kentucky income tax purposes;

(3) The submission date of the application;

(4) The amount of the endowment gift;

(5) The amount of tax credit;

(6) (a) The qualified community foundation's or affiliate community foundation's name, mailing address, identification number, telephone number, and fax number; or

(b) If a county–specific component fund, its name; and

(7) A statement that the application was executed by the applicant or authorized representative, declaring under the penalty of perjury that the application, including all accompanying documents and statements, is true, correct and complete.

Section 4. Proof of Endowment Gift. (1) Within thirty (30) calendar days after receiving the notice of preliminary authorization of the tax credit from the department, the taxpayer shall make the endowment gift to the permanent endowment fund held by the approved qualified community foundation, county-specific component fund, or affiliate community foundation.

(2) The applicant shall provide the department with proof of the endowment gift within ten (10) calendar days of making the gift by

filing with the department Revenue Form 41A720-S86, Notice of Endow Kentucky Tax Credit and Certification (Schedule ENDOW).

(3) If the department has verified that the endowment gift specified on the application was made to the approved qualified community foundation, county-specific component fund, or affiliate community foundation, Schedule ENDOW shall be returned to the applicant with the department's final approval of the tax credit.

(4) If the applicant fails to make an endowment gift or provide proof of the endowment gift to the department within the time frames established in KRS 141.438(7), the department shall revoke the preliminary authorization of the tax credit by written notification to the applicant. The department shall restore the denied amount to the tax credit cap and re-allocate the restored amount under the requirements established in Section 2(7) of this administrative regulation.

Section 5. Preliminarily Authorized Amounts Not Affected by Proration. (1) If an applicant approved for preliminary authorization makes an endowment gift that is less than the amount indicated on the application and all the other applicable requirements of KRS 141.438 and this administrative regulation are met by the applicant, the department shall:

(a) Issue final approval based on the amount proven; and

(b) Restore to the tax credit cap the difference between the amount of tax credit that received preliminary authorization and the amount receiving final approval.

(2) The amount restored to the tax credit cap shall be reallocated as provided in Section 2(7) of this administrative regulation.

Section 6. Preliminarily Authorized Amounts Affected by Proration. If an applicant receives preliminary authorization for a amount but due to the proration provisions in Section 2 of this administrative regulation will receive a tax credit for less than the amount for which the applicant is preliminarily approved, the applicant may donate the lesser prorated amount without penalty and receive the corresponding tax credit of the lesser prorated amount.

Section 7. Information Required on or Attached to the Schedule ENDOW. The following information shall be required on or attached to the Schedule ENDOW:

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

(2) The entity type of the applicant for Kentucky income tax purposes;

(3) The date the endowment gift was made to the approved qualified community foundation, county-specific component fund, or affiliate community foundation;

(4) The amount of the endowment gift;

(5) The date of the department's preliminary authorization of the tax credit;

(6)(a) The qualified community foundation's or affiliate community foundation's name, mailing address, identification number, telephone number, and fax number; or

(b) If a county-specific component fund, its name; and

(7) A statement that the Schedule ENDOW was executed by a foundation officer or designee, declaring under the penalty of perjury that the:

(a) Foundation is a qualified community foundation as provided by KRS 147A.310(6);

(b) Foundation is a qualified affiliate community foundation as provided by KRS 147A.310(1);

(c) County-Specific component fund as provided by KRS 147A.310(3).

(d) Endowment gift is held in a permanent endowment fund as provided by KRS 147A.310(4); and

(e) Schedule ENDOW, including all accompanying documents and statements, is true, correct and complete.

Section 8. Return Filing Requirement. (1) An applicant claiming the tax credit shall attach each tax year a copy of the approved Schedule ENDOW to the tax return on which the credit is claimed.

(2) An applicant claiming the tax credit shall not claim more than $10,000 in credit on a single return.

(3) A partner, member, or shareholder of an applicant claiming the tax credit shall attach each taxable year a copy of Schedule K-1, Form 720S (Revenue Form 41A720S(K-1)); Schedule K-1, Form 765 (Revenue Form 41A765(K-1)); or Schedule K-1, Form 765-GP (Revenue Form 42A765-GP(K-1)), incorporated by reference in 103 KAR 3:040, to the partner's, member's, or shareholder's tax return on which the credit is claimed.

(4) A beneficiary of an applicant that is an estate or trust shall attach each taxable year a copy of Schedule K-1, Form 741 (Revenue Form 42A741(K-1)), incorporated by reference in 103 KAR 3:040, to the beneficiary's tax return on which the credit is claimed.

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

(a) Revenue Form 41A720-S85, "Application for Preliminary Authorization of the Endow Kentucky Tax Credit", February 2011; and

(b) Revenue Form 41A720-S86, "Notice of Endow Kentucky Tax Credit and Certification (Schedule ENDOW)", February 2011.

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

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: April 1, 2011

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

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: DeVon Hankins, (502) 564-6660

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for the department's allocation of the $500,000 tax credit that may be awarded each fiscal year under the provisions of KRS 141.438(6) and establishes the filing requirements of a taxpayer to obtain preliminary authorization and final approval of the tax credit from the department.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to provide taxpayers the guidelines and filing requirements with the department when seeking approval for the Endow Kentucky tax credit as provided by KRS 141.438.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) provides that the department shall promulgate administrative regulations necessary to implement and administer Kentucky's tax laws.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the department in the administration of the Endow Kentucky tax credit as authorized by KRS 141.438(2) by requiring a taxpayer to file specified forms with the department in order to obtain preliminary authorization and final approval of an Endow Kentucky tax credit.

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

(a) How the amendment will change this existing administrative regulation: N/A

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

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

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All taxpayers filing applications with the department seeking the department's approval of their Endow Kentucky tax credits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will follow the guidance provided in this administrative regulation when filing:

(i) an application (Kentucky Form 41A720-S85) for preliminary authorization of an Endow Kentucky tax credit; and

(ii) Schedule ENDOW (Kentucky Form 41A720-S86) to provide proof to the department that the qualified endowment gift was made to the approved foundation for purposes of receiving final approval of the Endow Kentucky tax credit.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities in question (3) will have specific guidance which will expedite the process of obtaining from the department approval of an Endow Kentucky tax credit as provided by KRS 141.438.

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

(a) Initially: There will be a minimal cost initially in the administrative regulation process for the department. Also, a small amount of costs associated with notifying taxpayers of this administrative regulation will be incurred.

(b) On a continuing basis: There will be no additional cost for the department on a continuing basis as a result of this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation as it applies to all taxpayers seeking the department's approval of their Endow Kentucky tax credit application.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1) authorizes the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not generate any revenue, but will increase the department's expenditures slightly in the administrative process, including the notification of taxpayers of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? The cost to administer the program is expected to be small; however, personnel will be diverted from current assignments which may increase administrative cost to the department.

(d) How much will it cost to administer this program for subsequent years? The department will incur additional minimal cost each year to administer the program.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

COUNCIL ON POSTSECONDARY EDUCATION
(As Amended at ARRS, April 12, 2011)

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

RELATES TO: KRS 164.001, 164.020
STATUTORY AUTHORITY: KRS 164.020(19)[~~(18)~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.020(19) requires the Council on Postsecondary Education to postpone the approval of new academic programs for those institutions who fail to meet equal opportunity goals established **[**~~by an institution and approved~~**]** by the council**, and[**~~. The statute~~**]** further requires that institutions be able to secure a temporary waiver, if an institution has made substantial progress toward meeting **the** goals. This administrative regulation **establishes[**~~sets out~~**]** the process for goal setting, measurement of progress, and how to secure a temporary waiver.[~~Responsibility for the development of a system-wide equal opportunity plan is assigned to the Council on Postsecondary Education pursuant to KRS 164.020(18). The statute connects an institution's eligibility for new academic programs to its performance in implementing equal opportunity objectives. The Council on Postsecondary Education approves the offering of academic programs at each state-supported postsecondary education institution pursuant to KRS 164.020(14) but an institution's eligibility for new academic programs is limited by the requirement of KRS 164.020(18) that an institution meet its equal opportunity objectives. The statute does grant the Council on Postsecondary Education authority to grant a temporary waiver if an institution demonstrates progress in meeting equal opportunity objectives. This administrative regulation establishes the criteria used to determine an institution's compliance with equal opportunity objectives, and for the granting of a temporary waiver to a state-supported postsecondary education institution which has not met its objectives~~].

Section 1. Definitions. (1) "Continuous progress" means that an institution shows an increase in the number of students or employees over the previous year for a category.

(2) "Council" is defined by KRS 164.001**(8)[**~~(7)~~**]**.

(3) "Diversity Policy" means the Kentucky Public Postsecondary Education Diversity Policy and Framework for Institution Diversity

(4) "Institution" [~~"Goal" or "objective" means a flexible target in enrollment, retention, graduation or employment developed by the Council on Postsecondary Education and the state-supported postsecondary education institutions and included in the Kentucky Plan.~~

~~(4) "Kentucky Plan" means the "Kentucky Plan for Equal Opportunities" which is a five (5) year plan developed by the Council on Postsecondary Education.~~

~~(5) "State-supported institution"~~] means a state-supported postsecondary education[~~an~~] institution listed in KRS 164.001(17).

(5) "Institution Diversity Plan" means a plan developed by an institution in conjunction with the Council on Postsecondary Education to achieve diversity in student enrollment, to eliminate gaps in retention and graduation rates, and to achieve workforce diversity.[~~within the postsecondary education system as defined by KRS 164.001(15).~~]

Section 2. Creation of Institution Diversity Plan[~~Scope~~]. (1) The **[**~~Council on Postsecondary Education shall maintain the~~**]** Kentucky Public Postsecondary Education Diversity Policy and Framework for Institution Diversity Plan Development **shall[**~~to~~**]** provide a framework and guidelines to assist an institution in developing an institution diversity plan[~~a Kentucky Plan for Equal Opportunities to assist in ensuring equal opportunity of access to higher education for all citizens of Kentucky. The Kentucky Plan establishes flexible objectives for each state-supported postsecondary education institution in broad categories of student enrollment, retention, graduation and employment of African-Americans~~].

(2) **Except as provided in subsection (3) of this section, an institution shall develop an institution diversity plan that is consistent with the definition of diversity contained in the diversity policy and as represented by the institution's area of geographic responsibility and[**~~A four (4) year institution shall develop an institution diversity plan that~~**]** includes goals for these areas of interest:

(a) Student enrollment**:[**~~;~~**]**

1. Undergraduate **students**; **and**

2. Graduate students at the four (4) year **institution[**~~institutions~~**]**;

(b) Student success including**:[**~~;~~**]**

1. First year to second year retention of undergraduate students;

2. Second year to third year retention of undergraduate students;

3. Associate and baccalaureate degrees and credentials **conferred[**~~awarded~~**]**; and

4. Graduation rates for undergraduate students;

(c) **Retention[**~~Achievement gap closure~~**]** for undergraduate students including:

1. First year to second year retention rate:

2. Second year to third year retention rate; and

3. Graduation rate**;[**~~.~~**]**

(d) **A workforce diversity component that:**

1. Shall include these employment categories:

a. Executive administrative/managerial;

b. Faculty; and

c. Other professional; and

2. May include these employment categories:

a. Secretarial/clerical;

b. Technical/paraprofessional;

c. Skilled crafts; and

d. Service/maintenance; and[~~An institution shall include a workforce diversity component in its institution diversity plan using these employment categories:~~

~~1. Executive managerial;~~

~~2. Faculty;~~

~~3. Other professional;~~

~~4. Secretarial/clerical;~~

~~5. Technical/paraprofessional;~~

~~6. Skilled crafts; and~~

~~7. Service/maintenance.~~**]**

(e) **[**~~An institution shall develop~~**]** A campus climate component **[**~~in its institution diversity plan~~**]** including:

1. Creation of a campus environment team;

2. A comprehensive **assessment[**~~report~~**]** on strategies and best practices implemented; and

3. A review of the effectiveness of employment, retention, and promotion policies.

(3) **A community college shall not be required to include in its institution diversity plan the areas of interest established in subsections (2)(a)2., (2)(b)2., (2)(b)4., and (2)(c)2. of this section.**

(4) An institution, in developing an institution diversity plan, shall consider the institution's service region or statewide demographic data. **[**~~This provision shall not apply to Kentucky State University.~~**]**

(5)[~~(4)~~**]** An institution, in developing goals for areas of interest in **subsection (2) of this** section **[**~~2(2) of this administrative regulation~~**]**, shall reference the racial and ethnic groups listed in the U. S. Census**, on its Web site at http://www.census.gov/population/www/socdemo/race/Ombdir**

15.html, and the U. S. Department of Education's Integrated Postsecondary Education Database System (IPEDS)**, on its Web site at http://nces.ed.gov/ipeds/reic/resource.asp.**[~~Five (5) categories of African-American, resident students are included in the Kentucky Plan and in Section 3 of this administrative regulation with objectives established and measured for each category:~~

~~(a) Undergraduate enrollment;~~

~~(b) Retention of first-year undergraduate enrollment;~~

~~(c) Retention of total undergraduate enrollment;~~

~~(d) Award of baccalaureate degrees; and~~

~~(e) Graduate enrollment.~~

~~(3) Seven (7) categories of African-American employment are included in the Kentucky Plan.~~

~~(a) Objectives are established and measured for three (3) of those categories in the Kentucky Plan and in Section 4 of this administrative regulation:~~

~~1. Executive, administrative and managerial;~~

~~2. Faculty; and~~

~~3. Professional nonfaculty.~~

~~(b) The four (4) categories of African-American employment included in the Kentucky Plan that are not measured are:~~

~~1. Secretarial/clerical;~~

~~2. Technical/paraprofessional;~~

~~3. Skilled crafts; and~~

~~4. Service/maintenance.~~

~~(4) The Kentucky Plan includes enhancement provisions for Kentucky State University including the following categories which shall be reported on by the university:~~

~~(a) Identification by the university, subject to agreement by the council, of new and continuing academic programs which promote and build on the university's strength as a historically black institution;~~

~~(b) Evidence of marketing or showcasing programs which are developed and implemented as part of paragraph (a) of this subsection;~~

~~(c) Evidence of funding by the university of programs identified in paragraph (a) of this subsection including identification of private funding; and~~

~~(d) Identification of quality assurance assessment activities for programs identified in paragraph (a) of this subsection.~~

~~(5) The council may substitute objectives contained in subsection (4) of this section for objectives contained in Sections 3 and 4 of this administrative regulation based on a plan submitted by Kentucky State University, reviewed by the Committee on Equal Opportunities, and approved by the council.~~

~~(6) The Council on Postsecondary Education shall evaluate institutional progress in implementing the flexible objectives established in the Kentucky Plan in order to determine:~~

~~(a) An institution's automatic eligibility for a new academic program; or~~

~~(b) An institution's eligibility for a waiver~~].

Section 3. Measurement of an Institution's Performance in Demonstrating Continuous Progress, and Automatic Eligibility for New Academic Programs. (1)(a) A four (4) year institution shall demonstrate continuous progress or meet the goals established for the eight (8) areas of interest described in Section 2(2)(a)**1. and 2.**, (b)1., 2., and 3.**,** and (d)1., 2., and 3. **of this administrative regulation.**[**~~;~~ ~~or~~**]

(b) The Kentucky Community and Technical College System (KCTCS) shall demonstrate continuous progress or meet the goals established for the seven (7) areas of interest described in Section 2(2)(a)1., (b)1., 2., and 3., and (d)1., 2., and 3. **of this administrative regulation.**

(2) An institution shall submit a written report annually to the Council or its designee describing the institution's progress in meeting **the** goals set forth in the institution diversity plan, and describing whether **the**[~~an~~] institution has demonstrated continuous progress in the areas of interest described in Section 2(2) of this administrative regulation.

(3) To be automatically eligible for new academic programs:

(a) A four (4) year institution shall meet the goal or demonstrate continuous progress in six (6) of the eight (8) areas of interest or meet the goal listed in Section 2 of this administrative regulation; or

(b) A community college shall meet the goal or demonstrate continuous progress in five (5) of the seven (7) areas of interest listed in Section 2 of this administrative regulation and selected by the Kentucky Community and Technical College System.

(4) **[**~~For the campus climate component,~~**]** An institution shall demonstrate continuous progress **in campus climate** by completing a report **as required by Section 2(2)(e)2. and 3.**[~~addressing the issues described in Section 2(2)(e)~~**]** of this administrative regulation. [~~Enrollment, Retention and Graduation Objectives. (1)(a) An institution's objective for the enrollment of undergraduate, Kentucky resident African-American students shall be the percentage of African-American high school graduates within the institution's market area.~~

~~(b) The market area shall be the geographic area of Kentucky contributing ninety (90) percent of the entering Kentucky resident undergraduate enrollment at an institution as measured by the base year of the Kentucky Plan.~~

~~(2)(a) Except as provided in paragraph (b) of this subsection, an institution's objective for retention of first-year undergraduate Kentucky resident African-American students shall be equal to the institution's retention rate for first-year undergraduate Kentucky resident white students as measured by the base year of the Kentucky Plan.~~

~~(b) The community colleges shall be exempt from the requirement established in paragraph (a) of this subsection.~~

~~(3)(a) Except as provided in paragraph (b) of this subsection, an institution's objective for the retention of total undergraduate Kentucky resident African-American undergraduate students shall be equal to the institution's retention rate for all Kentucky resident white undergraduate students as measured by the base year of the Kentucky Plan.~~

~~(b) The community colleges shall be exempt from the requirement established in paragraph (a) of this subsection.~~

~~(4)(a) Except as provided in paragraphs (b) and (c) of this subsection, an institution's objective for the awarding of baccalaureate degrees to Kentucky resident African-American students shall be equal to the institution's rate for awarding baccalaureate degrees to Kentucky resident white students.~~

~~(b) For Kentucky State University, the institution's objective shall be that the rate of award of baccalaureate degrees to Kentucky resident white students be equal to that of Kentucky resident African-American students as measured by the base year of the Kentucky Plan.~~

~~(c) The community colleges shall be exempt from the requirements established in paragraphs (a) and (b) of this subsection.~~

~~(5)(a) Except as provided in paragraph (b) of this subsection, an institution's objective for the enrollment of Kentucky resident African-American graduate students shall be the same proportion as the institution's percentage of enrollment of Kentucky resident white graduate students expressed as a proportion of total resident white undergraduate degrees awarded.~~

~~(b) Kentucky State University and the community colleges shall be exempt from the requirement established in paragraph (a) of this subsection.~~

~~Section 4. Employment Objectives. (1) Pursuant to Section 2(3) of this administrative regulation, the Kentucky Plan provides for the measurement and evaluation of each of the three (3) following categories of employment:~~

~~(a) Executive, administrative, and managerial;~~

~~(b) Faculty; and~~

~~(c) Professional nonfaculty.~~

~~(2) Employment objectives for an institution shall be based on an institution's plan developed in compliance with the U.S. Department of Labor or the U.S. Department of Education as appropriate for that institution.~~

~~Section 5. Evaluation of Annual Progress. (1) Progress toward achievement of an objective shall be measured annually for the purpose of determining an institution's eligibility to submit a request for a new academic program or for a waiver.~~

~~(2) An institution shall have met its annual plan implementation objective for undergraduate enrollment if the following conditions have been fulfilled:~~

~~(a) For Kentucky State University:~~

~~1. The university maintains the current level of Kentucky resident African-Americans as a percentage of total enrollment; and~~

~~2. The university increases the number of entering Kentucky resident freshmen with ACT scores at or above the statewide average.~~

~~(b) For all other institutions:~~

~~1. Enrollment of African-American students within the system of state-supported higher education is.073 percent or greater excluding African-American students enrolled at Kentucky State University; and~~

~~2. An institution's enrollment of Kentucky resident African-American students is greater than the actual enrollment of African-American students in the prior year.~~

~~(3) An institution shall have met its annual plan implementation objectives for:~~

~~(a) Retention of first-year undergraduate students;~~

~~(b) Retention of total undergraduate students;~~

~~(c) Award of baccalaureate degrees;~~

~~(d) Enrollment of graduate students; and~~

~~(e) In employment of African-Americans by demonstrating continuous progress each year in each category or by meeting the plan objectives in each category. The council may, upon request by an institution, determine that an employment category has too few positions in order to evaluate continuous progress, and may indicate that the institution has met its annual implementation plan objectives for the year.~~

~~Section 6. Automatic Eligibility. (1) An institution shall be eligible for the consideration of a new academic program if:~~

~~(a) For Kentucky State University, the institution exhibits continuous progress:~~

~~1. In five (5) of seven (7) annual plan implementation objectives established in Sections 3 and 4 of this administrative regulation; or~~

~~2. As required by Section 2(4) of this administrative regulation, if substituted by the council in accordance with Section 2(5) of this administrative regulation;~~

~~(b) For a community college, the institution exhibits continuous progress in three (3) of four (4) annual plan implementation objectives established in Sections 3 and 4 of this administrative regulation; and~~

~~(c) For other institutions, an institution exhibits continuous progress in six (6) of the eight (8) annual plan implementation objectives established in Sections 3 and 4 of this administrative regulation.~~

~~(2) Automatic eligibility for a new academic program shall be for the calendar year immediately following the certification of eligibility.~~

~~(3) Certification of automatic eligibility and for a quantitative or qualitative waiver shall occur prior to the end of each calendar year and shall be reported to the Council on Postsecondary Education and the Committee on Equal Opportunities.~~]

Section 4.[~~7.~~] Waivers. (1) If an institution is not automatically eligible under Section 3[~~6~~]of this administrative regulation**,** [~~and is eligible for a quantitative or qualitative waiver,~~] the institution may request a one (1) year waiver [~~which shall be either:~~

~~(a) Quantitative; or~~

~~(b) Qualitative~~].

(2) A waiver request by an institution shall include a resolution submitted to the Council on Postsecondary Education approved by the institution's governing board describing[~~and shall include either a quantitative or qualitative assessment, as appropriate, of~~] the institution's efforts to achieve the institution's diversity goals[~~objectives as set forth in the Kentucky Plan~~].

(3) A four (4) year[~~An~~] institution shall be eligible to receive a [~~quantitative~~] waiver if:

(a) **[**~~A~~**]** The institution demonstrates continuous progress or meets the goals in five (5) of the eight (8) areas of interest listed in Section 2(2) of **[**~~the~~**]** this administrative regulation; or

(b) **The[**~~Where an~~**]** institution demonstrates continuous progress or meets the goals in less than five (5) of the areas of interest **and** shows in a written report that:

1.**a.** Outstanding efforts to achieve diversity were attempted which have not yet proven to be successful; or

b.[~~2.~~**]** Extraordinary circumstances precluded success; and

2. Explains[~~3.~~**]** how the institution's revised plans for recruitment and retention of a diverse student body, and workforce diversity show promise of future success.

(4) A community college shall be eligible for a waiver if:

(a) The community college demonstrates continuous progress or meets the goals in four (4) of the seven (7) areas of interest listed in Section 2(2) of **[**~~the~~**]** this administrative regulation; or

(b) **The[**~~Where a~~**]** community college has achieved continuous progress or meets the goals in less than four (4) of the areas of interest, **and** the community college shows in a written report that:

1.**a.** Outstanding efforts to achieve diversity were attempted which have not yet proven to be successful; or

b.[~~2.~~**]** Extraordinary circumstances precluded success; and

2. Explains[~~3.~~**]** how the institution's revised plans for recruitment and retention of a diverse student body, and workforce diversity show promise of future success.

(5)[~~:~~

~~(a) For Kentucky State University, the institution exhibits continuous progress:~~

~~1. In four (4) of seven (7) annual plan implementation objectives established in Sections 3 and 4 of this administrative regulation; or~~

~~2. As required by Section 2(4) of this administrative regulation, if substituted by the council in accordance with Section 2(5) of this administrative regulation;~~

~~(b) For a community college, an institution exhibits continuous progress in two (2) of four (4) objectives established in Sections 3 and 4 of this administrative regulation;~~

~~(c) For an institution other than Kentucky State University or a community college, if an institution exhibits continuous progress in five (5) of eight (8) annual plan implementation objectives established in Sections 3 and 4 of this administrative regulation.~~

~~A qualitative waiver may be approved for the institution failing to meet annual objectives if an institution can demonstrate:~~

~~(a)1. a. Outstanding efforts that were attempted which have not yet proven to be successful; or~~

~~2. Extraordinary circumstances that precluded success; and~~

~~3.(b) How the institution's revised plans for recruitment and retention of African-American students or employees show promise of future success.~~

~~(5) The written request for a qualitative waiver shall include specific and quantifiable aspects of the institution's efforts to meet equal opportunity objectives including:~~

~~(a) Commitment of funds to equal opportunity related activities;~~

~~(b) Financial aid distribution;~~

~~(c) Student services activities;~~

~~(d) High school visitations and results;~~

~~(e) Academic support services;~~

~~(f) Number of interviews granted to African-American applicants for a position;~~

~~(g) Offers of employment made that are accepted or rejected;~~

~~(h) Utilization of funds to stimulate a unit to improve its employment data;~~

~~(i) Special actions for a unit within an institution if additional efforts are required; and~~

~~(j) An evaluation of long-range data trends for those objectives that fell below expectations.~~

~~(6)~~] An institution's written request for a[~~qualitative~~] waiver shall be reviewed by the Council on Postsecondary Education's Committee on Equal Opportunity which shall make a recommendation to the council on whether to grant a [~~qualitative~~] waiver.

(6)[~~(7) The council shall consider an institution's request for a qualitative waiver at a subsequent meeting of the council:~~

~~(a) Following submission of the information by the institution in support of its request; and~~

~~(b) After a recommendation is forwarded from the Committee on Equal Opportunities.~~

~~(8)~~] An institution shall not be eligible for a waiver in consecutive years.

Section 5. Action Following Receipt of Institution Report. The council, or its designee shall upon receipt of an institution's annual report described in Section 3(2) of this administrative regulation:

(1) Review the report in public session; **and**

(2)**(a) Accept the report as submitted;**

(b) Recommend, as appropriate, that an institution modify its diversity plan goals; or

(c)[~~(3)~~**]** Recommend, as appropriate, that an institution modify strategies and activities to better ensure success in meeting goals. [~~regardless of the type of waive.~~

~~(9)(a) Except as provided in paragraph (b) of this subsection, an institution that has received a quantitative or qualitative waiver shall submit a new academic program under the waiver provision in the calendar year for which the waiver is granted. An institution's request for a new academic program, advanced under authority of an approved waiver, shall be considered at the next regularly scheduled meeting of the council after an institution has submitted a complete program application.~~

~~(b) If the council postpones or delays action on an academic program approval, it may extend the period of consideration of a new academic program.~~]

Section 6.[~~8.~~] Incorporation by Reference. (1) The Kentucky Public Postsecondary Education Diversity Policy and Framework for Institution Diversity Plan Development**, September 12, 2010,** [~~"The 1997-2002 Kentucky Plan for Equal Opportunities in Postsecondary Education", Council on Postsecondary Education,~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PAUL E. PATTON, Chair
DENNIS L. TAULBEE, General Counsel
APPROVED BY AGENCY: February 3, 2011
FILED WITH LRC: February 11, 2011 at 4 p.m.
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KENTUCKY STATE BOARD OF ELECTIONS
(As Amended at ARRS, April 12, 2011)

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

RELATES TO: KRS [~~116.055,~~] 117.079, 117.085, [~~118.025, 118.245,~~] 42 U.S.C. 1973ff-2**, 42 U.S.C. 1973ff-6**

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

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

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

(a) "Absent uniformed services voter" as defined by 42 U.S.C. 1973-ff-6(1); or (b) "Overseas voter" as defined by 42 U.S.C. 1973ff-6(5).

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

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

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

Section 3. **When to count the FWAB. (1) A FWAB received by the county board of elections from an absent uniformed services voter shall not be counted if the FWAB is submitted from within the voter's county of residence.**

(2) A FWAB received by the county board of elections **from an overseas voter** shall not be counted if the ballot is submitted from any location in the United States.

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

(a) The absent **[**~~overseas~~**]** voter may designate a candidate **in the following ways:**

1. In a primary, by writing in the name of the candidate; or

2. In a general election, by writing in the name of the candidate or by writing in the name of a political party, in which case the ballot shall be counted for the candidate of that political party.

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

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

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

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

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

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

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

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

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

~~(2) The voter shall:~~

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

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

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

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

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

~~2. If security envelopes are not available, two (2) plain enve-~~

~~lopes which contain all of the information on the Federal Write-In Absentee Ballot security envelope may be substituted.~~

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

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

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

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

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

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

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

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

(1)[~~(a)~~**]** Notarization requirements;

(2)[~~(b)~~**]** Restrictions on paper type, including weight and size; and

(3)[~~(c)~~**]** Restrictions on envelope type, including weight and size.

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

~~(a)~~] "Federal Write-In Absentee Ballot", Standard Form 186A, October 2005 edition, is incorporated by reference.[~~10-2005; and~~

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

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

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

HON. TREY GRAYSON, Chair
HON. JACK CONWAY, Attorney General

APPROVED BY AGENCY: January 18, 2011

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

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, April 12, 2011)

103 KAR 3:010. General administrative forms manual.

RELATES TO: KRS 42.470, 61.870-61.884, 64.012, 131.010(9), 131.020, 131.030, 131.041, 131.051, 131.061, 131.081, 131.081(2), (9), (15), 131.110, 131.130, 131.130(3), (10), (11), 131.150, 131.155, 131.170, 131.181, 131.183, 131.190, 131.190(1), 131.240, 131.340, 131.500, 131.500(1), (2), (3), (9), (10), 131.510(1), (2)(a), (2)(b), 131.530, 131.540, 132.020, 132.130-132.160, 132.180, 132.190, 132.200, 132.220, 132.227, 132.230, 132.260, 132.270, 132.290, 132.310, 132.320, 132.450, 132.487, 132.510, 132.820, 132.990, 133.045, 133.110, 133.120, 133.130, 133.240, 134.020, 134.390, 134.420, 134.430, 134.440, 134.500, 134.580(4), 134.590, 134.800, 134.805, 134.810, 134.815, 134.820, 134.825, 134.830, 135.010, 135.020, 135.050, 136.020, 136.050, 136.070, 136.071, 136.0704, 136.090, 136.100, 136.115-136.180, 136.1873, 136.310, 136.320, 136.330, 136.335, 136.377, 136.392, 136.545, 136.575, 136.600-136.660, 137.130, 137.160, 138.448, 138.885, 139.185, 139.200, 139.240, 139.330, 139.390, 139.550, 141.0401(5), 141.0401(6), 141.050(4), 141.210, 141.235, 141.340(2), 142.010, 142.050, 142.321, 142.327, 142.357, 143.030(1), 143.037, 143.040, 143.050, 143.060(1), 143.085, 143.990, 143A.010, 143A.030, 143A.035, 143A.037, 143A.080, 143A.090, 143A.100(1), 143A.991, 154.22-050, 154.22-060, 154.22-070, 154.23-010, 154.24-110, 154.24-130, 154.26-090, 154.28-090, 154.34-010, 155.170, 160.613-160.617, 160.6154(3), 205.745, 209.160, 224.01-310(1), 234.321, 234.370, 243.710, 243.720, 243.730, 243.850, 243.884, 248.756(2), 299.530, 304.4-030, 304.11-050, 304.49-220, 351.175, 395.470(3), 413.120

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

Section 1. Administrative - Required Forms. (1) Revenue Form 10A001, "Request to Inspect Public Records", shall be completed by the public to request access to public records specified on the form.

(2) Revenue Form 10A020, "Waiver of Appeal Rights", shall be completed by a taxpayer to reopen an audit that has become final if the taxpayer has failed to timely file a protest with the Department of Revenue.

(3) Revenue Form 10A070, "Authorization Agreement for Electronic Funds Transfer", shall be completed by taxpayers to authorize the Department of Revenue to move funds by electronic means from taxpayer accounts to the Department of Revenue as payment for taxes.

(4) Revenue Form 10A071, "EFT Bank Change", shall be completed by taxpayers who are registered as EFT ACH Debit filers to notify the department of a bank account change.

(5) Revenue Form 10A100, "Kentucky Tax Registration Application", shall**:**

(a) Be used by taxpayers to voluntarily apply for tax registration of the following accounts[~~taxes~~]:

1.[~~(a)~~**]** Employer's Kentucky withholding tax;

2.[~~(b)~~**]** Corporation income tax;

3.[~~(c)~~**]** Sales and use tax;

4.[~~(d)~~**]** Consumer's use tax;

5.[~~(e)~~**]** Motor vehicle tire fee;

6.[~~(f)~~**]** Transient room tax;

7.[~~(g)~~**]** Limited liability entity tax;

8.[~~(h)~~**]** Utility Gross Receipts License tax;

9.[~~(i)~~**]** Telecommunications tax;

10.[~~(j)~~**]**[~~and~~

~~(h)~~] Coal severance and processing tax; **or[**~~and~~**]**

11.[~~(k)~~**]** Coal Seller/Purchaser Certificate ID Number**; and**

(b) Provide[~~. The application provides~~**]** the department the necessary information to properly register the taxpayer for all applicable tax accounts, including **[**~~information such as,~~**]** the legal business name, federal employer identification number (FEIN), address and other demographic information for the business**, and each responsible party's[**~~; as well as the responsible party(ies)~~**]** information including full name, social security number and residential address **[**~~of the responsible party(ies)~~**]**.

(6) Revenue Form 10A100-CS, "Kentucky Tax Registration Application", shall**:**

(a) Be sent by the department's Division of Registration and Data Integrity[~~registration compliance section~~] to noncompliant taxpayers for the taxpayers [~~to use~~] to apply for tax registration of the following accounts[~~taxes~~]:

1.[~~(a)~~**]** Employer's Kentucky withholding tax;
2.[~~(b)~~**]** Corporation income tax;
3.[~~(c)~~**]** Sales and use tax;
4.[~~(d)~~**]** Consumer's use tax;
5.[~~(e)~~**]** Motor vehicle tire fee;
6.[~~(f)~~**]** Transient room tax;
7.[~~(g)~~**]** Limited liability entity tax;
8.[~~(h)~~**]** Utility Gross Receipts License tax;
9. Telecommunications tax;
10.[~~(i)~~**]** [~~; and~~
~~(h)~~] Coal severance and processing tax; **or[**~~and~~**]**
11.[~~(k)~~**]** Coal Seller/Purchaser Certificate ID Number**; and**

(b) Provide[~~. The application provides~~**]** the department the necessary information to properly register the taxpayer for all applicable tax accounts, including **[**~~such information as,~~**]** the legal business name, federal employer identification number (FEIN), address and other demographic information for the business**, and each responsible party's[**~~; as well as the responsible party(ies)~~**]** information including full name, social security number and residential address **[**~~of the responsible party(ies)~~**]**.

(7) Revenue Form 10A100-I, "Instructions **[**~~for~~**]** Kentucky Tax Registration Application", shall provide instructions for the proper completion of Revenue Form 10A100, "Kentucky Tax Registration Application", which is used to apply for employer's Kentucky withholding **tax**, corporation income **tax**, sales and use **tax**, consumer's use **tax**, motor vehicle tire fee, transient room **tax**, limited liability entity **tax**, utility gross receipts license **tax**, telecommunications **tax**, **[**~~and~~**]** coal severance and processing tax**, or[**~~accounts and~~**]** the coal seller/purchaser certificate ID number.

(8) Revenue Form 10A100-CS(I), "Instructions **[**~~for~~**]** Kentucky Tax Registration Application", shall provide instructions for the proper completion of Revenue Form 10A100-CS, "Kentucky Tax Registration Application", which is used to apply for employer's Kentucky withholding **tax**, corporation income **tax**, sales and use **tax**, consumer's use **tax**, motor vehicle tire fee, transient room **tax**, limited liability entity **tax**, utility gross receipts license **tax**, telecommunications **tax**, **[**~~and~~**]** coal severance and processing tax**, or[**~~accounts and~~**]** the coal seller/purchaser certificate ID number.

(9) Revenue Form 10A104, "Update or Cancellation of Kentucky Tax Account(s)", shall**:**

(a) Be used by the taxpayer to update business information or to cancel accounts for the following taxes:

1.[~~(a)~~**]** Employer's Kentucky withholding tax;
2.[~~(b)~~**]** Corporation income tax;
3.[~~(c)~~**]** Sales and use tax;
4.[~~(d)~~**]** Consumer's use tax;
5.[~~(e)~~**]** Motor vehicle tire fee;
6.[~~(f)~~**]** Transient room tax;
7.[~~(g)~~**]** Limited liability entity tax;
8.[~~(h)~~**]** Utility Gross Receipts License tax;
9.[~~(i)~~**]** Telecommunications tax; **or[**~~and~~**]**
10.[~~(j)~~**]** Coal severance and processing tax**; and**

(b) Provide[~~. The update form provides~~**]** the department the necessary information to properly update and maintain demographic information of the business for all applicable tax accounts, including **[**~~information such as,~~**]** the legal business name, federal employer identification number (FEIN), address and other demographic information for the business**, and each responsible party's[**~~; as well as the responsible party(ies)~~**]** information including full name, social security number and residential address **[**~~of the responsible party(ies)~~**]**.

(10) Revenue Form 10A104-I, "Instructions Update or Cancellation of Kentucky Tax Account(s)", shall provide instructions for the proper completion of Revenue Form 10A104.

(11) Revenue Form 10A106, "Appointment of Taxpayer Administrator and Authorized Users for Kentucky Online Tax", shall be used to establish a taxpayer administrator and authorized users for use of the Kentucky Online Tax System.

(12)[~~(9)~~] Revenue Form 10F060, "Electronic Funds Transfer Program: ACH Credit Guide", shall provide information on the specific requirements of the Department of Revenue's Credit Method of tax remittance for the Electronic Funds Transfer Program.

(13)[~~(10)~~] Revenue Form 10F061, "Electronic Funds Transfer Program: Debit Guide", shall provide instructions to the taxpayer on how to authorize the Department of Revenue to electronically debit a taxpayer controlled account in an Automated Clearing House participating financial institution for the amount which the taxpayer reports to the state's data collection service.

(14)[~~(11)~~] Revenue Form 10F100, "Your Rights As a Kentucky Taxpayer", shall provide the public with information describing taxpayer rights provided by KRS Chapters 131, 133 and 134.

(15)[~~(12)~~] Revenue Form 12A012, "Receipt of Seized Property", shall be presented for execution to the taxpayer receiving returned property from the Kentucky Department of Revenue that was previously seized for failure to pay taxes in order to establish documentation that the property was returned to the taxpayer.

(16)[~~(13)~~] Revenue Form 12A018, "Kentucky Department of Revenue Offer in Settlement Application", shall be presented for execution to persons requesting to settle their tax liabilities for less than the delinquent tax liability based upon doubt as to collectability or doubt as to liability.

(17)[~~(14)~~] Revenue Form 12A104, "Notice of Seizure", shall be presented to the owner or officer of the entity from which the Kentucky Department of Revenue is seizing property for failure to pay taxes owed to the Commonwealth.

(18)[~~(15)~~] Revenue Form 12A107, "Notice of Sale", shall be presented to the owner of seized property, **published in** the newspaper with the highest circulation for that area, and posted at the courthouse, at three (3) other public places within the county, and where the seizure was made, for the purpose of notifying the property owner, and advertising to the public the sale of the seized property.

(19)[~~(16)~~] Revenue Form 12A109-1, "Release of Bank Levy", shall be presented to the bank on which the levy was served for the purpose of releasing the seized property.

(20)[~~(17)~~] Revenue Form 12A109-2, "Release of Levy", shall be presented to the party on which the levy was served for the purpose of releasing the seized property.

(21)[~~(18)~~] Revenue Form 12A109-3, "Release of Levy", shall be presented to the party on which the levy was served for the purpose of releasing the seized property related to child support.

(22)[~~(19)~~] Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", shall be presented to an employer for the purpose of releasing a wage levy.

(23)[~~(20)~~] Revenue Form 12A110-1, "Release of Levy on Wages, Salary, and Other Income", shall be presented to an employer for the purpose of releasing a wage levy related to child support.

(24)[~~(21)~~] Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", shall be presented to anyone who makes a proper application for a lien release on a specific piece of property if the Department of Revenue's lien attaches no equity or if the equity that the lien encumbers is paid to the Department of Revenue.

(25)[~~(22)~~] Revenue Form 12A501, "Certificate of Subordination of Kentucky Finance and Administration Tax Lien", shall be presented to anyone who makes proper application requesting that the Department of Revenue subordinate its lien position to a new mortgage and demonstrates that the subordination is in the Commonwealth's best interest.

(26)[~~(23)~~] Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Tax Lien", shall be presented to anyone who requests to have the Department of Revenue subordinate its lien position to a new mortgage.

(27)[~~(24)~~] Revenue Form 12A503, "Application for Specific Lien Release", shall be presented to anyone who requests that the Department of Revenue release its tax lien so that a specific piece of property can be sold.

(28)[~~(25)~~] Revenue Form 12A504, "Personal Assessment of Corporate Officer or LLC Manager", shall be presented to a corporate officer for the purpose of establishing responsibility of payment of trust taxes owed to the Commonwealth.

(29)[~~(26)~~] Revenue Form 12A505, "Waiver Extending Statutory Period of Assessment of Corporate Officer or LLC Manager", shall be presented to the corporate officers or LLC managers for the purpose of entering into a payment agreement to pay the trust taxes owed to the Commonwealth, and the terms of the payment agreement shall extend past the statutory period for assessing responsible corporate officers or LLC managers.

(30)[~~(27)~~] Revenue Form 12A506, "Waiver Extending Statutory Period for Collection", shall be presented to the taxpayer for the purpose of extending the period in which the liability can be collected.

(31)[~~(28)~~] Revenue Form 12A507, "Table for Figuring the Amount Exempt From Levy on Wages, Salary, and Other Income", shall be presented to employers with a wage levy on an employee for the purpose of calculating the dollar amount of wages due to the employee.

(32)[~~(29)~~] Revenue Form 12A508-1, "Notice of Tax Due", shall be presented for the purpose of assessing an officer of a corporation who is personally liable for trust taxes owed to the Commonwealth.

(33)[~~(30)~~] Revenue Form 12A508-2, "Notice of Tax Due", shall be presented for the purpose of assessing an officer of a corporation who is personally liable for Gasoline and Special Fuels taxes owed to the Commonwealth.

(34)[~~(31)~~] Revenue Form 12A508-3, "Notice of Tax Due", shall be presented for the purpose of assessing a manager or partner of a limited liability company who is personally liable for trust taxes owed to the Commonwealth.

(35)[~~(32)~~] Revenue Form 12A508-4, "Notice of Tax Due", shall be presented for the purpose of assessing a manager or partner of a limited liability company who is personally liable for Gasoline and Special Fuels taxes owed to the Commonwealth.

(36)[~~(33)~~] Revenue Form 12A514, "Questionnaire for Persons Relative to a Notice of Assessment", shall be presented to an officer of a corporation for the purpose of resolving responsibility of the trust taxes owed to the Commonwealth.

(37)[~~(34)~~] Revenue Form 12A517, "Notice of Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(38)[~~(35)~~] Revenue Form 12A517-1, "Notice of Child Support Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(39)[~~(36)~~] Revenue Form 12A518, "Certificate of Release of Lien", shall be presented to the county clerk and to the taxpayer against whom the tax lien is filed for the purpose of releasing the lien and notifying the taxpayer of the release.

(40)[~~(37)~~] Revenue Form 12A518-1, "Certificate of Release of Child Support Lien", shall be presented to the county clerk and to the taxpayer against whom the child support lien is filed for the purpose of releasing the lien and notifying the obligor of the release.

(41)[~~(38)~~] Revenue Form 12A638, "Statement of Financial Condition for Individuals", shall be presented to individuals requesting to make payments or settle their tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(42)[~~(39)~~] Revenue Form 12A638(I), "Instructions for Completing Statement of Financial Condition for Individuals", shall provide instructions for completing Revenue Form 12A638.

(43)[~~(40)~~] Revenue Form 12A639, "Statement of Financial Condition for Businesses", shall be presented to business owners requesting to make payments or settle a tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(44)[~~(41)~~] Revenue Form 12A639(I), "Instructions for Completing Statement of Financial Condition for Businesses", shall provide instructions for completing Revenue Form 12A639.

(45)[~~(42)~~] Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", shall be presented to employers for the purpose of levying wages from an employee who owes taxes to the Kentucky Department of Revenue.

(46)[~~(43)~~] Revenue Form 12B019-1, "Notice of Levy on Wages, Salary, and Other Income", shall be presented to employers for the purpose of levying wages from an employee who owes child support.

(47)[~~(44)~~] Revenue Form 12B020, "Notice of Levy", shall be presented to banks for the purpose of levying bank accounts of taxpayers who owe taxes to the Kentucky Department of Revenue.

(48)[~~(45)~~] Revenue Form 12B020-2, "Notice of Levy", shall be presented to banks for the purpose of levying bank accounts of obligors who owe child support.

(49)[~~(46)~~] Revenue Form 21A020, "Request for Copy of Tax Refund Check", shall be completed and submitted to the Department of Revenue in order to obtain a copy of a cashed refund check.

(50)[~~(47)~~] Revenue Form 30A005, "Temporary Vendor's Sales Tax Permit", shall be presented to temporary and transient vendors who do not have a permanent place of business for the purpose of remitting tax on a non-permit [~~on-permit~~][~~nonpermit~~] basis, as required by 103 KAR 25:060.

(51)[~~(48)~~] Revenue Form 30A006, "Temporary Vendor Sales and Use Tax Return/Processing Document", shall be used to register temporary vendors who do business in the Commonwealth of Kentucky.

(52)[~~(49)~~] Revenue Form 30A872, "Record of Money Receipt Issued", shall be used by Department of Revenue Field personnel to provide written documentation of acceptance of cash payments.

(53)[~~(50)~~] Revenue Form 31A001, "Vendor Contact Authorization", shall be used by a Department of Revenue representative to obtain permission from a taxpayer to contact his **or her** vendors concerning the issuance of exemption certificates.

(54)[~~(51)~~] Revenue Form 31A004, "Auditor Record of Money Receipt Issued", shall be used by the auditor to acknowledge payment from taxpayers of taxes determined to be tentatively due at the time of an audit.

(55)[~~(52)~~] Revenue Form 31A011-ASH, "Taxpayer Data Questionnaire", shall be used by auditors at the Ashland Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(56)[~~(53)~~] Revenue Form 31A011-BG, "Taxpayer Data Questionnaire", shall be used by auditors at the Bowling Green Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(57)[~~(54)~~] Revenue Form 31A011-CKY, "Taxpayer Data Questionnaire", shall be used by auditors at the Central Kentucky Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(58)[~~(55)~~] Revenue Form 31A011-COR, "Taxpayer Data Questionnaire", shall be used by auditors at the Corbin Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(59)[~~(56)~~] Revenue Form 31A011-HOP, "Taxpayer Data Questionnaire", shall be used by auditors at the Hopkinsville Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(60)[~~(57)~~] Revenue Form 31A011-LOU, "Taxpayer Data Questionnaire", shall be used by auditors at the Louisville Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(61)[~~(58)~~] Revenue Form 31A011-NKY, "Taxpayer Data Questionnaire", shall be used by auditors at the Northern Kentucky Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(62)[(59)] Revenue Form 31A011-OWEN, "Taxpayer Data Questionnaire", shall be used by auditors at the Owensboro Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(63)[(60)] Revenue Form 31A011-PAD, "Taxpayer Data Questionnaire", shall be used by auditors at the Paducah Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(64)[(61)] Revenue Form 31A011-PIKE, "Taxpayer Data Questionnaire", shall be used by auditors at the Pikeville Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(65)[(62)] Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Ohio and Indiana.

(66)[(63)] Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Virginia and West Virginia.

(67)[(64)] Revenue Form 31A020, "Office of Field Operations Request for Copy of Tax Return(s)", shall be used by Department of Revenue representatives to obtain permission from a taxpayer to release tax returns.

(68)[(65)] Revenue Form 31A050, "Electronic Transmittal Authorization", shall be used by auditors to seek permission from a taxpayer to transmit audit results electronically.

(69)[(66)] Revenue Form 31A115, "Agreement Fixing Test Periods", shall be used by auditors to establish certain test periods when conducting an audit.

(70)[(67)] Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain sales, use or severance tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(71)[(68)] Revenue Form 31A150, "Agreement Fixing Period of Limitation Upon Assessment of Utility Gross Receipts License Tax", shall be used by auditors to establish taxable periods to be held open for audit and date of assessment.

(72)[(69)] Revenue Form 31A685, "Authorization to Examine Bank Records", shall be used by the Department of Revenue to obtain permission from a taxpayer to examine records in connection with transactions at the taxpayer's bank.

(73)[(70)] Revenue Form 31A725, "Statute of Limitations Agreement", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain income tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(74)[(71)] Revenue Form 31F006, "Southeastern States Information Exchange Program", shall be used to provide information to taxpayers concerning the information exchange program between the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Virginia, and West Virginia.

(75)[(72)] Revenue Form 31F010, "Kentucky's Computer Assisted Audit Program**[**~~Brochure~~**]**", shall be **the brochure** used as instructions for taxpayers who submit tax records in an electronic format.

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

(a) Revenue Form 10A001, "Request to Inspect Public Records", February 1997;

(b) Revenue Form 10A020, "Waiver of Appeal Rights", January 2001;

(c) Revenue Form 10A070, "Authorization Agreement for Electronic Funds Transfer", January 2008;

(d) Revenue Form 10A071, "EFT Bank Change", June[~~,~~] 2009;

(e) Revenue Form 10A100, "Kentucky Tax Registration Application", July 2010[~~April 2009~~];

(f) Revenue Form 10A100-CS, "Kentucky Tax Registration Application", July 2010[~~April 2009~~];

(g) Revenue Form 10A100-I, "Instructions **[**~~for~~**]** Kentucky Tax Registration Application", January 2011[~~April 2009~~];

(h) Revenue Form 10A100-CS(I), "Instructions **[**~~for~~**]** Kentucky Tax Registration Application", January 2011;

(i) Revenue Form 10A104, "Update of Cancellation of Kentucky Tax Account(s)"**,[**~~,~~**]** July 2010;

(j) Revenue Form 10A104-I, "Instructions **[**~~for~~**]** Update or Cancellation of Kentucky Tax Account(s)", July 2010;

(k) Revenue Form 10A106, "Appointment of Taxpayer Administrator and Authorized Users for Kentucky Online Tax" **[**~~System~~**]**, May 2010[~~April 2009~~];

(l)[(~~i~~)] Revenue Form 10F060, "Electronic Funds Transfer Program: ACH Credit Guide", April 2006;

(m)[(~~j~~)] Revenue Form 10F061, "Electronic Funds Transfer Program: Debit Guide", December 2008;

(n)[(~~k~~)] Revenue Form 10F100, "Your Rights as a Kentucky Taxpayer", October 2010;[~~September 2008;~~]

(o)[(~~l~~)] Revenue Form 12A012, "Receipt of Seized Property", November 2006;

(p)[(~~m~~)] Revenue Form 12A018, "Kentucky Department of Revenue Offer in Settlement Application", March 2009;

(q)[(~~n~~)] Revenue Form 12A104, "Notice of Seizure", October 1982;

(r)[(~~o~~)] Revenue Form 12A107, "Notice of Sale", January 2000;

(s)[(~~p~~)] Revenue Form 12A109-1, "Release of Bank Levy", September 2004;

(t)[(~~q~~)] Revenue Form 12A109-2, "Release of Levy", January 2000;

(u)[(~~r~~)] Revenue Form 12A109-3, "Release of Levy", January 2008;

(v)[(~~s~~)] Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", September 2004;

(w)[(~~t~~)] Revenue Form 12A110-1, "Release of Levy on Wages, Salary, and Other Income", January 2008;

(x)[(~~u~~)] Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", June 2006;

(y)[(~~v~~)] Revenue Form 12A501, "Certificate of Subordination of Kentucky Finance and Administration Tax Lien", June 2006;

(z)[(~~w~~)] Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Tax Lien", October 2006;

(aa)[(~~x~~)] Revenue Form 12A503, "Application for Specific Lien Release", October 2006;

(bb)[(~~y~~)] Revenue Form 12A504, "Personal Assessment of Corporate Officer or LLC Manager", June 2003;

(cc)[(~~z~~)] Revenue Form 12A505, "Waiver Extending Statutory Period of Assessment of Corporate Officer or LLC Manager", June 2003;

(dd)[(~~aa~~)] Revenue Form 12A506, "Waiver Extending Statutory Period for Collection", June 2003;

(ee)[(~~bb~~)] Revenue Form 12A507, "Table for Figuring the Amount Exempt from Levy on Wages, Salary, and Other Income", November 2006;

(ff)[(~~cc~~)] Revenue Form 12A508-1, "Notice of Tax Due", January 2008;

(gg)[(~~dd~~)] Revenue Form 12A508-2, "Notice of Tax Due", January 2008;

(hh)[(~~ee~~)] Revenue Form 12A508-3, "Notice of Tax Due", November 2008;

(ii)[(~~ff~~)] Revenue Form 12A508-4, "Notice of Tax Due", November 2008;

(jj)[(~~gg~~)] Revenue Form 12A514, "Questionnaire for Persons Relative to a Notice of Assessment", August, 1996;

(kk)[(~~hh~~)] Revenue Form 12A517, "Notice of Lien", November 2008;

(ll)[(~~ii~~)] Revenue Form 12A517-1, "Notice of Child Support Lien", November 2008;

(mm)[(~~jj~~)] Revenue Form 12A518, "Certificate of Release of Lien", November 2008;

(nn)[(~~kk~~)] Revenue Form 12A518-1, "Certificate of Release of Child Support Lien", January 2008;

(oo)[(ll)] Revenue Form 12A638, "Statement of Financial Condition for Individuals", July 2004;

(pp)[(mm)] Revenue Form 12A639, "Statement of Financial Condition for Businesses", August 2004;

(qq)[(oo)] Revenue Form 12A639(I), "Instructions for Completing Statement of Financial Condition for Businesses", August 2004;

(rr)[(pp)] Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", September 2004;

(ss)[(qq)] Revenue Form 12B019-1, "Notice of Levy on Wages, Salary, and Other Income", January 2008;

(tt)[(rr)] Revenue Form 12B020, "Notice of Levy", September 2004;

(uu)[(ss)] Revenue Form 12B020-2, "Notice of Levy", January 2008;

(vv)[(tt)] Revenue Form 21A020, "Request for Copy of Tax Refund Check", October 2006;

(ww)[(uu)] Revenue Form 30A005, "Temporary Vendor's Sales Tax Permit", September 1998;

(xx)[(vv)] Revenue Form 30A006, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2006;

(yy)[(ww)] Revenue Form 30A872, "Record of Money Receipt Issued", **October 2000[**~~February 2008~~**]**;

(zz)[(xx)] Revenue Form 31A001, "Vendor Contact Authorization", July 2006;

(aaa)[(yy)] Revenue Form 31A004, "Auditor Record of Money Receipt Issued", July 2006;

(bbb)[(zz)] Revenue Form 31A011-ASH, "Taxpayer Data Questionnaire", March 2009;

(ccc)[(aaa)] Revenue Form 31A011-BG, "Taxpayer Data Questionnaire", March 2009;

(ddd)[(bbb)] Revenue Form 31A011-CKY, "Taxpayer Data Questionnaire", March 2009;

(eee)[(ccc)] Revenue Form 31A011-COR, "Taxpayer Data Questionnaire", March 2009;

(fff)[(ddd)] Revenue Form 31A011-HOP, "Taxpayer Data Questionnaire", March 2009;

(ggg)[(eee)] Revenue Form 31A011-LOU, "Taxpayer Data Questionnaire", March 2009;

(hhh)[(fff)] Revenue Form 31A011-NKY, "Taxpayer Data Questionnaire", March 2009;

(iii)[(ggg)] Revenue Form 31A011-OWEN, "Taxpayer Data Questionnaire", March 2009;

(jjj)[(hhh)] Revenue Form 31A011-PAD, "Taxpayer Data Questionnaire", March 2009;

(kkk)[(iii)] Revenue Form 31A011-PIKE, "Taxpayer Data Questionnaire", March 2009;

(lll)[(jjj)] Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", July 2006;

(mmm)[(kkk)] Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", July 2006;

(nnn)[(lll)] Revenue Form 31A020, "Office of Field Operations Request for Copy of Tax Return(s)", July 2006;

(ooo)[(mmm)] Revenue Form 31A050, "Electronic Transmittal Authorization", April 2008;

(ppp)[(nnn)] Revenue Form 31A115, "Agreement Fixing Test Periods", April 2008;

(qqq)[(ooo)] Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", July 2006;

(rrr)[(ppp)] Revenue Form 31A150, "Agreement Fixing Period of Limitation Upon Assessment of Utility Gross Receipts License Tax", May 2008;

(sss)[(qqq)] Revenue Form 31A685, "Authorization to Examine Bank Records", May 1985;

(ttt)[(rrr)] Revenue Form 31A725, "Statute of Limitations Agreement", July 2006;

(uuu)[(sss)] Revenue Form 31F006, "Southeastern States Information Exchange Program", February 2005; and

(vvv)[(ttt)] Revenue Form 31F010, "Kentucky's Computer Assisted Audit Program**[**~~Brochure~~**]**", May 2010[~~June 2006~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGNECY: February 3, 2011

FILED WITH LRC: February 7, 2011 at 9 a.m.

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Property Valuation
(As Amended at ARRS, April 12, 2011)

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

RELATES TO: KRS 42.470, 61.870-61.884, 131.020, 131.030, 131.041-131.081, 131.081(2), (9), (15), 131.110, 131.130, 131.130(3), 131.155, 131.181, 131.183, 131.190, 131.340, 131.500, 131.500(1), (2), (3), (10), 131.510(1), (2)(a), 131.540, 132.020, 132.130-132.180, 132.190, 132.200, 132.220-132.270, 132.290, 132.310, 132.320, 132.360, 132.450, 132.487, 132.510, 132.820, 132.825, 132.990, 133.045, 133.110, 133.120, 133.130, 133.240, 134.015, 134.119, 134.020, 134.122, 134.128, 134.129, 134.390, 134.420, 134.430, 134.440, 134.500, 134.590, 134.800, 134.805, 134.810, 134.815, 134.820, 134.825, 134.830, 135.010, 135.020, 135.050, 136.020, 136.050, 136.115-136.180, 136.1802-136.1806, 136.1873, 136.310, 136.320, 136.330, 136.335, 136.377, 136.545, 136.575, 136.600-136.660, 137.130, 137.160, 143.030(1), 143.037, 143.040, 143.050, 143.060(1), 143.085, 143.990, 143A.010, 143A.030, 143A.035, 143A.037, 143A.080, 143A.090, 143A.100(1), 143A.991, Ky. Const. Sec. 170

STATUTORY AUTHORITY: KRS 131.130(3)

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

Section 1. Property Tax - Required Forms. (1) Revenue Form 61A200(P), "Property Tax Forms and Instructions for Public Service Companies 2011[~~2010~~]", shall be the packet of files and instructions relating to Revenue Form 61A200 for use by public service companies reporting company name, location and other pertinent filing information with the Department of Revenue.

(2) Revenue Form 61A200, "Public Service Company Property Tax Return for Year Ending December 31, 2010[~~2009~~]", shall be filed by public service companies reporting company name, location, and other pertinent filing information with the Department of Revenue.

(3) Revenue Form 61A200(A), "Report of Total Unit System and Kentucky Operations", shall be filed by public service companies with the Department of Revenue, reporting the System and Kentucky original cost, total depreciation and depreciated cost for all operating and nonoperating property types as of the end of the taxable year.

(4) Revenue Form 61A200(B), "Report of Kentucky Vehicles, Car Lines and Watercraft", shall be filed by public service companies with the Department of Revenue, reporting the assessed value of all Kentucky apportioned and regular licensed motor vehicles, railroad car lines and commercial watercraft as of the end of the year.

(5) Revenue Form 61A200(C), "Report of Total Unit Operations Balance Sheet", shall be filed by public service companies with the Department of Revenue, reporting a financial statement (balance sheet) as of December 31 for the system operating unit including Kentucky.

(6) Revenue Form 61A200(D), "Report of Total Unit Operations Income Statement", shall be filed by public service companies with

the Department of Revenue, reporting a financial statement (income statement) for twelve (12) months ending December 31 for the system operating unit including Kentucky.

(7) Revenue Form 61A200(E), "Filing Extension Application", shall be used by public service companies to request an extension of time to file the public service company tax return.

(8) Revenue Form 61A200(G), "Report of Capital Stocks", shall be filed by public service companies with the Department of Revenue, reporting an analysis of their capital stocks as of the end of the taxable year.

(9) Revenue Form 61A200(H), "Report of Funded Debt", shall be filed by public service companies with the Department of Revenue reporting an analysis of their debt as of the end of the taxable year.

(10) Revenue Form 61A200(I), "Business Summary by Taxing Jurisdiction", shall be filed by public service companies with the Department of Revenue, reporting a summary of the business activity within each taxing district.

(11) Revenue Form 61A200(J), "Property Summary by Taxing Jurisdiction, Operating and Nonoperating Property", shall be filed by public service companies with the Department of Revenue reporting a summary of the amount of operating and nonoperating property owned or leased in this state, by each county, city and special district.

(12) Revenue Form 61A200(K), "Operating Property Listing by Taxing Jurisdiction", shall be filed by public service companies with the Department of Revenue, reporting an inventory of the amount and kind of operating property, owned or leased, located in this state, for each county, city and special taxing district.

(13) Revenue Form 61A200(K2), "Nonoperating/Nonutility Property Listing by Taxing Jurisdiction", shall be filed by public service companies with the Department of Revenue reporting an inventory of the amount and kind of nonoperating property owned or leased, located in this state, for each county, city and special taxing district.

(14) Revenue Form 61A200(L), "Report of Allocation Factors, Operating and Noncarrier Property for All Interstate Companies", shall be filed by interstate, noncarrier, public service companies with the Department of Revenue, reporting property and business factors in total and for the state of Kentucky.

(15) Revenue Form 61A200(M), "Report of Property and Business Factors for Interstate Railroad and Sleeping Car Companies", shall be filed by interstate railroad and sleeping car companies with the Department of Revenue, reporting property and business factors in total and for the state of Kentucky.

(16) Revenue Form 61A200(N1), "Report of Operating Leased Real Property Located in Kentucky By Taxing District", shall be filed by public service companies with the Department of Revenue, reporting all leased real property and the terms of the lease by taxing district.

(17) Revenue Form 61A200(N2), "Report of Operating Leased Personal Property Located in Kentucky By Taxing District", shall be filed by public service companies with the Department of Revenue, reporting all leased personal property and the terms of the lease by taxing district.

(18) Revenue Form 61A200(N3), "Summary Report of System and Kentucky Operating Lease Payments", shall be filed by public service companies with the Department of Revenue reporting the annual operating lease payments paid during the calendar year.

(19) Revenue Form 61A200(O), "Railroad Private Car Mileage Report", shall be filed by railroad car line companies with the Department of Revenue reporting the name and address of the company and the mileage in Kentucky.

(20) Revenue Form 61A200(Q), "Supplemental Report of Operations for Contained and Residential Landfills", shall be filed by landfills with the Department of Revenue, reporting historic, current, and projected operational information.

(21) Revenue Form 61A200(R), "Report of Property Subject to the Pollution Control Tax Exemption", shall be filed by public service companies with the Department of Revenue, reporting certified pollution control equipment, the original cost and the net book value.

(22) Revenue Form 61A200(U), "Industrial Revenue Bond Property", shall be filed by a public service company to list real and tangible personal property purchased with an industrial revenue bond.

(23) Revenue Form 61A202, "2011[~~2010~~] Public Service Company Property Tax Return for Railroad Car Line", shall be filed by railroad car line companies with the Department of Revenue, classifying the railcars by type and reporting cost, age, and mileage for each railcar.

(24) Revenue Form 61A206(P), "Public Service Company Property Tax Forms and Instructions for Commercial Air Passenger and Air Freight Carriers 2011[~~2010~~]", shall be the packet of files and instructions relating to Revenue Form 61A206 for use by commercial air passenger and air freight carriers reporting company name, location, and other pertinent information with the Department of Revenue.

(25) Revenue Form 61A206, "Public Service Company Property Tax Return For Commercial Air Passenger and Air Freight Carriers", shall be filed by all commercial air passenger and air freight carriers reporting taxpayer name, location, and other pertinent information with the Department of Revenue.

(26) Revenue Form 61A206(A), "Filing Extension Application for Public Service Company Property Tax Return", shall be used by commercial air passenger and air freight carriers to request an extension of time to file the commercial air passenger and air freight carriers tax return.

(27) Revenue Form 61A206(B), "Report of Kentucky Registered and Licensed Motor Vehicles", shall be filed by commercial air passenger and air freight carriers to report vehicles, both owned and leased, registered within the state of Kentucky as of December 31.

(28) Revenue Form 61A206(C), "Report of Financial Operations for Commercial Air Passenger and Air Freight Carriers", shall be used by all commercial, passenger, or cargo airlines conducting business in Kentucky to provide the Department of Revenue with yearend financial statements, a complete annual report, and a complete 10K report (FCC annual report) for the twelve (12) month period ending December 31.

(29) Revenue Form 61A206(D-1), "Report of System Aircraft Fleet", shall be filed by commercial air passenger and air freight carriers providing a complete listing of fleet aircraft owned and capital-leased as of December 31.

(30) Revenue Form 61A206(D-2), "Report of System Aircraft Fleet", shall be filed by commercial air passenger and air freight carriers providing a complete listing of operating leased fleet aircraft.

(31) Revenue Form 61A206(D-3), "Report of System Aircraft Fleet", shall be filed by all commercial air passenger and air freight carriers providing a complete listing of all fleet managed aircraft and aircraft held for resale or nonoperating.

(32) Revenue Form 61A206(E), "Report of Kentucky Flight Statistics By Airport", shall be filed by all commercial air passenger and air freight carriers providing a listing of all arrivals, departures, and ground time at all Kentucky airports and heliports.

(33) Revenue Form 61A206(F), "Report of System and Kentucky Allocation Factors", shall be filed by all commercial air passenger and air freight carriers listing property factors and business factors.

(34) Revenue Form 61A206(G), "Report of Funded Debt", shall be filed by all commercial air passenger and air freight carriers listing all debt obligations, both long term and short term, by class and obligation.

(35) Revenue Form 61A206(H), "Report of Operating Leased Real Property Located in Kentucky By Taxing District", shall be filed by all commercial air passenger and air freight carriers listing all real property in Kentucky leased on an operating lease basis.

(36) Revenue Form 61A206(I), "Report of Operating Leased Personal Property Located in Kentucky By Taxing District", shall be filed by all commercial air passenger and air freight carriers listing all personal property in Kentucky leased on an operating lease basis.

(37) Revenue Form 61A206(J), "Summary Report of System and Kentucky Operating Lease Payments", shall be filed by all commercial air passenger and air freight carriers listing all annual operating lease payments.

(38) Revenue Form 61A206(K), "Report of Owned Real Prop-

erty Located in Kentucky By Taxing District", shall be filed by all commercial air passenger and air freight carriers listing all real property owned in Kentucky.

(39) Revenue Form 61A206(L), "Report of Owned Personal Property Located in Kentucky By Taxing District", shall be filed by all commercial air passenger and air freight carriers listing all personal property owned in Kentucky.

(40) Revenue Form 61A206(M), "Summary Report of Total System and Kentucky Operations", shall be filed by all commercial air passenger and air freight carriers listing all real and personal property owned and leased, providing the original cost, depreciation, and depreciated cost values.

(41) Revenue Form 61A206(N), "Industrial Revenue Bond Property", shall be filed by all commercial air passenger and air freight carriers listing real and tangible property purchased with an industrial revenue bond.

(42) Revenue Form 61A206(O), "Public Service Company Sales", shall be filed by commercial air passenger and air freight carriers listing any assets bought or sold during the year.

(43) Revenue Form 61A207(P), "Commercial Watercraft Personal Property Tax Return **2011[**~~2010~~**]**", shall be the packet of files and instructions relating to Revenue Form 61A207 for use by commercial watercraft owners both resident and nonresident, reporting the watercraft's book value, original cost and total and Kentucky route mileage with the Department of Revenue.

(44) Revenue Form 61A207, "2011[~~2010~~] Commercial Watercraft Personal Property Tax Return", shall be filed by all commercial watercraft owners, both resident and nonresident, reporting the watercraft's book value, original cost, and total and Kentucky route mileage with the Department of Revenue.

(45) Revenue Form 61A207(A), "Report of Owned Vessels in Your Possession", shall be filed with the Department of Revenue, reporting all owned vessels (both available and operating) in their fleet as of January 1, 2011[~~2010~~].

(46) Revenue Form 61A207(B), "Report of Owned Vessels - in Possession of Others", shall be filed with the Department of Revenue, reporting all owned vessels that are in possession of other persons, companies, corporations, operators, or charterers as of January 1, 2011[~~2010~~].

(47) Revenue Form 61A207(C), "Report of Nonowned Vessels in Your Possession", shall be filed with the Department of Revenue, reporting all nonowned vessels (both available and operating) in their fleet as of January 1, 2011[~~2010~~].

(48) Revenue Form 61A207(D), "Commercial Watercraft Valuation Worksheet", shall be filed with the Department of Revenue, reporting the original cost, cost of rebuilds and the cost of major improvements of all owned and nonowned vessels.

(49) Revenue Form 61A207(E), "Report of Kentucky Route Miles", shall be filed with the Department of Revenue reporting the system route miles traveled on Kentucky waterways.

(50) Revenue Form 61A207(F), "Report of System Route Miles", shall be filed with the Department of Revenue reporting the system route miles traveled on United States waterways.

(51) Revenue Form 61A209, "Public Service Company Sales", shall be filed by public service companies with the Department of Revenue, reporting any full or partial sale or purchase of assets of the public service company.

(52) Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Situs", shall be filed by public service companies with the Department of Revenue reporting all motor vehicles owned or leased within Kentucky.

(53) Revenue Form 61A211(I), "Instructions Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Situs", shall provide instructions for completing Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Situs".

(54) Revenue Form 61A230, "Notice of Assessment", shall be sent by the Department of Revenue to the taxpayer notifying him **or her** of the final assessment of the public service company property.

(55) Revenue Form 61A240, "Notice of Assessment", shall be sent by the Department of Revenue to the taxpayer notifying him **or her** of a tentative assessment of the public service company property. This notice shall inform the taxpayer of the protest period.

(56) Revenue Form 61A250, "Notice of Assessment", shall be sent by the Department of Revenue to the taxpayer notifying the taxpayer of his **or her** claim of assessed value on public service company property.

(57) Revenue Form 61A255, "Public Service Company Property Tax Statement", shall be used by the counties, schools and special districts to bill public service companies for local property taxes.

(58) Revenue Form 61A255(I), "Instructions for 61A255, Public Service Company Property Tax Statement", shall provide instructions for completing Revenue Form 61A255, "Public Service Company Property Tax Statement".

(59) Revenue Form 61A500(P), "2011[~~2010~~] Personal Property Tax Forms and Instructions for Communications Service Providers and Multi-channel Video Programming Service Providers", shall be the packet of files and instructions relating to Revenue Form 61A500 for use by telecommunication, satellite, and cable television companies, reporting all tangible personal property with the Department of Revenue.

(60) Revenue Form 61A500, "2011[~~2010~~] Tangible Personal Property Tax Return for Communication Service Providers and Multichannel Video Program Service Providers", shall be filed by telecommunications, satellite, and cable television companies, reporting all tangible personal property with the Department of Revenue.

(61) Revenue Form 61A500(H), "Report of Total Personal Tangible Property in Kentucky", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, summarizing the Kentucky original cost, depreciation, and net book value of each class of tangible personal property.

(62) Revenue Form 61A500(I), "Summary of Gross Personal Tangible Property Listing by Taxing District", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, summarizing the Kentucky Original Cost by taxing jurisdiction.

(63) Revenue Form 61A500(J), "Summary of Reported Personal Tangible Property Listing by Taxing District", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, summarizing the Kentucky reported value by taxing jurisdiction.

(64) Revenue Form 61A500(K), "Personal Tangible Property Listing by Taxing District", shall be filed by telecommunication, satellite and cable television companies with the Department of Revenue and shall contain an inventory of the amount and kind of personal property owned and located in Kentucky by taxing jurisdiction.

(65) Revenue Form 61A507, "Nonresident Watercraft Property Tax Statement", shall be used by county clerks and local tax jurisdictions to bill assessments of nonresident watercraft personal property.

(66) Revenue Form 61A508, "Annual Report of Distilled Spirits in Bonded Warehouse", shall be filed by distilleries with the Department of Revenue to report inventory as of January 1.

(67) Revenue Form 61A508-S1, "Schedule 1 Department of Property Valuation Cost of Production Schedule", shall be filed by distilleries with the Department of Revenue, reporting the average cost per gallon of production.

(68) Revenue Form 61A508-S2, "Schedule 2 Department of Property Valuation Storage Cost Schedule", shall be filed by distilleries with the Department of Revenue, reporting average per barrel storage cost.

(69) Revenue Form 61A508-S3, "Schedule 3 Schedule of Bulk Sales", shall be filed by distilleries with the Department of Revenue, reporting the date of the sale or purchase, the number of barrels, age, and the price.

(70) Revenue Form 61A508-S4, "Schedule 4", shall be filed by distilleries with the Department of Revenue, reporting the fair cash value of bulk inventory summarized on Form 61A508.

(71) Revenue Form 61A508-S5, "Schedule 5", shall be filed by distilleries with the Department of Revenue, reporting the fair cash values of case goods summarized on Form 61A508.

(72) Revenue Form 61A509, "Distilled Spirits or Telecoms Property Tax Statement", shall be used by county clerks and local

tax jurisdictions to bill assessments of distilled spirits and telecom personal property.

(73) Revenue Form 61F007, "Notification Protesting Your Commercial Watercraft Assessment", shall inform taxpayers of the protest procedures on Commercial Watercraft assessments.

(74) Revenue Form 61F008, "Notification Protesting Your Assessment", shall inform taxpayers of the protest procedures on Railroad Car Line assessments.

(75) Revenue Form 61F009, "Notification Protesting Your Assessment", shall inform taxpayers of the protest procedures on Public Service Company Property Tax assessments.

(76) Revenue Form 61F010, "Property Value Assessments for Public Service and Centrally Assessed Companies-Assessment of Distilled Spirits in Bonded Warehouses", shall inform taxpayers of the protest procedures on Distilled Spirits assessments.

(77) Revenue Form 62A007, "Motor Vehicle Tax and/or Registration Renewal Notice", shall be issued by the Department of Revenue to notify motor vehicle owners of their ad valorem property tax liabilities and registration renewal deadline.

(78) Revenue Form 62A007S, "Motor Vehicle/Boat Property Tax Notice - Second Notice", shall be issued by the Department of Revenue to notify motor vehicle and boat owners of their delinquent ad valorem property tax liabilities.

(79) Revenue Form 62A008, "Motor Vehicle Tax Notice", shall be issued by the Department of Revenue to notify motor vehicle owners of their ad valorem property tax liabilities.

(80) Revenue Form 62A009, "Map Sales Invoice", shall be provided to the customer by the Department of Revenue as a receipt for payment of maps purchased.

(81) Revenue Form 62A010, "Notice for Boat Transfer", shall be issued to January 1 owners of boats transferred during the calendar year informing them of the ad valorem tax due on the transferred boat.

(82) Revenue Form 62A013, "Application for Assessment Moratorium Certificate", shall be filed by property owners seeking an assessment moratorium on qualifying existing property undergoing repair, rehabilitation or restoration. The form shall be filed with the proper administrating agency of the county in which the property is located, thirty (30) days prior to restoration or repair.

(83) Revenue Form 62A015, "2011[~~2010~~] Motor Vehicle and Watercraft Property Tax Rate Certification", shall be submitted annually to the Department of Revenue by motor vehicle and watercraft taxing jurisdictions to certify the rates established by the taxing jurisdiction for motor vehicles and watercraft.

(84) Revenue Form 62A016, "Quietus", shall be issued by the Department of Revenue to certify that a county clerk is in good standing with regard to the conduct of ad valorem property tax collection duties.

(85) Revenue Form 62A017, "County Clerk's Claim for Calculation of Motor Vehicle and Boat Bills", shall be completed by the Department of Revenue and county clerk to certify the total number of motor vehicle and boat accounts for a given county and determine the county clerk's compensation for making tax bills.

(86) Revenue Form 62A020, "Intercounty Property Tax Collections", shall be completed by the Department of Revenue to list distributions of ad valorem property tax made to individual taxing jurisdictions.

(87) Revenue Form 62A023, "Application for Exemption from Property Taxation", shall be filed by organizations[~~, other than institutions of religion~~] seeking a property tax exemption under Ky. Const. Sec. 170. This form shall be filed with the Department of Revenue.

(88) [~~Revenue Form 62A023-R, "Application for Exemption from Property Taxation for Religious Organizations", shall be filed by institutions of religion seeking a property tax exemption under Ky. Const. Sec. 170. This form shall be filed with the Department of Revenue.~~

~~(89)~~] Revenue Form 62A030, "Request for Reproduction of PVA Public Records and Contract for Commercial Users", shall be submitted to request copies of documents required to be retained by the PVA.

(89)[~~(90)~~] Revenue Form 62A044, "Affidavit for Correction/Exoneration of Motor Vehicle/Boat/Trailer Property Tax", shall be completed by the owner of a vehicle, boat, or trailer, at the property valuation administrator's office in order to correct owner or vehicle, boat, or trailer information in the ad valorem tax computer system. The PVA shall present the form to the county clerk when a tax refund is authorized.

(90)[~~(91)~~] Revenue Form 62A200(P), "**2011[**~~2010~~**]** Unmined Coal Property Tax Information Return", shall be the packet of files and instructions relating to Revenue Form 62A200 for use by owners or lessees of unmined minerals, reporting filer information with the Department of Revenue.

(91)[~~(92)~~] Revenue Form 62A200, "**2011[**~~2010~~**]** Unmined Coal Property Tax Information Return", shall be filed by owners or lessees of unmined minerals, reporting filer information with the Department of Revenue.

(92)[~~(93)~~] Revenue Form 62A200, "Schedule A Fee Property Ownership", shall be filed by owners or lessees of unmined minerals with the Department of Revenue, reporting ownership information for each parcel or royalty information for each leased parcel.

(93)[~~(94)~~] Revenue Form 62A200, "Schedule B Leased Property", shall be filed by all lessees and sublessees with the Department of Revenue, reporting ownership information for each parcel or royalty information for each leased parcel.

(94)[~~(95)~~] Revenue Form 62A200, "Schedule C Property or Stock Transfers", shall be filed by both purchasers and sellers of unmined mineral property, with the Department of Revenue, reporting details of the transaction.

(95)[~~(96)~~] Revenue Form 62A200, "Schedule D Lease Terminations, Transfers or Assignments", shall be filed by lessors or lessees of unmined minerals, with the Department of Revenue, reporting the parcel number, **the** date **the** lease was terminated and the seams assigned.

(96)[~~(97)~~] Revenue Form 62A200, "Schedule E Farm Exception to Unmined Minerals Tax", shall be filed by surface owners, who own the mineral rights in their entirety and are engaged primarily in farming, to be excepted from the unmined minerals tax.

(97)[~~(98)~~] Revenue Form 62A200, "Schedule F Geological Information by County", shall be filed by owners or lessees of unmined minerals, with the Department of Revenue, reporting exploration and analytical information.

(98)[~~(99)~~] Revenue Form 62A302, "Request for Information for Local Board of Tax Appeals", shall be filed by taxpayers with the property valuation administrator, if appealing their assessment on real property.

(99)[~~(100)~~] Revenue Form 62A304, "Property Valuation Administrator's Recapitulation of Real Property Tax Roll", shall be filed by the property valuation administrator by the first Monday in April, showing a recapitulation of property assessments by type of property and by taxing district. This form shall also be known as "first recap".

(100)[~~(101)~~] Revenue Form 62A305, "Property Valuation Administrator's Summary of Real Property Tax Roll Changes (Since Recapitulation)", shall be filed by the property valuation administrator within six (6) days of the conclusion of the real property tax roll inspection period, showing all changes made since the submission of Revenue Form 62A304. This form shall also be known as "final recap" or "second recap".

(101)[~~(102)~~] Revenue Form 62A307, "Property Owner Conference Record", shall be used by the property valuation administrator to document a property owner's appeal conference. The property owner or his **or her** representative shall be asked to sign the record and shall be given a copy of the record.

(102)[~~(103)~~] Revenue Form 62A323, "Record of Additions and Deletions", shall be used by the PVA to report all real property additions and deletions for a particular assessment year.

(103)[~~(104)~~] Revenue Form 62A329, "Annual Report of Domestic Life Insurance Companies", shall be filed by life insurance companies doing business in Kentucky, with the Department of Revenue, reporting the fair cash value of the company's intangible property, both taxable and exempt, and the aggregate amount.

(104)[~~(105)~~] Revenue Form 62A350, "Application for Exemption Under the Homestead/Disability Amendment", shall be filed by property owners seeking an exemption from property taxes under Ky. Const. Sec. 170. This application shall be filed with the property valuation administrator of the county in which the residential unit is located.

(105)[~~(106)~~] Revenue Form 62A352, "Notice to Real Property Owner of Assessment by Property Valuation Administrator", shall be mailed to the property owner by the property valuation administrator notifying him **or her** of the assessment amount and of his **or her** appeal rights.

(106)[~~(107)~~] Revenue Form 62A353, "Notice of Listing of Omitted Real Property", shall be mailed by the property valuation administrator to the property owner. This document shall notify the property owner that his **or her** omitted property has been listed and assessed and of his **or her** appeal rights.

(107)[~~(108)~~] Revenue Form 62A354, "Notice to Property Owner of Final Decision of Board of Assessment Appeals", shall be sent from the Board of Assessment Appeals to the property owner to inform him **or her** of its ruling.

(108)[~~(109)~~] Revenue Form 62A358, "Receipt for Transferring Delinquent Property Tax Bills From the Sheriff to the County Clerk", shall be signed by both the sheriff and county clerk to affirm the number and total amount of delinquent tax bills transferred from the sheriff to the county clerk.

(109) Revenue Form 62A358-S, "Supplemental Receipt to Document Timely Postmarked Payments Received After the Delinquent **Tax Bill** Transfer Date", shall be signed by both the sheriff and the county clerk to affirm payments received by the sheriff via mail and postmarked timely after the transfer date.

(110) Revenue Form 62A359, "Sheriff's Report of Real Property Tax Bills Transferred to the County Clerk", shall be used by the sheriffs to report delinquent real estate tax bills that were transferred from the sheriff to the county clerk's office.

(111) Revenue Form 62A360, "Order Correcting Erroneous Assessment", shall be issued to the collection agency (county sheriff or clerk) and taxpayer correcting an erroneous mineral property tax assessment.

(112) Revenue Form 62A362, "Sheriff's Report of Delinquent Personal Property Tax Bills Transferred to the County Clerk", shall be used by the sheriff to report delinquent personal property tax bills transferred from the sheriff to the county clerk's office.

(113) Revenue Form 62A363, "County Clerk's Claim for Preparing Tax Bills", shall be submitted by the county clerk in order to receive payment for each property tax bill prepared, with one-half (1/2) paid out of the county treasury and one-half (1/2) paid out of the State Treasury.

(114) Revenue Form 62A363-B, "County Clerk's Claim for Preparing Omitted Tax Bills", shall be submitted by the county clerk in order to receive payment of one (1) dollar for each omitted property tax bill prepared, with one-half (1/2) paid out of the county treasury and one-half (1/2) paid out of the State Treasury.

(115) Revenue Form 62A364, "County Clerk's Monthly Report of Omitted Assessments", shall be used by the county clerk to report omitted assessments made by the property valuation administrator.

(116) Revenue Form 62A365, "Nonresidency Affidavit", shall be filed as proof of nonresidency in Kentucky as of January 1, for ad valorem tax purposes.

(117) Revenue Form 62A366, "Order Correcting Erroneous Assessment", shall be filed by the property valuation administrator with the sheriff, to correct an error made in an assessment of property.

(118) Revenue Form 62A366-D, "Order Correcting Erroneous Delinquent Assessment", shall be filed by the property valuation administrator with the sheriff, to correct an error made in a delinquent assessment of property.

(119) Revenue Form 62A366R, "Exoneration Form for Property Tax Refund", shall be filed by a taxpayer for refunds of property tax.

(120) Revenue Form 62A367, "Authorization for Preparing Additional/Supplemental Property Tax Bills", shall be used by a property valuation administrator to prepare additional or supplemental tax bills.

(121) Revenue Form 62A367-A, "Instructions for Preparation of Additional/Supplemental Tax Bills and Official Receipt", shall be provided to assist the PVA with the preparation of additional or supplemental tax bills.

(122) Revenue Form 62A368-A, "County Clerk's Monthly Report of Delinquent Tax Collections", shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for the 1997 tax year only.

(123) Revenue Form 62A368-B, "County Clerk's Monthly Report of Delinquent Tax Collections", shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for tax years after 1997.

(124) Revenue Form 62A369, "County Clerk's Monthly Report of Delinquent Tax Collections", shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for 1996 and earlier tax years.

(125) Revenue Form 62A369-A, "County Clerk's Monthly Report of Delinquent Tax Collections", shall be used by county clerks to report monthly to the Department of Revenue state commission from delinquent property tax collections.

(126) Revenue Form 62A370, "Kentucky Department of Revenue Certificate of Registration", shall be issued by the Department of Revenue to individuals, corporations or partnerships proving eligibility to purchase certificates of delinquency. This certificate shall be presented to the county clerk at the time certificates of delinquency are offered for sale.

(127) Revenue Form 62A370A, "Kentucky Department of Revenue Application for Certificate of Registration to Purchase Certificates of Delinquency", shall be submitted to the Department of Revenue by individuals, corporations or partnerships seeking to purchase certificates of delinquency offered for sale by the county clerk.

(128) Revenue Form 62A372, "Sheriff's List of Orders Correcting Erroneous Assessments", shall be used by the sheriff to report all exonerations made to the tax bills by the property valuation administrator.

(129) Revenue Form 62A372-A, "Certification", shall be used by the sheriff to affirm that the list of exonerations is accurate.

(130) Revenue Form 62A374, "County Clerk Certificate of Delinquency Sale Registration", shall be used by the county clerk to register third parties interested in purchasing certificates of delinquency offered for sale by the county clerk.

(131) Revenue Form 62A375, "Release of Certificate of Delinquency Assigned to a Third Party", shall be used by the county clerk to release the lien of a certificate of delinquency that has been refunded to a third party purchaser.

(132) Revenue Form 62A378, "Report of[~~Location of~~] Mobile Homes and Recreational Vehicles Not Registered in this State", shall be filed by every person providing rental space for mobile homes and recreational vehicles not registered in Kentucky[~~house trailers~~]. This form shall be filed with the property valuation administrator of the county in which the park is located.

(133)[~~(131)~~] Revenue Form 62A379, "Listing of Omitted Real Property", shall be used by a taxpayer to voluntarily list any property previously omitted from the tax roll or shall be used by a property valuation administrator to list any involuntarily omitted property.

(134) Revenue Form 62A380, "Notification of Updated Mailing Address from Sheriff to Property Valuation Administrator", shall be used by the sheriff to provide an updated address to the property valuation administrator in accordance with KRS 134.119(8).

(135)[~~(132)~~] Revenue Form 62A384C, "Clay Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing clay property, reporting the owner's name and address, percent ownership, product tons, and royalty rate.

(136)[~~(133)~~] Revenue Form **62A384C(I)**[~~62A384C-(I)~~], "Instructions to Complete Clay Property Tax Return for 2011[~~2010~~] Tax Year", shall be used by owners and lessees of land containing mineable clay minerals to file Revenue Form 62A384C.

(137)[~~(134)~~] Revenue Form 62A384-G, "Natural Gas Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing developed natural gas properties, reporting the location of the property, total yearly gas production, number of producing wells, and the total dollar value of production.

(138)[~~(135)~~] Revenue Form 62A384-G/O(I)**, "Gas/Oil", shall be a letter sent to owners of natural gas and oil property informing them of their responsibility to file, the filing deadline, and where to locate the forms**[~~"Instructions for Gas and Oil Property Tax Returns", which is also referenced as "Gas/Oil", shall be provided to filers of gas and oil property tax returns instructing filers of the acceptable method of completing the gas and oil prop-~~

~~erty tax return~~].

(139)[~~(136)~~] Revenue Form 62A384L, "Limestone, Sand and Gravel Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing limestone, sand or gravel properties reporting mineral location, type of mining and production in the last three (3) years.

(140)[~~(137)~~] Revenue Form 62A384-O, "Oil Property Tax Return Lease Report", shall be filed with the Department of Revenue by all persons, corporations, businesses and partnerships owning, leasing or having knowledge of developed oil properties to report developed oil property in Kentucky.

(141)[~~(138)~~] Revenue Form 62A385, "Sheriff's Official Receipt for Property Tax Bills", shall be used by sheriffs to acknowledge receipt of the county's property tax bills and to document the total tax amount to be collected for each taxing district.

(142)[~~(139)~~] Revenue Form 62A385-A, "Sheriff's Receipt For Unpaid and Partially Paid Tax Bills", shall be used by incoming sheriffs to give receipt to the outgoing sheriff for the unpaid and partially paid tax bills outstanding when he **or she** assumes office.

(143)[~~(140)~~] Revenue Form 62A393, "Sheriff's Property Tax Account Statement", shall be used by the Department of Revenue to conduct the annual property tax settlement with the sheriff.

(144)[~~(141)~~] Revenue Form 62A393-A, "Incoming Sheriff's Property Tax Account Statement", shall be used by the Department of Revenue to conduct the property tax settlement with the incoming sheriff.

(145)[~~(142)~~] Revenue Form 62A393-B, "Outgoing Sheriff's Property Tax Account Statement", shall be used by the Department of Revenue to conduct the property tax settlement with the outgoing sheriff.

(146)[~~(143)~~] Revenue Form 62A394, "Sheriff's Monthly Report of Property Tax Collections", shall be used by sheriffs to report to the Department of Revenue property tax collections for the month.

(147)[~~(144)~~] Revenue Form 62A394-MV, "County Clerk's Monthly Report of Motor Vehicle Property Tax Collections", shall be submitted by the county clerk to the Department of Revenue and local taxing jurisdictions to report ad valorem property tax collections for the month.

(148)[~~(145)~~] Revenue Form 62A398, "Property Valuation Administrator's Bond", shall be completed by property valuation administrators evidencing surety with the Commonwealth and a local school board and affirming a commitment to fulfill the duties of the office.

(149)[~~(146)~~] Revenue Form 62A500(P), "2011[~~2010~~] Personal Property Tax Forms and Instructions", shall be the packet of files and instructions relating to Revenue Form 62A500 for use by owners or lessees of tangible personal property reporting taxpayer information, original cost of tangible property and reported value of tangible property with either the property valuation administrator of the county of taxable situs or with the Department of Revenue.

(150)[~~(147)~~] Revenue Form 62A500, "2011[~~2010~~] Tangible Personal Property Tax Return", shall be filed by owners or lessees of tangible personal property reporting taxpayer information, original cost of tangible property and reported value of tangible property with either the property valuation administrator of the county of taxable situs or with the Department of Revenue.

(151)[~~(148)~~] Revenue Form 62A500-A, "2011[~~2010~~] Tangible Personal Property Tax Return (Aircraft Assessments Only)", shall be filed by owners or lessees of aircraft not used for commercial purposes, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting the federal registration number, make and model, and taxpayer's value for each aircraft.

(152)[~~(149)~~] Revenue Form 62A500-C, "Consignee Tangible Personal Property Tax Return", shall be filed by persons in possession of consigned inventory, that has not been reported on Revenue Form 62A500, with either the property valuation administrator of the county of taxable situs or the Department of Revenue, reporting consignor information and consigned inventory information.

(153)[~~(150)~~] Revenue Form 62A500-L, "Lessee Tangible Personal Property Tax Return", shall be filed by lessees of tangible personal property who did not list the property on Revenue Form 62A500, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting lessor information and equipment information.

(154)[~~(151)~~] Revenue Form 62A500-M1, "Boat Dealer's Used Inventory Listing for Line 31 Tangible Personal Property Tax Return" shall be filed by boat dealers with the property valuation administrator of each county of taxable situs or with the Department of Revenue, containing a detailed listing of used boats held for sale by a licensed boat dealer.

(155)[~~(152)~~] Revenue Form 62A500-S1, "Dealer's Inventory Listing for Line 34 Tangible Personal Property Tax Return", shall be filed by automobile dealers, dealers with new boat and marine equipment held under a floor plan or dealers with new farm machinery held under a floor plan with the property valuation administrator of each county of taxable situs or with the Department of Revenue, containing a detailed listing of property reported on line 34 of the Tangible Personal Property Tax Return.

(156)[~~(153)~~] Revenue Form 62A500-W, "2011[~~2010~~] Tangible Personal Property Tax Return (Documented Watercraft)", shall be filed by owners or lessees of documented vessels not used for commercial purposes, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting the coast guard number, make and model and taxpayer's value for each watercraft.

(157)[~~(154)~~] Revenue Form 62A600, "Domestic Savings and Loan Tax Return", shall be filed with the Department of Revenue by savings and loans operating solely in Kentucky, reporting the balances in their capital accounts.

(158)[~~(155)~~] Revenue Form 62A601, "Foreign Savings and Loan Tax Return", shall be filed with the Department of Revenue by foreign savings and loans authorized to do business in this state, reporting the balances in their capital accounts.

(159)[~~(156)~~] Revenue Form 62A601-S2, "Schedule B, Computation of Exempt Securities", shall be filed with the Department of Revenue, by taxpayers filing Revenue Form 62A600 or 62A601, reporting the market value of U. S. government securities.

(160)[~~(157)~~] Revenue Form 62A850, "Bank Deposits Tax Return", shall be filed with the Department of Revenue by financial institutions, reporting the amount of its deposits as of the preceding January 1.

(161)[~~(158)~~] Revenue Form 62A862, "Certification of Tax Rate for Bank Deposits Franchise Tax", shall be filed by the local taxing district with the Department of Revenue to notify the Department of Revenue of the rate set on bank deposits.

(162)[~~(159)~~] Revenue Form 62A863, "Financial Institutions Local Deposits Summary Report", shall be filed with the Department of Revenue, by financial institutions, reporting all deposits located within the state as of the preceding June 30, along with a copy of the most recent summary of deposits filed with the Federal Deposit Insurance Corporation.

(163)[~~(160)~~] Revenue Form 62A863-A, "Schedule A, Summary of Net Deposits", shall be filed with the Department of Revenue, by financial institutions filing Revenue Form 62A863, to summarize deposits.

(164)[~~(161)~~] Revenue Form 62A880, "Personal Property Assessment", shall be sent by the Department of Revenue to the owner of omitted personal property notifying him **or her** of the value assessed by the department as well as all applicable penalties and interest.

(165)[~~(162)~~] Revenue Form 62B003, "Unmined Coal Notice of Tax Assessment", shall be sent by the Department of Revenue to the taxpayer notifying him **or her** of the value of his **or her** interest in unmined coal property.

(166)[~~(163)~~] Revenue Form 62B011, " Limestone, Sand, or Gravel Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him **or her** of the value of his **or her** interest in limestone, sand or gravel property.

(167)[~~(164)~~] Revenue Form 62B012, " Oil Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him **or her** of the value of his **or her** interest in oil property.

(168)[~~(165)~~] Revenue Form 62B013, " Clay Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him **or her** of the value of his **or her** interest in clay property.

(169)[~~(166)~~] Revenue Form 62B015, " Gas Assessment No-

tice", shall be sent by the Department of Revenue to the taxpayer notifying him **or her** of the value of his **or her** interest in gas property.

(170)[~~(167)~~] Revenue Form 62F003, "Appeals Process for Real Property Assessments", shall be an informational brochure on the procedure to follow to appeal an assessment on real property.

(171)[~~(168)~~] Revenue Form 62F015, "PVA Open Records Commercial Fee Guidelines", shall be used by the PVA to establish fees to be charged for the cost of reproduction, creation, or other acquisition of records.

(172)[~~(169)~~] Revenue Form 62F031, "Appeal to Local Board of Assessment Appeals", shall be filed with the county clerk by any taxpayer who wishes to appeal his **or her** assessment on real property.

(173)[~~(170)~~] Revenue Form 62F1341, "Exemptions Allowed for Savings and Loans, Savings Banks and Similar Institutions for Intangible Property Tax Purposes", shall inform taxpayers, subject to intangible property tax on the value of their capital stock, of those institutions which issue obligations that are exempt from state ad valorem taxation.

Section 2. Severance Taxes - Required Forms.(1) Revenue Form 10A100, "Kentucky Tax Registration Application", shall be filed by taxpayers with a coal severance and processing tax account listing taxpayer information including mine name and mining permit number.

(2) Revenue Form 55A004, "Coal Severance Tax Seller/Purchaser Certificate", shall be filed by the taxpayer to verify purchase coal deductions.

(3) Revenue Form 55A100, "Coal Severance Tax Return", shall be filed monthly by the taxpayer to report production and tax due.

(4) Revenue Form 55A100, "Part IV - Schedule of Purchased Coal ", shall be used by the taxpayer to report coal purchased for processing and resale. "Part V - Schedule for Thin Seam Coal Tax Credit", shall be used by the taxpayer to apply for tax credit for underground mining of thin coal seams.

(5) Revenue Form 55A101, "Coal Severance Tax Return Instructions", shall be included with the coal tax return mailed to the taxpayer to assist in the completion of his **or her** return.

(6) Revenue Form 55A131, "Credit Memorandum", shall be used by the department to issue a credit to the taxpayer for an overpayment rather than a refund.

(7) Revenue Form 55A209, "Severance Tax Refund Application", shall be used by the taxpayer for the purpose of requesting a refund of tax overpaid.

(8) Revenue Form 56A001, "Application for Certificate of Registration Minerals and Natural Gas Tax", shall be used by persons dealing in minerals, natural gas or natural gas liquids who wish to register with the Department of Revenue to acquire an account number.

(9) Revenue Form 56A100, "Natural Gas and Natural Gas Liquids Tax Return", shall be used by registered natural gas and natural gas liquids taxpayers monthly to report production and tax due.

(10) Revenue Form 56A101, "Minerals Tax Return", shall be used by registered mineral taxpayers monthly to report production and tax due.

(11) Revenue Form 56A106, "Minerals Tax Certificate of Exemption", shall be used by mineral taxpayers to claim exemptions from minerals tax for minerals purchased for the maintenance of a privately maintained but publicly dedicated road.

(12) Revenue Form 56A107, "Schedule A, Allocation of Gross Value of Minerals Severed in Kentucky and Schedule B, Minerals Purchased from Others for Processing by Taxpayer", shall be used by mineral taxpayers to compute gross value of minerals to be allocated and to show the allocation by county of the gross value of minerals severed in Kentucky and also shall be used by a taxpayer for showing minerals that are purchased from others for processing by the taxpayer.

(13) Revenue Form 56A108, "Schedule A, Gross Value of Natural Gas Sold to Nonconsumers and Schedule B, Taxable Gross Value of Natural Gas and Natural Gas Liquids Extracted in Kentucky by Taxpayer - Allocation", shall be used by natural gas taxpayers to show details of all natural gas extracted in Kentucky and sold to nonconsumers and also shall be used by natural gas taxpayers to allocate the natural gas to the county or counties where the natural gas or natural gas liquids were located prior to extraction.

(14) Revenue Form 56A109, "Schedule C, Natural Gas First Purchased by Taxpayer From Kentucky Producers", shall be used by natural gas taxpayers who are first purchasers of natural gas to show gross value by county or counties from which the natural gas was extracted.

(15) Revenue Form 56A110, "Minerals Tax Return Attachment, Schedule C, Computation of Clay Severed and Processed in Kentucky and Allocation of Tax Attributable to Clay", shall be used by mineral taxpayers that sever clay to compute tax due.

(16) Revenue Form 56A112, "Crude Petroleum Transporter's Monthly Report, Kentucky Oil Production Tax", shall be used by registered crude petroleum transporter's for reporting gross value and tax due.

(17) Revenue Form 56A113, "Minerals Tax Credit for Limestone Sold in Interstate Commerce", shall be used by mineral taxpayers for the purpose of determining the eligibility for the minerals tax credit.

(18) Revenue Form 56A114, "Crude Petroleum Transporter's Application for Registration", shall be used by crude petroleum transporters who wish to acquire an account number with the Kentucky Department of Revenue.

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

(a) Property tax - referenced material:

1. Revenue Form 61A200(P), "Property Tax Forms and Instructions for Public Service Companies 2011[~~2010~~]", August 2010[~~June 2009~~];

2. Revenue Form 61A200, "Public Service Company Property Tax Return for Year Ending December 31, 2010[~~2009~~]", August 2010[~~June 2009~~];

3. Revenue Form 61A200(A), "Report of Total Unit System and Kentucky Operations", August 2010[~~June 2009~~];

4. Revenue Form 61A200(B), "Report of Kentucky Vehicles, Car Lines and Watercraft", August 2010[~~June 2009~~];

5. Revenue Form 61A200(C), "Report of Total Unit Operations Balance Sheet", August 2010[~~June 2009~~];

6. Revenue Form 61A200(D), "Report of Total Unit Operations Income Statement", August 2010[~~June 2009~~];

7. Revenue Form 61A200(E), "Filing Extension Application", August 2010[~~June 2009~~];

8. Revenue Form 61A200(G), "Report of Capital Stocks", August 2010[~~June 2009~~];

9. Revenue Form 61A200(H), "Report of Funded Debt", August 2010[~~June 2009~~];

10 Revenue Form 61A200(I), "Business Summary by Taxing Jurisdiction", August 2010[~~June 2009~~];

11. Revenue Form 61A200(J), "Property Summary by Taxing Jurisdiction, Operating and Nonoperating Property", August 2010[~~November 2009~~];

12. Revenue Form 61A200(K), "Operating Property Listing by Taxing Jurisdiction", August 2010[~~June 2009~~];

13. Revenue Form 61A200(K2), "Nonoperating/Nonutility Property Listing by Taxing Jurisdiction", August 2010[~~June 2009~~];

14. Revenue Form 61A200(L), "Report of Allocation Factors, Operating and Noncarrier Property for All Interstate Companies", August 2010[~~June 2009~~];

15. Revenue Form 61A200(M), "Report of Property and Business Factors for Interstate Railroad and Sleeping Car Companies", August 2010[~~June 2009~~];

16. Revenue Form 61A200(N1), "Report of Operating Leased Real Property Located in Kentucky By Taxing District", August 2010[~~June 2009~~];

17. Revenue Form 61A200(N2), "Report of Operating Leased Personal Property Located in Kentucky By Taxing District", August 2010[~~June 2009~~];

18. Revenue Form 61A200(N3), "Summary Report of System and Kentucky Operating Lease Payments", August 2010[~~June 2009~~];

19. Revenue Form 61A200(O), "Railroad Private Car Mileage Report", August 2010[~~June 2009~~];

20. Revenue Form 61A200(Q), "Supplemental Report of Operations for Contained and Residential Landfills", August 2010[~~June 2009~~];

21. Revenue Form 61A200(R), "Report of Property Subject to the Pollution Control Tax Exemption", August 2010[~~June 2009~~];

22. Revenue Form 61A200(U), "Industrial Revenue Bond Property", August 2010[~~June 2009~~];

23. Revenue Form 61A202, "**2011[**~~2010~~**]** Public Service Company Property Tax Return for Railroad Car Line", August 2010[~~June 2009~~];

24. Revenue Form 61A206(P), "Public Service Company Property Tax Forms and Instructions for Commercial Air Passenger and Air Freight Carriers 2011[~~2010~~]", August 2010[~~June 2009~~];

25. Revenue Form 61A206, "Public Service Company Property Tax Return For Commercial Air Passenger and Air Freight Carriers", August 2010[~~June 2009~~];

26. Revenue Form 61A206(A), "Filing Extension Application for Public Service Company Property Tax Return", August 2010[~~June 2009~~];

27. Revenue Form 61A206(B), "Report of Kentucky Registered and Licensed Motor Vehicles", August 2010[~~June 2009~~];

28. Revenue Form 61A206(C), "Report of Financial Operations for Commercial Air Passenger and Air Freight Carriers", August 2010[~~June 2009~~];

29. Revenue Form 61A206(D-1), "Report of System Aircraft Fleet", August 2010[~~June 2009~~];

30. Revenue Form 61A206(D-2), "Report of System Aircraft Fleet", August 2010[~~June 2009~~];

31. Revenue Form 61A206(D-3), "Report of System Aircraft Fleet", August 2010[~~June 2009~~];

32. Revenue Form 61A206(E), "Report of Kentucky Flight Statistics By Airport", August 2010[~~June 2009~~];

33. Revenue Form 61A206(F), "Report of System and Kentucky Allocation Factors", August 2010[~~June 2009~~];

34. Revenue Form 61A206(G), "Report of Funded Debt", August 2010[~~June 2009~~];

35. Revenue Form 61A206(H), "Report of Operating Leased Real Property Located in Kentucky By Taxing District", August 2010[~~June 2009~~];

36. Revenue Form 61A206(I), "Report of Operating Leased Personal Property Located in Kentucky By Taxing District", August 2010[~~June 2009~~];

37. Revenue Form 61A206(J), "Summary Report of System and Kentucky Operating Lease Payments", August 2010[~~June 2009~~];

38. Revenue Form 61A206(K), "Report of Owned Real Property Located in Kentucky By Taxing District", August 2010[~~June 2009~~];

39. Revenue Form 61A206(L), "Report of Owned Personal Property Located In Kentucky By Taxing District", August 2010[~~June 2009~~];

40. Revenue Form 61A206(M), "Summary Report of Total System and Kentucky Operations", August 2010[~~June 2009~~];

41. Revenue Form 61A206(N), "Industrial Revenue Bond Property", August 2010[~~June 2009~~];

42. Revenue Form 61A206(O), "Public Service Company Sales", August 2010[~~June 2009~~];

43. Revenue Form 61A207(P), "Commercial Watercraft Personal Property Tax Return 2011[~~2010~~]", November 2010[~~June 2009~~];

44. Revenue Form 61A207, "2011[~~2010~~] Commercial Watercraft Personal Property Tax Return", November 2010[~~2009~~];

45. Revenue Form 61A207(A), "Report of Owned Vessels in Your Possession", August 2010[~~November 2009~~];

46. Revenue Form 61A207(B), "Report of Owned Vessels - in Possession of Others", August 2010[~~November 2009~~];

47. Revenue Form 61A207(C), "Report of Nonowned Vessels in Your Possession", August 2010[~~November 2009~~];

48. Revenue Form 61A207(D), "Valuation Worksheet", November 2010[~~2009~~];

49. Revenue Form 61A207(E), "Report of Kentucky Route Miles", November 2010[~~2009~~];

50. Revenue Form 61A207(F), "Report of System Route Miles", November 2010[~~2009~~];

51. Revenue Form 61A209, "Public Service Company Sales", August 2010[~~June 2009~~];

52. Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Situs", August 2010[~~June 2009~~];

53. Revenue Form 61A211(I), "Instructions Public Service Company Schedule of Owned and/or Leased Motor Vehicle with Kentucky Situs", August 2010[~~June 2009~~];

54. Revenue Form 61A230, "Notice of Assessment", February 2010;

55. Revenue Form 61A240, "Notice of Assessment", August 2008;

56. Revenue Form 61A250, "Notice of Assessment", August 2008;

57. Revenue Form 61A255, "Public Service Company Property Tax Statement", February 2011[~~July 2008~~];

58. Revenue Form 61A255(I), "Instructions for 61A255, Public Service Company Property Tax Statement", July 2008;

59. Revenue Form 61A500(P), "2011[~~2010~~] Personal Property Tax Forms and Instructions for Communications Service Providers and Multi-channel Video Programming Service Providers", November 2010[~~2009~~];

60. Revenue Form 61A500, "2011[~~2010~~] Tangible Personal Property Tax Return for Communication Service Providers and Multichannel Video Program Service Providers", November 2010[~~2009~~];

61. Revenue Form 61A500(H), "Report of Total Personal Tangible Property in Kentucky", November 2010[~~2009~~];

62. Revenue Form 61A500(I), "Summary of Gross Personal Tangible Property Listing by Taxing District", September 2010[~~October 2009~~];

63. Revenue Form 61A500(J), "Summary of Reported Personal Tangible Property Listing by Taxing District", September 2010[~~October 2009~~];

64. Revenue Form 61A500(K), "Personal Tangible Property Listing by Taxing District", November 2010[~~2009~~];

65. Revenue Form 61A507, "Nonresident Watercraft Property Tax Statement", January 2006;

66. Revenue Form 61A508, "Annual Report of Distilled Spirits in Bonded Warehouse", August 2010[~~June 2009~~];

67. Revenue Form 61A508-S1, "Schedule 1 Department of Property Valuation Cost of Production Schedule", August 2010[~~June 2009~~];

68. Revenue Form 61A508-S2, "Schedule 2 Department of Property Valuation Storage Cost Schedule", August 2010[~~June 2009~~];

69. Revenue Form 61A508-S3, "Schedule 3 Schedule of Bulk Sales", August 2010[~~June 2009~~];

70. Revenue Form 61A508-S4, "Schedule 4", August 2010[~~June 2009~~];

71. Revenue Form 61A508-S5, "Schedule 5", August 2010[~~June 2009~~];

72. Revenue Form 61A509, "Distilled Spirits or Telecoms Property Tax Statement", May 2010[~~July 2008~~];

73. Revenue Form 61F007, "Notification Protesting Your Commercial Watercraft Assessment ", February 2010;

74. Revenue Form 61F008, "Notification Protesting Your Assessment ", February 2010;

75. Revenue Form 61F009, "Notification Protesting Your Assessment", February 2010;

76. Revenue Form 61F010, "Property Value Assessments for Public Service and Centrally Assess Companies-Assessment of Distilled Spirits in Bonded Warehouses", February 2010;

77. Revenue Form 62A007, "Motor Vehicle Tax and/or Registration Renewal Notice", 2006;

78. Revenue Form 62A007S, "Motor Vehicle/Boat Property Tax Notice - Second Notice", 2006;

79. Revenue Form 62A008, "Motor Vehicle Tax Notice", 2006;

80. Revenue Form 62A009, "Map Sales Invoice", July 2006;

81. Revenue Form 62A010, "Notice for Boat Transfer", 2009;

82. Revenue Form 62A013, "Application for Assessment Moratorium Certificate", December 2009;

83. Revenue Form 62A015, "2011[~~2010~~] Motor Vehicle and Watercraft Property Tax Rate Certification", 2010[~~2009~~];

84. Revenue Form 62A016, "Quietus", 2009;

85. Revenue Form 62A017, "County Clerk's Claim for Calculation of Motor Vehicle and Boat Bills", 2009;

86. Revenue Form 62A020, "Intercounty Property Tax Collections", 2009;

87. Revenue Form 62A023, "Application for Exemption from Property Taxation", April 2010[~~December 2007~~];

88.[~~Revenue Form 62A023-R, "Application for Exemption from Property Taxation for Religious Organizations", December 2007];~~

~~89.~~] Revenue Form 62A030, "Request for Reproduction of PVA Public Records and Contract for Commercial Users", February 2008;

89.[~~90.~~] Revenue Form 62A044, "Affidavit for Correction/Exoneration of Motor Vehicle/Boat/Trailer Property Tax", February 2009;

90.[~~91.~~] Revenue Form 62A200(P), "2011[~~2010~~] Unmined Coal Property Tax Information Return", December 2010[~~2009~~];

91.[~~92.~~] Revenue Form 62A200, "2011[~~2010~~] Unmined Coal Property Tax Information Return", December 2010[~~2009~~];

92.[~~93.~~] Revenue Form 62A200, "Schedule A Fee Property Ownership", December 2010[~~2009~~];

93.[~~94.~~] Revenue Form 62A200, "Schedule B Leased Property", December 2010[~~2009~~];

94.[~~95.~~] Revenue Form 62A200, "Schedule C Property or Stock Transfers", December 2010[~~2009~~];

95.[~~96.~~] Revenue Form 62A200, "Schedule D Lease Terminations, Transfers or Assignments", December 2010[~~2009~~];

96.[~~97.~~] Revenue Form 62A200, "Schedule E Farm Exception to Unmined Minerals Tax", December 2010[~~2009~~];

97.[~~98.~~] Revenue Form 62A200, "Schedule F Geological Information by County", December 2010[~~2009~~];

98.[~~99.~~] Revenue Form 62A302, "Request for Information for Local Board of Tax Appeals", September 2005;

99.[~~100.~~] Revenue Form 62A304, "Property Valuation Administrator's Recapitulation of Real Property Tax Roll", December 2008;

100.[~~101.~~] Revenue Form 62A305, "Property Valuation Administrator's Summary of Real Property Tax Roll Changes (Since Recapitulation)", December 2008;

101.[~~102.~~] Revenue Form 62A307, "Property Owner Conference Record", September 2005;

102.[~~103.~~] Revenue Form 62A323, "Record of Additions and Deletions", December 2008;

103.[~~104.~~] Revenue Form 62A329, "Annual Report of Domestic Life Insurance Companies", August 2010[~~October 2008~~];

104.[~~105.~~] Revenue Form 62A350, "Application for Exemption Under the Homestead/Disability Amendment", October 2010[~~July 2008~~];

105.[~~106.~~] Revenue Form 62A352, "Notice to Real Property Owner of Assessment by Property Valuation Administrator", April 2005;

106.[~~107.~~] Revenue Form 62A353, "Notice of Listing of Omitted Real Property", September 2005;

107.[~~108.~~] Revenue Form 62A354, "Notice to Property Owner of Final Decision of Board of Assessment Appeals", August 2006;

108.[~~109.~~] Revenue Form 62A358, "Receipt for Transferring Delinquent Property Tax Bills From the Sheriff to the County Clerk", December 2009;

109. Revenue Form 62A358-S, "Supplemental Receipt to Document Timely Postmarked Payments Received After the Delinquent **Tax Bill** Transfer Date", March 2010;

110. Revenue Form 62A359, "Sheriff's Report of Real Property Tax Bills Transferred to the County Clerk", December 2009;

111. Revenue Form 62A360, "Order Correcting Erroneous Assessment", January 2008;

112. Revenue Form 62A362, "Sheriff's Report of Delinquent Personal Property Tax Bills Transferred to the County Clerk", December 2009;

113. Revenue Form 62A363, "County Clerk's Claim for Preparing Tax Bills", December 2007;

114. Revenue Form 62A363-B, "County Clerk's Claim for Preparing Omitted Tax Bills", December 2007;

115. Revenue Form 62A364, "County Clerk's Monthly Report of Omitted Assessments", February 2006;

116. Revenue Form 62A365, "Nonresidency Affidavit", December 2007;

117. Revenue Form 62A366, "Order Correcting Erroneous Assessment", September 2005;

118. Revenue Form 62A366-D, "Order Correcting Erroneous Delinquent Assessment", December 2007;

119. Revenue Form 62A366R, "Exoneration Form for Property Tax Refund", September 2005;

120. Revenue Form 62A367, "Authorization for Preparing Additional/Supplemental Property Tax Bills", December 2008;

121. Revenue Form 62A367-A, "Instructions for Preparation of Additional/Supplemental Tax Bills and Official Receipt", December 2007;

122. Revenue Form 62A368-A, "County Clerk's Monthly Report of Delinquent Tax Collections", February 2006;

123. Revenue Form 62A368-B, "County Clerk's Monthly Report of Delinquent Tax Collections", February 2006;

124. Revenue Form 62A369, "County Clerk's Monthly Report of Delinquent Tax Collections", February 2006;

125. Revenue Form 62A369-A, "County Clerk's Monthly Report of Delinquent Tax Collections", February 2006;

126. Revenue Form 62A370, "Kentucky Department of Revenue Certificate of Registration", November 2009;

127. Revenue Form 62A370A, "Kentucky Department of Revenue Application for Certificate of Registration to Purchase Certificates of Delinquency", November 2009;

128. Revenue Form 62A372, "Sheriff's List of Orders Correcting Erroneous Assessments", February 2006;

129. Revenue Form 62A372-A, "Certification", February 2006;

130. Revenue Form 62A374, "County Clerk Certificate of Delinquency Sale Registration", November 2010;

131. Revenue Form 62A375, "Release of Certificate of Delinquency Assigned to a Third Party", April 2010;

132.[~~130.~~] Revenue Form 62A378, "Report of[~~Location of~~] Mobile Homes and Recreational Vehicles Not Registered in this State", August 2010[~~September 2005~~];

133.[~~131.~~] Revenue Form 62A379, "Listing of Omitted Real Property", November 2010[~~2009~~];

134. Revenue Form 62A380, "Notification of Updated Mailing Address from Sheriff to Property Valuation Administrator", September 2010;

135.[~~132.~~] Revenue Form 62A384C, "Clay Property Tax Return", January 2011[~~2010~~];

136.[~~133.~~] Revenue Form **62A384C(I)[**~~62A384C-(I)~~**]**, "Instructions to Complete Clay Property Tax Return for 2011[~~2010~~] Tax Year", January, 2011[~~2010~~];

137.[~~134.~~] Revenue Form 62A384-G, "Natural Gas Property Tax Return", January 2011[~~2010~~];

138.[~~135.~~] Revenue Form 62A384-G/O(I), "**Gas/Oil[**~~Instructions for Gas and Oil Property Tax Returns~~**]**", which is also referenced as "Gas/Oil", January 2011[~~2010~~];

139.[~~136.~~] Revenue Form 62A384L, "Limestone, Sand and Gravel Property Tax Return", January 2011[~~2010~~];

140.[~~137.~~] Revenue Form 62A384-O, "Oil Property Tax Return Lease Report", January 2011[~~2010~~];

141.[~~138.~~] Revenue Form 62A385, "Sheriff's Official Receipt for Property Tax Bills", February 2006;

142.[~~139.~~] Revenue Form 62A385-A, "Sheriff's Receipt for Unpaid and Partially Paid Tax Bills", February 2006;

143.[~~140.~~] Revenue Form 62A393, "Sheriff's Property Tax Account Statement", February 2006;

144.[~~141.~~] Revenue Form 62A393-A, "Incoming Sheriff's Property Tax Account Statement", February 2006;

145.[~~142.~~] Revenue Form 62A393-B, "Outgoing Sheriff's Property Tax Account Statement", February 2006;

146.[~~143.~~] Revenue Form 62A394, "Sheriff's Monthly Report of Property Tax Collections", January 2010;

147.[~~144.~~] Revenue Form 62A394-MV, "County Clerk's Monthly Report of Motor Vehicle Property Tax Collections", June 2008;

148.[~~145.~~] Revenue Form 62A398, "Property Valuation Administrator's Bond", September 2010[~~November 2006~~];

149.[~~146.~~] Revenue Form 62A500(P), "2011[~~2010~~] Personal

Property Tax Forms and Instructions", November 2010[~~2009~~];

150.[~~147.~~] Revenue Form 62A500, "2011[~~2010~~] Tangible Personal Property Tax Return", November 2010[~~2009~~];

151.[~~148.~~] Revenue Form 62A500-A, "2011[~~2010~~] Tangible Personal Property Tax Return (Aircraft Assessments Only)", November 2010[~~2009~~];

152.[~~149.~~] Revenue Form 62A500-C, "Consignee Tangible Personal Property Tax Return", November 2010[~~2009~~];

153.[~~150.~~] Revenue Form 62A500-L, "Lessee Tangible Personal Property Tax Return", November 2010[~~2009~~];

154.[~~151.~~] Revenue Form 62A500-M1, "Boat Dealer's Used Inventory Listing for Line 31 Tangible Personal Property Tax Return", November 2010[~~2009~~];

155.[~~152.~~] Revenue Form 62A500-S1, "Dealer's Inventory Listing for Line 34 Tangible Personal Property Tax Return", November 2010[~~2009~~];

156.[~~153.~~] Revenue Form 62A500-W, "**2011[**~~2010~~**]** Tangible Personal Property Tax Return (Documented Watercraft)", November 2010[~~2009~~];

157.[~~154.~~] Revenue Form 62A600, "Domestic Savings and Loan Tax Return", August 2010[~~May 2009~~];

158.[~~155.~~] Revenue Form 62A601, "Foreign Savings and Loan Tax Return", August 2010[~~November 2008~~];

159.[~~156.~~] Revenue Form 62A601-S2, "Schedule B, Computation of Exempt Securities", August 2010[~~November 2008~~];

160.[~~157.~~] Revenue Form 62A850, "Bank Deposits Tax Return", August[~~March,~~] 2010;

161.[~~158.~~] Revenue Form 62A862, "Certification of Tax Rate for Bank Deposits Franchise Tax", August 2010[~~October 2008~~];

162.[~~159.~~] Revenue Form 62A863, "Financial Institutions Local Deposits Summary Report", August 2010[~~May 2009~~];

163.[~~160.~~] Revenue Form 62A863-A, "Schedule A, Summary of Net Deposits", August 2010[~~May 2009~~];

164.[~~161.~~] Revenue Form 62A880, "Personal Property Assessment", October 2004;

165.[~~162.~~] Revenue Form 62B003, "Unmined Coal Notice of Tax Assessment", November 2008;

166.[~~163.~~] Revenue Form 62B011, "Limestone, Sand, or Gravel Assessment Notice", July 2006;

167.[~~164.~~] Revenue Form 62B012, "Oil Assessment Notice", July 2006;

168.[~~165.~~] Revenue Form 62B013, "Clay Assessment Notice", July 2006;

169.[~~166.~~] Revenue Form 62B015, "Gas Assessment Notice", July 2006;

170.[~~167.~~] Revenue Form 62F003, "Appeals Process for Real Property Assessments", May 2009;

171.[~~168.~~] Revenue Form 62F015, "PVA Open Records Commercial Fee Guidelines", November 2008;

172.[~~169.~~] Revenue Form 62F031, "Appeal to Local Board of Assessment Appeals", January, 2010; and

173.[~~170.~~] Revenue Form 62F1341, "Exemptions Allowed for Savings and Loans, Savings Banks and Similar Institutions for Intangible Property Tax Purposes", August 2010[~~October 2008~~]; and

(b) Severance taxes - referenced material:

1. Revenue Form 10A100, "Kentucky Tax Registration Application", July 2010[~~April 2009~~];

2. Revenue Form 55A004, "Coal Severance Tax Seller/Purchaser Certificate", October 2010[~~March 2009~~];

3. Revenue Form 55A100, "Coal Severance Tax Return", October 2010[~~May, 2008~~];

4. Revenue Form 55A100, "Part IV - Schedule of Purchased Coal" and "Part V - Schedule for Thin Seam Coal Tax Credit", October 2010[~~May, 2008~~];

5. Revenue Form 55A101, "Coal Severance Tax Return Instructions", October 2010[~~November 2009~~];

6. Revenue Form 55A131, "Credit Memorandum", December 2006;

7. Revenue Form 55A209, "Severance Tax Refund Application", August 2009;

8. Revenue Form 56A001, "Application for Certificate of Registration Minerals and Natural Gas Tax", October 1984;

9. Revenue Form 56A100, "Natural Gas and Natural Gas Liquids Tax Return", July 2004;

10. Revenue Form 56A101, "Minerals Tax Return", July 2004;

11. Revenue Form 56A106, "Minerals Tax Certificate of Exemption", December 2006;

12. Revenue Form 56A107, "Schedule A, Allocation of Gross Value of Minerals Severed in Kentucky and Schedule B, Minerals Purchased from Others for Processing by Taxpayer", January 2005;

13. Revenue Form 56A108, "Schedule A, Gross Value of Natural Gas Sold to Nonconsumers and Schedule B, Taxable Gross Value of Natural Gas and Natural Gas Liquids Extracted in Kentucky by Taxpayer - Allocation", March 2005;

14. Revenue Form 56A109, "Schedule C, Natural Gas First Purchased by Taxpayer from Kentucky Producers", January 2005;

15. Revenue Form 56A110, "Minerals Tax Return Attachment, Schedule C, Computation of Clay Severed and Processed in Kentucky and Allocation of Tax Attributable to Clay", March 2005;

16. Revenue Form 56A112, "Crude Petroleum Transporter's Monthly Report, Kentucky Oil Production Tax", July 2004;

17. Revenue Form 56A113, "Minerals Tax Credit for Limestone Sold in Interstate Commerce", November 1997; and

18. Revenue Form 56A114, "Crude Petroleum Transporter's Application for Registration", December 2006.

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THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: February 3, **2011[**~~20100~~**]**

FILED WITH LRC: February 7, **2011[**~~2010~~**]** at 9 a.m.

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, April 12, 2011)

103 KAR 3:040. Income tax forms manual.

RELATES TO: KRS 131.041, 131.051, 131.061, 131.071, 131.081, 131.110, 131.130, 131.155, 131.170, 131.180, 131.190, 131.340, 131.500, 131.510(1), (2)(a), 131.540, 141.010, 141.0101, 141.011, 141.016, 141.020, 141.0202, 141.030, 141.040, 141.0401, 141.0405, 141.041, 141.042, 141.044, 141.062, 141.065, 141.066, 141.067, 141.068, 141.069, 141.070, 141.071, 141.120, 141.121, 141.160, 141.170, 141.180, 141.200, 141.205, 141.206, 141.208, 141.300, 141.310, 141.325, 141.330, 141.335, 141.347, 141.370, 141.381, 141.382, 141.383, 141.385, 141.386, 141.390, 141.395, 141.400, 141.401, 141.402, 141.403, 141.405, 141.407, 141.412, 141.415, 141.418, 141.420, 141.421, 141.423, 141.424, 141.4242, 141.4244, 141.428, 141.430, 141.434, 141.436, 141.437, **141.985,** 141.990, 151B.127, 154.12-2086, 154.20-050, 154.22-060, 154.23-035, 154.24-110, 154.25-030, 154.26-090, 154.28-090, 154.32-010, 154.34-080, 154.45-090, 154.48-025, 155.170

STATUTORY AUTHORITY: KRS 131.130(3)

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

Section 1. Corporation Income Taxes. (1) Revenue Form 41A720, "Form 720, 2010[~~2009~~] Kentucky Corporation Income Tax and LLET Return", shall be used by a C corporation to determine its corporation income tax due in accordance with KRS 141.040 and its limited liability entity tax due in accordance with KRS

141.0401 for tax years beginning in 2010[~~2009~~].

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

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

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

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

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

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

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

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

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

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

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

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

(14) Revenue Form 41A720HH, "Schedule HH, Kentucky Housing for Homeless Families Deduction", shall be used by an individual, corporation, fiduciary, or pass-through entity to determine the deduction allowed by KRS 141.0202.

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

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

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

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

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

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

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

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

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

(24) Revenue Form 41A720-O, "Schedule O-720, Other Additions and Subtractions To/From Federal Taxable Income", shall be used by a corporation filing Kentucky Form 720 to show other additions to and subtractions from federal taxable income on Revenue Form 41A720, Part III[~~II~~], Lines 9 and 16[~~15~~], respectively.

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

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

(27) Revenue Form 41A720RC-C, "Schedule RC-C, Schedule

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(41)[~~(39)~~] Revenue Form 41A720-S2, "Form 720-AMENDED, Amended Kentucky Corporation Income Tax Return", shall be used by a C corporation to amend its Kentucky Corporation Income Tax Return for periods beginning on or after January 1, 2005 and before January 1, 2007, as previously filed.

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

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

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

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

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

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

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

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

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

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

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

(53)[~~(51)~~] Revenue Form 41A720-S22, "Schedule KIDA-SP, Tax Computation Schedule (For a KIDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against its Kentucky income tax liability and limited

liability entity tax liability in accordance with KRS 141.400.

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

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

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

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

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

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

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

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

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

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

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

(65)[~~(62)~~] Revenue Form 41A720-S42, "Schedule KEOZ-T, Tracking Schedule for a KEOZ Project", shall be used by a company which has entered into an agreement for a Kentucky Economic Opportunity Zone (KEOZ) Act project to maintain a record of the debt service payments, wage assessment fees, approved costs and tax credits for the duration of the agreement.

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

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

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

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

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

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

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

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

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

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

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

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

(78)[~~(69)~~] Revenue Form 41A725, "Form 725, 2010[~~2009~~]

Kentucky Single Member LLC Individually Owned LLET Return", shall be used by a single member individually-owned LLC to file an LLET return in accordance with KRS 141.0401 for tax years beginning in 2010[~~2009~~].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Revenue Form 42A003(T), "2011[~~2010~~] Withholding Tax Tables Computer Formula", shall be used by an employer for computing **employees'[**~~employees~~**]** Kentucky income tax withholding each pay period.

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

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

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

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

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

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

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

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

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

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

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

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

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

(23) Revenue Form 42A740-NP(P), "2010[~~2009~~] Kentucky Income Tax Return, Nonresident or Part-Year Resident", shall be a

packet containing forms and instructions and shall be mailed to nonresident and part-year resident individuals for use in filing a Kentucky individual tax return for 2010[~~2009~~].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(39) Revenue Form 42A741(K-1), "Schedule K-1, Form 741, 2010[~~2009~~] Kentucky Beneficiary's Share of Income, Deductions, Credits, etc.", shall be filed by the fiduciary with Form 741 to report each beneficiary's share of income, deductions, and credits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(57)[~~(56)~~] Revenue Form 42A808, "Authorization to Submit Employees Annual Wage and Tax Statements Via Kentucky De-

partment of Revenue Web Site", shall be used by employers to request authorization to annually submit wage and tax statements via the Kentucky Department of Revenue Web site.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Corporation income taxes **-[**~~:~~**]** referenced material:

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

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

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

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

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

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

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

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

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

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

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

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

13. Revenue Form 41A720EZC, "Schedule EZC, Enterprise Zone Tax Credit", October 2010[~~2009~~];

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38.[~~36.~~] Revenue Form 41A720TCS, "Schedule TCS, Tax

Credit Summary Schedule", October 2010[~~2009~~];

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

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

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

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

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

44.[~~42.~~] Revenue Form 41A720-S6, "Form 2220-K, Underpayment and Late Payment of Estimated Income Tax and LLET", **April 2011[**~~October 2010~~**]**[~~2009~~];

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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2. Revenue Form 40A100, "Application for Refund of Income Taxes", October 2010[~~2009~~];

3. Revenue Form 40A102, "2010[~~2009~~] Application for Extension of Time to File Individual, General Partnership and Fiduciary Income Tax Returns for Kentucky", November 2010[~~2009~~];

4. Revenue Form 40A103, "Application for New Home Tax Credit", June 2010[~~July2009~~];

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12. Revenue Form 42A740ES, "Form 740-ES, 2011[~~2010~~] Individual Income Tax Kentucky Estimated Tax Voucher", July 2010[~~2009~~];

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15. Revenue Form 42A740-J, "Schedule J, Kentucky Farm Income Averaging", October 2010[~~2009~~];

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19. Revenue Form 42A740-NP-A, "Schedule A, Form 740-NP, 2010[~~2009~~] Kentucky Schedule A Itemized Deductions", 2010[~~2009~~];

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22. Revenue Form 42A740-NP-R, "Form 740-NP-R, 2010[~~2009~~] Kentucky Income Tax Return Nonresident - Reciprocal State", 2010[~~2009~~];

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29. Revenue Form 42A740-S1, "Form 2210-K, 2010[~~2009~~] Underpayment of Estimated Tax by Individuals", **April 2011[**~~2010~~**]**[~~2009~~];

30. Revenue Form 42A740-S4, "2011[~~2010~~] Instructions for Filing Estimated Tax Vouchers", October 2010[~~2009~~];

31. Revenue Form 42A740-S18, "Form 8582-K, 2010[~~2009~~] Kentucky Passive Activity Loss Limitations", 2010[~~2009~~];

32. Revenue Form 42A740-S21, "Form 4972-K, 2010[~~2009~~] Kentucky Tax on Lump-Sum Distributions", 2010[~~2009~~];

33. Revenue Form 42A740-S22, "Form 8453-K, 2010[~~2009~~] Kentucky Individual Income Tax Declaration for Electronic Filing", 2010[~~2009~~];

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35. Revenue Form 42A740-S24, "Form 8863-K, 2010[~~2009~~] Kentucky Education Tuition Tax Credit", 2010[~~2009~~];

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

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

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

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

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

53. Revenue Form 42A804-E, "Form K-4E, Special Withholding Exemption Certificate", **March 2011[**~~November 2010~~**]**[~~February 2009~~];

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

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

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

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

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

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

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

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

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

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

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

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68.[~~65.~~] Revenue Form 42D003, "2010[~~2009~~] Kentucky Wage and Tax Statements (W-2/K-2) Order Form", July 2010[~~2009~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601[~~40620~~], Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: January 27, 2011

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

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TOURISM, ARTS, AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, April 12, 2011)

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 2008-516~~]

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 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the new Tourism, Arts and Heritage Cabinet~~]. This administrative regulation establishes commercial fishing requirements, protects certain species from overharvest, and regulates the buying and selling of[~~paddlefish, shovelnose sturgeon, and bowfin as protected species and regulates the selling and buying of these~~] roe-bearing species of rough fish.

Section 1. Definitions. (1) "Buyer's permit" means a 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 defined by KRS 217.015(20), prior to its sale at a roe-bearing fish buyer's facility.

Section 2. Unlicensed Helpers. (1) A commercial fisherman shall not utilize more than two (2) unlicensed helpers while actively fishing.

(2) A commercial fisherman shall ensure that an unlicensed helper complies with all boating safety requirements established in KRS Chapter 235.

(3) An unlicensed helper shall:

(a) Be accompanied by a licensed commercial fisherman while using commercial fishing gear;

(b) Be permitted to transport roe or roe-bearing fish in the absence of a commercial fisherman with a Fish Transportation Permit as established in 301 KAR 1:125.[~~be accompanied by a licensed commercial fisherman while using commercial fishing gear:~~]

Section 3. Tagging and Using Commercial Gear. A commercial fisherman shall:

(1) Tag commercial fishing gear pursuant to 301 KAR 1:146[~~so 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 **his or her[**~~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 **shall[**~~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 **shall[**~~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 **shall[**~~will~~**]** be held to determine the recipients of the available permits.

Section 6. Roe-bearing Fish Harvester Permit Requirements. (1)[~~Commercial Roe-bearing Fish Harvester's Permit. (1) For the 2008 commercial fishing season:~~

~~(a) The department shall sell roe-bearing fish harvester's permits between the dates of October 6, 2008 and November 5, 2008 only to:~~

~~1. A resident of Kentucky who possesses a valid 2008 commercial fishing license; or~~

~~2. A person who possesses a valid nonresident 2008 commercial fishing license and previously:~~

~~a. Reported harvesting roe-bearing fish from March 1, 2006 to September 7, 2007; or~~

~~b. Purchased a shovelnose sturgeon permit for the 2006 - 2008 seasons;~~

~~(b) Initial permit applications.~~

~~1. An eligible licensed commercial fisherman shall submit to the department by November 5, 2008, a completed Application for a Roe-bearing Fish Harvester 's Permit along with permit fees as established in 301 KAR 3:022.~~

~~2. Mailed applications shall be postmarked not later than November 5, 2008; and~~

~~(c) The number of harvester's permits sold after the 2008 season shall not exceed 120 percent of the total number of resident and nonresident harvester's permits sold in 2008.~~

~~(2) Beginning with the 2009 commercial fishing season:~~

~~(a) The number of resident permits available shall be 120 percent of the resident permits 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[~~10~~] of this administrative regulation, have been completed and submitted to the department.

(4)[~~(d)~~] A harvester permittee shall:

(a)[~~1.~~] Have the harvester's permit in possession while:

1.[~~a.~~] Fishing for roe-bearing fish; and

2.[~~b.~~] Transporting or selling roe-bearing fish or unprocessed roe;

(b)[~~2.~~] Only sell, ship, barter, or provide harvested roe from roe-bearing fish to a Kentucky permitted buyer as established in Section 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:

(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 platorynchus)]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. Boundaries. The department shall make available on its Web site at www.kdfwr.state.ky.us Global Positioning System (GPS) coordinates detailing the boundary with Ohio.~~] on the Ohio River, for download to personal devices.

Section 15.[~~13.~~] 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.

TOURISM, ARTS, AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, April 12, 2011)

301 KAR 2:178. Deer hunting on Wildlife Management Areas, state parks, and other public lands.

RELATES TO: KRS 150.010, 150.340, 150.370(1), 150.390, 150.990

STATUTORY AUTHORITY: 148.029(5), 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to implement wildlife management plans on state parks. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes deer hunting seasons, application procedures, and other matters pertaining to deer hunting on Wildlife Management Areas that differ from statewide requirements and on state parks.

Section 1. Definitions. (1) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that may lure, entice, or attract wildlife.

(2) "Centerfire" means a type of firearm that detonates a cartridge by the firing pin striking a primer in the middle of the end of the cartridge casing.

(3) "In-line muzzleloading gun" means a firearm capable of being loaded only from the discharging end of the barrel or cylinder, that is also equipped with an enclosed ignition system located directly behind the powder charge.

(4) "Mobility-impaired" means an individual who meets the requirements of Section 2(1) of 301 KAR 3:026.

(5) "Modern firearm season" means the ten (10) or sixteen (16) consecutive day period beginning the second Saturday in November when breech-loading firearms may be used to take deer pursuant to 301 KAR 2:172.

(6) "Optical enhancement" means any sighting device other than open or "iron" sights.

(7) "Quota hunt" means a Wildlife Management Area or state park hunt where a participant is selected by a random drawing.

(8) "Statewide requirements" mean the season dates, zone descriptions, and other requirements for deer hunting established in 301 KAR 2:172.

(9) "Wildlife management area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

(10) "Youth" means a person under the age of sixteen (16) by the date of the hunt.

Section 2. General WMA Requirements. (1) Unless specified in this administrative regulation, statewide requirements shall apply to a WMA.

(2) A hunter shall not take more than one (1) deer per day on a WMA, except:

(a) During a quota hunt;

(b) The Grayson Lake WMA open youth deer hunt; or

(c) West Kentucky WMA firearms season[~~during a quota hunt~~].

(3) Unless specified in Section 6 of this administrative regulation, if a WMA is in two (2) or more deer hunting zones as established in 301 KAR 2:172, then the WMA shall be regulated by the most liberal zone requirements of the zones in which it lies.

(4) Deer hunting on WMAs listed in Section 6 of this administrative regulation, shall be permitted only as stated, except archery hunting is allowed under the statewide archery requirements established in 301 KAR 2:172, unless otherwise noted.

(5) An open firearm deer hunt, beginning on the Wednesday following the third Monday in January for ten (10) consecutive days, shall:

(a) Be limited to members of the United States Armed Forces and the National Guard and reserve component who:

1. Are residents of Kentucky or nonresidents stationed in Kentucky; and

2. Were deployed out-of-country during any portion of the most recent regular statewide deer season.

(b) Only be on a WMA designated as open for this special hunt; and

(c) Follow statewide requirements established in 301 KAR 2:172.

(6) On a WMA, a person:

(a) Shall not use a nail, spike, screw-in device, wire, or tree climber for attaching a tree stand or climbing a tree;

(b) May use a portable stand or climbing device that does not injure a tree;

(c) Shall not place a portable stand in a tree more than two (2) weeks before opening day, and shall remove it within one (1) week following the last day, of each hunting period;

(d) Shall plainly mark the portable stand with the hunter's name and address;

(e) Shall not use an existing permanent tree stand; and

(f) Shall not place, distribute, or hunt over bait.

(7) A person without a valid quota hunt confirmation number shall not enter a WMA during a quota hunt on that area except:

(a) To travel through a WMA on an established road or to use an area designated open by a sign; or

(b) One (1) assistant who shall not be required to have applied for the quota hunt, may accompany a mobility-impaired hunter who was drawn to hunt.

(8) A person hunting any species except waterfowl hunting or hunting at night, or a person accompanying a hunter shall wear hunter orange clothing as specified in 301 KAR 2:172 while on a WMA when firearms are permitted for deer hunting or while hunting within the sixteen (16) county elk zone when firearm elk season is in progress.

Section 3. General Quota Hunt Procedures. (1) A quota hunt applicant who is not selected and applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

(2) If selected for a quota hunt other than the Taylorsville Lake WMA antlerless-only hunt, a person shall lose all accumulated preference points.

(3) A random selection of hunters with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(4) If a person does not apply for a deer quota hunt in a given year, then all accumulated preference points shall be forfeited.

(5) Each applicant's preference points are independent of each other. If applying as a party, the entire party is selected if one (1) member of the party is selected.

(6) The commissioner may extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(7) A hunter may take up to two (2) deer on a quota hunt, only one (1) of which may be an antlered deer, except as authorized in Section 6 of this administrative regulation.

(8) There shall be one (1) person drawn from the eligible quota hunt applicants who were not selected in the original drawing. This person shall receive one (1) deer permit that carries with it all the privileges of the Special Commission Permit described in 301 KAR 3:100.

Section 4. Quota Hunt Application Process. A person applying for a quota hunt shall:

(1) Call the toll free number listed in the current fall hunting and trapping guide from a touch-tone phone or apply online at fw.ky.gov between September 1 and September 30;

(2) Enter each applicant's Social Security number;

(3) Indicate a first and second choice of hunts; and

(4) Pay a three (3) dollar application fee for each applicant, prior to the draw by:

(a) Check;

(b) Money order;

(c) Visa; or

(d) Master Card.

(5) Not apply more than one (1) time;

(6) Not apply as a group of more than five (5) persons; and

(7) Not be eligible to participate in a quota hunt unless selected pursuant to this administrative regulation, or accompanying a mobility-impaired[~~movement-impaired~~] hunter.

Section 5. Quota Hunt Participant Requirements. Except as otherwise specified in this administrative regulation, a person selected to participate in a quota hunt shall:

(1) Possess an annual Kentucky hunting license, except as provided in KRS 150.170(3) and 150.170(6);

(2) Possess a deer permit that authorizes the taking of deer with the equipment being used and in accordance with the zone restrictions where the hunt will occur;

(3) Possess an unused bonus deer permit, if the person has already taken the two (2) deer authorized by possession of the statewide deer permit;

(4) Not be required to possess a deer permit if the person possesses and presents a senior/disabled combination hunting and fishing license at time of check-in, is on military furlough for more than three (3) days, or is under twelve (12) years of age;

(5) Hunt on assigned date and in assigned areas selected by a random drawing of applicants if necessary;

(6) Comply with hunting equipment restrictions specified by the type of hunt;

(7) Check in at the designated check station:

(a) Either:

1. On the day before the hunt, between noon and 8 p.m. local time; or

2. On the day of the hunt, between 5:30 a.m. and 8 p.m. Eastern time; and

(b) With documentation of the participant's:

1. Social Security number or draw confirmation number; and

2. Purchase of a current statewide deer permit;

(8) Check out at the designated check station:

(a) If finished hunting;

(b) If the hunter's bag limit is reached; or

(c) By 8 p.m. Eastern time on the final day of the hunt;

(9) Take a harvested deer to the designated check station by 8 p.m. Eastern time the day the deer was harvested.

(10) Be declared ineligible to apply for the next year's drawing if the hunter fails to check out properly; and

(11) Comply with all waterfowl, pheasant, quail, and deer quota hunt requirements, including the fifteen (15) inch minimum outside antler spread harvest restriction for antlered deer when in effect, or be ineligible to apply for any quota hunt for these species the following year.

Section 6. Hunting Dates, Requirements and Restrictions. (1) Adair WMA. The crossbow season shall be open under statewide requirements.

(2) Ballard WMA.

(a) On the main tract, the quota hunt shall be for two (2) consecutive days beginning on the first Saturday in November.

(b) On the main tract, the archery, crossbow, and youth firearm seasons shall be open under statewide requirements through October 14, except that the two (2) mile driving loop marked by signs shall be closed to all hunting;

(c) The crossbow, modern firearm, youth firearm, and muzzleloader seasons shall be open under statewide requirements only on the 400 acre tract south of Sallie Crice Road.

(d) A hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(3) Barren River WMA. The area shall be open under statewide requirements except that on the Peninsula Unit, including Narrows, Goose and Grass Islands, a person shall not hunt deer with a modern firearm.

(4) Beaver Creek WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The limit shall be one (1) deer during the quota hunt.

(c) The crossbow season shall be open under statewide requirements.

(d) A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches.

(5) Boatwright WMA. The area shall be open under statewide requirements, except that:

(a) On the Swan Lake Unit the archery and crossbow season shall be open under statewide requirements through October 14; and

(b) The October youth deer season shall be open under statewide requirements.

(6) Cedar Creek Lake WMA. The crossbow season shall be open under statewide requirements.

(7) Clay WMA.

(a) On the main tract, crossbow and youth firearm seasons shall be open under statewide requirements, except archery hunting shall be prohibited during the quota fox hunting field trials as established in 301 KAR 2:049.

(b) The remainder of the WMA shall be open under statewide requirements for the archery, crossbow, and youth seasons, except during the quota deer hunt.

(c) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(d) A quota hunt participant shall be given one (1) preference point for each female deer checked-in.

(e) Hunters drawn for the quota hunt may harvest up to four (4) deer, only one (1) of which may be antlered.

(8) Dewey Lake WMA.

(a) The crossbow and youth firearm seasons shall be open

under statewide requirements.

(b) The use of firearms shall be prohibited for deer hunting on the portion of the area extending southward from the dam to Shoreline Campground Number One, and including all property from the WMA boundary downslope to the lake edge.

(c) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(9) Dix River WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open under statewide requirements.

(10) Fishtrap Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning on the Saturday before Thanksgiving.

(b) The limit for the quota hunt shall be one (1) deer.

(c) The crossbow and youth firearm season shall be open under statewide requirements.

(11) Grayson Lake WMA.

(a) An open youth hunt shall:

1. Be the first Saturday in November for two (2) consecutive days;

2. Have a two (2) deer bag limit, only one (1) of which may be an antlered deer; and

3. Have bonus deer permits apply.

(b) A person who has not checked in shall not enter the Grayson Lake WMA during the open youth hunt, except to:

1. Travel through the WMA on an established public road; or

2. Use an area designated as open by signs.

(c) The property of Camp Webb shall be open for a mobility-impaired deer hunting event during the first weekend of October as established in 301 KAR 3:110.

(d) The crossbow hunt shall be from the first Saturday in September through the third Monday in January, except during the November open youth hunt.

(e) The statewide youth firearm season shall be open under statewide requirements.

(12) Green River Lake WMA and Dennis-Gray WMA.

(a) The crossbow season shall be open under statewide requirements.

(b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(c) Fifteen (15) openings shall be reserved in the quota hunt for mobility-impaired persons.

(d) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches

(e) The Green River Lake and Dennis-Gray WMAs shall be considered to be located in the Eastern Time Zone.

(13) Higginson-Henry WMA.

(a) The youth firearm deer season shall be open under statewide requirements.

(b) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(c) A hunter shall not take more than one (1) deer from the WMA per license year.

(14) J.C. Williams WMA. The crossbow season shall be open under statewide requirements.

(15) Kentucky River WMA. The crossbow and youth firearm seasons shall be open under statewide requirements.

(16) Kleber WMA.

(a) The crossbow season shall be open under statewide requirements, except during a quota hunt.

(b) The quota hunts shall be for:

1. Two (2) consecutive days beginning the first Saturday in November; and

2. Two (2) consecutive days beginning the first Saturday in December.

(c) The youth firearm season shall be open under statewide requirements.

(17) Knobs State Forest WMA. The crossbow season shall be open under statewide requirements.

(18) Lake Barkley WMA shall be open under statewide requirements except

(a) The North Refuge is closed from November 1 to February 15; and

(b) Duck Island is closed from October 15 to March 15.

(19) Lewis County WMA.

(a) The modern firearm and youth firearm seasons shall be open under statewide requirements, except that the use of centerfire rifles and handguns shall be prohibited.

(b)[~~The October muzzleloader season shall be open under statewide requirements.~~

~~(c)~~] The crossbow and muzzleloader seasons[~~season~~] shall be open under statewide requirements.

(20) Livingston County WMA. The crossbow, youth firearm, muzzleloader, and modern firearm seasons shall be open under statewide requirements, except a person shall not hunt deer with a modern gun during the modern firearm deer season.

(21) Curtis Gates Lloyd WMA. The crossbow season shall be open under statewide requirements.

(22) Marion County WMA.

(a) The crossbow, muzzleloader, and youth firearm seasons shall be open under statewide requirements.

(b) There shall be a quota hunt for:

1. Five (5) consecutive days beginning the second Saturday in November; and

2. Five (5) consecutive days beginning the Thursday following the second Saturday in November.

(c) A quota hunt participant shall not be required to check in and out of the WMA, but shall telecheck or internet-check harvested deer as specified in 301 KAR 2:172.

(23) Mill Creek WMA.

(a) The crossbow season shall be open under statewide requirements.

(b) The quota hunt shall:

1. Be for two (2) consecutive days beginning the first Saturday in November; and

2. Have a one (1) deer bag limit.

(24)[~~(23)~~] Miller Welch-Central Kentucky WMA. The archery hunt shall be:

(a) On Wednesdays, from the first Saturday in September through December 17, except during scheduled field trials as posted on the area bulletin board; and

(b) December 18 through the third Monday in January.

(25)[~~(24)~~] Mud Camp Creek WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open under statewide requirements.

(26)[~~(25)~~] Mullins WMA. The crossbow season shall be open under statewide deer requirements.

(27)[~~(26)~~] Ohio River Islands WMA, Stewart Island Unit.

(a) The muzzleloader season shall be for two (2) consecutive days beginning the third Saturday in October.

(b) The archery season shall be from the first Saturday in September through October 14.

(c) The crossbow season shall be from October 1 through October 14.

(d) The October youth season shall be open under statewide requirements.

(e) The remainder of the WMA shall be open under statewide requirements.

(28) Otter Creek Outdoor Recreation Area.

(a) The archery and crossbow seasons shall be open under statewide requirements.

(b) There shall be a quota hunt for:

1. Two (2) consecutive days beginning the third Saturday in November; and

2. Two (2) consecutive days beginning the second Saturday in December.

(29)[~~(27)~~] Paintsville Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The crossbow and youth firearm seasons shall be open under statewide requirements.

(c) A person shall not use firearms for deer hunting on:

1. The area extending eastward from the drainage of Glade Branch, along the north edge of the lake, to the No Hunting Area surrounding Rocky Knob Recreation Area and enclosing all property from the WMA boundary downslope to the lake edge; and

2. The islands to the south and that portion of the area extending eastward along the south edge of the lake from the drainage of Shoal Branch to the No Hunting Area surrounding the dam and

ranger station, and extending downslope to the edge of the lake.

(d) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(30)[~~(28)~~] Peabody WMA.

(a) The crossbow, youth firearms, and muzzleloader seasons shall be open under statewide requirements.

(b) The modern firearm season shall be open under statewide requirements for ten (10) consecutive days beginning the second Saturday in November.

(31)[~~(29)~~] Pennyrile State Forest-Tradewater WMA.

(a) The crossbow season shall be open under statewide requirements.

(b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(c) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(32)[~~(30)~~] Pioneer Weapons WMA. Statewide requirements shall apply except that a person:

(a) Shall not use a modern firearm;

(b) Shall not use an in-line muzzleloading gun;

(c) Shall not use a scope or optical enhancement; and

(d) May use a crossbow during the entire archery season.

(33)[~~(31)~~] Dr. James R. Rich WMA.

(a) The crossbow season shall be open under statewide requirements, except during a quota hunt.

(b) The quota hunts shall be for:

1. Two (2) consecutive days beginning the first Saturday in November; and

2. Two (2) consecutive days beginning the first Saturday in December; and

(c) The youth firearm season shall be open under statewide requirements.

(34)[~~(32)~~] Robinson Forest WMA.

(a) A person shall not hunt deer on the main block of Robinson Forest.

(b) The remainder of the WMA shall be open under statewide requirements.

(35)[~~(33)~~] Sloughs WMA.

(a) On the Sauerheber Unit, the archery, crossbow, muzzleloader, and youth firearm seasons shall be open under statewide requirements through October 31, except that the Crenshaw and Duncan II Tracts shall be open under statewide requirements through the end of modern firearm season.

(b) The remainder of the WMA shall be open under statewide requirements.

(36)[~~(34)~~] South Shore WMA.

(a) The youth firearm, October muzzleloader, and modern firearm seasons shall be open under statewide requirements through November 14, except that the use of centerfire rifles and handguns shall be prohibited.

(b) The archery and crossbow seasons shall be open under statewide requirements, except the area shall be closed November 15 through January 15.

(37)[~~(35)~~] Sturgis WMA.

(a) The area shall be closed to the statewide archery season.

(b) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in November.

(c) There shall be an archery and crossbow quota hunt for two (2) consecutive days beginning the fourth Saturday in October.

(d) There shall be a youth quota hunt for two (2) consecutive days beginning the second Saturday in October.

(e) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(38)[~~(36)~~] T.N. Sullivan WMA. The crossbow season shall be open under statewide requirements.

(39)[~~(37)~~] R.F. Tarter WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open under statewide requirements.

(40)[~~(38)~~] Taylorsville Lake WMA.

(a) There shall be a quota hunt for:

1. Two (2) consecutive days beginning the first Saturday in November for antlerless deer;

2. Two (2) consecutive days beginning the first Saturday in December; and

3. Two (2) consecutive days beginning the first[~~second~~] Saturday in January.

(b) Seven (7) openings shall be reserved in each quota hunt for mobility-impaired persons.

(c) The youth firearm season shall be open under statewide requirements.

(d) The crossbow season shall be open under statewide requirements.

(e) Applicants drawn for the antlerless-only quota hunt shall not lose any accumulated preference points.

(41)[~~(39)~~] Twin Eagle WMA. The crossbow season shall be open under statewide requirements.

(42)[~~(40)~~] Twin Knobs Campground.

(a) The quota hunt shall be on the second Saturday in December for mobility-impaired persons.

(b) The area shall be closed to the statewide archery season.

(43)[~~(41)~~] Paul Van Booven WMA.

(a) The area shall be closed to vehicle access from an hour after sunset to an hour before sunrise, except that a hunter may retrieve downed game.

(b) The crossbow, muzzleloader, and youth firearm seasons shall be open under statewide requirements.

(c) There shall be a quota hunt for:

1. Five (5) consecutive days beginning the second Saturday in November; and

2. Five (5) consecutive days beginning the Thursday following the second Saturday in November.

(d) The bag limit for a quota hunt shall be one (1) deer.

(e) A quota hunt participant shall not be required to check in and out of the WMA, but shall check in a harvested deer pursuant to[~~telecheck harvested deer as specified in~~] 301 KAR 2:172.

(f) A hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(44)[~~(42)~~] West Kentucky WMA.

(a) All tracts shall be open under statewide requirements for the archery and crossbow seasons, except that:

1. Tract 8A shall be closed to all deer hunting; and

2. All tracts shall be closed to archery and crossbow hunting during quota and firearm deer hunts.

(b) Tracts 1-6 shall be open to shotgun and muzzleloader hunters participating in the quota and open firearm deer hunts.[~~Tract 7 and "A" Tracts shall not be open for quota or firearm deer hunts.~~]

(c) Tract 7 and "A" Tracts shall not be open for quota or firearm deer hunts.

(d) The quota hunt shall be for five (5) consecutive days beginning the Saturday prior to Thanksgiving.

(e) The firearms season shall:

1. Be for three (3) consecutive days beginning the Saturday preceding the third Monday in January;

2. Be limited to the first 200 hunters;

3. Require a hunter to check-in at a designated check station from 4 p.m. to 8 p.m. Central Time on the day before the hunt or between 4:30 a.m. and 7 p.m. Central Time on hunt days;

4. Shall require a hunter to check out at the designated check station:

a. When finished hunting;

b. If the hunter's bag limit is reached; or

c. By 7 p.m. Central time on the final day of the hunt.

5. Have a two (2) deer bag limit, only one (1) of which may be an antlered deer;

6. Have bonus deer permits apply; and

7. Require every person to check in during, except for:

a. A person traveling on an established public road; or

b. A person in an area designated as open by signs.

(f) Firearm hunters shall not use centerfire rifles or handguns;

(g) A person shall not carry a firearm in posted zones pursuant to the agreement between the department and the U.S. Department of Energy.

(h) Archery hunters shall check-in with U.S. Energy Corporation security personnel before hunting on the "A" Tracts.

(i) Crossbow hunting is prohibited on the "A" Tracts.

(j) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(k) A hunter shall sign in for the hunting tract of their choice and except after Noon shall not hunt outside of that tract at the check in prior to each day's hunt.

(45)[~~(43)~~] Yatesville WMA. The crossbow, youth firearm, muzzleloader, and modern firearm seasons shall be open under statewide requirements, except a person shall not take antlerless deer with a firearm during the modern firearm deer season.

(46)[~~(44)~~] Yellowbank WMA.

(a) The crossbow and youth firearm deer seasons shall be open under statewide requirements.

(b) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(47)[~~(45)~~] Zilpo Campground.

(a) The quota hunt shall be on the second Saturday in December for mobility-impaired persons.

(b) The area shall be closed to the statewide archery season.

Section 7. State Park Deer Seasons. (1) A state park may allow archery and crossbow hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(2) A state park may allow up to sixteen (16) days of firearm hunting and up to eleven (11) days of muzzleloader hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(3) The following state parks shall be open to deer hunting as specified below and according to requirements in Section 8 of this administrative regulation:

(a)[~~(1)~~] Lake Barkley State Resort Park. Deer hunting shall be permitted on the second[~~first~~] Tuesday of January for two (2) consecutive days.

(b)[~~(2)~~] Greenbo Lake State Resort Park. Deer hunting shall be permitted on the second[~~first~~] Tuesday of January for two (2) consecutive days.

(c)[~~(3)~~] Green River Lake State Park.

1.[~~(a)~~] Archery and crossbow deer hunting shall be permitted beginning the second Thursday of December for four (4) consecutive days.

2.[~~(b)~~] Archery and crossbow deer hunting shall be permitted beginning the third Thursday of December for four (4) consecutive days.

3.[~~(c)~~] A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches.

(d)[~~(4)~~] Yatesville Lake State Park. Muzzleloading firearm, archery, and crossbow deer hunting shall be permitted under statewide deer requirements on the second Monday of December for three (3) consecutive days.

(e)[~~(5)~~] Jenny Wiley State Resort Park.

1.[~~(a)~~] Deer hunting shall be permitted on the first Saturday of January for two (2) consecutive days.

2.[~~(b)~~] The bag limit shall be two (2) deer, only one (1) of which may be antlered.

3.[~~(c)~~] The hunt shall be open to the first fifteen (15) mobility-impaired persons who check in at the park on the day before the hunt.

4.[~~(d)~~] A person who participates in the hunt shall comply with the requirements established in 301 KAR 3:026.

5.[~~(e)~~] A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches.

Section 8. State Park Deer Hunt Requirements. (1) Except for the open hunts at Jenny Wiley State Resort Park and[hunt at] Yatesville Lake State Park, a person shall not hunt on a state park unless:

(a) Selected by a random drawing as described in Section 3 of this administrative regulation;[~~or~~]

(b) The person is a member of a successful applicant's hunting party; or

(c) **The person was[**~~They were~~**]** selected as part of a process administered by the Department of Parks, pursuant to Section 7 of this administrative regulation.

(2) A person participating in a state park hunt, except for the quota hunts[~~hunt~~] at Green River Lake State Park and the Yatesville Lake State Park open deer hunt, shall:

(a) Check in and check out as required in Section 5 of this administrative regulation;

(b) Furnish at check-in a driver's license or other form of government-issued identification; and

(c) Check in:

1. Between noon and 8 p.m. Eastern Time the day before the hunt at the state park campground if hunting in the Yatesville Lake State Park open deer hunt; or

2. At the park the day before the hunt if hunting in the Jenny Wiley State Resort Park deer hunt; and

(d) Not be eligible to apply for a quota hunt the following year if the person does not check out as required in Section 5 of this administrative regulation.

(3) A person participating in a state park deer hunt shall:

(a) Comply with the provisions of 301 KAR 2:172; and

(b) Check harvested deer daily at the designated park check station, except that the deer taken in the Green River Lake State Park quota hunts[~~hunt,~~] and the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park shall be telechecked or checked in on the department's Web site at fw.ky.gov, pursuant to[~~according to requirements established in~~] 301 KAR 2:172.

(4) A person participating in a state park deer hunt shall not:

(a) Take more than two (2) deer in a quota hunt, only one (1) of which may be antlered;

(b) Hunt over bait;

(c) Injure a tree by using:

1. A tree stand except a portable stand;

2. Climbing devices that nail or screw to the tree; or

3. Climbing spikes;

(d) Leave a deer stand unattended for more than twenty-four (24) hours;

(e) Discharge a firearm within 100 yards of a maintained road or building; and

(f) Hunt:

1. In an area posted as closed by signs; or

2. Outside park boundaries.

(5) A person participating in a state park deer hunt, other than the open hunts at Jenny Wiley State Park and Yatesville Lake State Park and any department administered state park quota hunt, may take up to two (2) bonus deer that shall not count toward their statewide limit if **the person**:

(a) **Takes[**~~They take~~**]** no more than one (1) bonus antlered deer; and

(b) **[**~~The person~~**]**Obtains the valid bonus deer tag(s) from the state park hunt administrators.

BENJY KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY THE AGENCY: January 12, 2011
FILED WITH LRC: January 13, 2011 at 4 p.m.
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.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, April 12, 2011)

702 KAR 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.030 establish the age

for compulsory school attendance. KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. (1) Daily attendance of pupils in elementary schools shall be determined by taking attendance one (1) time each day prior to the start of instruction and maintaining a student entry and exit log at each school.

(2) Daily attendance of pupils in middle and high school shall be determined by taking attendance by class period and maintaining a student entry and exit log at each school.

(3) The student entry and exit log shall include the date, student name, grade or homeroom, time of late arrival, time of early departure (with the reason for both listed) and other information required by the local board of education. For elementary students who are signed out, the student entry and exit log shall also include a signature of:

(a) A parent;

(b) A legal guardian; or

(c) An adult with proof of identification and for whom the school has received a written authorization from the parent or legal guardian.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a co-curricular instructional activity that has been authorized by the local board of education and is a definite part of the instructional program of the school;

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035;

(c) The pupil is participating in an off-site virtual high school class or block. A student may be counted in attendance for a virtual high school class or block for the year or semester in which the student initially enrolled in the class or block if the student demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 5(2)(b) or (3);

(d) The pupil's mental or physical condition prevents or renders inadvisable attendance in a school setting, and the pupil meets the requirements of KRS 159.030(2). A pupil being served in the home/hospital program shall receive a minimum of one (1) hour of instruction two (2) times per five (5) instructional days;

(e) The student has been court ordered to receive educational services in a setting other than the classroom. A pupil being served through a court order shall receive a minimum of one (1) hour of instruction two (2) times per five (5) instructional days;

(f) The student has an individual education plan (IEP) that requires less than full-time instructional services;

(g) The pupil is participating in standards-based, performance-based credit that is awarded in accordance with 704 KAR 3:305, Section 5(2)(b) and that falls within one (1) or more of the categories of standards-based course work outlined in 704 KAR 3:305, Section **2[**~~4(4)~~**]**. A student may be counted in attendance for performance-based credit for a class or block for the year or semester in which the student initially enrolled in the class or block if the student demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 5(3); or

(h) The pupil participates in a school that is authorized by the Commissioner of Education to design and deliver an educational program so that all graduation requirements are based on student proficiency of standards and performance, rather than time and Carnegie units, as authorized in 704 KAR 3:305, Section 5.

(5) Even if a pupil's absence or tardy is due to factors beyond the pupil's control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent or tardy.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 2. The guidelines in this section shall be used to calculate student attendance for state funding purposes through June 30, 2010.

(1) A full day of attendance shall be recorded for a pupil who is in attendance 100 percent of the regularly-scheduled school day for the pupil's grade level.

(2) A tardy shall be recorded for a pupil who is absent sixty (60) minutes or less of the regularly-scheduled school day for the pupil's grade level.

(3) The actual percentage of the school day shall be recorded for attendance of a pupil absent for more than sixty (60) minutes of the regularly-scheduled school day for the pupil's grade level.

(4) A full day absence shall be recorded for a pupil who is absent 100 percent of the regularly-scheduled school day for the pupil's grade level.

(5) The percentages described in this section shall apply to the regularly-scheduled school day approved by the local board of education and shall be applicable to entry level through grade level twelve (12).

Section 3. The guidelines in this section shall be used to calculate student attendance for state funding purposes after June 30, 2010.

(1) A full day of attendance shall be recorded for a pupil who is in attendance at least sixty-five (65) percent of the regularly-scheduled school day for the pupil's grade level.

(2) A tardy shall be recorded for a pupil who is absent[~~less than~~] 35 percent or less of the regularly-scheduled school day for the pupil's grade level.

(3) A half day absence shall be recorded for a pupil who is absent 36[~~35~~] percent to 84 percent of the regularly-scheduled school day for the pupil's grade level.

(4) A full day absence shall be recorded for a pupil who is absent more than 84 percent of the regularly-scheduled school day for the pupil's grade level.

Section 4. A local board of education may permit an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060, or local board of education policy. The time a student is in attendance shall be included in calculating the district's average daily attendance.

Section 5. A local board of education may permit an arrangement in which a pupil pursues part of the student's education under the direction and control of one (1) public school and part of the student's education under the direction and control of another public or nonpublic school. The time a student is served by **each** public school shall be included when calculating the district's average daily attendance.

Section 6. If a local school district, under the provisions of KRS 157.360(6), enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 7. (1) If a local school district enrolls a pupil in the entry level program who will not be five (5) years of age on or before October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(2) If a local school district enrolls a pupil in the second level of the primary program who will not be six (6) years of age on or before October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the **[**~~following~~**]** conditions **established in this subsection.[**:**]**

(a) The local board of education shall have determined that the student is eligible for enrollment into the second level of the primary program after academic, social, and developmental progress records from multiple data sources are reviewed by a team and determined to support accelerated placement. These sources shall include:

1 Anecdotal records;

2. A variety of student work samples, including evidence of student self-reflection; and

3. Standardized test results**.[**~~;~~**]**

(b) The team shall be comprised of three (3) members who have knowledge of the student's developmental skills and abilities. Team members shall be chosen from these categories:

1. Teachers;
2. Parents;
3. Psychologists;
4. Principals; or
5. District specialists**.[**~~;~~**]**

(c) At least one (1) team member shall represent the district office and have an understanding of early childhood development and knowledge of developmentally-appropriate practices**.[**~~; and~~**]**

(d) If a student is recommended by the local board of education for accelerated placement into the second level of the primary program, the district shall forward that recommendation to the department for approval with:

1. A list of data sources used in making the decision;
2. A list of all individuals who submitted the data sources;
3. A list of team members; and
4. The data needed to create a pupil attendance record.

(3) A local school district shall enroll any resident pupil, not holding a high school diploma, under the age of twenty-one (21) years of age who wishes to enroll. The days attended after the student's 21st birthday shall not be included in the calculation of the district's average daily attendance.

Section 8. The Growth Factor Report for the first two (2) school months of the school year pursuant to KRS 157.360(8) shall be submitted to the Department of Education within ten (10) business days following the last day of the second school month or by November 1 of each year, whichever occurs first.

Section 9. (1)**(a)** A[~~copy of the~~] written agreement local boards of education execute for enrollment of nonresident pupils as provided by KRS 157.350(4) shall be filed in both the attending district and the resident district[~~submitted to the Department of Education~~] no later than February 1 of the year prior to the school year to which it will apply.

(b) The written agreement shall include the specific terms to which the districts have agreed.

(c) A list of the names of all nonresident pupils enrolled in the attending district covered by the agreement shall be filed in both the attending district and the resident district[~~submitted to the Department of Education~~] not later than November 1 of the school year covered by the agreement.

(2) A change may be made to the original nonresident pupil agreement up to the close of the school year to include the nonresident pupils enrolling after the close of the second school month. The amendment shall be filed in both the attending district and the resident district[~~submitted to the Department of Education~~] no later than June 30 of each year.

Section 10. The Superintendent's Annual Attendance Report (SAAR) shall be considered the request to substitute prior year's average daily attendance for up to ten (10) designated weather-related low attendance days, and certification that the low attendance was due to inclement weather in accordance with KRS 157.320(17). Documentation that the low attendance was due to inclement weather shall be retained at the central office.

Section 11. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, student entry and exit logs, and the Home/Hospital Program Form, shall be the original source of attendance data for all pupils enrolled in the public common schools and shall be verified at the end of each school month.

(2) The school's records of daily attendance and teachers' monthly attendance reports shall be signed by a designated certified person within the elementary or secondary school who shall be responsible for verifying and certifying the state attendance documents for accuracy.

(3) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and student entry and exit logs shall be retained at least two (2) full school years after the current school year.

Section 12. The following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(2) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(3) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who withdrew as a W06, W07, W13, W16 or W18 during the 2004-2005 school year or as a W24 or W25 for previous school years;

(4) R01 - A pupil received from another grade in the same school;

(5) R02 - A pupil received from another public school in the same public school district;

(6) R06 - A pupil reentering the school after dropping out, discharge or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(7) R20 - A pupil previously enrolled in a home school in Kentucky during the current school year;

(8) R21 - A pupil previously enrolled in any public or nonpublic school (excluding home schools) in Kentucky during the current school year;

(9) W01 - A pupil transferred to another grade in the same school. The reentry code to use with W01 shall be R01;

(10) W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;

(11) W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2:020, Section 1(1), accompanied by a doctor's statement certifying the condition, or any other health-related condition for which the student is too ill to participate in regular school attendance or local homebound instructional services, or if the student has obtained a doctor's statement certifying the condition. The reentry code to use with W07 shall be R06;

(12) W08 - A pupil withdrawn due to death;

(13) W12 - A pupil under the jurisdiction of the court. For purposes of the W12 code, a pupil may be considered under the jurisdiction of the court on the day the petition is filed with the court. The reentry code to use with W12 shall be R06. For accountability purposes, a W12 shall be considered a dropout if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(14) W17 - An entry level student in the primary program, withdrawn during the first two (2) months enrolled due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5:060;

(15) W20 - A pupil transferred to a home school. The reentry code to use with W20 shall be R20;

(16) W21 - A pupil transferred to a nonpublic school (excluding home school). The reentry code to use with W21 shall be R21;

(17) W22 - A pupil who has transferred to another public school district and for whom a request for student records has been received or enrollment has been substantiated, or a pupil who is known to have moved out of the United States;

(18) W23 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W24 or W25 during the current school year;

(19) W24 - A pupil who has moved out of this public school district for whom enrollment elsewhere has not been substantiated;

(20) W25 - A pupil who is at least sixteen (16) years of age and has dropped out of public school;

(21) W26 - A pupil who has withdrawn from school after completing a secondary GED program and receiving a GED certificate;

(22) W27 - a pupil who has withdrawn from school and subsequently received a GED;

(23) W28 - a pupil who has reached the maximum age for education services without receiving a diploma or certificate of attainment;

(24) C01 - a pupil who completes the school year in the school of the most current enrollment;

(25) G01 - a pupil who graduates in less than four (4) years;

(26) G02 - a pupil who graduates in four (4) years;

(27) G03 - a pupil who graduates in five (5) or more years;

(28) G04 - a pupil who graduates in six (6) or more years; and

(29) NS - a pupil who completed the prior year with a C01 and was expected to enroll in the district but did not enroll by October 1 of the current year whose enrollment elsewhere cannot be substantiated.

Section 13. (1) For a student who has been suspended, a code of S shall be used to indicate the days suspended.

(2) Suspension shall be considered an unexcused absence.

Section 14. The ethnicity of each student shall be designated as either Hispanic/Latino or not Hispanic/Latino. The designation shall be "Hispanic/Latino" if the person is of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture of origin regardless of race. The term "Spanish origin" **may[**~~can~~**]** be used in addition to "Hispanic/Latino **[**~~or Latino~~**]**".

Section 15. One (1) or more of the following racial codes shall be used to indicate the racial category of pupils:

(1)[~~1~~] White - A person having origins in any of the original peoples of Europe, North Africa or the Middle East;

(2)[~~2~~] Black or African American - A person having origins in any of the black racial groups of Africa;

(3)[~~4~~] Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, **or[**~~and~~**]** Vietnam[~~, or the Pacific Islands~~];

(4)[~~5~~] American Indian or Alaskan Native - A person having origins in any of the original peoples of North America and South America (including Central America), and who maintains cultural identification through tribal affiliation or community attachment[~~recognition~~]; and

(5) Native Hawaiian or other [~~7~~]Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Section 16. (1) The Student Dropout Questionnaire shall be completed during the one (1) hour counseling session mandated in accordance with KRS 159.010. Dropout data shall be reported to the Department of Education on the Nonacademic Report that is submitted to the Department each year.

(2) The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his **or her** designee pursuant to KRS 159.170, and shall be maintained in the student's permanent file.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Home/Hospital Program Form", 2008-2009;

(b) "Student Dropout Questionnaire", December 2000;

(c) "Growth Factor Report", November 2009;

(d) "Superintendent's Annual Attendance Report (SAAR)", November 2009; and

(e) "Nonacademic Report", October 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Division of Finance, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TERRY HOLLIDAY, Ph.D. Commissioner
DAVID KAREM, Chairperson

APPROVED BY AGENCY: February 15, 2011

FILED WITH LRC: February 15, 2011 at noon

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321 or email at kevin.brown@education.ky.gov.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As amended at ARRS, April 12, 2011)

811 KAR 1:280. 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" **means a single horse, or more than one (1) horse joined as a mutuel entry or joined in a mutuel field, on which a single pari-mutuel wager may be placed[**~~is defined by 811 KAR 1:005~~**]**.

(2) "Breakage" is defined by 811 KAR 1:005.

(3) "Broken consolation price" means the profit per dollar, plus one (1) dollar, rounded down to the break point.

(4) "Carryover" is defined 811 KAR 1:005.

(5) "Consolation payout" means a payout to individuals who do not correctly choose all of the selections in a multiple-pick wager, or a payout to individuals who wager on a horse in a multi-pick wager that is subsequently scratched.

(6) "Covered betting interest" means a betting interest or combination of betting interests that has been wagered upon.

(7) "Dead heat" is defined by 811 KAR 1:005.

(8) "Gross pool" means the sum of all wagers less refunds.

(9) "Individual" **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 811 KAR 1:285~~**]**.

(10) "Multi-commission pool" means a pari-mutuel pool where entities accepting wagers use different takeout rates.

(11) "Net pool" is defined by 811 KAR 1:005.

(12) "Payout" is defined by 811 KAR 1:005.

(13) "Performance" means a specified number of races on a given race day that constitutes a full card of racing.

(14) "Profit" means the net pool less the gross amount wagered **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 811 KAR 1:005.

(17) "Single commission pool" means a pari-mutuel pool where all entities accepting wagers use the same takeout rate.

(18) "Single price pool" means a pari-mutuel pool in which the entire profit is paid to holders of winning tickets after the deduction of the takeout.

(19) "Takeout" is defined by 811 KAR 1:005.

(20) "Unbroken consolation price" means the profit per dollar plus one (1) dollar.

Section 2. General requirements. (1) All pari-mutuel pools shall be separately and independently calculated and distributed. The takeout shall be deducted from each gross pool as stipulated by KRS 230.750. The remainder of the pool shall be the net pool for distribution as payoff on winning pari-mutuel wagers.

(2)(a) Single commission pari-mutuel pools may be calculated using either the standard price calculation procedure or the net price calculation procedure.

(b) Multi-commission pari-mutuel pools shall be calculated using the net price calculation procedure.

(3) The standard price calculation procedure shall be as follows:

(a) Single price pools - Win pool

Gross Pool	=	Sum of Wagers on all Betting Interests - Refunds
Takeout	=	Gross Pool x Percent Takeout
Net Pool	=	Gross Pool - Takeout
Profit	=	Net Pool - Gross Amount Bet on Winner
Profit Per Dollar	=	Profit / Gross Amount Bet on Winner
$1 Unbroken Price	=	Profit Per Dollar + $1
$1 Broken Price	=	$1 Unbroken Price Rounded Down to the Break Point
Total Payout	=	$1 Broken Price x Gross Amount Bet on Winner
Total Breakage	=	Net Pool - Total Payout

(b) Profit split - Place pool. Profit **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 (2) 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 (3) unique prices.

(4) The net price calculation procedure shall be as follows:

(a) Single price pool - Win pool

Gross Pool	=	Sum of Wagers on all Betting Interests – Refunds
Takeout	=	Gross Pool x Percent Takeout for Each Source
Net Pool	=	Gross Pool - Takeout
Net Bet on Winner	=	Gross Amount Bet on Winner x (1 – Percent Takeout)
Total Net Pool	=	Sum of All Sources Net pools
Total Net Bet on Winner	=	Sum of All Sources Net Bet on Winner
Total Profit	=	Total Net Pool - Total Net Bet on Winner
Profit Per Dollar	=	Total Profit / Total Net Bet on Winner
$1 Unbroken Base Price	=	Profit Per Dollar + $1 for each source:
$1 unbroken price	=	$1 Unbroken Base Price x (1 - Percent Takeout)
$1 Broken Price	=	$1 Unbroken Price Rounded Down to the Break Point
Total Payout	=	$1 Broken Price x Gross Amount Bet on Winner
Total Breakage	=	Net Pool - Total Payout

(b) Profit split - Place pool. Total profit **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 (2) unique unbroken base prices.

(c) Profit split - Show pool. Total profit **shall be[~~is~~]** 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 (3) unique unbroken base prices.

(5) Each association shall disclose the following in its license application:

(a) Which price calculation method it will use for single commission pari-mutuel pools;

(b) The ticket denominations for each type of pari-mutuel wager;

(c) The procedures for refunds of pari-mutuel wagers;

(d) The takeout for each type of pari-mutuel wager;

(e) Which pari-mutuel wagers will include carryover and consolation pools and the percentages of the net pool assigned to each; and

(f) For each type of pari-mutuel wagering involving more than one (1) live horse race, the procedures to be used if a race is cancelled.

(6) All minimum amounts for pari-mutuel wagers shall be approved by the commission.

(7) The individual pools described in this administrative regulation may be given alternative names by each association if prior approval is obtained from the commission.

(8) A mutuel entry or a mutuel field in any race shall be a single betting interest for the purpose of each of the wagers described in this administrative regulation and the corresponding pool calculations and payouts. If either horse in a mutuel entry, or any horse in a mutuel field, is a starter in a race, the entry or the field selection shall remain as the designated selection for any of the wagers described in this administrative regulation and the selection shall not be deemed scratched.

Section 3. Pools dependent upon entries for live horse races. (1) **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[~~is~~]** deducted from the net win pool and the balance remaining **shall be[~~is~~]** the profit. The profit **shall be[~~is~~]** divided by the amount wagered on the betting interest finishing first and the result **shall be[~~is~~]** the profit per dollar wagered to win on that betting interest.

(2) The net win pool shall be distributed as a single price pool in the following precedence based upon the official order of finish:

(a) To individuals whose selection finishes first, **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 (2) or more betting interests, the win pool shall be distributed as a profit split.

Section 5. Place pools. (1) The amounts wagered to place on the first two (2) betting interests to finish **shall be[**~~are~~**]** deducted from the net pool and the balance remaining **shall be[**~~is~~**]** the profit. The profit **shall be[**~~is~~**]** divided into two (2) equal portions, with each portion assigned to each winning betting interest and divided by the dollar amount wagered to place on that betting interest. The result **shall be[**~~is~~**]** the profit per dollar wagered to place on that betting interest.

(2) The net place pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses in a mutuel entry or mutuel field finish in the first two (2) places, as a single price pool to individuals who selected the mutuel entry or mutuel field, otherwise;

(b) As a profit split to individuals whose selection is included within the first two (2) finishers, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers on one (1) of those two (2) finishers, then;

(c) As a single price pool to individuals who selected the one (1) covered betting interest included within the first two (2) finishers, **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 (2) or more betting interests, the place pool shall be distributed as a profit split.

(4)(a) If there is a dead heat for second involving horses representing the same betting interest, the place pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for second involving horses representing two (2) or more betting interests, the place pool **shall be[**~~is~~**]** divided, with one-half (1/2) of the profit distributed to place wagers on the betting interest finishing first and the remainder of the profit distributed equally among place wagers on the betting interests involved in the dead heat for second.

Section 6. Show Pools. (1) The amounts wagered to show on the first three (3) betting interests **shall be[**~~are~~**]** deducted from the net pool and the balance remaining **shall be[**~~is~~**]** the profit. The profit **shall be[**~~is~~**]** divided into three (3) equal portions, with each portion assigned to each winning betting interest and divided by the amount wagered to show on that betting interest. The result **shall be[**~~is~~**]** the profit per dollar wagered to show on that betting interest.

(2) The net show pool shall be distributed in the following precedence based on the official order of finish:

(a) If horses in a mutuel entry or mutuel field finish in the first three (3) places, as a single price pool to individuals who selected the mutuel entry or mutuel field, otherwise;

(b) If horses of a mutuel entry or mutuel field finish as two (2) of the first three (3) finishers, the profit **shall be[**~~is~~**]** divided with two-thirds (2/3) distributed to individuals who selected the mutuel entry or mutuel field and one-third (1/3) distributed to individuals who selected the other betting interest included within the first three (3) finishers, otherwise;

(c) As a profit split to individuals whose selection **shall be[**~~is~~**]** included within the first three (3) finishers, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers on one (1) of those three (3) finishers, then;

(d) As a profit split to individuals who selected one (1) of the two (2) covered betting interests included within the first three (3) finishers, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers on two (2) of those three (3) finishers, then;

(e) As a single price pool to individuals who selected the one (1) covered betting interest included within the first three (3) finishers, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers, then;

(f) As a single price pool to individuals who selected the fourth-place finisher, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers, then;

(g) The entire pool shall be refunded on show wagers for that race.

(3)(a) If there is a dead heat for first involving two (2) horses representing the same betting interest, the profit **shall be[**~~is~~**]** divided with two-thirds (2/3) to individuals who selected the first-place finishers and one-third (1/3) distributed to individuals who selected the betting interest finishing third.

(b) If there is a dead heat for first involving three (3) horses representing a single betting interest, the show pool shall be distributed as a single price pool.

(c) If there is a dead heat for first involving horses representing two (2) or more betting interests, the show pool shall be distributed as a profit split.

(4)(a) If there is a dead heat for second involving horses representing the same betting interest, the profit **shall be[**~~is~~**]** divided with one-third (1/3) distributed to individuals who selected the betting interest finishing first and two-thirds (2/3) distributed to individuals who selected the second-place finishers.

(b) If there is a dead heat for second involving horses representing two (2) betting interests, the show pool shall be distributed as a profit split.

(c) If there is a dead heat for second involving horses representing three (3) betting interests, the show pool **shall be[**~~is~~**]** divided with one-third (1/3) of the profit distributed to show wagers on the betting interest finishing first and the remainder **shall be[**~~is~~**]** distributed equally among show wagers on those betting interests involved in the dead heat for second.

(5)(a) If there is a dead heat for third involving horses representing the same betting interest, the show pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for third involving horses representing two (2) or more betting interests, the show pool **shall be[**~~is~~**]** divided with two-thirds (2/3) of the profit distributed to show wagers on the betting interests finishing first and second and the remainder **shall be[**~~is~~**]** 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[**~~requires~~**]** the selection of the first-place finisher in each of two (2) specified races.

(2) The net double pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose selections finished first in each of the two (2) races, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers, then;

(b) As a profit split to individuals who selected the first-place finisher in either of the two (2) 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 one (1) covered betting interest that finished first in either race, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers, then;

(d) As a single price pool to individuals whose selection finished second in each of the two (2) races, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers, then;

(e) The entire pool shall be refunded on the double wagers for those races.

(3)(a) If there is a dead heat for first in either of the races involving horses representing the same betting interest, the double pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first in either of the races involving horses representing two (2) or more betting interests, the double pool shall be distributed as a profit split if there is more than one (1) covered winning combination.

(4) If a betting interest in the first half of the double is scratched prior to the close of wagering on the first double contest, all money wagered on combinations including the scratched betting interest shall be deducted from the double pool and refunded.

(5) If a betting interest in the second half of the double is scratched prior to the close of wagering on the first double race, all money wagered on the combinations including the scratched betting interest shall be deducted from the double pool and refunded.

(6) If a betting interest in the second half of the double is scratched after the close of wagering on the first double race, all

wagers combining the winner of the first race with the scratched betting interest in the second race shall be allocated a consolation payout.

(a) In calculating the consolation payout, the net double pool shall be divided by the total amount wagered on the winner of the first race and an unbroken consolation price obtained.

(b) The broken consolation price shall be multiplied by the dollar value of wagers on the winner of the first race combined with the scratched betting interest to obtain the consolation payout.

(c) Breakage **shall not be[**~~is not~~**]** included in this calculation.

(d) The consolation payout shall be deducted from the net double pool before calculation and distribution of the winning double payout.

(e) Dead heats including separate betting interests in the first race shall result in a consolation payout calculated as a profit split.

(7) If either of the double races is cancelled prior to the first double race, or the first double race is declared "no contest," the entire double pool shall be refunded on double wagers for those races.

(8)(a) If the second double race is cancelled or declared a "no contest" after the conclusion of the first double race, the net double pool shall be distributed as a single price pool to individuals who selected the winner of the first double race.

(b) **If there is[**~~In the event of~~**]** a dead heat involving separate betting interests, the net double pool shall be distributed as a profit split.

Section 8. Exacta Pools. (1) The Exacta **shall require[**~~requires~~**]** the selection of the first two (2) finishers, in their exact order, for a single race.

(2) The net Exacta pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses of a mutuel entry or mutuel field finish as the first two (2) finishers, as a single price pool to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished in the correct sequence as the first two (2) betting interests, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers, then;

(c) As a single price pool to individuals whose combination included the betting interest that finishes first, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers, then;

(d) As a single price pool to individuals whose combination included the betting interest that finished second, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers, then;

(e) The entire pool shall be refunded on Exacta wagers for that race.

(3)(a) If there is a dead heat for first involving horses representing the same betting interest, the Exacta pool shall be distributed as a single price pool to individuals who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish.

(b) If there is a dead heat for first involving horses representing two (2) or more betting interests, the Exacta pool shall be distributed as a profit split.

(4) If there is a dead heat for second involving horses representing the same betting interest, the Exacta shall be distributed as if no dead heat occurred.

(5) If there is a dead heat for second involving horses representing two (2) or more betting interests, the Exacta pool shall be distributed to ticket holders in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the first-place betting interest with any of the betting interests involved in the dead heat for second, **except[**~~but~~**]** if there is only one (1) covered combination, then;

(b) As a single price pool to individuals combining the first-place betting interest with the one (1) covered betting interest involved in the dead heat for second, **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 (2) finishers, irrespective of order, for a single race.

(2) The net Quinella pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses of a mutuel entry or mutuel field finish as the first two (2) finishers, as a single price pool to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished as the first two (2) betting interests, **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 (1) of those two (2) finishers, then;

(d) As a single price pool to individuals whose combination included the one (1) covered betting interest included within the first two (2) finishers, **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 (2) betting interests, the Quinella pool shall be distributed as if no dead heat occurred.

(c) If there is a dead heat for first involving horses representing three (3) or more betting interests, the Quinella pool shall be distributed as a profit split.

(3) If there is a dead heat for second involving horses representing the same betting interest, the Quinella pool shall be distributed as if no dead heat occurred.

(4) If there is a dead heat for second involving horses representing two (2) or more betting interests, the Quinella pool shall be distributed to individuals in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the winner with any of the betting interests involved in the dead heat for second, **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 (1) 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 (3) specified races designated by the association and approved by the commission. Any changes to the Pick-3 format shall be approved by the commission before implementation**.**

(2) The net Pick-3 pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose selection finished first in each of the three (3) races, **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 (2) of the three (3) 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 (1) of the three (3) 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 (3) races involving horses representing the same betting interest, the Pick-3 shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first in any of the three (3) races involving horses representing two (2) or more betting interests, the Pick-3 pool shall be distributed as follows:

1. As a profit split to individuals whose selections finished first in each of the three (3) races, **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 (2) of the three (3) 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 (1) of the three (3) 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 (2) races; or

(c) After the third race of the Pick-3, there are no wagers with the winners of the first three (3) races.

(8) **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 (4) specified races designated by the association and approved by the commission. Any changes to the Pick-4 format shall be approved by the commission before implementation.

(2) The Pick-4 pari-mutuel pool consists of amounts contributed for a win only selection in each of four (4) races designated by the association. Each individual placing a Pick-4 wager shall designate the winning horse in each of four (4) races comprising the Pick-4.

(3) The net Pick-4 pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose selection finished first in each of the four (4) races, **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 (3) of the four (4) 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 (2) of the four (4) 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 (1) of the four (4) 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 (1) or two (2) of the races comprising the Pick-4 is cancelled, the net amount of the pari-mutuel pool shall be distributed as provided above in subsections (3)(b), (c), (d), and (e) of this section.

(5) If for any reason three (3) or more races comprising the Pick-4 are cancelled, the entire pool shall be refunded on Pick-4 wagers for those races.

(6) **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 involving horses representing the same betting interest, the Pick-4 pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first in any Pick-4 race involving horses representing two (2) or more betting interests, the Pick-4 pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

(8) **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 (2) or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number.

(b) The totalizator shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.

(9) The Pick-4 pool shall be cancelled and all Pick-4 wagers for the individual performance shall be refunded if at least three (3) races included as part of a Pick-4 are cancelled or declared "no contest."

(10)(a) Each association shall disclose in its license application whether it intends to schedule Pick-4 races and, if so, shall disclose:

1. The percentage of the pool to be retained for the winning wagers, and

2. The designated amount of any cap to be set on the pool to be retained for the winning wagers.

(b) Any changes to the Pick-4 scheduling **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, 100 percent of the net pool, part of which ordinarily would be added to the Pick-4 carryover, shall be distributed to individuals whose selections finished first in the greatest number of Pick-4 races for that performance.

(12) An association may request permission from the commission to distribute the Pick-4 carryover on a specific performance. The request shall contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(13) If the Pick-4 carryover is designated for distribution on a specified date and performance, and no wagers correctly select the first-place finisher in each of the Pick-4 races, the entire pool shall be distributed as a single price pool to individuals whose selection finished first in the greatest number of Pick-4 races.

(14) The Pick-4 carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(a) Upon written approval from the commission as provided in subsection (7) of this section; **[**~~or~~**]**

(b) Upon written approval from the commission **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 (2) or more betting interests, the Pick-6 pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

(4) At any time after wagering has begun on the Pick-6 and a betting interest is scratched, or declared a nonstarter, the actual favorite, as evidenced by total amounts wagered in the win pool at the host association for the race at the close of wagering on that race, shall be substituted for the scratched betting interest for all purposes, including pool calculations.

(a) **If[**~~In the event that~~**]** the win pool total for two (2) or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number.

(b) The totalizator shall produce reports showing each of the winning combinations with substituted betting interests that became winners as a result of the substitution, in addition to the normal winning combination.

(c) Pick-6 wagers on a mutuel entry or mutuel field from which a starter or starters may have been scratched shall be wagers upon the horse or horses remaining in **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 (1) 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 (3) races included as part of the Pick-6 are cancelled or declared "no contest."

(8)(a) Each association shall disclose in its license application whether it intends to schedule Pick-6 races and, if so, shall disclose:

1. The percentage of the pool to be retained for the winning wagers; and

2. The designated amount of any cap to be set on the pool to be retained for the winning wagers.

(b) Any subsequent changes to the Pick-6 scheduling **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, 100 percent of the net

pool, part of which ordinarily would be added to the Pick-6 carryover, shall be distributed to those whose selection finished first in the greatest number of Pick-6 races for that performance.

(10) An association may request permission from the commission to distribute the Pick-6 carryover on a specific performance. The request shall contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(11)(a) On the final day of a meeting, an association shall make a final distribution of all accumulated carryovers along with seventy-five (75) percent of the net pool of the Pick-6 pool conducted on the final day of the meeting to:

1. Individuals with tickets selecting the winners of all Pick-6 races, or, if **there are not any of those[**~~no such~~**]** wagers **[**~~exist~~**]**, to;

2. Individuals with tickets selecting five (5) winners and no more than one (1) "all win" selection.

(b) Twenty-five (25) percent of the net pool shall be distributed to the holders of the remaining tickets selecting the most winners.

(c) If there is no distribution in accordance with paragraph (a) of this subsection on the last day of the meeting, the entire distributable pool and all monies accumulated therein shall be distributed to the holders of tickets correctly designating the most winning selections of the six (6) 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 (6) designated races, or five (5) winners and no more than one (1) "all win" race of the Pick-6 pool.

(16) The association may supply information to the general public regarding the winning dollars in the Pick-6 pool. **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 (3) finishers, in their exact order, for a single race.

(2) For Trifecta price calculations only, the highest placed finisher of any part of a mutuel entry or mutuel field **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 (3) 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 (2) 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 (3) 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 (3) or more betting interests, all of the wagering combinations selecting three (3) betting interests that correspond with any of the betting interests involved in the dead heat shall share in a profit split.

(b) If there is a dead heat for first involving horses representing two (2) betting interests, both of the wagering combinations selecting the two (2) betting interests that finish in a dead heat, irrespective of order, along with the third-place betting interest shall share in a profit split.

(6) If there is a dead heat for second, all of the combinations correctly selecting the winner combined with any of the betting interests involved in the dead heat for second shall share in a profit split.

(7) If there is a dead heat for third, all wagering combinations correctly selecting the first two (2) finishers, in correct sequence, along with any of the betting interests involved in the dead heat for third shall share in a profit split.

(8)(a) **[**~~No~~**]** Trifecta wagering shall **not** be conducted on any race having fewer than five (5) separate betting interests.

(b) If fewer than five (5) 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 (4) finishers, in their exact order, for a single race.

(2) The net Superfecta pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose combination finished in correct sequence as the first four (4) betting interests, **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 (3) 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 (2) 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 (4) or more betting interests, all of the wagering combinations selecting betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split.

(b) If there is a dead heat for first involving horses representing three (3) betting interests, all of the wagering combinations selecting the three (3) betting interests that finish in a dead heat, irrespective of order, along with the fourth-place betting interest shall share in a profit split.

(c) If there is a dead heat for first involving horses representing two (2) betting interests, both of the wagering combinations selecting the two (2) dead-heated betting interests, irrespective of order, along with the third-place and fourth-place betting interests shall

share in a profit split.

(5)(a) If there is a dead heat for second involving horses representing three (3) or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three (3) betting interests involved in the dead heat for second shall share in a profit split**.**

(b) If there is a dead heat for second involving horses representing two (2) betting interests, all of the wagering combinations correctly selecting the winner, the two (2) dead-heated betting interests, irrespective of order, and the fourth-place betting interest shall share in a profit split.

(6) If there is a dead heat for third, all wagering combinations correctly selecting the first two (2) finishers, in correct sequence, along with any two (2) of the betting interests involved in the dead heat for third shall share in a profit split.

(7) If there is a dead heat for fourth, all wagering combinations correctly selecting the first three (3) finishers, in correct sequence, along with any interest involved in the dead heat for fourth, shall share in a profit split.

(8) **[**~~No~~**]** Superfecta wagering shall **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[**~~no more 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 (2) finishers, irrespective of order, in each of two (2) designated races.

(a) Each winning ticket for the first Big Q race shall be exchanged for a free ticket on the second Big Q race in order to remain eligible for the second half Big Q pool.

(b) Exchange tickets shall be exchanged at attended ticket windows prior to the second race comprising the Big Q.

(c) There shall **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 (1) Big Q pool.

(2) In the first Big Q race only, winning wagers shall be determined using the following precedence based on the official order of finish for the first Big Q race:

(a) If a mutuel entry or mutuel field finishes as the first two (2) finishers, those who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish shall be winners, otherwise:

(b) Individuals whose combination finished as the first two (2) betting interests shall be winners, **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 (1) of the two (2) finishers, then;

(d) Individuals whose combination included the one (1) covered betting interest included within the first two (2) finishers shall be winners, **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 (2) betting interests, the winning Big Q wagers shall be determined as if no dead heat occurred.

(c) In the first Big Q race only, if there is a dead heat for first involving horses representing three (3) or more betting interests, individuals whose combination included any two (2) of the betting interests finishing in the dead heat shall be winners.

(4) **[**~~Except as set forth in subsection (16) of this section,~~**]** In the first Big Q race only, if there is a dead heat for second, the winners shall be those who combined the first place finisher with any of the runners involved in the dead heat for second.

(5) In the second Big Q race only, the entire net Big Q pool shall be distributed to individuals in the following precedence based upon the official order of finish for the second Big Q race:

(a) If a mutuel entry or mutuel field finishes as the first two (2) finishers, as a single price pool to individuals who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished as the first two (2) betting interests, **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 (1) of those two (2) finishers, then;

(d) As a single price pool to individuals whose combination included one (1) of the covered betting interests included within the first two (2) finishers, **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 (2) betting interests, the net Big Q pool shall be distributed as if no dead heat occurred.

(c) In the second Big Q race only, if there is a dead heat for first involving horses representing three (3) or more betting interests, the net Big Q pool shall be distributed as a profit split to individuals whose combination included any two (2) of the betting interests finishing in the dead heat.

(7) In the second Big Q race only, if there is a dead heat for second involving horses representing two (2) or more betting interests, the Big Q pool shall be distributed to individuals in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the winner with any of the betting interests involved in the dead heat for second, **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 (1) 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 (3) finishers, in their exact order, in each of two (2) designated races.

(a) Each winning ticket for the first Twin Trifecta race shall be exchanged for a free ticket on the second Twin Trifecta race in order to remain eligible for the second half Twin Trifecta pool.

(b) **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 (1) Twin Trifecta pool.

(2) After wagering closes for the first half of the Twin Trifecta, and the takeout has been deducted from the pool, the net pool shall then be divided into two (2) separate pools: the first half Twin Trifecta pool and the second half Twin Trifecta pool.

(3) In the first Twin Trifecta race only, winning wagers shall be determined using the following precedence based upon the official order of finish for the first Twin Trifecta race:

(a) As a single price pool to individuals whose combination finished in the correct sequence as the first three (3) betting interests, **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 (2) 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 (3) 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 (3) finishers shall be exchanged for tickets selecting the first three (3) finishers of the second half of the Twin Trifecta.

(b) The second half Twin Trifecta pool shall be distributed to individuals in the following precedence based upon the official order of finish for the second Twin Trifecta race:

1. As a single price pool, including any existing carryover monies, to individuals whose combination finished in correct sequence as the first three (3) betting interests **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, 100 percent of the net Twin Trifecta pool for each individual race shall be distributed to winners of the first half of the twin Trifecta pool.

(14) A written request for permission to distribute the Twin Trifecta carryover on a specific performance may be submitted to the commission. The request shall contain:

(a) Justification for the distribution;

(b) An explanation of the benefit to be derived; and

(c) The intended date and performance for the distribution.

(15) If the Twin Trifecta carryover is designated for distribution on a specified date and performance, the following precedence **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 (3) 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 (2) 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 winning tickets.

(16) For a performance designated to distribute the Twin Trifecta carryover, exchange tickets shall be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first half of the twin Trifecta.

(a) If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first- and second-place finishers.

(b) If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, exchange tickets shall be issued for combinations correctly selecting only the first-place finisher.

(c) If there are no wagers selecting the first-place finisher only in the first half of the Twin Trifecta, all first half tickets shall be winning tickets and shall be entitled to 100 percent of that performance's net Twin Trifecta pool, and any existing Twin Trifecta carryover.

(17) The Twin Trifecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(a) Upon written approval from the commission as provided in subsection (14) of this section; **[**~~or~~**]**

(b) Upon written approval from the commission **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: February 14, 2011
FILED WITH LRC: February 14, 2011 at 4 p.m.
CONTACT PERSON: Timothy A. West, Assistant General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, April 12, 2011)

811 KAR 2:180. 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 811 KAR 2:010.

(2) "Breakage" is defined by 811 KAR 2:010.

(3) "Broken consolation price" means the profit per dollar, plus one (1) dollar, rounded down to the break point.

(4) "Carryover" is defined 811 KAR 2:010.

(5) "Consolation payout" means a payout to individuals who do not correctly choose all of the selections in a multiple-pick wager, or a payout to individuals who wager on a horse in a multi-pick wager that is subsequently scratched.

(6) "Covered betting interest" means a betting interest or combination of betting interests that has been wagered upon.

(7) "Dead heat" is defined by 811 KAR 2:010.

(8) "Gross pool" means the sum of all wagers less refunds.

(9) "Individual" **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 811 KAR 2:185~~**]**.

(10) "Multi-commission pool" means a pari-mutuel pool where entities accepting wagers use different takeout rates.

(11) "Net pool" is defined by 811 KAR 2:010.

(12) "Payout" is defined by 811 KAR 2:010.

(13) "Performance" means a specified number of races on a given race day that constitutes a full card of racing.

(14) "Profit" means the net pool less the gross amount wagered **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 811 KAR 2:010.

(17) "Single commission pool" means a pari-mutuel pool where all entities accepting wagers use the same takeout rate.

(18) "Single price pool" means a pari-mutuel pool in which the entire profit is paid to holders of winning tickets after the deduction of the takeout.

(19) "Takeout" is defined by 811 KAR 2:010.

(20) "Unbroken consolation price" means the profit per dollar plus one (1) dollar.

Section 2. General requirements. (1) All pari-mutuel pools shall be separately and independently calculated and distributed. The takeout shall be deducted from each gross pool as stipulated by KRS 230.750. The remainder of the pool shall be the net pool for distribution as payoff on winning pari-mutuel wagers.

(2)(a) Single commission pari-mutuel pools may be calculated using either the standard price calculation procedure or the net price calculation procedure.

(b) Multi-commission pari-mutuel pools shall be calculated using the net price calculation procedure.

(3) The standard price calculation procedure shall be as follows:

(a) Single price pools - Win pool

Gross Pool	=	Sum of Wagers on all Betting Interests - Refunds
Takeout	=	Gross Pool x Percent Takeout
Net Pool	=	Gross Pool - Takeout
Profit	=	Net Pool - Gross Amount Bet on Winner
Profit Per Dollar	=	Profit / Gross Amount Bet on Winner
$1 Unbroken Price	=	Profit Per Dollar + $1
$1 Broken Price	=	$1 Unbroken Price Rounded Down to the Break Point
Total Payout	=	$1 Broken Price x Gross Amount Bet on Winner
Total Breakage	=	Net Pool - Total Payout

(b) Profit split - Place pool. Profit **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 (2) 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 (3) unique prices.

(4) The net price calculation procedure shall be as follows:

(a) Single price pool - Win pool

Gross Pool	=	Sum of Wagers on all Betting Interests – Refunds
Takeout	=	Gross Pool x Percent Takeout for Each Source
Net Pool	=	Gross Pool - Takeout
Net Bet on Winner	=	Gross Amount Bet on Winner x (1 – Percent Takeout)
Total Net Pool	=	Sum of All Sources Net pools
Total Net Bet on Winner	=	Sum of All Sources Net Bet on Winner
Total Profit	=	Total Net Pool - Total Net Bet on Winner
Profit Per Dollar	=	Total Profit / Total Net Bet on Winner
$1 Unbroken Base Price	=	Profit Per Dollar + $1 for each source:
$1 unbroken price	=	$1 Unbroken Base Price x (1 - Percent Takeout)
$1 Broken Price	=	$1 Unbroken Price Rounded Down to the Break Point
Total Payout	=	$1 Broken Price x Gross Amount Bet on Winner
Total Breakage	=	Net Pool - Total Payout

(b) Profit split - Place pool. Total profit **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 (2) unique unbroken base prices.

(c) Profit split - Show pool. Total profit **shall be[**~~is~~**]** 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 (3) unique unbroken base prices.

(5) Each association shall disclose the following in its license application:

(a) Which price calculation method it will use for single commission pari-mutuel pools;

(b) The ticket denominations for each type of pari-mutuel wager;

(c) The procedures for refunds of pari-mutuel wagers;

(d) The takeout for each type of pari-mutuel wager;

(e) Which pari-mutuel wagers will include carryover and consolation pools and the percentages of the net pool assigned to each; and

(f) For each type of pari-mutuel wagering involving more than one (1) live horse race, the procedures to be used if a race is cancelled.

(6) All minimum amounts for pari-mutuel wagers shall be approved by the commission.

(7) The individual pools described in this administrative regulation may be given alternative names by each association if prior approval is obtained from the commission.

(8) A mutuel entry or a mutuel field in any race shall be a single betting interest for the purpose of each of the wagers described in this administrative regulation and the corresponding pool calculations and payouts. If either horse in a mutuel entry, or any horse in a mutuel field, is a starter in a race, the entry or the field selection shall remain as the designated selection for any of the wagers described in this administrative regulation and the selection shall not be deemed scratched.

Section 3. Pools dependent upon entries for live horse races. (1) **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[**~~is~~**]** deducted from the net win pool and the balance remaining **shall be[**~~is~~**]** the profit. The profit **shall be[**~~is~~**]** divided by the amount wagered on the betting interest finishing first and the result **shall be[**~~is~~**]** the profit per dollar wagered to win on that betting interest.

(2) The net win pool shall be distributed as a single price pool in the following precedence based upon the official order of finish:

(a) To individuals whose selection finishes first, **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 (2) or more betting interests, the win pool shall be distributed as a profit split.

Section 5. Place pools. (1) The amounts wagered to place on the first two (2) betting interests to finish **shall be[**~~are~~**]** deducted from the net pool and the balance remaining **shall be[**~~is~~**]** the profit. The profit **shall be[**~~is~~**]** divided into two (2) equal portions, with each portion assigned to each winning betting interest and divided by the dollar amount wagered to place on that betting interest. The result **shall be[**~~is~~**]** the profit per dollar wagered to place on that betting interest.

(2) The net place pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses in a mutuel entry or mutuel field finish in the first two (2) places, as a single price pool to individuals who selected the mutuel entry or mutuel field, otherwise;

(b) As a profit split to individuals whose selection is included within the first two (2) finishers, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers on one (1) of those two (2) finishers, then;

(c) As a single price pool to individuals who selected the one (1) covered betting interest included within the first two (2) finishers, **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 (2) or more betting interests, the place pool shall be distributed as a profit split.

(4)(a) If there is a dead heat for second involving horses representing the same betting interest, the place pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for second involving horses representing two (2) or more betting interests, the place pool **shall be[**~~is~~**]** divided, with one-half (1/2) of the profit distributed to place wagers on the betting interest finishing first and the remainder of the profit distributed equally among place wagers on the betting interests involved in the dead heat for second.

Section 6. Show Pools. (1) The amounts wagered to show on the first three (3) betting interests **shall be[**~~are~~**]** deducted from the net pool and the balance remaining **shall be[**~~is~~**]** the profit. The profit **shall be[**~~is~~**]** divided into three (3) equal portions, with each portion assigned to each winning betting interest and divided by the amount wagered to show on that betting interest. The result **shall be[**~~is~~**]** the profit per dollar wagered to show on that betting interest.

(2) The net show pool shall be distributed in the following precedence based on the official order of finish:

(a) If horses in a mutuel entry or mutuel field finish in the first three (3) places, as a single price pool to individuals who selected the mutuel entry or mutuel field, otherwise;

(b) If horses of a mutuel entry or mutuel field finish as two (2) of the first three (3) finishers, the profit **shall be[**~~is~~**]** divided with two-thirds (2/3) distributed to individuals who selected the mutuel entry or mutuel field and one-third (1/3) distributed to individuals who selected the other betting interest included within the first three (3) finishers, otherwise;

(c) As a profit split to individuals whose selection **shall be[**~~is~~**]** included within the first three (3) finishers, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers on one (1) of those three (3) finishers, then;

(d) As a profit split to individuals who selected one (1) of the two (2) covered betting interests included within the first three (3) finishers, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers on two (2) of those three (3) finishers, then;

(e) As a single price pool to individuals who selected the one (1) covered betting interest included within the first three (3) finishers, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers, then;

(f) As a single price pool to individuals who selected the fourth-place finisher, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers, then;

(g) The entire pool shall be refunded on show wagers for that race.

(3)(a) If there is a dead heat for first involving two (2) horses representing the same betting interest, the profit **shall be[**~~is~~**]** divided with two-thirds (2/3) to individuals who selected the first-place finishers and one-third (1/3) distributed to individuals who selected the betting interest finishing third.

(b) If there is a dead heat for first involving three (3) horses representing a single betting interest, the show pool shall be distributed as a single price pool.

(c) If there is a dead heat for first involving horses representing two (2) or more betting interests, the show pool shall be distributed as a profit split.

(4)(a) If there is a dead heat for second involving horses representing the same betting interest, the profit **shall be[**~~is~~**]** divided with one-third (1/3) distributed to individuals who selected the betting interest finishing first and two-thirds (2/3) distributed to individuals who selected the second-place finishers.

(b) If there is a dead heat for second involving horses representing two (2) betting interests, the show pool shall be distributed as a profit split.

(c) If there is a dead heat for second involving horses representing three (3) betting interests, the show pool **shall be[**~~is~~**]** divided with one-third (1/3) of the profit distributed to show wagers on the betting interest finishing first and the remainder **shall be[**~~is~~**]** distributed equally among show wagers on those betting interests involved in the dead heat for second.

(5)(a) If there is a dead heat for third involving horses representing the same betting interest, the show pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for third involving horses representing two (2) or more betting interests, the show pool **shall be[**~~is~~**]** divided with two-thirds (2/3) of the profit distributed to show wagers on the betting interests finishing first and second and the remainder **shall be[**~~is~~**]** 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[**~~requires~~**]** the selection of the first-place finisher in each of two (2) specified races.

(2) The net double pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose selections finished first in each of the two (2) races, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers, then;

(b) As a profit split to individuals who selected the first-place finisher in either of the two (2) 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 one (1) covered betting interest that finished first in either race, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers, then;

(d) As a single price pool to individuals whose selection finished second in each of the two (2) races, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers, then;

(e) The entire pool shall be refunded on the double wagers for those races.

(3)(a) If there is a dead heat for first in either of the races involving horses representing the same betting interest, the double pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first in either of the races involving horses representing two (2) or more betting interests, the double pool shall be distributed as a profit split if there is more than one (1) covered winning combination.

(4) If a betting interest in the first half of the double is scratched prior to the close of wagering on the first double contest, all money wagered on combinations including the scratched betting interest shall be deducted from the double pool and refunded.

(5) If a betting interest in the second half of the double is scratched prior to the close of wagering on the first double race, all money wagered on the combinations including the scratched betting interest shall be deducted from the double pool and refunded.

(6) If a betting interest in the second half of the double is scratched after the close of wagering on the first double race, all wagers combining the winner of the first race with the scratched betting interest in the second race shall be allocated a consolation payout.

(a) In calculating the consolation payout, the net double pool shall be divided by the total amount wagered on the winner of the first race and an unbroken consolation price obtained.

(b) The broken consolation price shall be multiplied by the dollar value of wagers on the winner of the first race combined with the scratched betting interest to obtain the consolation payout.

(c) Breakage **shall not be[**~~is not~~**]** included in this calculation.

(d) The consolation payout shall be deducted from the net double pool before calculation and distribution of the winning double payout.

(e) Dead heats including separate betting interests in the first race shall result in a consolation payout calculated as a profit split.

(7) If either of the double races is cancelled prior to the first double race, or the first double race is declared "no contest," the entire double pool shall be refunded on double wagers for those races.

(8)(a) If the second double race is cancelled or declared a "no contest" after the conclusion of the first double race, the net double pool shall be distributed as a single price pool to individuals who selected the winner of the first double race.

(b) **If there is[**~~In the event of~~**]** a dead heat involving separate betting interests, the net double pool shall be distributed as a profit split.

Section 8. Exacta Pools. (1) The Exacta **shall require[**~~requires~~**]** the selection of the first two (2) finishers, in their exact order, for a single race.

(2) The net Exacta pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses of a mutuel entry or mutuel field finish as the first two (2) finishers, as a single price pool to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished in the correct sequence as the first two (2) betting interests, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers, then;

(c) As a single price pool to individuals whose combination included the betting interest that finishes first, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers, then;

(d) As a single price pool to individuals whose combination included the betting interest that finished second, **except[**~~but~~**]** if there are **not any of those[**~~no such~~**]** wagers, then;

(e) The entire pool shall be refunded on Exacta wagers for that race.

(3)(a) If there is a dead heat for first involving horses representing the same betting interest, the Exacta pool shall be distributed as a single price pool to individuals who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish.

(b) If there is a dead heat for first involving horses representing two (2) or more betting interests, the Exacta pool shall be distributed as a profit split.

(4) If there is a dead heat for second involving horses representing the same betting interest, the Exacta shall be distributed as if no dead heat occurred.

(5) If there is a dead heat for second involving horses representing two (2) or more betting interests, the Exacta pool shall be distributed to ticket holders in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the first-place betting interest with any of the betting interests involved in the dead heat for second, **except[**~~but~~**]** if there is only one (1) covered combination, then;

(b) As a single price pool to individuals combining the first-place betting interest with the one (1) covered betting interest involved in the dead heat for second, **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 (2) finishers, irrespective of order, for a single race.

(2) The net Quinella pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses of a mutuel entry or mutuel field finish as the first two (2) finishers, as a single price pool to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished as the first two (2) betting interests, **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 (1) of those two (2) finishers, then;

(d) As a single price pool to individuals whose combination included the one (1) covered betting interest included within the first two (2) finishers, **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 (2) betting interests, the Quinella pool shall be distributed as if no dead heat occurred.

(c) If there is a dead heat for first involving horses representing three (3) or more betting interests, the Quinella pool shall be distributed as a profit split.

(3) If there is a dead heat for second involving horses

representing the same betting interest, the Quinella pool shall be distributed as if no dead heat occurred.

(4) If there is a dead heat for second involving horses representing two (2) or more betting interests, the Quinella pool shall be distributed to individuals in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the winner with any of the betting interests involved in the dead heat for second, **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 (1) 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 (3) specified races designated by the association and approved by the commission. Any changes to the Pick-3 format shall be approved by the commission before implementation**.**

(2) The net Pick-3 pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose selection finished first in each of the three (3) races, **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 (2) of the three (3) 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 (1) of the three (3) 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 (3) races involving horses representing the same betting interest, the Pick-3 shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first in any of the three (3) races involving horses representing two (2) or more betting interests, the Pick-3 pool shall be distributed as follows:

1. As a profit split to individuals whose selections finished first in each of the three (3) races, **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 (2) of the three (3) 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 (1) of the three (3) 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 (2) races; or

(c) After the third race of the Pick-3, there are no wagers with the winners of the first three (3) races.

(8) **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 (4) specified races designated by the association and approved by the commission. Any changes to the Pick-4 format shall be approved by the commission before implementation.

(2) The Pick-4 pari-mutuel pool consists of amounts contributed for a win only selection in each of four (4) races designated by the association. Each individual placing a Pick-4 wager shall designate the winning horse in each of four (4) races comprising the Pick-4.

(3) The net Pick-4 pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose selection finished first in each of the four (4) races, **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 (3) of the four (4) 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 (2) of the four (4) 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 (1) of the four (4) 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 (1) or two (2) of the races comprising the Pick-4 is cancelled, the net amount of the pari-mutuel pool shall be distributed as provided above in subsections (3)(b), (c), (d), and (e) of this section.

(5) If for any reason three (3) or more races comprising the Pick-4 are cancelled, the entire pool shall be refunded on Pick-4 wagers for those races.

(6) **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 involving horses representing the same betting interest, the Pick-4 pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first in any Pick-4 race involving horses representing two (2) or more betting interests, the Pick-4 pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

(8) **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 (2) or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number.

(b) The totalizator shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.

(9) The Pick-4 pool shall be cancelled and all Pick-4 wagers for the individual performance shall be refunded if at least three (3) races included as part of a Pick-4 are cancelled or declared "no contest."

(10)(a) Each association shall disclose in its license application whether it intends to schedule Pick-4 races and, if so, shall disclose:

1. The percentage of the pool to be retained for the winning wagers, and

2. The designated amount of any cap to be set on the pool to be retained for the winning wagers.

(b) Any changes to the Pick-4 scheduling **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, 100 percent of the net pool, part of which ordinarily would be added to the Pick-4 carryover, shall be distributed to individuals whose selections finished first in the greatest number of Pick-4 races for that performance.

(12) An association may request permission from the commission to distribute the Pick-4 carryover on a specific performance. The request shall contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(13) If the Pick-4 carryover is designated for distribution on a specified date and performance, and no wagers correctly select the first-place finisher in each of the Pick-4 races, the entire pool shall be distributed as a single price pool to individuals whose selection finished first in the greatest number of Pick-4 races.

(14) The Pick-4 carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(a) Upon written approval from the commission as provided in subsection (7) of this section; **[**~~or~~**]**

(b) Upon written approval from the commission **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 (2) or more betting interests, the Pick-6 pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

(4) At any time after wagering has begun on the Pick-6 and a betting interest is scratched, or declared a nonstarter, the actual favorite, as evidenced by total amounts wagered in the win pool at the host association for the race at the close of wagering on that race, shall be substituted for the scratched betting interest for all purposes, including pool calculations.

(a) **If[**~~In the event that~~**]** the win pool total for two (2) or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number.

(b) The totalizator shall produce reports showing each of the winning combinations with substituted betting interests that became winners as a result of the substitution, in addition to the normal winning combination.

(c) Pick-6 wagers on a mutuel entry or mutuel field from which a starter or starters may have been scratched shall be wagers upon the horse or horses remaining in **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 (1) 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 (3) races included as part of the Pick-6 are cancelled or declared "no contest."

(8)(a) Each association shall disclose in its license application whether it intends to schedule Pick-6 races and, if so, shall disclose:

1. The percentage of the pool to be retained for the winning wagers; and

2. The designated amount of any cap to be set on the pool to be retained for the winning wagers.

(b) Any subsequent changes to the Pick-6 scheduling **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, 100 percent of the net pool, part of which ordinarily would be added to the Pick-6 carryover, shall be distributed to those whose selection finished first in the greatest number of Pick-6 races for that performance.

(10) An association may request permission from the commission to distribute the Pick-6 carryover on a specific performance. The request shall contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(11)(a) On the final day of a meeting, an association shall make a final distribution of all accumulated carryovers along with seventy-five (75) percent of the net pool of the Pick-6 pool conducted on the final day of the meeting to:

1. Individuals with tickets selecting the winners of all Pick-6 races, or, if **there are not any of those[**~~no such~~**]** wagers **[**~~exist~~**]**, to;

2. Individuals with tickets selecting five (5) winners and no more than one (1) "all win" selection.

(b) Twenty-five (25) percent of the net pool shall be distributed to the holders of the remaining tickets selecting the most winners.

(c) If there is no distribution in accordance with paragraph (a) of this subsection on the last day of the meeting, the entire distributable pool and all monies accumulated therein shall be distributed to the holders of tickets correctly designating the most winning selections of the six (6) 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 (6) designated races, or five (5) winners and no more than one (1) "all win" race of the Pick-6 pool.

(16) The association may supply information to the general public regarding the winning dollars in the Pick-6 pool. **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 (3) finishers, in their exact order, for a single race.

(2) For Trifecta price calculations only, the highest placed finisher of any part of a mutuel entry or mutuel field **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 (3) 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 (2) 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 (3) 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 (3) or more betting interests, all of the wagering combinations selecting three (3) betting interests that correspond with any of the betting interests involved in the dead heat shall share in a profit split.

(b) If there is a dead heat for first involving horses representing two (2) betting interests, both of the wagering combinations selecting the two (2) betting interests that finish in a dead heat, irrespective of order, along with the third-place betting interest shall share in a profit split.

(6) If there is a dead heat for second, all of the combinations correctly selecting the winner combined with any of the betting interests involved in the dead heat for second shall share in a profit split.

(7) If there is a dead heat for third, all wagering combinations correctly selecting the first two (2) finishers, in correct sequence, along with any of the betting interests involved in the dead heat for third shall share in a profit split.

(8)(a) **[**~~No~~**]** Trifecta wagering shall **not** be conducted on any race having fewer than five (5) separate betting interests.

(b) If fewer than five (5) 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 (4) finishers, in their exact

order, for a single race.

(2) The net Superfecta pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose combination finished in correct sequence as the first four (4) betting interests, **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 (3) 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 (2) 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 (4) or more betting interests, all of the wagering combinations selecting betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split.

(b) If there is a dead heat for first involving horses representing three (3) betting interests, all of the wagering combinations selecting the three (3) betting interests that finish in a dead heat, irrespective of order, along with the fourth-place betting interest shall share in a profit split.

(c) If there is a dead heat for first involving horses representing two (2) betting interests, both of the wagering combinations selecting the two (2) dead-heated betting interests, irrespective of order, along with the third-place and fourth-place betting interests shall share in a profit split.

(5)(a) If there is a dead heat for second involving horses representing three (3) or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three (3) betting interests involved in the dead heat for second shall share in a profit split**.**

(b) If there is a dead heat for second involving horses representing two (2) betting interests, all of the wagering combinations correctly selecting the winner, the two (2) dead-heated betting interests, irrespective of order, and the fourth-place betting interest shall share in a profit split.

(6) If there is a dead heat for third, all wagering combinations correctly selecting the first two (2) finishers, in correct sequence, along with any two (2) of the betting interests involved in the dead heat for third shall share in a profit split.

(7) If there is a dead heat for fourth, all wagering combinations correctly selecting the first three (3) finishers, in correct sequence, along with any interest involved in the dead heat for fourth, shall share in a profit split.

(8) **[**~~No~~**]** Superfecta wagering shall **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[**~~no more 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 (2) finishers, irrespective of order, in each of two (2) designated races.

(a) Each winning ticket for the first Big Q race shall be exchanged for a free ticket on the second Big Q race in order to remain eligible for the second half Big Q pool.

(b) Exchange tickets shall be exchanged at attended ticket windows prior to the second race comprising the Big Q.

(c) There shall **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 (1) Big Q pool.

(2) In the first Big Q race only, winning wagers shall be determined using the following precedence based on the official order of finish for the first Big Q race:

(a) If a mutuel entry or mutuel field finishes as the first two (2) finishers, those who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish shall be winners, otherwise:

(b) Individuals whose combination finished as the first two (2) betting interests shall be winners, **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 (1) of the two (2) finishers, then;

(d) Individuals whose combination included the one (1) covered betting interest included within the first two (2) finishers shall be winners, **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 (2) betting interests, the winning Big Q wagers shall be determined as if no dead heat occurred.

(c) In the first Big Q race only, if there is a dead heat for first involving horses representing three (3) or more betting interests, individuals whose combination included any two (2) of the betting interests finishing in the dead heat shall be winners.

(4) **[**~~Except as set forth in subsection (16) of this section,~~**]** In the first Big Q race only, if there is a dead heat for second, the winners shall be those who combined the first place finisher with any of the runners involved in the dead heat for second.

(5) In the second Big Q race only, the entire net Big Q pool shall be distributed to individuals in the following precedence based upon the official order of finish for the second Big Q race:

(a) If a mutuel entry or mutuel field finishes as the first two (2) finishers, as a single price pool to individuals who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished as the first two (2) betting interests, **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 (1) of those two (2) finishers, then;

(d) As a single price pool to individuals whose combination included one (1) of the covered betting interests included within the first two (2) finishers, **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 (2) betting interests, the net Big Q pool shall be distributed as if no dead heat occurred.

(c) In the second Big Q race only, if there is a dead heat for first involving horses representing three (3) or more betting interests, the net Big Q pool shall be distributed as a profit split to individuals whose combination included any two (2) of the betting interests finishing in the dead heat.

(7) In the second Big Q race only, if there is a dead heat for second involving horses representing two (2) or more betting interests, the Big Q pool shall be distributed to individuals in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the winner with any of the betting interests involved in the dead heat for second, **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 (1) 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 (3) finishers, in their exact order, in each of two (2) designated races.

(a) Each winning ticket for the first Twin Trifecta race shall be exchanged for a free ticket on the second Twin Trifecta race in order to remain eligible for the second half Twin Trifecta pool.

(b) **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 (1) Twin Trifecta pool.

(2) After wagering closes for the first half of the Twin Trifecta, and the takeout has been deducted from the pool, the net pool shall then be divided into two (2) separate pools: the first half Twin Trifecta pool and the second half Twin Trifecta pool.

(3) In the first Twin Trifecta race only, winning wagers shall be determined using the following precedence based upon the official order of finish for the first Twin Trifecta race:

(a) As a single price pool to individuals whose combination finished in the correct sequence as the first three (3) betting interests, **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 (2) 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 (3) 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 (3) finishers shall be exchanged for tickets selecting the first three (3) finishers of the second half of the Twin Trifecta.

(b) The second half Twin Trifecta pool shall be distributed to individuals in the following precedence based upon the official order of finish for the second Twin Trifecta race:

1. As a single price pool, including any existing carryover monies, to individuals whose combination finished in correct sequence as the first three (3) betting interests **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, 100 percent of the net Twin Trifecta pool for each individual race shall be distributed to winners of the first half of the twin Trifecta pool.

(14) A written request for permission to distribute the Twin Trifecta carryover on a specific performance may be submitted to the commission. The request shall contain:

(a) Justification for the distribution;

(b) An explanation of the benefit to be derived; and

(c) The intended date and performance for the distribution.

(15) If the Twin Trifecta carryover is designated for distribution on a specified date and performance, the following precedence **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 (3) 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 (2) 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 winning tickets.

(16) For a performance designated to distribute the Twin Trifecta carryover, exchange tickets shall be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first half of the twin Trifecta.

(a) If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first- and second-place finishers.

(b) If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, exchange tickets shall be issued for combinations correctly selecting only the first-place finisher.

(c) If there are no wagers selecting the first-place finisher only in the first half of the Twin Trifecta, all first half tickets shall be winning tickets and shall be entitled to 100 percent of that performance's net Twin Trifecta pool, and any existing Twin Trifecta carryover.

(17) The Twin Trifecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(a) Upon written approval from the commission as provided in subsection (14) of this section; **[**~~or~~**]**

(b) Upon written approval from the commission **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: February 14, 2011

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, April 12, 2011)

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

RELATES TO: KRS **211.840,** 211.842-211.852, 211.990(4), 10 C.F.R. 20.1003-20.1005, NCRP Report 141**, 42 U.S.C. 2011 et seq.**

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 211.844, 10 C.F.R. 20.1003-20.1005

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 authorizes the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. **The Nuclear Regulatory Commission (NRC) approves or denies Kentucky's program for regulating radioactive materials after the effective date of administrative regulations within 902 KAR Chapter 100. The federal guidance manual, Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements - SA - 200, issued June 5, 2009, provides parameters states shall follow in order for approval. The parameters include the provision that definitions shall be identical to NRC definitions.** This administrative regulation establishes definitions for 902 KAR Chapter 100.

Section 1. Definitions. (1) "A_1" and "A_2":

(a) "A_1" means the maximum activity of special form radioactive material permitted in a Type A package;

(b) "A_2" means the maximum activity of radioactive material, other than special form radioactive material, LSA, and SCO material, permitted in a Type A package;

(c) These values are listed in 10 C.F.R. 71, Appendix A [~~902 KAR 100:070, Section 21~~], or may be derived under the procedure prescribed in 10 C.F.R. 71 Appendix A [~~902 KAR 100:070, Section 20~~].

(2) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).

(3) "Accelerator" means a machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one (1) MeV, such as the cyclotron, synchrotron, synchrocyclotron, betatron, linear accelerator, and Van de Graaff electrostatic generator.

(4) "Accessible surface" means the external surface of the enclosure or housing provided by the manufacturer.

(5) "Act" **means[**~~is defined at KRS 211.840 as~~**]** the "Kentucky Radiation Control Act of 1978"**, as established in KRS 211.840**.

(6) "Activity" means the rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).

(7) "Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, used or stored.

(8) "Adult" means an individual eighteen (18) or more years of age.

(9) "Agreement state" means a state with which the United States Nuclear Regulatory Commission or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, **42 U.S.C. 200 et seg.,** as amended (73 Stat. 689).

(10) "Airborne radioactive material" means radioactive material dispersed in the
air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(11) "Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive material, composed wholly or partly of radioactive material, exists in concentrations:

(a) In excess of the derived air concentrations specified in 10 **C.F.R.[**~~CFR~~**]** 20 Appendix B [~~902 KAR 100:019, Section 44~~]; or

(b) That an individual present in the area without respiratory protective equipment may exceed an intake of six-tenths (0.6) percent of the annual limit on intake or twelve (12) DAC hours.

(12) "Air kerma (K)" means the kinetic energy released in air by ionizing radiation. Kerma is determined as the quotient of dE by dM, where dE is the sum of the initial kinetic energies of all the charged ionizing particles liberated by uncharged ionizing particles in air of mass dM. The SI unit of air kerma is joule per kilogram and the special name for the unit of kerma is the gray (Gy).

(13) "Air-purifying respirator" means a respirator with an air-purifying filer, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(14) [~~(12)~~]"Alert" means the notice given when an event may occur, is in progress, or has occurred that may lead to a release of radioactive material, but the release is not expected to require a response by an off-site response organization in order to protect persons offsite.

(15)[~~(13)~~] "Aluminum equivalent" means the thickness of type 1100 aluminum, which is composed of at least ninety-nine (99.0) percent aluminum, 0.12 percent copper, affording the same attenuation, under specified conditions, as the material for which it is substituted.

(16)[~~(14)~~] "Analytical x-ray system" means a system which utilizes x-rays for the examination of the structure of materials, such as x-ray diffraction and spectrographic equipment.

(17)[~~(15)~~] "Annual limit on intake" or "ALI" means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of annual intake of a given radionuclide by the reference man that would result in:

(a) A committed effective dose equivalent of five (5) rems, or 0.05 Sv; or

(b) A committed dose equivalent of fifty (50) rems, or five-tenths (0.5) Sv, to an individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are **established in 10 C.F.R.[**~~given in 10 CFR~~**]** 20 Appendix B [~~902 KAR 100:019, Section 44, Table I, Columns 1 and 2~~].

(18)[~~(16)~~] "Area of use" means a portion of a physical structure that has been set aside for the purpose of receiving, using or storing radioactive material.

(19)[~~(17)~~] "As low as reasonably achievable" or "ALARA" means making every reasonable effort to maintain exposures to radiation as far below the dose limits established in 902 KAR 100:019 as practical, consistent with the purpose for which the licensed activity is undertaken. ALARA shall take into account the state of technology, the economics of improvement in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, in relation to the utilization of nuclear energy and radioactive materials in the public interest.

(20) "Assigned protection factor" or "APF" means the expected workplace level of respirator protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration may be estimated by dividing the ambient airborne concentration by the APF.

(21) "Atmosphere-supplying respirator" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

(22)[~~(18)~~] "Attenuation" means the reduction of exposure rate upon passage of radiation through matter.

(23)[~~(19)~~] "Attenuation block" means a block or stack, having dimensions twenty (20) centimeters by twenty (20) centimeters by three and eight-tenths (3.8) centimeters, of type 1100 aluminum alloy or other materials having equivalent attenuation.

(24) "Authorized medical physicist" means an individual who:

(a) Meets the requirements in 902 KAR 100:072, Sections (63) and 65(1); or

(b) Is identified as an authorized medical physicist or teletherapy physicist on:

1. A specific medical use licensee issued by the cabinet, U.S.

Nuclear Regulatory Commission, or an agreement state;

2. A medical use permit issued by a U.S. Nuclear Regulatory Commission master material licensee;

3. A permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state broad scope medical use licensee; or

4. A permit issued by the U.S. Nuclear Regulatory Commission master material license broad scope medical use permittee.

(25)[~~(20)~~] "Authorized nuclear pharmacist" means a pharmacist who [~~is~~]:

(a) Meets the requirements in 902 KAR 100:072, Sections 63 and 66(1) [~~Board certified as a nuclear pharmacist by the Board of Pharmaceutical Specialities~~];**[~~or~~]**

(b) Is identified as an authorized nuclear pharmacist on a:

1. Specific license issued by the cabinet, [~~agreement~~] state, or U.S. Nuclear Regulatory Commission [~~license~~] that authorizes the medical use or [~~of radioactive material in~~] the practice of nuclear pharmacy;[~~.~~]

2. Permit issued by a U.S. Nuclear Regulatory Commission master material licensee that authorizes medical use or the practice of nuclear pharmacy;

3. Permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or agreement state broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or

4. Permit issued by a U.S. Nuclear Regulatory Commission master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy**;[~~.~~]**

(c) Is identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or

(d) Is designated as an authorized nuclear pharmacist under 902 KAR 100:058, Section 9(2)(c).

(26) "Authorized user" means a physician, dentist, or podiatrist who:

(a) Meets the requirements in 902 KAR 100:072, Sections 63 and 68(1), 69(1), 71(1), 72(1), 74(1), 76(1), and 77(1); or

(b) Is identified as an authorized user on:

1. The cabinet's, U.S. Nuclear Regulatory Commission's, or an agreement state's license that authorizes the medical use of radioactive material;

2. A permit issued by a U.S. Nuclear Regulatory Commission master material licensee that is authorized to permit the medical use of radioactive material;

3. A permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or agreement state licensee of broad scope that is authorized to permit the medical use of radioactive material; or

4. A permit issued by a U.S. Nuclear Regulatory Commission master material license broad scope permittee that is authorized to permit the medical use of radioactive material.

(27)[~~(21)~~] "Automatic exposure control" means a device **that[**~~which~~**]** automatically controls one (1) or more technique factors in order to obtain, at a preselected location, a required quantity of radiation.

(28)[~~(22) "Authorized user" means a physician, dentist, or podiatrist, identified as an authorized user on a cabinet, U.S. Nuclear Regulatory Commission, or other agreement state license that authorizes the medical use of radioactive material.~~

~~(23)~~] "Background radiation" means radiation not under the control of the licensee, including:

(a) From cosmic sources;

(b) Naturally occurring radioactive materials;

(c) Radon that is not a decay product of source or special nuclear material; and

(d) Global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents. Background radiation shall not include radiation from radioactive materials regulated by the Cabinet for **Health and Family Services [~~Human Resources~~]**.

(29)[~~(24)~~] "Beam axis" means the axis of rotation of the beam limiting device [~~a line from the source through the centers of the x-ray fields~~].

(30)[~~(25)~~] "Beam limiting device" or "collimator" means a device **that[**~~which~~**]** provides a means to restrict the dimensions of the x-ray field.

(31)[~~(26)~~] "Beam monitoring system" means a system designed to detect and measure the radiation present in the useful beam.

(32) "Beam scattering foil" means a thin piece of material (usually metallic) placed in the beam to scatter a beam of electrons in order to provide a more uniform electron distribution in the useful beam.

(33)[~~(27)~~] "Becquerel" means a unit, in the International System of Units (SI), of measurement of radioactivity equal to one (1) transformation per second.

(34)[~~(28)~~] "Bioassay" or "radiobioassay" means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body.

(35)[~~(29)~~] "Brachytherapy" means a method of radiation therapy in which an encapsulated source or group of sources is utilized to deliver radiation at a distance to a few centimeters, by surface, intracavitary, or interstitial application.

(36)[~~(30)~~] "Broker" or "waste broker" means a person who takes possession of low-level waste solely for the purposes of consolidation and shipment.

(37)[~~(31)~~] "By-product material" means:

(a) Radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; or

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations shall not constitute by-product material within this definition.

(38)[~~(32)~~] "Cabinet" means Cabinet for Health Services, or its duly authorized representatives.

(39)[~~(33)~~] "Cabinet radiography" means industrial radiography conducted in an enclosure or cabinet shielded so that radiation levels at every location on the exterior meet the limitations specified in 902 KAR 100:019, Section 11.

(40)[~~(34)~~] "Cabinet x-ray system" means an x-ray system with the x-ray tube installed or used in a permanent enclosure in which the enclosure is intended to contain at least that portion of the material being irradiated**, not to include x-ray systems used by licensed practitioners of the healing arts**. The enclosure:

(a) May be the architectural structure or may be independent of the architectural structure;

(b) Shall provide attenuation of the radiation to meet the requirements of 902 KAR 100:105; and

(c) Shall exclude personnel from its interior during the generation of x-radiation.**[~~This definition shall not include x-ray systems used by licensed practitioners of the healing arts.~~]**

(41)[~~(35)~~] "Calendar quarter" means between twelve (12) and fourteen (14) consecutive weeks.

(a) The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be arranged so that no day is included in more than one (1) calendar quarter and no day in a one (1) year period is omitted from inclusion within a calendar quarter.

(b) A licensee or registrant shall not change the method observed of determining
calendar quarters, except at the beginning of a calendar year.

(42)[~~(36)~~] "Calibration" means the determination of:

(a) The response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) The strength of a source of radiation relative to a standard.

(43)[~~(37)~~] "Carrier" [~~means~~] is defined **by[~~at~~]** KRS 174.405(1).

(44)[~~(38)~~] "Cephalometric device" means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

(45) "Certificate holder" means a person who has been issued a certificate of compliance or other package approval by the U.S. Nuclear Regulatory Commission.

(46) "Certificate of Compliance**" or "CoC[~~(CoC)~~]**" means the

certificate issued by the U.S. Nuclear Regulatory Commission under 10 **C.F.R.[**~~CFR~~**]** Part 71, which approves the design of a package for the transportation of radioactive material.

(47)[~~(39)~~] "Certified cabinet x-ray system" means an x-ray system **that[**~~which~~**]** has been certified under 21 C.F.R. 1010.2 as being manufactured and assembled according to the provisions of 21 C.F.R. 1020.40.

(48)[~~(40)~~] "Certified component" means a component of an x-ray system subject to 21 C.F.R. Subchapter J.

(49)[~~(41)~~] "Certified system" means an x-ray system **that[**~~which~~**]** has one (1) or more certified component.

(50)[~~(42)~~] "C.F.R." means Code of Federal Regulations.

(51)[~~(43)~~] "Changeable filters" means a filter, exclusive of inherent filtration, which can be removed from the useful beam through an electronic, mechanical, or physical process.

(52) "Chemical description" means a description of the principal chemical characteristics of a low-level radioactive waste.

(53)[~~(44)~~] "Class" or "lung class" or "inhalation class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials shall be classified as D, W, or Y, which applies to a range of clearance half-times:

(a) For Class D (Days) of less than ten (10) days;

(b) For Class W (Weeks) from ten (10) to 100 days; and

(c) For Class Y (Years) of greater than 100 days.

(54) "Close reflection by water" means immediate contact by water of sufficient thickness for maximum reflection of neutrons.

(55)[~~(45)~~] "Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(56)[~~(46)~~] "Collimator" means a device used to limit the size, shape, and direction of the primary radiation beam.

(57)[~~(47)~~] "Commission" means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

(58)[~~(48)~~] "Committed dose equivalent ($H_{T,50}$)" means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the fifty (50) year period following the intake.

(59)[~~(49)~~] "Committed effective dose equivalent ($H_{E,50}$)" means the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to these organs or tissues ($H_{E,50} = \sum W_T H_{T,50}$).

(60) "Computer-readable medium" means the cabinet's computer can transfer the information from the medium into its memory.

(61)[~~(50)~~] "Computed tomography" or "CT" means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

(62) "Consignee" means the designated receiver of the shipment of low-level radioactive waste.

(63) "Consignment" means each shipment of a package or groups of packages or load of radioactive material officered by a shipper for transport.

(64)[~~(51)~~] "Constraint" or "dose constraint" means a value above which specified licensee actions are required.

(65)[~~(52)~~] "Contact therapy system" means an x-ray system used for therapy with the x-ray tube port placed in contact with or within five (5) centimeters of the surface being treated.

(66) "Containment system" means the assembly of components of the package intended to retain the radioactive material during transport.

(67)[~~(53)~~] "Controlled area" means an area, outside of a restricted area but inside the site boundary, to which access can be limited by the licensee or registrant for a stated reason.

(68)[~~(54)~~] "Cooling curve" means the graphical relationship between heat units stored and cooling time.

(69) "Conveyance" means:

(a) For transport by public highway or rail, **a[**~~any~~**]** transport vehicle or large freight container**;[**~~.~~**]**

(b) For transport by water, **a vessel or a[**~~any vessel, or any~~**]** hold, compartment, or defined deck area of a vessel including **a[**~~any~~**]** transport vehicle on board the vessel; or

(c) Transportation by **an[**~~any~~**]** aircraft.

(70)[~~(55)~~] "Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(71) "Criticality Safety Index**"** or "CSI", means the dimensionless number, rounded up to the next tenth, assigned to and placed on the label of a fissile material package, to designate the degree of control of accumulation of packages containing fissile material during transportation. Determination of the criticality safety index is described in 10 C.F.R. 71.22, 71.23**,** and 71.59.

(72)[~~(56)~~] "Curie" means a quantity of radioactivity.

(a) One (1) curie (Ci) is that quantity of radioactive material **that[**~~which~~**]** decays at the rate of 3.7×10^{10} disintegrations per second (dps).

(b) Commonly used submultiples of the curie are the millicurie and the microcurie.

1. One (1) millicurie (mCi) = 0.001 curie = 3.7×10^{7} dps.

2. One (1) microcurie (uCi) = 0.000001 curie = 3.7×10^{4} dps.

(73)[~~(57)~~] "Dead man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

(74)[~~(58)~~] "Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is not longer pregnant.

(75)[~~(59)~~] "Decommission" means the:

(a) Safe removal from service of a facility or site;

(b) Termination of license; and

(c) Reduction of residual radioactivity to a level permitting release of the property:

1. For unrestricted use; or

2. Under restricted conditions.

(76) "Decontamination facility" means a facility operating under the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state license whose principal purpose is decontamination of equipment or materials to accomplish recycle, reuse, or other waste management objectives, and is not considered to be a consignee for LLW shipments.

(77)[~~(60)~~] "Dedicated check source" means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years. The source may also be used for other purposes.

(78)[~~(61)~~] "Deep-dose equivalent (H_d)" which applies to external whole-body exposure, means the dose equivalent at a tissue depth of one (1) centimeter (cm) (1000 mg/cm^2).

(79) "Demand respirator" means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

(80)[~~(62)~~] "Derived air concentration" or "DAC" means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one (1) ALI.

(a) "Light work" produces an inhalation rate of one and two-tenths (1.2) cubic meters (1.2m^3) of air per hour.

(b) DAC values are given in 10 **C.F.R.[**~~CFR~~**]**, 20 Appendix B [~~902 KAR 100:019, Section 44, Table I, Column 3~~].

(81)[~~(63)~~] "Derived air concentration-hour" or "DAC-hour" means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent one (1) ALI, equivalent to a committed effective dose equivalent of five (5) rems (0.05 Sv).

(82)[~~(64)~~] "Diagnostic clinical procedure manual" means the collection of written procedures, methods, instructions, and precautions by which the licensee performs diagnostic clinical procedures, where each diagnostic clinical procedure:

(a) Has been approved by the authorized user; and

(b) Includes the radiopharmaceutical name, dosage, and route of administration.

(83)[~~(65)~~] "Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

(84)[~~(66)~~] "Diagnostic-type protective tube housing" means an x-ray tube housing so constructed that the leakage radiation measured at a distance of one (1) meter from
the source cannot exceed 100 milliroentgens in one (1) hour if the tube is operated at its
maximum continuous rated current for the maximum tube potential.

(85)[~~(67)~~] "Diagnostic x-ray system" means an x-ray system designed for irradiation of a part of the human body for the purpose of diagnosis or visualization.

(86)[~~(68)~~] "Direct scatter radiation" means that scattered radiation **that[**~~which~~**]** has been deviated in direction only by materials irradiated by the useful beam. (See also "scattered radiation").

(87) “Disposable container” means a container principally used to confine low-level radioactive waste during disposal operations at a land disposal facility. (See also “high integrity container”.) For some shipments, the disposal container may be transport package.

(88) “Disposable respirator” means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Disposal respirator may include, but not limit to a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

(89)[~~(69)~~] "Disposal" means the disposition of waste as authorized by 902 KAR 100:021.

(90)[~~(70)~~] "Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentrations of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurements technology, survey, and statistical techniques.

(91)[~~(71)~~] "Dose" or "radiation dose" means:

(a) Absorbed dose;

(b) Dose equivalent;

(c) Effective dose equivalent;

(d) Committed dose equivalent;

(e) Committed effective dose equivalent; or

(f) Total effective dose equivalent.

(92)[~~(72)~~] "Dose commitment" means the total radiation dose to a part of the body that results from retention in the body of radioactive material. Estimation assumes the period of exposure to retained material to be less than fifty (50) years.

(93)[~~(73)~~] "Dose equivalent (H_T)" means the product of the absorbed dose in tissue, the quality factor, and other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

(94) Dose monitor unit (DMU)” means a unit response from the beam monitoring system from which the absorbed dose can be calculated.

(95)[~~(74)~~] "Dosimetry processor" means an individual or an organization that
processes and evaluates individual monitoring equipment in order to determine the radiation dose delivered to the equipment.

(96) “DOT “ means the U.S. Department of Transportation.

(97)[~~(75)~~] "Effective dose equivalent (H_E)" means the sum of the products of the dose equivalent to the organ or tissue (H_T) and the weighting factors (W_T) applicable to each of the body organs or tissues that are irradiated ($H_E = W_T H_T$).

(98)[~~(76)~~] "Embryo or fetus" means the developing human organism from conception until the time of birth.

(99) “Energy compensation source or “ECS” means a small sealed source, with an activity not exceeding 100 microcuries (3.7 MBq), used within a logging tool, or other
tool components, to provide a reference standard to maintain the tool’s calibration when
in use.

(100)[~~(77)~~] "Entrance or access point" means a location through which an individual may gain access to a radiation area or radioactive material, including an entry or exit portal of sufficient size to permit human entry, irrespective of its intended use.

(101)[~~(78)~~] "Entrance exposure rate" means the roentgens per unit time at the point the center of the useful beam enters the patient.

(102) “Environmental Protection Agency “EPA” Identification number” means the number received by a transporter following application to the EPA as required by 40 C.F.R. Part 263.

(103)[~~(79)~~] "Exclusive use" means the sole use of a conveyance by a single consignor in which initial, intermediate, and final loading and unloading are carried out under the direction of the consignor or consignee.

(a) Consignor and carrier shall each ensure that loading and unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment.

(b) Consignor shall include with the shipping paper information provided to the carrier, specific written instructions for maintenance of exclusive use shipment controls.

(104)[~~(80)~~] "Exposure" means being exposed to ionizing radiation or to radioactive material.

(105)[~~(81)~~] "Exposure rate" means the exposure per unit of time.

(106) “External beam radiation therapy” means therapeutic irradiation in which the source of radiation is at a distance from the body.

(107)[~~(82)~~] "External dose" means that portion of the dose equivalent received from radiation sources outside the body.

(108)[~~(83)~~] "Extremity" means hand, elbow, arm below the elbow, foot, knee, or
leg below the knee.

(109)[~~(84)~~] "Eye dose equivalent". See "lens dose equivalent".

(110)[~~(85)~~] "Facility" means a location at which one (1) or more devices or sources are installed or located within one (1) building, vehicle, or under one (1) roof, under the same administrative control.

(111)[~~(86)~~] "Field emission equipment" means equipment which uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

(112) “Field-flattening filter” means a filter used to homogenize the absorbed dose rate over the radiation field.

(113)[~~(87)~~] "Field station" means a facility where radioactive sources may be stored or used and from which equipment is dispatched to temporary job sites.

(114)[~~(88)~~] "Filter" means the material in the useful beam which usually absorbs preferentially the less penetrating radiations.

(a) "Inherent filtration" means the filter permanently in the useful beam. It includes the window of the x-ray tube and the permanent tube enclosure.

(b) "Added filter" means the filter added to the inherent filtration.

(c) "Total filter" means the sum of the inherent and added filters.

(115) “Filtering facepiece (dust mask)” means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

(116)[~~(89)~~](a) "Fissile material" means the: [~~special nuclear material consisting of or containing one (1) or more fissile radionuclides.~~]

1. Radionuclides uranium-233, uranium-235, plutonium-239, and plutonium-241, or any combination of these radionuclides; and

2. Fissile nuclides themselves, not material containing fissile nuclides.

(b) Fissile [~~This~~] material does not include unirradiated natural and depleted uranium; and natural or depleted uranium that has been irradiated in thermal reactors only; [~~Fissile radionuclides are plutonium-238, plutonium-239, plutonium-241, uranium-233, and uranium-235.~~]

(c) Fissile material also excludes certain controls as provided in 10 C.F.R. 70.15. (117)[~~(90)~~] "Fissile material package" means a fissile material packaging together
with its fissile material contents.

(118) “Fit factor” means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator **while[**~~when~~**]** worn.

(119) “Fit test” means the use of a protocol to qualitatively or

quantitatively evaluate the fit of a respirator on an individual.

(120)[~~(91)~~] "Fluoroscopic imaging assembly" means a component that comprises a reception system in which x-ray photons produce a fluoroscopic image. It includes equipment housings, electrical interlocks if present, the primary protective barrier, and structural material providing linkage between the image receptor and the diagnostic source assembly.

(121)[~~(92)~~] "Focal spot" means the area projected on the anode of the x-ray tube by the electrons accelerated from the cathode and from which the useful beam originates.

(122)[~~(93)~~] "Former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear
Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

(123) "Gantry" means that part of a radiation producing machine supporting and allowing movements of the radiation head about a center of rotation.

(124)[~~(94)~~] "General purpose radiographic x-ray system" means a radiographic x-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

(125)[~~(95)~~] "Generally applicable environmental radiation standards" means standards issued by the Environmental Protection Agency (EPA) under the authority of 42 U.S.C. sec. 2011 et seq., that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(126)[~~(96)~~] "Generator" or [~~"waste generator"~~] means a licensee operating under the cabinet, U.S. Nuclear Regulatory Commission or an agreement state who:

(a) Is a waste generator as defined in this administrative regulation; or

(b) Is the licensee to whom waste can be attributed within the context of the Low Level Radioactive Waste Policy Amendments Act of 1985, such as, waste generated as a result of decontamination or recycle activities [~~person who produces or possesses low-level radioactive waste in the course of manufacturing, power generation, processing, medical diagnosis and treatment, research, education or other activity~~].

(127)[~~(97)~~] "Gonad shield" means a protective barrier for the testes or ovaries.

(128)[~~(98)~~] "Gray" or "Gy" means the SI unit of absorbed dose. One (1) gray
equals an absorbed dose of one (1) Joule/kilogram (100 rads).

(129)[~~(99)~~] "Half-value layer" or "HVL" means the thickness of specified material which attenuates the beam of radiation to one-half (1/2) of its original air kerma rate, exposure rate or absorbed dose rate. This excludes the contribution of scattered radiation, other than that which might be present initially in the beam concerned.

(130)[~~(100)~~] "Healing arts screening" means the testing of human beings using x-ray machines for the detection or evaluation of health indications if these tests are not specifically and individually ordered by a licensed practitioner of the healing arts legally authorized to prescribe these x-ray tests for the purpose of diagnosis or treatment.

(131)[~~(101)~~] "Heat unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes, and seconds.

(132) **"Helmet"[**~~"Helmut"~~**]** means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

(133) "High integrity container or "HIC" means a container commonly designated to meet the structural stability requirements of 10 C.F.R. 61.56, and to meet the U.S. Department of Transportation requirements for a Type A package.

(134)[~~(102)~~] "High radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body may result in an individual receiving a dose equivalent in excess of one-tenth (0.1) rem (1m Sv) in one (1) hour at thirty (30) centimeters from the radiation source or thirty (30) centimeters from a surface that the radiation penetrates.

(135) "Hood" means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(136)[~~(103)~~] "Human use" means the internal or external administration of
radiation or radioactive materials to human beings.

(137)[~~(104)~~] "Image intensifier" means a device that converts instantaneously, by means of photoemissive surfaces and electronic circuitry, an x-ray pattern into a light pattern of greater intensity than would have been produced by the original x-ray pattern.

(138)[~~(105)~~] "Image receptor" means a device that transforms incident radiation into a visual image or into another form which can be made into a visual image by
further transformations.

(139)[~~(106)~~] "Image receptor support" means, for mammographic systems, that part of the system designed to support the image receptor in a horizontal plane during a mammographic examination.

(140)[~~(107)~~] "Individual" means a human being.

(141)[~~(108)~~] "Individual monitoring" means the assessment of:

(a) Dose equivalent by the use of an individual monitoring device;

(b) Committed effective dose equivalent by:

1. Bioassay; or

2. Determination of the time-weighted air concentrations to which an individual has been exposed; or

(c) Dose equivalent by the use of survey data.

(142)[~~(109)~~] "Individual monitoring device" or "individual monitoring equipment" means a device designed to be worn by a[~~n~~] single individual for the assessment of dose equivalent, such as film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, **or[**~~and~~**]** personal ("lapel") air sampling devices.

(143)[~~(110)~~] "Industrial radiography" means the examination of the macroscopic
structure of materials by nondestructive methods utilizing sources of radiation.

(144)[~~(111)~~] "Injection tool" means a device used for controlled subsurface injection of radioactive tracer material.

(145) "Interlock" means a device preventing the start or continued operation of equipment unless certain predetermined conditions prevail.

(146)[~~(112)~~] "Internal dose" means that portion of the dose equivalent received
from radioactive material taken into the body.

(147)[~~(113)~~] "Irradiation" means the exposure of matter to ionizing radiation.

(148) "Kilovolt (kV) {kilo electron volt (keV)}" means the energy equal to that acquired by a particle with one **(1)** electron charge in passing through a potential difference of **1,000[**~~one thousand~~**]** volts in a vacuum. {Note: current convention is to use kV for photons and keV for electrons.}

(149)[~~(114)~~] "Kilovolt peak" or "kVp" means the crest value in kilovolts of the potential difference of a pulsating potential generator. If only one-half (1/2) of the wave is used, the value refers to the useful half of the wave.

(150)[~~(115)~~] "Lead equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(151)[~~(116)~~] "Leakage radiation" means radiation emanating from the diagnostic or therapeutic source assembly, except for the useful beam.

(152)[~~(117)~~] "Leakage technique factor" means, with respect to different tube housing assemblies:

(a) For capacitor energy storage equipment: the maximum rated number of exposures in an hour for operation at the maximum rated peak tube potential, with a charge per exposure of ten (10) milliampere seconds (mAs) or the minimum obtainable from the unit, whichever is larger.

(b) For field emission equipment rated for pulsed operation: the maximum rated number of x-ray pulses in an hour for operation at the maximum rated peak tube potential.

(c) For all other equipment: the maximum rated continuous tube current for the
maximum rated peak tube potential.

(153)[~~(118)~~] "Lens dose equivalent" or "LDE" means the [~~dose~~

~~equivalent, upon~~] external exposure of the lens of the eye, and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm^2).

(154)[~~(119)~~] "License" means a license issued by the cabinet under 902 KAR Chapter 100.

(155)[~~(120)~~] "Licensed material" means radioactive material, source material, or special nuclear material received, possessed, used, or transferred, [~~or disposed~~] under a general or specific license issued by the cabinet, U.S. Nuclear Regulatory Commission or an agreement state.

(156) "Light field" means the area illuminated by light, simulating the radiation field.

(157)[~~(121)~~] "Limits" or "dose limits"" means the permissible upper bounds of radiation doses.

(158)[~~(122)~~] "Lixiscope" means a portable light-intensified imaging device using a sealed source.

(159)[~~(123)~~] "Logging assistant" means an individual who, under the personal supervision of a logging supervisor:

(a) Handles sealed sources or tracers that are not in logging tools or shipping containers; or

(b) Uses survey instruments in well-logging activities.

(160)[~~(124)~~] "Logging supervisor" means the individual who provides personal supervision of the utilization of sources of radiation at the well site.

(161)[~~(125)~~] "Logging tool" means a device used subsurface to perform well-
logging.

(162) "Loose-fitting facepiece" means a respiratory inlet covering that is designed to form a partial seal with the face.

(163)[~~(126)~~] "Lost or missing licensed material" means licensed material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

(164)[~~(127)~~] "Low-level radioactive waste" means radioactive waste not classified as:

(a) High-level radioactive waste;

(b) Transuranic waste;

(c) Spent nuclear fuel; or

(d) By-product material as defined in Section 11e(2) of the Atomic Energy Act of 1954, 42 U.S.C. 2014.

(165)[~~(128)~~] "Low specific activity" or "LSA" means radioactive material with limited specific activity, which is nonfissile or is excepted under 10 C.F.R. 70.15 and that satisfies the descriptions and limits established in paragraphs (a), (b), and (c) of this subsection. Shielding materials surrounding the LSA material shall not be considered in determining the estimated average specific activity of the package contents. LSA material shall be in one (1) of three (3) groups:

(a) LSA-I:

1. Uranium and thorium ores. [~~containing only naturally occurring radionuclides (e.g., uranium, thorium) and~~] uranium or thorium concentrates of **these[**~~such~~**]** ores, and other ores containing naturally occurring radioactive **nuclides that[**~~radionuclides which~~**]** are not intended to be processed for the use of these radionuclides; [~~or~~]

2. Solid unirradiated natural or depleted uranium or natural thorium or their solid[~~s~~] or liquid compounds or mixtures; [~~or~~]

3. Radioactive material[~~, other than fissile material,~~] for which the A_2 value is unlimited; or

4. Other radioactive material in which the activity is distributed throughout [~~Mill tailings, contaminated earth, concrete, rubble, other debris, and activated material in which the radioactive material is essentially uniformly distributed,~~] and the estimated average specific activity does not exceed thirty (30) times the value for exempt material activity concentration determined in 10 C.F.R. 71 Appendix A [~~10^{-6} A_2/gram~~].

(b) LSA-II:

1. Water with tritium concentration up to 20.0 curies/liter (0.8 TBq/liter); or

2. Material in which the radioactive material is distributed throughout, and the average specific activity does not exceed 10^{-4} A_2/gram for solids and gases, and 10^{-5} A_2/gram for liquids.

(c) LSA-III: Solids (e.g., consolidated wastes, activated materials), excluding powders, that satisfy the requirements of 10 C.F.R. 71.77 in which:

1. The radioactive material is distributed throughout a solid or a collection of solid objects; [~~or~~]

2. Is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.); [~~and~~]

3. The radioactive material is relatively insoluble, or it is intrinsically contained in
a relatively insoluble material, so that, even under loss of packaging, the loss of radioactive material per package by leaching, when placed in water for seven (7) days, would not exceed 0.1 A_2; and the average specific activity of the solid does not exceed 2 x 10^{-3} A_2/gram; and [~~.~~]

4. The average specific activity of the solid does not exceed 2 x 10^{-3} A_2/gram.

(166)[~~(129)~~] "Low toxicity alpha emitter" means natural uranium, depleted uranium, natural thorium, uranium-235, uranium-238, thorium-232, thorium-228 or thorium-230 when contained in ores or physical or chemical concentrates or tailings; or alpha emitters with a half-life of less than ten (10) days.

(167)[~~(130)~~] "mA" means milliampere.

(168)[~~(131)~~] "Management" means the chief executive officer or that individual's designee.

(169)[~~(132)~~] "mAs" means milliampere second.

(170)[~~(133)~~] "Maximum normal operating pressure" means the maximum gauge pressure that would develop in the containment system in a period of one (1) year under the heat condition specified in 10 C.F.R. Part 71.71(c)(1), in the absence of venting, external cooling by an ancillary system, or operational controls during transport.

(171)[~~(134)~~] "Medical institution" means an organization in which several medical disciplines are practiced.

(172)[~~(135)~~] "Medical use" means the intentional internal or external administration of radioactive material, or the radiation therefrom, to patients or human research subjects under the supervision of an authorized user.

(173)[~~(136)~~] "Member of the public" means an individual except when the
individual is receiving an occupational dose.

(174)[~~(137)~~] "Microscopic analytical x-ray equipment" means a device which
utilizes x-rays for examining the microscopic structure of materials. This includes x-ray diffraction and spectrographic equipment.

(175)[~~(138)~~] "Mineral logging" means logging performed for the purpose of mineral exploration other than oil or gas.

(176)[~~(139)~~] "Minor" means an individual less than eighteen (18) years of age.

(177)[~~(140)~~] "Misadministration" means the administration of:

(a) A radiopharmaceutical dosage greater than thirty (30) microcuries of sodium iodide I-125 or I-131:

1. Involving the wrong patient or human research subject or the wrong radiopharmaceutical; or

2. If both the administered dosage differs from the prescribed dosage by more than twenty (20) percent of the prescribed dosage and the difference between the administered dosage and prescribe dosage exceeds thirty (30) microcuries.

(b) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131:

1. Involving the wrong patient, human research subject, radiopharmaceutical, or route of administration; or

2. If the administered dosage differs from the prescribed dosage by more than twenty (20) percent of the prescribed dosage.

(c) A gamma stereotactic radiosurgery radiation dose:

1. Involving the wrong patient, human research subject, or treatment site; or

2. If the calculated total administered dose differs from the total prescribed dose
by more than ten (10) percent.

(d) A teletherapy radiation dose:

1. Involving the wrong patient, human research subject, mode of treatment, or treatment site;

2. If the treatment consists of three (3) or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than ten (10) percent;

3. If the calculated weekly administered dose is thirty (30) per-

cent greater than the weekly prescribed dose; or

4. If the calculated total administered dose differs from the total prescribed dose by more than twenty (20) percent.

(e) A brachytherapy radiation dose:

1. Involving the wrong patient, human research subject, radioisotope, or treatment site except for permanent implant seeds that were implanted in the correct site but migrated outside the treatment site;

2. Involving a sealed source that is leaking;

3. If, for a temporary implant, one (1) or more sealed sources are not removed upon completion of the procedure; or

4. If the calculated administered dose differs from the prescribed dose by more than twenty (20) percent.

(f) A diagnostic radiopharmaceutical dosage, other than quantities greater than thirty (30) microcuries of sodium iodide I-125 or I-131:

1. Involving the wrong patient, human research subject, radiopharmaceutical, or
route of administration, or if the administered dosage differs from the prescribed
dosage; and

2. If the dose to the patient or human research subject exceeds five (5) rems effective dose equivalent or fifty (50) rems dose equivalent to an individual organ.

(178)[(~~141~~)] "Mobile nuclear medicine service" means the transportation and medical use of radioactive material.

(179) “Monitor unit (MU)” (See “Dose monitor unit”).

(180)[(~~142~~)] "Monitoring" or "radiation monitoring" or "radiation protection monitoring" means the measurement of radiation levels, concentrations, surface area concentrations or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses.

(181) “Moving beam radiation therapy” means radiation therapy with any planned displacement of radiation field or patient relative to each other, or with any planned change of absorbed dose distribution. It includes arc, skip, conformal, intensity modulation and rotational therapy.

(182)[(~~143~~)] "Natural thorium" means thorium with the naturally occurring distribution of thorium isotopes; that is, 100 weight percent thorium-232.

(183) “Negative pressure respirator (tight fitting)” means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

(184) “Nominal treatment distance” means:

(a) For electron irradiation, the distance from the scattering foil, virtual source, or exit window of the electron beam to the entrance surface of the irradiated object along
the central axis of the useful beam.

(b) For x-ray irradiation, the virtual source or target to isocenter distance along the central axis of the useful beam. For non-isocentric equipment, this distance shall be that specified by the manufacturer.

(185)[(~~144~~)] "Nonstochastic effect" or "deterministic effect" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist.

(186)[(~~145~~)] "Normal form radioactive material" means radioactive material that has [~~does~~] not been demonstrated to qualify as "special form radioactive material."

(187)[(~~146~~)] "NRC" means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

(188)(a) “NRC Forms 540, 540A, 541, 541A, 542, and 542A” means official NRC forms as referenced in 902 KAR 100:021.

(b)Licensees need not use originals of these forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size, and location of information.

(c) Upon agreement between the shipper and consignee, NRC Forms 541, 541A, 542, and 542A may be completed, transmitted, and stored in electronic media.

(d) The electronic media shall have the capability for producing legible, accurate, and complete records in the format of the uniform manifest.

(189)[(~~147~~)] "Occupational dose" means dose received by an individual in the course of employment in which the individual's assigned duties for the licensee or registrant involve exposure to sources of radiation, whether in the possession of the licensee, registrant, or other person. Occupational dose shall not include dose received:

(a) From background radiation;

(b) As a medical patient;

(c) From voluntary participation in a medical research program;

(d) As a member of the public; or

(e) From exposure to individuals administered radioactive material and released in accordance with 902 KAR 100:072 [~~073~~], Section 27 [~~25~~].

(190)[(~~148~~)] "Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions.

(191)[(~~149~~)] "Operating procedures" means detailed written instructions, such as:

(a) Normal operation of equipment and movable shielding;

(b) Closing of interlock circuits;

(c) Manipulation of controls;

(d) Radiation monitoring procedures for personnel and areas;

(e) Testing of interlocks; and

(f) Recordkeeping requirements.

(192)[(~~150~~)] "Package" means the packaging together with its radioactive contents as presented for transport:[.]

(a) Fissile material package or Type AF package, Type BF package, Type B(U)F package, or Type B(M)F package are all fissile material packaging types together with its fissile material complete.

(b) Type A package means a Type A packaging together with its radioactive contents. A Type A package is defined and shall comply with the DOT regulations in 49 C.F.R. Part 173.

(c) Type B package means a Type B packaging together with its radioactive contents.

(i) On approval, a Type B package design is designated by the U.S. Nuclear Regulatory Commission as B(U) unless the package has a maximum normal operating pressure of more than 100 pounds/in^2 (700 kPa) gauge or a pressure relief device that would allow the release of radioactive material to the environment under the tests specified in 10 C.F.R. Part 71.73 (hypothetical accident conditions), in which case it will receive a designation B(M).

(ii) B(U) refers to the need for unilateral approval of international shipments.

(iii) B(M) refers to the need for multilaterial approval of international shipments.

(iv) There is no distinction made in how packages with these designations may be used in domestic transportation.

(v) To determine their distinction for international transportation, refer to U.S. Department of Transportation Regulations in 49 C.F.R. Part 173.

(vi) A Type B package approved before September 6, 1983, was designated only as Type B. Limitations on its use are specified in 902 KAR 100:070, Section 7.

(193)[(~~151~~)] "Packaging" means the assembly of components necessary to
ensure compliance with the requirements of 902 KAR 100:070.

(a) It may consist of one (1) or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks.

(b) The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

(194)[(~~152~~)] "Patient" means an individual subjected to healing arts examination, diagnosis, or treatment.

(195)[(~~153~~)] "Peak tube potential" means the maximum value of the potential
difference across the x-ray tube during an exposure.

(196) “Periodic quality assurance check” means a procedure which is performed to ensure that a previous calibration continues to be valid.

(197)[(~~154~~)] "Permanent radiographic installation" means an installation or structure designed or intended for radiography and in which radiography is regularly performed.

(198)[(~~155~~)] "Person" is defined at KRS 216B.015(16).

(199)[(~~156~~)] "Personal supervision" means guidance and instruction by the supervisor who is physically present at the job site

and watching the performance of the operation in proximity so that contact can be maintained and immediate assistance given as required.

(200)[~~(157)~~] "Personnel monitoring equipment" means a device designed to be worn or carried by an individual for the purpose of estimating the dose received by the individual.

(201)[~~(158)~~] "Phantom" means a volume of material behaving in a manner similar
to tissue with respect to the attenuation and scattering of radiation.

(202)[~~(159)~~] "Phototimer" means a method for controlling radiation exposures to image receptors by the amount of radiation which reaches a radiation monitoring device. The radiation monitoring device is part of an electronic circuit which controls the duration of time the tube is activated. See "automatic exposure control".

(203) "Physical description" means the items called for on NRC Form 541 to describe low-level radioactive waste.

(204)[~~(160)~~] "Physician" is defined **by[~~at~~]** KRS 311.720(9).

(205)[~~(161)~~] "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual dose limits.

(206)[~~(162)~~] "Position indicating device" means a device on dental x-ray equipment used to indicate the beam position and to establish a definite source-surface (skin) distance. It may or may not incorporate or serve as a beam-limiting device.

(207) "Positive pressure respirator" means a respirator in which the pressure inside the respirator inlet covering exceeds the ambient air pressure outside the respirator.

(208) "Powered air-purifying respirator**"** or "PAPR" means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

(209) "Preceptor" means an individual who provides, directs, or verifies the training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, or a Radiation Safety Officer.

(210) "Pressure demand respirator" means a positive pressure atmosphere-
supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

(211)[~~(163)~~] "Preregistrant" means a person who is preregistered with the cabinet for the intent of obtaining a radiation producing machine registerable under 902 KAR 100:110.

(212)[~~(164)~~] "Preregistration" means preregistration with the cabinet as specified in 902 KAR 100:110.

(213)[~~(165)~~] "Prescribed dosage" means the quantity of radiopharmaceutical activity as documented:

(a) In a written directive;

(b) In the diagnostic clinical procedures manual; or

(c) In an appropriate record in accordance with the directions of the authorized user for diagnostic procedures.

(214)[~~(166)~~] "Prescribed dose" means:

(a) For gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(b) For teletherapy, the total dose and dose per fraction as documented in the written directive; or

(c) For brachytherapy, the total source strength and exposure time or the total dose, as documented in the written directive.

(215)[~~(167)~~] "Primary dose monitoring system" means a system that:

(a) Monitors the useful beam during irradiation; and

(b) Terminates irradiation if a preselected number of dose monitor units have
been acquired.

(216)[~~(168)~~] "Principal activities" means activities authorized by the license **that[**~~which~~**]** are essential to achieving the purpose for which the license was issued or amended. "Principal activities" do not include:

(a) Storage during which **[**~~no~~**]**licensed material is **not** accessed for use or disposal; and

(b) Activities incidental to decontamination or decommissioning.

(217)[~~(169)~~] "Protective apron" means an apron made of radiation absorbing materials of at least 0.25 mm lead equivalency; that is, if the HVL of the apron is not less than 0.25 mm lead at normal operating voltages.

(218)[~~(170)~~] "Protective barrier" means a barrier of radiation absorbing material used to reduce radiation exposure.

(a) "Primary protective barrier" means a barrier sufficient to attenuate the useful beam to the required degree.

(b) "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to the required degree.

(219)[~~(171)~~] "Protective glove" means a glove made of radiation absorbing materials of at least 0.25 mm lead equivalency; that is, if the HVL of the glove is not less than 0.25 mm lead at normal operating voltages.

(220)[~~(172)~~] "Public dose" means the dose received by a member of the public from sources of radiation from licensed or registered operations. It shall not include radiation received:

(a) As an occupational dose;

(b) From background radiation;

(c) As a medical patient;

(d) From voluntary participation in a medical research program; or

(e) From exposure to an individual administered radioactive material and released in accordance with 902 KAR 100:072 [~~073~~], Section 27 [~~25~~].

(221)[~~(173)~~] "Qualified expert" means an individual who has **been recognized by the cabinet to possess[**~~demonstrated to the satisfaction of the cabinet that he possesses~~**]** the knowledge and training to:

(a) Measure ionizing radiation;

(b) Evaluate safety techniques; and

(c) Advise regarding radiation protection needs.

(222) "Qualitative fit test or "QFT" means a pass or fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

(223)[~~(174)~~] "Quality factor" or "Q" means the modifying factor used to derive dose equivalent from absorbed dose.

(a) Quality factors and absorbed dose equivalencies:

Type of Radiation	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent[a]
X-, gamma, or beta radiation	1	1
Alpha particles, multiple-charged particles, fission fragments, and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

[a]Absorbed dose in rad equal to one (1) rem or the absorbed dose in gray equal to one (1) sievert.

(b) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in rems per hour or sieverts per hour, as provided in paragraph (a) of this subsection, one (1) rem (0.01 sievert) of neutron radiation of unknown energies may, for purposes of the regulations in this part, be assumed to result from a total fluence of twenty-five (25) million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee may use the fluence rate per unit dose equivalent or the appropriate Q value from paragraph (c) of this subsection to convert a measured tissue dose in rads to dose equivalent in rems.

(c) Mean quality factors, Q, and fluency per unit dose equivalent for monoenergetic neutrons:

	Neutron Energy (MeV)	Quality Factor[a] (Q)	Fluency per Unit Dose Equivalent[b] (neutrons cm^{-2} rem^{-1})
(thermal)	2.5×10^{-8}	2	980×10^{6}
	1×10^{-7}	2	980×10^{6}
	1×10^{-6}	2	810×10^{6}
	1×10^{-5}	2	810×10^{6}
	1×10^{-4}	2	840×10^{6}
	1×10^{-3}	2	980×10^{6}

	1×10^{-2}	2.5	1010×10^{6}
	1×10^{-1}	7.5	170×10^{6}
	5×10^{-1}	11	39×10^{6}
	1	11	27×10^{6}
	2.5	9	29×10^{6}
	5	8	23×10^{6}
	7	7	24×10^{6}
	10	6.5	24×10^{6}
	14	7.5	17×10^{6}
	20	8	16×10^{6}
	40	7	14×10^{6}
	60	5.5	16×10^{6}
	1×10^{2}	4	20×10^{6}
	2×10^{2}	3.5	19×10^{6}
	3×10^{2}	3.5	16×10^{6}
	4×10^{2}	3.5	14×10^{6}

[a] Value of quality factor (Q) at the point at which the dose equivalent is maximum in a thirty (30)-cm diameter cylinder tissue-equivalent phantom.

[b] Monoenergetic neutrons incident normally on a thirty (30)-cm diameter cylinder tissue-equivalent phantom.

(224) "Quantitative fit test "QNFT" means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

(225)[~~(175)~~] "Quarter" is defined **by[~~at~~]** KRS 341.080(1)(b).

(226)[~~(176)~~] "Rad" means the special unit of absorbed dose. One (1) rad equals an absorbed dose of 0.01 joule per kilogram (0.01 gray) or 100 ergs per gram.

(227)[~~(177)~~] "Radiation" means ionizing radiation.

(a) It includes the following:

1. Gamma rays;
2. X-rays;
3. Alpha particles;
4. Beta particles;
5. High speed electrons;
6. Neutrons;
7. High-speed protons; and
8. Other atomic particles capable of producing ions.

(b) It excludes nonionizing radiations, such as:

1. Sound;
2. Microwaves;
3. Radiowaves; or
4. Visible, infrared, or ultraviolet light.

(c) The following are specific forms of radiation:

1. "Leakage radiation" means radiation coming from within the tube or source housing except the useful beam.

2. "Scattered radiation" means radiation that, during passage through matter, has been deviated in direction, and may have been modified by a decrease in energy.

3. "Useful radiation" or "primary beam" means radiation **that[**~~which~~**]** passes through the window, aperture, cone, or other beam limiting device of the tube or source housing.

4. "Stray radiation" means the sum of leakage and scattered radiation.

(228)[~~(178)~~] "Radiation area" means an area, accessible to individuals, in which there exists radiation at levels that an individual may receive in excess of five (5) millirems (0.05 mSv) in one (1) hour at thirty (30) centimeters from the radiation source or from a surface that the radiation penetrates.

(229) "Radiation detector" means a device which, in the presence of radiation, by either direct or indirect means, provides a signal or other indication suitable for use in measuring one (1) or more quantities of incident radiation.

(230) "Radiation head" means the structure from which the useful beam emerges.

(231)[~~(179)~~] "Radiation machine" means a device capable of producing radiation, except a device that produces radiation only from radioactive material.

(232)[~~(180)~~] "Radiation safety officer" means an individual who:

(a) Has the knowledge and responsibility to apply appropriate radiation
protection administrative regulations; and

(b) For licenses issued under 902 KAR 100:072, meets the requirements in 902 KAR 100:072, Sections 63 and 64(1) and (3)(a).

1. A specific medical use licensee issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state; or

2. A medical use permit issued by a U.S. Nuclear Regulatory Commission master material licensee.

(233)[~~(181)~~] "Radiation therapy simulation system" means a fluoroscopic or radiographic x-ray system intended for:

(a) Localizing the volume to be exposed during radiation therapy; and

(b) Confirming the position and size of the therapeutic irradiation field.

(234)[~~(182)~~] "Radioactive marker" means radioactive material placed subsurface or on a structure intended for subsurface use for the purpose of depth determination or direction orientation.

(235)[~~(183)~~] "Radioactive material" means a solid, liquid, or gas, which emits radiation spontaneously.

(236)[~~(184)~~] "Radioactivity" means the disintegration of unstable atomic nuclei by the emission of radiation.

(237)[~~(185)~~] "Radiograph" means an image receptor on which the image is created directly or indirectly by an x-ray pattern and results in a permanent record.

(238)[~~(186)~~] "Radiographer" means an individual who performs or who, in attendance at the site where sources of radiation are being used, personally supervises industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of administrative regulations and license conditions.

(239)[~~(187)~~] "Radiographer's assistant" means an individual who, under the
personal supervision of a radiographer, uses sources of radiation, related handling tools, or survey instruments in industrial radiography.

(240)[~~(188)~~] "Radiographer instructor" means a radiographer who has been authorized by the cabinet to provide on-the-job training to radiographer trainees under 902 KAR 100:100, Section 14[~~11(1)~~].

(241)[~~(189)~~] "Radiographer trainee" means an individual who, under the personal supervision of a radiographer instructor, uses sources of radiation, related handling tools, or radiation survey instruments during the course of instruction.

(242)[~~(190)~~] "Radiographic exposure device" means an instrument containing a sealed source fastened or contained within, in which the sealed source or its shielding may be moved, or otherwise changed, from a shielded to an unshielded position for purposes of making a radiographic exposure.

(243)[~~(191)~~] "Radiographic imaging system" means a system designed to record a permanent or semipermanent image on an image receptor by the action of ionizing radiation.

(244)[~~(192)~~] "Radiographic personnel" means a:

(a) Radiographer;

(b) Radiographer instructor; or

(c) Radiographer trainee.

(245)[~~(193)~~] "Rating" means the operating limits specified by the component
manufacturer.

(246)[~~(194)~~] "Recordable event" means the administration of:

(a) A radiopharmaceutical or radiation without a written directive, if a written
directive is required;

(b) A radiopharmaceutical or radiation if a written directive is required without daily recording of each administered radiopharmaceutical dosage or radiation dose in the appropriate record;

(c) A radiopharmaceutical dosage greater than thirty (30) microcuries of sodium iodide I-125 or I-131 if:

1. The administered dosage differs from the prescribed dosage by more than twenty (20) [~~ten (10)~~] percent; and

2. The difference between the administered dosage and prescribed dosage exceeds fifteen (15) microcuries;

(d) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131, if the administered dosage differs from the prescribed dosage by more than twenty (20) [~~ten (10)~~] percent;

(e) A teletherapy radiation dose, if the calculated weekly admi-

nistered dose is fifteen (15) percent greater than the weekly prescribed dose; or

(f) A brachytherapy radiation dose, if the calculated administered dose differs from the prescribed dose by more than twenty (20) [~~ten (10)~~] percent.

(247)[~~(195)~~] "Recording" means producing a permanent form of an image resulting from x-ray photons.

(248)[~~(196)~~] "Reference man" means a hypothetical aggregation of human
physical and physiological characteristics arrived at by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base.

(249)[~~(197)~~] "Registrant" means a person who is registered with the cabinet and is legally obligated to register with the cabinet under 902 KAR 100:110.

(250)[~~(198)~~] "Registration" means registration with the cabinet under 902 KAR 100:110.

(251)[~~(199)~~] "Regulations of the U.S. Department of Transportation" means the regulations in 49 C.F.R. Parts 100-189.

(252)[~~(200)~~] "Rem" means a special unit of quantities expressed as dose equivalent. The dose equivalent in rems is equal to the absorbed dose in rads multiplied by the quality factor (one (1) rem = 0.01 sievert).

(253)[~~(201)~~] "Research and development" means:

(a) Theoretical analysis, exploration, or experimentation; or

(b) The extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

(254)[~~(202)~~] "Residential location" means an area where structures for human habitation are located.

(255)[~~(203)~~] "Residual radioactivity" means low-level radioactive waste resulting from processing or decontamination activities that cannot be easily separated into distinct batches attributable to specific waste generators. This waste is attributable to the processor or decontamination facility, as applicable [~~radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive material remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 902 KAR 100:019~~].

(256)[~~(204)~~] "Respiratory protective device" means an apparatus used to reduce an individual's intake of airborne radioactive materials.

(257)[~~(205)~~] "Restricted area" means an area access to which is limited by the licensee or registrant for purposes of protection of individuals against undue risks from exposure to radiation and radioactive materials. A restricted area shall not include areas used as residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

(258)[~~(206)~~] "Roentgen" or "R" means the special unit of exposure. One (1) roentgen (R) equals 2.58 x 10^{-4} coulombs per kilogram of air. See "Exposure".

(259)[~~(207)~~] "Sanitary sewerage" means a system of public sewers for carrying off waste, water, and refuse, but excludes sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

(260)[~~(208)~~] "Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent leakage or escape of the
radioactive material.

(261)[~~(209)~~] "Secondary dose monitoring system" means a system which terminates irradiation upon failure of the primary system.

(262) "Self-contained breathing apparatus**" or** "SCBA" means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(263)[~~(210)~~] "Shallow-dose equivalent (H_S)", with respect to external exposure of the skin of the whole body or the skin of an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (seven (7) mg/cm^2) [~~averaged over an area of one (1) square centimeter~~].

(264)[~~(211)~~] "Shielded position" means the location within the radiographic exposure device or storage container which, by manufacturer's design, is the proper location for storage of the sealed source.

(265)[~~(212)~~] "Shielded-room radiography" means industrial radiography conducted in a room shielded so that radiation levels at every location on the exterior meet the limitations specified in 902 KAR 100:019, Section 10.

(266) "Shipper" means the licensed entity, the generator that offers low-level radioactive waste for transportation, and may consign the waste to a licensed waste collector, waste processor, or land disposal facility operator.

(267) "Shipping paper" means NRC Form 540, and if required, 540A, or their equivalent, and includes the information required by the U.S. Department of Transportation in 49 C.F.R. Part 172.

(268)[~~(213)~~] "Shutter" means a device attached to the tube housing assembly
which can totally intercept the useful beam and which has a lead equivalency not less
than that of the tube housing assembly.

(269)[~~(214)~~] "Sievert" means:

(a) The International System (SI) unit of quantities expressed as dose equivalent. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor (1 Sv=100 rems).

(b) See the table in the definition of "quality factors" for the quality factors to convert absorbed dose to dose equivalent.

(270)[~~(215)~~] "Site area emergency" means the existence of situation where an event may occur, is in progress, or has occurred that may:

(a) Lead to a significant release of radioactive material; and

(b) Require a response by an off-site response organization to protect persons off site.

(271)[~~(216)~~] "Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(272)[~~(217)~~] "Source" means the focal spot of the x-ray tube.

(273)[~~(218)~~] "Source changer" means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those source changers also used for transporting and storage of sealed sources.

(274)[~~(219)~~] "Source holder" means a housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source.

(275)[~~(220)~~] "Source image receptor distance" or "SID" means the distance from
the source to the center of the input surface of the image receptor.

(276)[~~(221)~~] "Source material" means:

(a) Uranium or thorium, or a combination thereof, in a physical or chemical form; or

(b) Ores **that[**~~which~~**]** contain by weight 0.05 percent or more of:

1. Uranium;

2. Thorium; or

3. A combination of uranium and thorium.

(c) Source material does not include special nuclear material.

(277)[~~(222)~~] "Source of radiation" means a radioactive material or device, or equipment emitting or capable of producing radiation.

(278)[~~(223)~~] "Special form radioactive material" means radioactive material **that[**~~which~~**]** satisfies the following conditions:

(a) It is a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) The piece or capsule has at least one (1) dimension not less than five (5) millimeters (0.197 inch); and

(c)1. It satisfies the test requirements specified by the NRC in 10 C.F.R. Part 71.75.

2. A special form encapsulation designed under the NRC requirements in 10 C.F.R. 71.4 in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used.

3. A special form encapsulation designed in accordance with

the NRC requirements in 10 C.F.R. 71.4 in effect on March 31, 1996, and constructed before April 1, 1998 may continue to be used [~~or constructed after June 30, 1985 shall meet requirements of this definition applicable if it is designed or constructed~~].

4. Any other special form encapsulation shall meet the specifications of this definition.

(279)[~~(224)~~] "Special nuclear material" means:

(a) Plutonium, uranium 233, uranium enriched in the isotope U-233 or in the isotope U-235, and other material which the Governor declares by order to be special nuclear material after the United States Nuclear Regulatory Commission, or successor thereto, has determined the material to be special nuclear material, but does not include source material; or

(b) Material artificially enriched by one (1) of the foregoing, but does not include source material.

(280)[~~(225)~~] "Special nuclear material in quantities not sufficient to form a critical mass" means:

(a) Uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235;

(b) U-233 in quantities not exceeding 200 grams;

(c) Plutonium in quantities not exceeding 200 grams; or

(d) A combination of them as specified by the following formula:

1. For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material.

2. The sum of these ratios for the different kinds of special nuclear material in
combination shall not exceed one (1).

3. For example, the following quantities in combination would not exceed the limitation and are within the formula:

$$\frac{175\ (\text{grams contained U-235})}{350} +$$

$$\frac{50(\text{grams U-233})}{200} + \frac{50\ (\text{grams Pu})}{200} = 1$$

(281)[~~(226)~~] "Special purpose x-ray system" means a radiographic x-ray system which, by design, is limited to radiographic examination of a specific anatomical region.

(282)[~~(227)~~] "Specific activity" means the radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

(283)[~~(228)~~] "Spot check" means a procedure**[**~~which is~~**]** performed to assure that a previous calibration continues to be valid.

(284)[~~(229)~~] "Spot film" means a radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure.

(285)[~~(230)~~] "Spot-film device" means a device intended to transport or position a radiographic image receptor between the x-ray source and fluoroscopic image receptor. It includes a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

(286)[~~(231)~~] "SSD" means the distance between the source and the skin of the patient.

(287) "Stationary beam radiation therapy" means radiation therapy without displacement of one (1) or more mechanical axes relative to the patient during
irradiation.

(288)[~~(232)~~] "Stochastic effect" means a health effect that occurs randomly and
for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose plus threshold factors.

(289)[~~(233)~~] "Storage" or "waste storage" means the holding of waste for treatment or disposal for a period of twenty-four (24) hours or more.

(290)[~~(234)~~] "Storage area" means:

(a) A location, facility, or vehicle used to store, transport, or secure a radiographic exposure device, storage container, or sealed source if the source is not in use; and

(b) Which is locked or has a physical barrier to prevent accidental exposure, tampering with, or unauthorized removal of the device, container, or source.

(291)[~~(235)~~] "Storage container" means a device in which a sealed source is transported or stored.

(292)[~~(236)~~] "Stray radiation" means the sum of leakage and scattered radiation.

(293)[~~(237)~~] "Subsurface tracer study" means the release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the wellbore or adjacent formation.

(294) "Supplied-air respirator "SAR" "airline respirator" means an atmosphere-supplying respirator for which the source of breathing air is not designated to be carried by the user.

(295)[~~(238)~~] "Surface contaminated object" or "SCO" means a solid object that is
not classed as radioactive material, but which has radioactive material distributed on a surface. SCO must be in one (1) of two (2) groups with surface activity not exceeding
the following limits:

(a) SCO-I: A solid object on which:

1. The nonfixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 10^{-4} microcurie/cm^2 (4 Bq/cm^2) for beta and gamma and low toxicity alpha emitters, or 10^{-5} microcurie/cm^2 (0.4 Bq/cm^2) for all other alpha emitters;

2. The fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 1.0 microcurie/cm^2 ($4x10^4$ Bq/cm^2) for beta and gamma and low toxicity alpha emitters, or 0.1 microcurie/cm^2 ($4x10^3$ Bq/cm^2) for all other alpha emitters; and

3. The nonfixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 1 microcurie/cm^2 ($4x10^4$ Bq/cm^2) for beta and gamma and low toxicity alpha emitters, for 0.1 microcurie/cm^2 ($4x10^3$ Bq/cm^2) for all other alpha emitters.

(b) SCO-II: A solid object on which the limits for SCO-I are exceeded and on which:

1. The nonfixed contamination on the accessible surface averaged over 300cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 10^{-2} microcurie/cm^2 (400 Bq/cm^2) for beta and gamma and low toxicity alpha emitters or 10^{-3} microcurie/cm^2 (40 Bq/cm^2) for all other alpha emitters;

2. The fixed contamination on the accessible surface averaged over 300 cm^2 (or
the area of the surface if less than 300 cm^2) does not exceed 20 microcuries/cm^2 ($8x10^5$ Bq/cm^2) for beta and gamma and low toxicity alpha emitters, or 2 microcuries/cm^2
($8x10^4$ Bq/cm^2) for all other alpha emitters; and

3. The nonfixed contamination plus the fixed contamination on the inaccessible
surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 20 microcuries/cm^2 ($8x10^5$ Bq/cm^2) for beta and gamma and low toxicity alpha emitters, or 2 microcuries/cm^2 ($8x10^4$ Bq/cm^2) for all other alpha emitters.

(296)[~~(239)~~] "Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. If appropriate, the evaluation shall include at least:

(a) A physical survey of the location of sources of radiation; and

(b) Measurements or calculations of levels of radiation or concentrations or quantities of radioactive material present.

(297) "Target" means that part of an x-ray tube or accelerator onto which a beam of accelerated particles is directed to produce ionizing radiation or other particles.

(298)[~~(240)~~] "Technique factors" means the conditions of operation. They are specified as follows:

(a) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs**;[**~~,~~**]**

(b) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses**;[**~~,~~**]**

(c) For CT x-ray systems designed for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan, or the product of tube current, x-ray pulse width,

and the number of x-ray pulses in mAs;

(d) For CT x-ray systems not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time if the scan time and exposure time are equivalent; and

(e) For other equipment, peak tube potential in kV and tube current in mA and exposure time in seconds or the product of tube current and exposure time in mAs.

(299) "Technically Enhanced Naturally Occurring Radioactive Material "TENORM" means N.O.R.M., which has been separated to various degrees from the original ore or other material, refining or implementing it.

(300)[~~(241)~~] "Teletherapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

(301)[~~(242)~~] "Teletherapy physicist" means the individual identified as the teletherapy physicist on a cabinet license.

(302)[~~(243)~~] "Temporary job site" means a location to which radioactive material has been dispatched to perform a job, operation, or study other than the location listed in a specific license or certificate of registration.

(303) "Tenth-value layer (TVL)" means the thickness of a specified material **that[**~~which~~**]** attenuates X-radiation or gamma radiation to an extent **[**~~such~~**]**that the air kerma rate, exposure rate, or absorbed dose rate is reduced to one-tenth of the value measured without the material at the same point.

(304)[~~(244)~~] "Termination of irradiation" means the stopping of irradiation in a fashion **that[**~~which~~**]** does not permit continuance of irradiation without the resetting of operating conditions at the control panel.

(305)[~~(245)~~] "Tests" means the process of verifying compliance with an applicable regulation.

(306) "Therapeutic radiation machines" means x-ray or electron-producing equipment designed and used for external beam radiation therapy.

(307)[~~(246)~~] "Therapeutic-type protective tube housing" means:

(a) For x-ray therapy equipment not capable of operating at 500 kVp or above: an x-ray tube housing so constructed that the leakage radiation at a distance of one (1) meter from the target does not exceed one (1) roentgen in one (1) hour if the tube is operated at its maximum rated tube potential**. Small areas of reduced protection are acceptable providing the average reading over a 100-square centimeter area at one (1) meter distance from the target does not exceed the value established in this paragraph; or[**~~;~~**]**

(b) For x-ray therapy equipment capable of operating at 500 kVp or above: an x-ray tube housing so constructed that the leakage radiation at a distance of one (1) meter from the target does not exceed one-tenth (0.1) percent of the useful beam exposure rate at one (1) meter from the target, for its operating conditions**. Small areas of reduced protection are acceptable providing the average reading over a 100-square centimeter area at one (1) meter distance from the target does not exceed the value established in this paragraph.[**~~;~~

~~(c) Small areas of reduced protection are acceptable providing the average reading over a 100-square centimeter area at one (1) meter distance from the target does not exceed the values given above.~~**]**

(308) "Tight-fitting facepiece" means a respiratory inlet covering that forms a complete seal with the face.

(309)[~~(247)~~] "Tomogram" means the depiction of the x-ray attenuation properties of a section through the body.

(310)[~~(248)~~] "Total effective dose equivalent" or "TEDE" means the sum of the
deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

(311)[~~(249)~~] "Traceable to a national standard" means that a quantity or a measurement has been compared to a national standard directly or indirectly through
one (1) or more intermediate steps and that comparisons have been documented.

(312)[~~(250)~~] "Transport container" means a package that is designed to provide radiation safety and security if sealed sources are transported and which meets the requirements of the 49 C.F.R. 173, Subpart I.

(313)[~~(251)~~] "Transport index" means:

(a) The dimensionless number that designates the degree of control to be exercised by the carrier during transportation, rounded up to the next tenth [~~first decimal place~~] required to be placed on the label of a package.

(b) The transport index is determined by multiplying the maximum radiation level in millisievert (mSv) per hour at one (1) meter (3.3 feet) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour at one (1) meter (3.3 feet) [~~as follows:~~

~~(a) For nonfissile material packages, the number determined by multiplying the maximum radiation level in millisievert (mSv) per hour at one (1) meter (3.3 feet) from the external surface by 100 (equivalent to the maximum radiation level in millirem per hour at one (1) meter (3.3 feet); or~~

~~(b) For fissile material packages, the number determined by multiplying the maximum radiation level in millisievert per hour at one (1) meter (3.3 feet) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour at one (1) meter (3.3 feet), or, for criticality control purposes, the number obtained as described in 10 C.F.R. Part 71.59, whichever is larger~~].

(314)[~~(252)~~] "Treatment" or "waste treatment" means a method, technique, or process, including storage for radioactive decay, designed to change the physical, chemical, or biological characteristics or composition of a waste in order to render the waste for transport, storage or disposal, amendable to recovery, convertible to another usable material, or reduced in volume.

(315) "Tritium neutron generator target source" means a tritium source used within a neutron generator tube to produce neutrons.

(316)[~~(253)~~] "Tube" means an x-ray tube, unless otherwise specified.

(317)[~~(254)~~] "Tube housing assembly" means the tube housing with tube installed. It includes high-voltage or filament transformers and other appropriate
elements if they are contained within the tube housing.

(318)[~~(255)~~] "Tube rating chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

(319)[~~(256)~~] "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in 10 **C.F.R.[**~~CFR~~**]** 71 Appendix A [~~902 KAR 100:070, Section 21~~], or may be determined by procedures described in 10 C.F.R. 71 Appendix A.

(320) [~~902 KAR 100:070, Section 20~~.

~~(257) "Type B package" means a Type B packaging together with its radioactive contents. On approval a Type B package design is designated by NRC as B(U) unless the package has a maximum normal operating pressure of more than 700 kPa (100 lb/in^2) gauge or a pressure relief device that would allow the release of radioactive material to the environment under the tests specified in 10 C.F.R. Part 71.73 (hypothetical accident conditions), in which case it will receive a designation B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, refer to U.S. Department of Transportation regulations in 49 C.F.R. Part 173. A Type B package approved prior to September 6, 1983, was designated only as Type B. Limitations on its use are specified in 902 KAR 100:070, Section 6.~~

~~(258)~~] "Type B packaging" means a packaging designed to retain the integrity of containment and shielding required by U.S. Nuclear Regulatory Commission regulations if subjected to the normal conditions of transport and hypothetical accident test conditions established in 10 C.F.R. Part 71.

(321)[~~(259)~~] "Type B quantity" means a quantity of radioactive material greater than a Type A quantity.

(322) "Uniform low-level radioactive waste manifest" or "uniform manifest" means the combination of NRC Forms 540, 541, and if necessary, 542, or their equivalents, and their respective continuation sheets as needed, or equivalent.

(323) “Unirradiated uranium” means uranium containing not more than $2x10^3$ Bq of plutonium per gram of uranium-235, not more than 9×10^6 Bq of fission products per gram of uranium-235, and not more than 5×10^{-3} gram of uranium-236 per gram of uranium-235.

(324)[~~(260)~~] "U.S. Department of Energy" means the Department of Energy established by 42 U.S.C. 7101 et seq., to the extent that the department exercises functions formerly vested in the U.S. Atomic Energy Commission, its chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof and retransferred to the Secretary of Energy in 42 U.S.C. 7151, effective October 1, 1977.

(325)[~~(261)~~] "Unrefined and unprocessed ore" means ore in its natural form prior to processing, such as grinding, roasting, beneficiating, or refining.

(326)[~~(262)~~] "Unrestricted area" means an area access to which is not controlled or limited by the licensee or registrant for purposes of protection of individuals from exposure to radiation and radioactive material.

(327)[~~(263)~~] "Uranium - natural, depleted, enriched" means:

(a) "Natural uranium" means uranium with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238);

(b) "Depleted uranium" means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes;

(c) "Enriched uranium" means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

(328)[~~(264)~~] "Uranium fuel cycle" means the operations of milling of uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity by a light-water-cooled nuclear power plant using uranium fuel, and reprocessing of spent uranium fuel to the extent that these activities directly support the production of electrical power for public use. Uranium fuel cycle shall not include mining operations, operations at waste disposal sites, transportation of radioactive material in support of these operations, and the reuse of recovered nonuranium special nuclear and byproduct materials from the cycle.

(329)[~~(265)~~] "Useful beam" means the radiation **that[**~~which~~**]** passes through the tube housing port and the aperture of the beam limiting device if the exposure switch or timer is activated.

(330)[~~(266)~~] "User" means an individual who personally utilizes or manipulates a source of radiation.

(331) “User seal check**" or "fit check[**~~(fit check)~~**]**” means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include
negative pressure check, positive pressure check, irritant smoke check, or isoamylacetate check.

(332)[~~(267)~~] "Variable-aperture beam limiting device" means a beam limiting device **that[**~~which~~**]** has capacity for stepless adjustment of the x-ray field size at a given SID.

(333)[~~(268)~~] "Vendor" means a person who sells radiation producing machines or accelerators registerable with the cabinet as specified by 902 KAR 100:110.

(334)[~~(269)~~] "Vendor registrant" means a vendor who is registered with the cabinet.

(335)[~~(270)~~] "Vendor registration" means registration of a vendor with the cabinet described by 902 KAR 100:110.

(336)[~~(271)~~] "Very high radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body may result in an individual receiving an absorbed dose in excess of 500 rads (five (5) grays) in one (1)
hour at one (1) meter from a radiation source or one (1) meter from a surface that the radiation penetrates.

(337) “Virtual source” means a point from which radiation appears to originate.

(338) [~~At very high doses received at high dose rates, units of absorbed
dose (such as rads and grays) are appropriate, rather than units of dose equivalent (such as rems and sieverts).~~

~~(272)~~] "Visible area" means that portion of the input surface of the image receptor over which incident x-ray photons are producing a visible image.

(339)[~~(273)~~] "Visiting authorized nuclear pharmacist" means a nuclear pharmacist who is not identified on the license of the licensee being visited.

(340)[~~(274)~~] "Visiting authorized user" means an authorized user who is not identified on the license of the licensee being visited.

(341)[~~(275)~~] "Waste". See "low-level radioactive waste".

(342) “Waste collector” means an entity, operating under the cabinet, U.S. Nuclear Regulatory Commission or agreement state license whose principal purpose is to collect and consolidate low level waste generated by others**[**~~,~~**]** and to transfer this waste, without processing or repackaging the collected waste, to another licensed waste collector, licensed waste processor, or licensed land disposal facility.

(343) “Waste description” means the physical, chemical**,** and radiological description of a low-level radioactive waste as called for on NRC Form 541.

(344) “Waste generator” means an entity, operating under the cabinet, U.S. Nuclear Regulatory Commission, or agreement state license, who:

(a) Possesses any material or component that contains radioactivity or is
radioactively contaminated for which the licensee foresees no further use; and

(b) Transfers this material or component to a licensed land disposal facility or to a licensed waste collector or processor for handling or treatment prior to disposal. A licensee performing processing or decontamination services may be waste generator if the transfer of low-level radioactive waste from its facility is defined as “residual waste”.

(345) “Waste processor” means an entity, operating under a cabinet, U.S. Regulatory Commission or agreement state license, whose principal purpose is to process, repackage, or treat low-level radioactive material or waste generated by others prior to eventual transfer of waste to a licensed low-level radioactive waste land disposal facility.

(346) “Waste type” means a waste within a disposal container having a unique physical description, such as a specific waste descriptor code or description, or a waste sorbed on or solidified in a specifically defined media.

(347)[~~(276)~~] "Wedge filter" means an added filter effecting continuous progressive attenuation on the useful beam or a part thereof.

(348)[~~(277)~~] "Week" means seven (7) consecutive days starting on Sunday.

(349)[~~(278)~~] "Weighting factor (W_T)", for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects if the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of (W_T) are:

Organ Dose Weighting Factors	
Organ or tissue	W_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	[1]0.30
Whole Body	[2]1.00

[1]0.30 results from 0.06 for each of five (5) "remainder" organs (excluding the skin and the lens of the eye) that receive the highest doses.

[2]For the purpose of weighting the external whole body dose (for adding it to the internal dose), a single weighting factor, W_T=1.0, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis**, pursuant to 10 C.F.R. Part 20,** until a time as specific guidance is issued.

(350)[~~(279)~~] "Well-bore" means a drilled hole in which wire line

service operations and subsurface tracer studies are performed.

(351)[(280)] "Well-logging" means the lowering and raising of measuring devices or tools which may contain sources of radiation in well-bores or cavities for the purpose of obtaining information about the well or adjacent formations.

(352)[(281)] "Whole body" means, for purposes of external exposure, head, trunk (including male gonads), arms above the elbow, or legs above the knee.

(353)[(282)] "Wire line" means a cable containing one (1) or more electrical conductors which is used to lower and raise logging tools in the well-bore.

(354)[(283)] "Wire line service operation" means an evaluation or mechanical service which is performed in the well-bore using devices on a wire line.

(355)[(284)] "Worker" means an individual engaged in activities licensed or registered by the cabinet and controlled by a licensee or registrant, but does not include the licensee or registrant.

(356)[(285)] "Working level" or "WL" means a combination of short-lived radon daughters (for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212) in one (1) liter of air that results in the ultimate emission of $1.3x10^5$MeV of potential alpha particle energy.

(357)[(286)] "Working level month" or "WLM" means an exposure to one (1) working level for 170 hours (2,000 working hours per year/twelve (12) months per year = approximately 170 hours per month).

(358)[(287)] "Written directive" means an order in writing for a specific patient or human research subject, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation, except as specified in paragraph (f) of this subsection, and containing the following information:

(a) For an administration of quantities greater than thirty (30) microcuries of sodium iodide I-125 or I-131: the dosage;

(b) For a therapeutic administration of a radiopharmaceutical other than sodium iodide I-125 or I-131: the radiopharmaceutical, dosage, and route of administration;

(c) For gamma stereotactic radiosurgery: target coordinates, collimator size, plug pattern, and total dose;

(d) For teletherapy: the total dose, dose per fraction, treatment site, and overall treatment period;

(e) For high-dose-rate remote afterloading brachytherapy: the radioisotope, treatment site, and total dose; or

(f) For all other brachytherapy:

1. Prior to implementation: the radioisotope, number of sources, and source strengths; and

2. After implantation, but prior to completion of the procedure: the radioisotope, treatment site, and total source strength and exposure time (or, equivalently, the total dose).

(359)[(288)] "X-ray control" means a device which controls input power to the x-ray high-voltage generator or the x-ray tube. It includes timers, phototimers, automatic brightness stabilizers, and similar devices which control the technique factors of an x-ray exposure.

(360)[(289)] "X-ray equipment" means an x-ray system, subsystem, or component thereof. X-ray equipment is further classified as:

(a) "Mobile" means x-ray equipment mounted on a permanent base with wheels or casters for moving while completely assembled.

(b) "Portable" means x-ray equipment designed to be hand-carried.

(c) "Stationary" means x-ray equipment which is installed in a fixed location.

(d) "Transportable" means x-ray equipment installed in a vehicle or trailer.

(361)[(290)] "X-ray field" means that area of the intersection of the useful beam and one (1) of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth (1/4) of the maximum in the intersection.

(362)[(291)] "X-ray high-voltage generator" means a device **that[**~~which~~**]** transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tube, high-voltage switches, electrical protective devices, and other appropriate elements.

(363)[(292)] "X-ray subsystem" means a combination of two (2) or more components of an x-ray system.

(364)[(293)] "X-ray system" means an assemblage of components for the controlled production of x-rays. It includes an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and necessary supporting structures. Additional components **that[**~~which~~**]** function with the system are considered integral parts of the system.

(365)[(294)] "X-ray tube" means an electron tube designed to be used primarily for the production of x-rays.

(366)[(295)] "Year" means the period of time, beginning in January, used to determine compliance with the provisions of 902 KAR Chapter 100. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant if:

(a) The change is made at the beginning of the year; and

(b) A day is not omitted or duplicated in consecutive years.

WILLIAM D. HACKER, MD FAAP, CPE
JANIE MILLER, Secretary

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, April 12, 2011)

902 KAR 100:021. Disposal of radioactive material.

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. 20.2001-.2007, Appendix G-20.2001-.2401, 61[~~.80(1)~~]

STATUTORY AUTHORITY: KRS 13B.170, 194A.050(1), 211.090(3), 211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of a source of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides waste disposal limitations for radioactive material**[,]** and shall apply to a person disposing of radioactive material or waste. [~~This administrative regulation shall not establish standards governing naturally occurring radioactive material (NORM) and waste.~~]

Section 1. General Requirements. (1) A person or licensee shall dispose of radioactive material or waste only:

By transfer to an authorized recipient as provided in 902 KAR 100:040, Section 12 [~~13~~], or 902 KAR 100:022;

(b) By decay in storage;

(c) By release in an effluent within the limits in 902 KAR 100:019, Section 10; or

(d) As authorized by Sections 2, 3, 4, or 5 of this administrative regulation.

(2) A person shall be specifically licensed to receive waste containing radioactive material or waste from other persons for:

(a) Treatment prior to disposal;

(b) Treatment or disposal by incineration;

(c) Decay in storage; or

(d) Disposal at a land disposal facility licensed under 902 KAR 100:022.

Section 2. Method for Obtaining Approval of Proposed Disposal Procedures. A person, licensee, or applicant for a license may apply to the cabinet for approval of a proposed procedure, not authorized in 902 KAR 100:019 [~~100:020~~], 100:021, 100:022,

100:050, **or[**~~and~~**]** 100:072 [~~100:073~~], to dispose of radioactive material or waste generated by their activity. An application shall include:

(1) A description of the waste containing radioactive material to be disposed of, including the:

(a) Physical and chemical properties important to risk evaluation; and

(b) Proposed manner and conditions of waste disposal;

(2) An analysis and evaluation of pertinent information on the nature of the environment;

(3) The nature and location of other potentially affected licensed and unlicensed facilities; and

(4) An analysis and a procedure to ensure doses **shall be[**~~are~~**]** maintained ALARA and within the dose limits in 902 KAR 100:019, Sections 3, 8, 9, and 10.

Section 3. Disposal by Release into Sanitary Sewerage. (1) A person or licensee may discharge licensed material into sanitary sewerage under the following conditions:

(a) The material shall be readily soluble**[,]** or shall be readily dispersible biological material, in water;

(b) The quantity of licensed or other radioactive material that the licensee released into the sewer in one (1) month, divided by the average monthly volume of water released into the sewer by the licensee, shall not exceed the concentration in 10 **C.F.R. 20,[**~~CFR 20~~**]** Appendix B [~~902 KAR 100:019, Section 44, Table III~~];

(c) For the release of more than one (1) radionuclide, the following conditions shall be satisfied:

1. The licensee shall determine the fraction of the limit in 10 **C.F.R. 20,[**~~CFR 20~~**]** Appendix B [~~902 KAR 100:019, Section 44, Table III~~], represented by discharges into the sanitary sewerage by dividing the actual monthly average concentration of each radionuclide released by the licensee into the sewer by the concentration of that radionuclide in 10 **C.F.R. 20,[**~~CFR 20~~**]** Appendix B [~~902 KAR 100:019, Section 44, Table III~~]; and

2. The sum of the fractions for each radionuclide required by subsection (1)(c)1 of this section shall not exceed unity; and

(d) The total quantity of licensed and other radioactive material that the licensee releases into the sewerage system in a year shall not exceed five (5) curies (185 GBq) of hydrogen-3, one (1) curie (37 GBq) of carbon-14, and one (1) curie of other radioactive materials combined.

(2) Excreta from an individual undergoing medical diagnosis or therapy with radioactive material shall not be subject to the limitations contained in subsection (1) of this section.

Section 4. Treatment or Disposal by Incineration. A licensee may treat or dispose of licensed material by incineration only:

(1) In the amounts and forms specified in Section 5 of this administrative regulation; or

(2) As specifically approved by the cabinet **in accordance with[**~~and authorized by~~**]** Section 2 of this administrative regulation.

Section 5. Disposal of Specific Wastes. (1) A person or licensee may dispose of the following radioactive material without regard to its radioactivity:

(a) 0.05 microcurie or less of hydrogen-3, or tritium, carbon-14, or iodine-125 per gram of medium used for liquid scintillation counting or in vitro clinical or in vivo laboratory testing; and

(b) 0.05 microcurie (1.85 kBq) or less of hydrogen-3, carbon-14, or iodine-125 per gram of animal tissue averaged over the weight of the entire animal.

(2) A licensee shall not dispose of tissue pursuant to subsection (1)(b) of this section in a manner that may permit its use as food for a human or as animal feed.

(3) A licensee shall maintain records required by Section 11 of this administrative regulation.

(4) A licensee shall comply with other applicable federal, state, and local regulations governing other toxic or hazardous properties of these materials.

Section 6. Classification of Radioactive Waste for Near-Surface Disposal. (1) Considerations. Determination of the classification of waste shall be given the following considerations:

(a)1. The concentration of long-lived radionuclides, and their shorter-lived

precursors, whose potential hazard shall persist long after a precaution such as an institutional control, improved waste form, and deeper disposal have ceased to be effective.

2. The precaution delays the time long-lived radionuclides may cause an exposure.

3. The magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure; and

(b) The concentration of a shorter-lived radionuclide for which a requirement on an institutional control, waste form, and disposal methods are effective.

(2) Classes of waste.

(a)1. Class A waste shall be segregated from other waste classes at the disposal site, except for waste described at subparagraph 2 of this paragraph.

2. The physical form and characteristics of Class A waste shall meet the minimum requirements in Section 7 of this administrative regulation.

3. If Class A waste also meets the stability requirements in Section 7(2) of this administrative regulation, it shall not be necessary to segregate Class A waste for disposal.

(b)1. Class B waste shall meet more rigorous requirements on waste form to ensure stability after disposal.

2. The physical form and characteristics of Class B waste shall meet both the minimum and stability requirements in Section 7 of this administrative regulation.

(c)1. Class C waste shall meet more rigorous requirements on waste form to ensure stability and shall require additional measures at the disposal facility to protect against inadvertent intrusion.

2. The physical form and characteristics of Class C waste shall meet both the minimum and stability requirements in Section 7 of this administrative regulation.

(3) Classification determined by long-lived radionuclides. If the waste contains only a radionuclide in Table 1 of this subsection, classification shall be determined as follows:

(a) If the concentration does not exceed one-tenth (0.1) times the value in Table 1, the waste shall be Class A.

(b) If the concentration exceeds one-tenth (0.1) times the value, but does not exceed the value in Table 1, the waste shall be Class C.

(c) If the concentration exceeds the value in Table 1, **as established in 10 C.F.R. 61.55,** the waste shall not generally be acceptable for near-surface disposal.

(d) For waste containing a mixture of radionuclides in Table 1, the total concentration shall be determined by the sum of fractions rule described in subsection (7) of this section.

TABLE 1

Radionuclide	Concentration curies/cubic meter
C-14	8
C-14 in activated metal	80
Ni-59 in activated metal	220
Nb-94 in activated metal	0.2
Tc-99	3
I-129	0.08
Alpha emitting transuranic radionuclides with half-life greater than five (5) years	100*
Pu-241	3500*
Cm-242	20000*
Ra-226	100*

*Units are nanocuries per gram.

(4) Classification determined by short-lived radionuclides.

1. If the waste contains none of the radionuclides in Table 1 of subsection (3) of this section, classification shall be determined based on the concentrations shown in Table 2 of this subsection.

2. If a radionuclide is not in Table 2, it shall not be considered in determining the waste class.

(a) If the concentration does not exceed the value in Column 1, the waste shall be Class A.

(b) If the concentration exceeds the value in Column 1, but does not exceed the value in Column 2, the waste shall be Class B.

(c) If the concentration exceeds the value in Column 2, but does not exceed the value in Column 3, the waste shall be Class C.

(d) If the concentration exceeds the value in Column 3, **as established in 10 C.F.R. 61.55,** the waste shall not generally be acceptable for near-surface disposal.

(e) For waste containing a mixture of the radionuclides in Table 2, the total concentration shall be determined by the sum of fractions rule described in subsection (7) of this section.

TABLE 2

Radionuclide	Concentration, curies/cubic meter		
	Column 1	Column 2	Column 3
Total of all radionuclides with less than five (5) year half-life	700	*	*
H-3	40	*	*
Co-60	700	*	*
Ni-63	3.5	70	700
Ni-63 in activated metal	35	700	7000
Sr-90	0.04	150	7000
Cs-137	1	44	4600

* Limits have not been established for a radionuclide in Class B or C waste. Practical considerations, such as the effects of external radiation and internal heat generation on transportation, handling, and disposal, limit the concentrations for these wastes. This waste shall be Class B unless the concentrations of other radionuclides in Table 2 determine the waste to be Class C independent of these radionuclides.

(5) Classification determined by both long-lived and short-lived radionuclides.

(a) If the waste contains a mixture of radionuclides, some in Table 1 of this section, and some in Table 2 of this section, classification shall be determined as follows:

(b) If the concentration of a radionuclide in Table 1 does not exceed one-tenth (0.1) times the value in Table 1, the class shall be determined by the concentration of a radionuclide in Table 2.

(c) If the concentration of a radionuclide in Table 1 exceeds one-tenth (0.1) times the value, but does not exceed the value in Table 1, the waste shall be Class C, if the concentration of a radionuclide in Table 2 does not exceed the value shown in Column 3 of Table 2.

(6) Classification of waste with a radionuclide other than those in Tables 1 and 2. If the waste contains none of the radionuclides in Table 1 or 2 of this section, the waste shall be Class A.

(7) The sum of fractions rule for mixtures of radionuclides. The following shall be considered in determining classification for waste that contains a mixture of radionuclides:

(a) The sum of fractions shall be determined by dividing each radionuclide concentration by the appropriate limit and adding the resulting values.

(b) The appropriate limit shall be taken from the same column of the same table.

(c) The sum of the fractions for the column shall be less than one (1.0) if the waste class is determined by that column.

(d) Example: A waste contains Sr-90 in a concentration of fifty (50) curies/cubic meter and Cs-137 in a concentration of twenty-two (22) curies/cubic meter. **Because[**~~Since~~**]** the concentrations both exceed the values in Column 1, Table 2, they shall be compared to Column 2 values. For Sr-90 fraction, 50/150 = 0.33; for Cs-137 fraction, 22/44 = 0.5; the sum of the fractions = 0.83. **Because[**~~Since~~**]** the sum is less than one (1.0), the waste shall be Class B.

(8) Determination of concentrations in waste.

(a) If there is reasonable assurance that an indirect method may be correlated with an actual measurement, the concentration of a radionuclide may be determined by an indirect method, such as use of a scaling factor**,** which relates the inferred concentration of one (1) radionuclide to another that is measured or radionuclide material accountability.

(b) If the units are expressed as nanocuries per gram, the concentration of a radionuclide may be averaged over the volume or weight of the waste.

Section 7. Radioactive Waste Characteristics. (1) The following minimum requirements for each class of waste**[**~~are intended to~~**]** facilitate handling and provide protection of health and safety of personnel at the disposal site:

(a) Waste shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste shall be shipped. If the conditions of the site license are more restrictive than the provisions of this administrative regulation, the site license conditions shall govern.

(b) Waste shall not be packaged for disposal in a cardboard or fiberboard box.

(c) Liquid waste shall be solidified or packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(d) Solid waste containing liquid shall contain as little freestanding and noncorrosive liquid as is reasonably achievable. The liquid shall not exceed one (1) percent of the volume.

(e) Waste shall not be readily capable of:

1. Detonation;

2. Explosive decomposition or reaction at normal pressures and temperatures; or

3. Explosive reaction with water.

(f) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to a person transporting, handling, or disposing of the waste. This shall not apply to radioactive gaseous waste packaged in accordance with paragraph (h) of this subsection.

(g) Waste shall not be pyrophoric. Pyrophoric material contained in waste shall be treated, prepared, and packaged to be nonflammable.

(h) Waste in a gaseous form shall be packaged at a pressure that shall not exceed one and five-tenths (1.5) atmospheres at twenty (20) degrees Centigrade. Total activity shall not exceed 100 curies per container.

(i) Waste containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce to the maximum extent practicable the potential hazard from the nonradiological material.

(2) Stability shall ensure that the waste shall not structurally degrade and affect overall stability of the site through slumping, collapse, or other failure of the disposal unit and lead to water infiltration. Stability shall also be a factor in limiting exposure to an inadvertent intruder, since it provides a recognizable and nondispersible waste. The following requirements shall provide stability of the waste:

(a) Waste shall have structural stability.

1. A structurally-stable waste form shall maintain its physical dimension and its form under expected disposal conditions, such as:

a. Weight of overburden and compaction equipment;

b. Presence of moisture and microbial activity; and

c. Internal factors such as radiation effects and chemical changes.

2. Structural stability may be provided by:

a. The waste form itself;

b. Processing the waste to a stable form; or

c. Placing the waste in a disposal container or structure that provides stability after disposal.

(b) Unless otherwise exempted in subsection (1)(c) and (d) of this section, liquid waste**[**~~,~~**]** or waste containing liquid**[**~~,~~**]** shall be converted into a form that contains as little free standing and noncorrosive liquid as is reasonably achievable. The liquid shall not exceed one (1) percent of the volume of the waste if the waste is in a disposal container designed to ensure stability, or five-tenths (0.5) percent of the volume of the waste for waste processed to a stable form.

(c) Void spaces within and between the waste and its package shall be eliminated.

Section 8. Labeling. Each package of waste shall be clearly labeled to identify if it is Class A, Class B, or Class C waste, in

accordance with Section 6 of this administrative regulation.

Section 9. Transfer for Disposal and Manifests. (1) The requirements of this section and Section 10 of this administrative regulation shall:

(a) Control transfers of low-level radioactive waste by any waste generator, waste collector, or waste processor licensee, as defined in 902 KAR 100:010, who ships low-level waste either directly or indirectly through a waste collector or waste processor, to a licensed low-level waste [~~intended for disposal at a~~] land disposal facility as established in 902 KAR 100:022;

(b) Establish a manifest tracking system; and

(c) Supplement existing requirements concerning transfers and recordkeeping for the wastes being transferred.

(2) Any licensee shipping radioactive material [~~A shipment of radioactive waste~~] intended for ultimate disposal at a licensed land disposal facility shall document the information required on U.S. Nuclear Regulatory Commission's Uniform Low-Level Radioactive Waste Manifest, or its equivalent, and transfer this recorded manifest information to the intended consignee in accordance with [~~be accompanied by a shipment manifest as specified in~~] Section 10[~~(1)~~] of this administrative regulation.

(3) The shipment manifest shall include a certification by the waste generator as specified in Section 10(12) of this administrative regulation.

(4) A person involved in the transfer for disposal and disposal of waste, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in Section 10(13) of this administrative regulation.

Section 10. Requirements for Low-level Waste Transfers Intended for Disposal at Land Disposal Facilities and Manifests. (1) A waste generator, collector, or processor who transports, or offers for transportation, low-level radioactive waste intended for ultimate disposal at a licensed low-level radioactive waste land disposal facility shall prepare a manifest reflecting information requested on the following applicable forms, or their equivalent:

(a) NRC Form 540, Uniform Low-Level Radioactive Waste Manifest, Shipping Paper;

(b) NRC Form 541, Uniform Low-Level Radioactive Waste Manifest, Container and Waste Description; and

(c) If necessary, NRC Form 542, Uniform Low-Level Radioactive Waste Manifest, Manifest Index and Regional Compact Tabulation.

(2) NRC Forms 540 and 540A shall be completed and shall physically accompany the pertinent low-level waste shipment.

(3) Upon agreement between shipper and consignee, NRC Forms 541, 541A, 542 and 542A may be completed, transmitted, and stored in electronic media with the capability for producing legible, accurate, and complete records on the respective forms.

(4) A licensee shall not be required by the cabinet to comply with the manifesting requirements of this section, if they ship:

(a) LLW for processing and expect its return for storage as prescribed by their license, prior to disposal at a licensed land disposal facility;

(b) LLW that is being returned to the licensee who is the waste generator or generator, as defined in 902 KAR 100:010; or

(c) Radioactive contaminated [~~radioactive~~] material to a waste processor that
becomes the processor's residual waste.

(5) For guidance in completing a form, refer to instructions that accompany the form.

(6) A copy of a manifest required by this section may be legible carbon copies, photocopies, or computer printouts that reproduce the data in the format of the uniform manifest.

(7) Information on hazardous, medical, or other waste, required to meet U.S. Environmental Protection Agency regulations, for example, 40 **C.F.R.[**~~CFR~~**]** Parts 259 and 261, is not addressed in this section, and shall be provided on the required EPA form. The required EPA form shall accompany the Uniform Low-Level Radioactive Waste Manifest required by this section.

(8) The shipper of the radioactive waste, shall provide the following information on the uniform manifest:

(a) The name, facility address, and telephone number of the licensee shipping the waste;

(b) An explicit declaration indicating whether the shipper shall be acting as a waste generator, collector, processor, or a combination of these identifiers for purposes of the manifested shipment; and

(c) The name, address, and telephone number, or the name and U.S. Environmental Protection Agency hazardous identification number, for the carrier transporting the waste.

(d) The shipper of the radioactive waste shall provide, on the uniform manifest, the following information:

1. The date of the waste shipment;

2. The total number of packages or disposal containers;

3. The total disposal volume and disposal weight in the shipment;

4. The total radionuclide activity in the shipment;

5. The activity of each of the radionuclides, hydrogen-3, carbon-14, technetium-99, and iodine-129 contained in the shipment;

6. The total masses of uranium-233, uranium-235, and plutonium in special nuclear material; and

7. The total mass of uranium and thorium in source material.

(9) The shipper of the radioactive waste shall provide the following information on the uniform manifest regarding the waste and disposal container of waste in the shipment:

(a) An alphabetic or numeric identification that uniquely identifies each disposal container in the shipment;

(b) A physical description of the disposal container, including the manufacturer and model of a high integrity container;

(c) The volume displaced by the disposal container;

(d) The gross weight of the disposal container, including the waste;

(e) For waste consigned to a disposal facility, the maximum radiation level at the surface of each disposal container;

(f) A physical and chemical description of the waste;

(g) The total weight percentage of a chelating agent for waste containing more than one-tenth (0.1) percent of a chelating agent by weight, and the identity of the
principal chelating agent;

(h) The approximate volume of waste within a container;

(i) The sorbing or solidification media, if present, and the identity of the
solidification media vendor and brand name;

(j)1. The identity and activity of a radionuclide contained in each container;

2. The masses of uranium-233, uranium-235, and plutonium in special nuclear material;

3. The masses of uranium and thorium in source material; and

4. The identity and activity of each radionuclide associated with, or contained in, discrete waste types within a disposal container, such as:

a. Activated materials;

b. Contaminated equipment;

c. Mechanical filters; [~~,~~]

d. Sealed sources or devices; and

e. Wastes in solidification or stabilization media;

(k) The total radioactivity within each container;

(l) The classification of the waste in accordance with Section 6 of this administrative regulation, for wastes cosigned to a disposal facility; and

(m) Identification of waste not meeting the structural stability requirements of Section 7(2) of this administrative regulation.

(10) The shipper of the radioactive waste shall provide the following information on the uniform manifest regarding a waste shipment delivered without a disposal container:

(a) The approximate volume and weight of the waste;

(b) A physical and chemical description of the waste;

(c) The total weight percentage of a chelating agent if the chelating agent exceeds one-tenth (0.1) percent by weight, and the identity of the principal chelating agent;

(d) The classification of the waste in accordance with Section 6 of this
administrative regulation for waste cosigned to a disposal facility;

(e) Identification of waste not meeting the structural stability

requirements of Section 7(2) of this administrative regulation;

(f)1. The identity and activity of a radionuclide contained in the waste;

2. The masses of uranium-233, uranium-235, and plutonium in special nuclear material;

3. The masses of uranium and thorium in source material; and

(g) For a waste cosigned to a disposal facility, the maximum radiation level at the surface of the waste.

(11)(a) The origin of the LLW resulting from activities of a processor may be attributable to one (1) or more generators, including a waste generator. The requirements in this subsection apply to:

1. A disposal container enclosing a mixture of waste originating from different generators; and

2. A mixture of waste shipped in a form without a disposal container, for which portions of the mixture within the shipment originate from different generators.

(b) For a homogeneous mixture of a waste, such as incinerator ash, provide the:

1. Waste description applicable to the mixture; and

2. Volume of the waste attributed to each generator;

(c) For a heterogeneous mixture of a waste such as:

1. The combined products from a large compactor, identify each generator contributing waste to the disposal container; and

2. A discrete waste type, for example, activated materials, contaminated
equipment, mechanical filters, sealed sources or devices, and wastes in solidification or stabilization media, the identity and activity of individual radionuclides contained on the waste type within the disposal container;

(d) For a generator, the following information shall be provided:

1. The volume of waste within the disposal container;

2. A physical and chemical description of the waste, including, if present, the solidification agent;

3. The total weight percentage of a chelating agent for a disposal container containing more than one-tenth (0.1) percent of a chelating agent by weight, plus the identity of the principal chelating agent;

4. The sorbing or solidification media, if present, and the identity of the solidification media vendor and brand name if the media is claimed to meet stability requirements in Section 7(2) of this administrative regulation; and

5.a. Radionuclide identity and activity contained in the waste;

b. The mass of uranium-233, uranium-235, and plutonium in special nuclear material; and

c. The mass of uranium and thorium in source material if contained in the waste.

(12)(a) An authorized representative of the waste generator, processor, or collector shall certify, by signing and dating the shipment manifest, that the transported materials are:

1. Properly classified;

2. Described;

3. Packaged;

4. Marked;

5. Labeled; and

6. In proper condition for transportation according to **10 C.F.R. 20, Appendix G to Part 20, and the NRC**[~~the applicable administrative regulations of the Department of Transportation and 902 KAR 100:070~~]; and

(b) A collector in signing the certification shall certify that nothing has been done to the collected waste which would invalidate the waste generator's certification.

(13) A licensee who transfers waste to a licensed waste processor for waste treatment or repackaging shall comply with the requirements of paragraphs (d) through (l) of this subsection. A licensee who transfers waste to a land disposal facility or a licensed waste collector shall:

(a) Prepare waste to meet a classification in Section 6 of this administrative regulation and the waste characteristics requirements in Section 7 of this administrative regulation;

(b) Label each disposal container, or transport container if potential radiation hazards preclude labeling of the individual disposal container, of waste to identify if the waste is Class A, Class B, Class C, or greater than Class C waste, in accordance with Section 6 of this administrative regulation;

(c) Conduct a quality assurance program including, management evaluation of audits to assure compliance with Sections 6 and 7 of this administrative regulation.

(d) Prepare the NRC Uniform Low-Level Radioactive Waste Manifest as required
by this subsection;

(e) Forward a copy or electronically transfer the Uniform Low-Level Radioactive Waste Manifest to the intended consignee so that:

1. Receipt of the manifest precedes the LLW shipment;

2. The manifest and the waste are delivered to the consignee at the same time; or

3. Both methods of manifest delivery described in subparagraphs 1 and 2 of this paragraph are used.

(f) Include NRC Form 540 and Form 540A, if required, with the shipment, regardless of the option chosen in paragraph (e) of this subsection;

(g) Receive acknowledgment of the receipt of the shipment in the form of a signed copy of NRC Form 540;

(h) Retain a copy of or electronically store the Uniform Low-Level Radioactive Waste Manifest and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by 902 KAR 100:040; and

(i) For a shipment, or parts of a shipment, for which acknowledgment of receipt has not been received within the times established in this section, conduct an investigation in accordance with subsection (17) of this section.

(14) A waste collector licensee who handles only prepackaged waste shall:

(a) Acknowledge receipt of the waste from the generator within one (1) week of receipt by returning a signed copy of NRC Form 540;

(b) Prepare a new manifest to reflect consolidated shipments that meet the requirements of this section, including identification of the generator of each container of
waste in the shipment;

(c) Forward a copy or electronically transfer the Uniform Low-Level Radioactive Waste Manifest to the intended consignee so that either:

1. Receipt of the manifest precedes the LLW shipment; or

2. The manifest and the waste are delivered to the consignee at the same time; or

3. Both methods of manifest delivery described in subparagraphs 1 and 2 of this paragraph are used**;**[~~.~~]

(d) Include NRC Form 540 and Form 540A, if required, with the shipment regardless of the option chosen in paragraph (c) of this subsection;

(e) Receive acknowledgement of the receipt of the shipment in the form of a signed copy of NRC Form 540;

(f) Retain a copy of or electronically store the Uniform Low-Level Radioactive Waste Manifest and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by 902 KAR 100:040;

(g) For a shipment, or parts of a shipment, for which acknowledgment of receipt is not received within the time established in this section, conduct an investigation in accordance with subsection (17) of this section;

(h) Notify the shipper and the cabinet if a shipment, or part of a shipment, has not arrived within sixty (60) days after receipt of an advance manifest, unless notified by the shipper that the shipment has been cancelled.

(15) A licensed waste processor who treats or repackages waste shall:

(a) Acknowledge receipt of the waste from the shipper within one (1) week of receipt by returning a signed copy of the manifest or equivalent documentation;

(b) Prepare a new manifest that meets the requirements of this subsection:

1. Preparation of the new manifest shall reflect that the processor shall be responsible for meeting these requirements; and

2. For each container of waste in the shipment, the manifest shall identify the
waste generators, the preprocessed waste volume, and other information required by subsection (11) of this section;

(c) Prepare waste to meet a classification in Section 6 of this administrative regulation and the waste characteristics requirement in Section 7 of this administrative regulation;

(d) Label each package of waste to identify the waste as Class A, Class B, or Class C, in accordance with Sections 6 and 8 of this administrative regulation;

(e) Conduct a quality control program to assure compliance with Sections 6 and 7 of this administrative regulation, including management evaluation of audits;

(f) Forward a copy or electronically transfer the Uniform Low-Level Radioactive Waste Manifest to the intended consignee so that:

1. Receipt of the manifest precedes the LLW shipment;

2. The manifest and the waste are delivered to the consignee at the same time; or

3. Both methods of manifest delivery described in subparagraphs 1 and 2 of this paragraph are used**;[**~~.~~**]**

(g) Include NRC Form 540 and 540A, if required with the shipment regardless of the option chosen in subsection (15)(f) of this section;

(h) Retain a copy of or electronically store the Uniform Low-Level Radioactive Waste Manifest and documentation of acknowledgment of receipt as the record of
transfer of licensed material required by 902 KAR 100:040;

(i) Receive acknowledgment of the receipt of the shipment in the form of a signed copy of NRC Form 540;

(j) For a shipment or part of a shipment for which acknowledgment of receipt is not
received within the time established in this section, conduct an investigation in accordance with subsection (17) of this section; and

(k) Notify the shipper and the cabinet when a shipment, or part of a shipment, has not arrived within sixty (60) days after receipt of an advance manifest, unless notified by the shipper that the shipment has been cancelled.

(16) The land disposal facility operator shall:

(a) Acknowledge receipt of the waste within one (1) week of receipt by returning a signed copy of the manifest or equivalent documentation to the licensee that last possessed the waste and transferred the waste to the operator. If the returned copy of the manifest or equivalent documentation indicates discrepancies between materials on the manifest and materials received, copies or electronic transfer of the affected forms shall be returned indicating the discrepancy;

(b) Maintain copies of completed manifests, or equivalent documentation, and electronically store the information required by 10 **C.F.R.[**~~CFR~~**]** 61.80(l) until the cabinet terminates the license; and

(c) Notify the shipper, generator, collector, or processor and the cabinet if a shipment, or part of a shipment, has not arrived within sixty (60) days after the advance manifest was received, unless notified by the shipper that the shipment has been cancelled.

(17)(a) The shipper shall investigate a shipment or part of a shipment for which
acknowledgment is not received within the time established in this section, if the shipper has not received notification of receipt within twenty (20) days after transfer.

(b) The investigation shall include tracing the shipment and filing a report with the
cabinet.

(c) A licensee who conducts a trace investigation shall file a written report with the cabinet within two (2) weeks of completion of the investigation.

Section 11. Records. (1) A licensee shall maintain a record in the same units used in this administrative regulation.

(2) A record of disposal of licensed material required by this administrative regulation shall be maintained until the cabinet authorizes disposition, or in accordance with 902 KAR 100:072, Section 29 [~~902 KAR 100:073, Section 28~~].

(3) A licensee shall maintain a record of the disposal of licensed materials required by 902 KAR 100:022 and Sections 2, 3, 4, and 5 of this administrative regulation, and disposal by burial in soil, including burials authorized before January 28, 1981.

(4) A licensee shall retain the records required in subsection (3) of this section until the cabinet terminates each pertinent license requiring the record.

Section 12. Annual Report of Waste Generated. (1) A licensee issued a specific license, pursuant to 902 KAR 100:040, shall file an annual report with the cabinet containing information regarding low-level radioactive waste associated with activities authorized by the license. The report shall be filed if the licensee was, or was not, a waste generator during the reporting period.

(2) The report shall contain information regarding the waste for a period of one (1)
calendar year and shall be filed no later than January 15 of the following year.

(3) The report shall be filed on a Low-Level Radioactive Waste (LLW) Report Form provided by the cabinet and shall contain types and amounts of generated waste and
estimates of future wastes to be generated.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) NRC Form 540, "Uniform Low-Level Radioactive Waste Manifest, Shipping Paper", **7/2007[**~~7/2001~~**]**;

(b) NRC Form 540A, "Uniform Low-Level Radioactive Waste Manifest", **7/2007[**~~3/1995~~**]**;

(c) NRC Form 541, "Uniform Low-Level Radioactive Waste Manifest, Container and Waste Description", **7/2007[**~~7/2001~~**]**;

(d) NRC Form 541A, "Uniform Low-Level Radioactive Waste Manifest", **7/2007[**~~3/1995~~**]**;

(e) NRC Form 542, "Uniform Low-Level Radioactive Waste Manifest, Manifest Index and Regional Compact Tabulation", **8/2010[**~~7/2001~~**]**;

(f) NRC Form 542A, "Uniform Low-Level Radioactive Waste Manifest, Manifest Index and Regional Compact Tabulation", **8/2010[**~~3/1995~~**]**; and

(g) "Low-Level Radioactive Waste (LLW) Report", **3/2011[**~~2001~~**]**.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Office of the Commissioner, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM D. HACKER, MD FAAP, CPE
JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 10, 2010 at 11 a.m.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, April 12, 2011)

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

RELATES TO: KRS 211.842 -[~~to~~] 211.852, 211.990(4), 10 C.F.R. 32.11, **32.18, 32.19, 32.51 - 32.74[**~~32.51 to 32.74~~**]**, 32.101 -[~~to~~] 32.103, 32.110, 40.34, 40.35

STATUTORY AUTHORITY: KRS 13B.170, 194A.050, 211.090(3), 211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the Cabinet for Health and Family Services to regulate the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes requirements for issuing specific licenses to persons who manufacture, assemble, repair, or distribute commodities, products, or devices, **that[**~~which~~**]** contain radioactive material.

Section 1. Registration of Product Information. (1) A manufacturer or initial distributor of a sealed source, or device containing a sealed source, whose product is intended for use under a specific license, shall submit a request to the cabinet for evaluation of radiation safety information about its product and for its registration.

(2) The request for review of a sealed source or device shall include sufficient
information to provide reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property.

(3) The request shall include information on:

(a) Design;

(b) Manufacture;

(c) Prototype testing;

(d) Quality control program;

(e) Labeling;

(f) Proposed uses; and

(g) Leak testing.

(4) For a device, the request shall also include sufficient information about:

(a) Installation;

(b) Service and maintenance;

(c) Operating and safety instructions; and

(d) Potential hazards.

(5) The cabinet shall evaluate a sealed source or device using radiation safety criteria in accepted industry standards. If the standards and criteria do not readily apply to a particular case, the cabinet shall formulate reasonable standards and criteria, with the help of the manufacturer or distributor. The cabinet shall use criteria and standards sufficient to ensure that the radiation safety properties of the device or sealed source are adequate to protect health and minimize danger to life and property.

(6) After completion of the evaluation, the cabinet shall issue a certificate of registration to the person making the request. The certificate shall acknowledge the availability of the submitted information for inclusion in an application for a specific license proposing use of the product.

(7) A person submitting the request for evaluation and registration of safety information about the product shall manufacture and distribute the product in accordance with:

(a) The statements and representations, including quality control program, contained in the request; and

(b) The provisions of the registration certificate.

Section 2. Licensing the Introduction of Radioactive Material into Products in Exempt Concentrations. (1) In addition to the requirements established in 902 KAR **Chapter 100[**~~100:040, Section 4,~~**]** a specific license authorizing the introduction of radioactive material into a product or material owned by or in the possession of the licensee or another, to be transferred to a person exempt under 902 KAR 100:045, Section 2(1)(a) **shall[**~~may~~**]** be issued if:

(a) The applicant submits a description of the:

1. Product or material into which the radioactive material will be introduced;

2. Intended use of the radioactive material and the product or material into which it is introduced;

3. Method of introduction;

4. Initial concentration of the radioactive material in the product or material;

5. Control methods to assure that no more than the specified concentration **shall be[**~~is~~**]** introduced into the product or material;

6. Estimated time interval between introduction and transfer of the product or material; and

7. Estimated concentrations of the radioactive material in the product or material at the time of transfer; and

(b) The applicant provides reasonable assurance that the:

1. Concentrations of the radioactive material at the time of transfer shall not exceed the concentrations established in 902 KAR 100:085;

2. Reconcentration of the radioactive material in concentrations exceeding those in 902 KAR 100:085 is not likely;

3. Use of lower concentrations is not feasible; and

4. Product or material is not likely to be incorporated in a food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(2) A person licensed pursuant to this administrative regulation shall:

(a) Maintain records of transfer of radioactive material;

(b) File an annual report with the cabinet **that[**~~which~~**]** shall include the:

1. Type and quantity of a product or material into which radioactive material has been introduced during the reporting period;

2. Name and address of the person who owned or possessed the product or material[~~,~~] into which radioactive material has been introduced[~~,~~] at the time of introduction;

3. Type and quantity of radionuclide introduced into a product or material; and

4. Initial concentrations of the radionuclide in the product or material at the time
of transfer of the radioactive material by the licensee;

(c) Indicate in the report if no transfers of radioactive material have been made during the reporting period;

(d) File a report by July 30[~~,~~] covering the year ending the previous June 30; and

(e) Maintain the record of a transfer for a period of one (1) year after the event is included in a report to the cabinet.

Section 3. Resins Containing Scandium-46 and Designed for Sand-Consolidation in Oil Wells: Requirements for License to Manufacture**[**~~,~~**]** or Initially Transfer for Sale or Distribution. An application for a specific license to manufacture**[**~~,~~**]** or initially transfer for sale or distribution, synthetic plastic resins containing scandium-46 for use as indicated in 902 KAR 100:045, Section 3(3), shall be approved if:

(1) The applicant satisfies the requirements specified in 902 KAR 100:040, Section 4;

(2) The product is designed to be used only for sand-consolidation in oil wells;

(3) The applicant submits the following information:

(a) A general description of the product to be manufactured or initially transferred; and

(b) A description of control procedures used to assure that the concentration of scandium-46 in the final product at the time of distribution shall not exceed $1.4x10^{-3}$ micro-curie/milliliter; and

(4) A container of the product bears a durable, legible label approved by the cabinet **based on[**~~, which contains~~**]** the following information:

(a) The product name;

(b) A statement that the product contains radioactive scandium and is designed and manufactured only for sand-consolidation in oil wells;

(c) Instructions necessary for proper use; and

(d) The manufacturer's name.

Section 4. Licensing the Manufacture and Distribution of a Device to a Person Generally Licensed under 902 KAR 100:050. (1) In addition to the requirements established in 902 KAR **Chapter 100[**~~100:040, Section 4,~~**]** an application for a specific license to distribute certain devices containing radioactive material, excluding special nuclear material, to a person generally licensed **shall[**~~may~~**]** be issued only if the applicant submits sufficient information relating to the:

(a) Design;

(b) Manufacture;

(c) Prototype testing;

(d) Quality control;

(e) Labels;

(f) Proposed uses;

(g) Installation;

(h) Servicing;

(i) Leak testing;

(j) Operating and safety instructions; and

(k) Potential hazards of the device to provide reasonable assurance that:

1. Under accident conditions, such as fire and explosion associated with handling, storage, and use of the device, it is unlikely that a person would receive an
external radiation dose or dose commitment in excess of the fol-

lowing organ doses:

a. Whole body; [;] head and trunk; [;] active blood-forming organs; [;] gonads; [;] or lens of eye - 15 rems (150 mSv);

b. Hands and forearms; [;] feet and ankles; or [;] localized areas of skin averaged over areas no larger than one (1) square centimeter - 200 rems (2 Sv); or

c. Other organs - 50 rems (500 mSv). [;]

2. Under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device shall not be released or inadvertently removed from the device, and it is unlikely that a person will receive in a period of one (1) calendar year a dose in excess of ten (10) percent of the limits specified in 902 KAR 100:019, Section 3; and

3. The device can be safely operated by individuals not having training in radiological protection.

(2) A device identified in subsection (1) of this section shall bear a durable, legible, clearly visible label or labels **in accordance with 902 KAR 100:050[**~~approved by the cabinet~~**]**, which contain in a clearly identified and separate statement:

(a) Instructions and precautions necessary to assure safe installation, operation, and servicing of the device (documents such as operating and service manuals[,] may be identified in the label and used to provide this information);

(b) The requirement, or lack of requirement, for leak testing[,] or for testing an "on-off" mechanism and indicator, including the maximum time interval for the testing[,] and the identification of radioactive material by:

1. Isotope;

2. Quantity of radioactivity; and

3. Date of determination of the quantity; and

(c) The information called for in the following statement, in the same or substantially similar form:

"The receipt, possession, use, and transfer of this device, Model _____, Serial No. _____, are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

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Name of manufacturer or distributor[."]

The model, serial number, and name of the manufacturer or distributor may be omitted from this label if the information is elsewhere specified in labeling affixed to the device.

(3)(a) If the applicant desires that the device identified in subsection (1) of this section be required to be tested for proper operation of the "on-off" mechanism and indicator[~~, if any,~~] or for leakage of radioactive material, subsequent to the initial tests required by this administrative regulation at intervals longer than six (6) months but not exceeding three (3) years, the applicant shall include in the application sufficient information to demonstrate that the longer interval is justified by:

1. Performance characteristics of the device or similar devices; and

2. Design features **that[**~~which~~**]** have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator.

(b) In determining the acceptable interval for the test for leakage of radioactive material, the cabinet may consider information **that[**~~which~~**]** shall include:

1. Primary containment or source capsule;

2. Protection of primary containment;

3. Method of sealing containment;

4. Containment construction materials;

5. Form of contained radioactive material;

6. Maximum temperature withstood during prototype tests;

7. Maximum pressure withstood during prototype tests;

8. Maximum quantity of contained radioactive material;

9. Radiotoxicity of contained radioactive material; and

10. Operating experience with identical devices or similarly designed and constructed devices.

(4)(a) If the applicant desires authorization of the general licensee established in 902 KAR 100:050, Section 3, or pursuant to equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State, to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application:

1. Written instructions to be followed by the general licensee;

2. Estimated calendar quarter doses associated with the activity or activities; and

3. Basis [~~Bases~~] for the estimates.

(b) The information shall demonstrate that performance of the activity by an individual untrained in radiological protection, handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of ten (10) percent of the annual limits specified in 902 KAR 100:019, Section 3.

(5) A person licensed pursuant to this administrative regulation to distribute devices to generally licensed persons shall:

(a) Furnish a copy of the general license identified in 902 KAR 100:050, Section 3, to each person to whom the licensee, directly or through an intermediate person, transfers radioactive material in a device for use as authorized by a general license;

(b) Furnish a copy of the general license contained in the U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent to 902 KAR 100:050, Section 3, or alternatively, furnish a copy of the general license to each person to whom the licensee directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license of the U.S. Nuclear Regulatory Commission or the Agreement State. If a copy of the general license identified in 902 KAR 100:050, Section 3, is furnished to the person, it shall be accompanied by a note explaining that the use of the device is regulated by the U.S. Nuclear Regulatory Commission or Agreement State under requirements substantially the same as those in 902 KAR 100:050, Section 3;

(c) Report to the cabinet transfers of the devices to persons for use under the general license.

1. The report shall identify:

a. A general licensee by name and address;

b. An individual by name or position who may constitute a point of contact between the cabinet and the general licensee;

c. The type and model number of device transferred; and

d. The quantity and type of radioactive material contained in the device.

2. If one (1) or more intermediate persons possess the device temporarily at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user.

3. If no transfers have been made to persons generally licensed during the reporting period, the report shall so indicate.

4. The report shall cover a calendar quarter and shall be filed within thirty (30) days of the close of the quarter.

(d) Furnish reports to other agencies as follows:

1. Report to the U.S. Nuclear Regulatory Commission transfers of such devices to persons for use under the U.S. Nuclear Regulatory Commission general license in Section 31.5 of 10 **C.F.R.[**~~C.F.R.~~**]** Part 31; or

2. Report to the responsible state agency transfers of devices manufactured and distributed for use under a general license in that state's regulations equivalent to 902 KAR 100:050, Section 3; and

3. The reports shall identify:

a. A general licensee by name and address;

b. An individual by name or position who may constitute a point of contact between the agency and the general licensee;

c. The type and model of the device transferred; and

d. The quantity and type of radioactive material contained in the device. [;]

4. If one (1) or more intermediate persons possess the device temporarily at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user;

5. The report shall be submitted within thirty (30) days after the end of the calendar quarter in which the device is transferred to the

generally licensed person;

6. If no transfers have been made to U.S. Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the U.S. Nuclear Regulatory Commission; and

7. If no transfers have been made to general licensees within a particular state during the reporting period, this information shall be reported to the responsible state agency upon request of that agency;

(e) Keep records showing the name, address, and the point of contact for a general licensee to which the licensee, directly or through an intermediate person, transfers radioactive material in devices for use as authorized by a general license or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. The records shall show:

1. The date of transfer;

2. The radionuclide and the quantity of radioactivity in each device transferred;

3. The identity of the intermediate person; and

4. Compliance with the report requirements; and

(f) Maintain the records required by paragraphs (c) and (d) of this subsection for a period of five (5) years from the date of the recorded transfer.

Section 5. Special Requirements for the Manufacture, Assembly, or Repair of Luminous Safety Devices for use in Aircraft. An application for a specific license to manufacture, assemble, or repair luminous safety devices containing tritium or promethium-147 for use in aircraft, for distribution to persons generally licensed pursuant to 902 KAR 100:050 shall be approved if:

(1) The applicant satisfies the requirements specified in 902 KAR 100:040, Section 4; and

(2) The applicant satisfies the requirements of U.S. Nuclear Regulatory Commission 10 **C.F.R.[**~~C.F.R.~~**]** Part 32, Sections 32.2(b), 32.53, 32.54, 32.55, 32.56, 32.101, and 32.110 or their equivalent.

Section 6. Special Requirements for License to Manufacture and Distribute Calibration Sources Containing Americium-241, Plutonium or Radium-226 for Distribution to Persons Generally Licensed pursuant to 902 KAR 100:050. An application for a specific license to manufacture or distribute calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed pursuant to 902 KAR 100:050 shall be approved if:

(1) The applicant satisfies the requirements established in 902 KAR 100:040, Section 4; and

(2) The applicant satisfies the requirements of U.S. Nuclear Regulatory Commission 10 C.F.R. Part 32, Sections 32.57, 32.58, 32.59, and 32.102**, and 10 C.F.R.[**~~and 10 C.F.R.~~**]** Part 70, Section 70.39, or their equivalent.

Section 7. Licensing the Manufacture and Distribution of Ice Detection Devices Containing Strontium-90. An application for a specific license to manufacture and
distribute ice detection devices to persons generally licensed shall be approved if:

(1) The applicant satisfies the requirements established in 902 KAR 100:040, Section 4; and

(2) The criteria of U.S. Nuclear Regulatory Commission 10 **C.F.R.[**~~C.F.R.~~**]** Part 32, Sections 32.2(b), 32.61, 32.62, 32.103, and 32.110 are met.

Section 8. Manufacture and Distribution of Radioactive Material for Certain In Vitro Clinical or Laboratory Testing under a General License. An application for a specific license to manufacture or distribute radioactive material for use pursuant to the general license established in 902 KAR 100:050, Section 4, shall be approved if:

(1) The applicant satisfies the general requirements specified in 902 KAR 100:040, Section 4;

(2) The radioactive material is to be prepared for distribution in prepackaged units of:

(a) Iodine-125 in units not exceeding ten (10) microcuries (370 kBq) each;

(b) Iodine-131 in units not exceeding ten (10) microcuries (370 kBq) each;

(c) Carbon-14 in units not exceeding ten (10) microcuries (370 kBq) each;

(d) Hydrogen-3 (tritium) in units not exceeding fifty (50) microcuries (1.85 MBq) each;

(e) Iron-59 in units not exceeding twenty (20) microcuries (704 kBq) each;

(f) Selenium-75 in units not exceeding ten (10) microcuries (370 kBq) each;

(g) Mock iodine-125 in units not exceeding 0.05 microcurie (1.85 MBq) of iodine-129 and 0.005 microcurie (185 Bq) of americium-241 each; or

(h) Cobalt-57 in units not exceeding fifty (50) microcuries (370 kBq) each;

(3) Each prepackaged unit bears a durable, clearly visible label:

(a) Identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed:

1. Ten (10) microcuries (370 kBq) of iodine-131, iodine-125, selenium-75, cobalt-57, or carbon-14;

2. Fifty (50) microcuries (1.85 MBq) of hydrogen-3 (tritium);

3. Twenty (20) microcuries (740 kBq) of iron-59; or

4. Mock iodine-125 in units not exceeding 0.05 microcurie (1.85 kBq) of iodine-129 and 0.005 microcurie (185 Bq) of americium-241 each; and

(b) Displaying the radiation caution symbol described in 902 KAR 100:019, Section 23, and the words, "Caution, Radioactive Material"[~~,~~] and "Not for Internal or External Use in Humans or Animals";

(4) The following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to a prepackaged unit, or appears in a leaflet or brochure which accompanies the package:

"This radioactive material may be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the administrative regulations and a general license or the equivalent of the United States Nuclear Commission or of an Agreement State.
(Name of Manufacturer)"; and

(5) The label affixed to the unit, or the leaflet or brochure **that[**~~which~~**]** accompanies the package, contains adequate information regarding precautions to be observed in handling and storing the radioactive material. For a mock iodine-125 reference or calibration source, the information accompanying the source shall contain directions to the licensee regarding the waste disposal requirements established in 902 KAR 100:021, Section 1.

Section 9. Manufacture and Distribution of Radiopharmaceuticals Containing Radioactive Material for Medical Use Under Specific Licenses. (1) An application for a specific license to manufacture, prepare or transfer for commercial distribution radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to 902 KAR 100:072 [~~073~~], shall be approved if the applicant:

(a) Satisfies the requirements specified in 902 KAR 100:040, Section 4;

(b) Submits evidence that the applicant is at least one (1) of the following:

1. Registered or licensed with the U.S. Food and Drug Administration (FDA) as a drug manufacturer;

2. Registered or licensed with a state agency as a drug manufacturer; [~~or~~]

3. Licensed as a pharmacy by the State Board of Pharmacy; or[~~,~~]

4. Operating as a nuclear pharmacy within the federal medical institution.

(c) Submits information on:

1. The radionuclide;

2. Chemical and physical form;

3. Maximum activity per vial, syringe, generator, or other container of the radioactive drug; and

4. Shielding provided by the packaging of the radioactive material to show it is
appropriate for safe handling and storage of radiopharmaceuticals by medical use licensees; and

(d) Satisfies the following labeling requirements:

1. The label shall be affixed to the transport radiation shield, if it is constructed of lead, glass, plastic, or other material[,] of a radioactive drug to be transferred for commercial distribution. The label shall include:

a. The radiation symbol;

b. The words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL";

c. The name of the radioactive drug or its abbreviation; and

d. The quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

2. A label shall be affixed to a syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label shall include:

a. The radiation symbol;

b. The words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and

c. An identifier that ensures the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(2) A licensee described by subsection (1)(b)3 of this section may:

(a) Prepare radioactive drugs for medical use, as defined in 902 KAR 100:010, if the radioactive drug is prepared by an authorized nuclear pharmacist, as specified in paragraphs (b) and (c) of this subsection, or an individual under the supervision of an
authorized nuclear pharmacist, as specified in 902 KAR 100:072 [073], Section 12[8];

(b) Allow a pharmacist to work as an authorized nuclear pharmacist if the individual:

1. Qualifies as an authorized nuclear pharmacist as defined in 902 KAR 100:010;

2. Meets the requirements specified in 902 KAR 100:072 [073], Sections 63 [58] and 66 [59], and the licensee has received an approved license amendment identifying the individual as an authorized nuclear pharmacist; or

3. Is designated as an authorized nuclear pharmacist in accordance with paragraph (c) of this subsection.

(c) Designate a pharmacist as an authorized nuclear pharmacist if the individual is identified as an authorized user on a nuclear pharmacy license issued by the cabinet.

(3) The actions authorized in subsections (2)(a) and (b) of this section are permitted in spite of more restrictive language in license conditions.

(4) A licensee shall provide to the cabinet a copy of an individual's certification by the Board of Pharmaceutical Specialties, the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state license, and a copy of the state pharmacy licensure or registration, no later than thirty (30) days after the date that the licensee allows the individual to work as an authorized nuclear pharmacist, pursuant to subsection (2)(b)1 and 3 of this section.

(5) A licensee shall:

(a) Possess and use instrumentation to measure the radioactivity of radioactive drugs;

(b) Have procedures for use of the instrumentation;

(c) Measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta- or photon-emitting radioactive drugs[,] prior to transfer for commercial distribution;

(d) Perform accuracy, linearity, and geometry dependence tests on an instrument before initial use, periodically, and following repair, as appropriate for the instrument, and make necessary adjustments; and

(e) Check an instrument for constancy and proper operation at the beginning of each day of use.

(6) Nothing in this section relieves a licensee from complying with applicable FDA, other federal, and state requirements governing radioactive drugs.

Section 10. Manufacture and Distribution of Sources or Devices Containing Radioactive Material for Medical Use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed as authorized by 902 KAR 100:072 [073] for use as a calibration, transmission, or reference source or for medical uses listed in 902 KAR 100:072, Sections 37, 45 and 46 shall be approved if:

(1) The applicant satisfies the requirements established in 902 KAR 100:040, Section 4;

(2) The applicant submits sufficient information regarding a type of source or device pertinent to an evaluation of its radiation safety, including:

(a) The radioactive material contained, its chemical and physical form, and amount;

(b) Details of design and construction of the source or device;

(c) Procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents;

(d) For devices containing radioactive material, the radiation profile of a prototype device;

(e) Details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests;

(f) Procedures and standards for calibrating sources and devices;

(g) Legend and methods for labeling sources and devices as to their radioactive content; and

(h) Instructions for handling and storing the source or device from the radiation safety standpoint. The instructions shall be included on a durable label attached to the source or device, or attached to a permanent storage container for the source or device. Instructions too lengthy for a label may be summarized on the label and printed in detail on a brochure**[**~~which is~~**]** referenced on the label;

(3) The label affixed to the source or device, or to the permanent storage container for the source or device, contains:

(a) Information on the radionuclide;

(b) Quantity; and
Date of assay; and

(d) A statement that the name of source or device is licensed by the cabinet for distribution to persons licensed as authorized by 902 KAR 100:072 [073], or under
equivalent licenses of the U.S. Nuclear Regulatory Commission or an Agreement State;

(4) If an applicant desires the source or device to be tested for leakage of radioactive material at intervals longer than six (6) months, he shall include in the application sufficient information to demonstrate that the longer interval is justified by:

(a) Performance characteristics of the source or device, or similar sources or devices; and

(b) Design features having a significant bearing on the probability or consequence of leakage of radioactive material from the source; and

(5) In determining the acceptable interval for tests of leakage of radioactive material, the cabinet shall consider information that includes:

(a) Primary containment or source capsule;

(b) Protection of primary containment;

(c) Method of sealing containment;

(d) Containment construction materials;

(e) Form of contained radioactive material;

(f) Maximum temperature withstood during prototype tests;

(g) Maximum pressure withstood during prototype tests;

(h) Maximum quantity of contained radioactive material;

(i) Radiotoxicity of contained radioactive material; and

(j) Operating experience with identical sources or devices, or similarly designed and constructed sources or devices.

Section 11. Requirements for License to Manufacture and Distribute Industrial Products Containing Depleted Uranium for Mass-volume Applications. (1) An application for a specific license to manufacture or distribute an industrial product or device contain-

ing depleted uranium for use authorized by 902 KAR 100:050, Section 2, or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State shall be approved if:

(a) The applicant satisfies the general requirements specified in 902 KAR 100:040, Section 4;

(b) The applicant submits sufficient information relating to the:

1. Design;

2. Manufacture;

3. Prototype testing;

4. Quality control procedures;

5. Labeling or marking;

6. Proposed uses; and

7. Potential hazards of the industrial product or device;

(c) The applicant provides reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive in a period of one (1) year a radiation dose in excess of ten (10) percent of the limits specified in 902 KAR 100:019, Section 3; and

(d) The applicant submits sufficient information regarding the industrial product or device, and the presence of depleted uranium for a mass-volume application in the product or device, to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(2) For an industrial product or device **that is[**~~whose~~**]** unique benefits are questionable, the cabinet may approve an application for a specific license pursuant to this section only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(3) The cabinet shall deny an application for a specific license pursuant to this section if the end use of the industrial product or device cannot reasonably be foreseen.

(4) A person licensed as authorized by this section shall:

(a) Maintain the level of quality control required by the license in:

1. Manufacture of the industrial product or device; and

2. Installation of the depleted uranium into the product or device;

(b) Label or mark each unit to identify:

1. The manufacturer of the product or device;

2. The number of the license under which the product or device was manufactured or distributed;

3. The fact that the product or device contains depleted uranium;

4. The quantity of depleted uranium in the product or device; and

5. That the receipt, possession, use, or transfer of the product or device is subject to a general license, or the equivalent, and the regulations of the U.S. Nuclear Regulatory Commission or an Agreement State;

(c) Assure that the depleted uranium, before being installed in a product or device, has been impressed with the legend "DEPLETED URANIUM" clearly legible through plating or other covering;

(d) Furnish a copy of the general license contained in:

1. 902 KAR 100:050 to a person to whom depleted uranium is transferred in a
product or device for use authorized by the general license; or

2. The U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent to 902 KAR 100:050, and a copy of an applicable U.S. Nuclear Regulatory Commission's or Agreement State's certificate, to a person to whom depleted uranium is transferred in a product or device for use as authorized by the general license of the U.S. Nuclear Regulatory Commission or an Agreement State, with a note explaining that use of the product or device is regulated by the U.S. Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in 902 KAR 100:050;

(e) Furnish the following to either the cabinet, U.S. Nuclear Regulatory Commission, or agreement state:

1. A report of each transfer of an industrial product or device to a person for use pursuant to the general license in 902 KAR 100:050. The report shall identify:

a. A general licensee by name and address;

b. An individual, by name or position, who constitutes a point of contact between the cabinet and the general licensee;

c. The type and model number of device transferred; and

d. The quantity of depleted uranium contained in the product or device.

2. The report identified in subparagraph 1 of this paragraph shall be submitted within thirty (30) days after the end of a calendar quarter in which the product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed pursuant to 902 KAR 100:050 during the reporting period, the report shall so indicate; and

(f) Keep records showing the name, address, and point of contact for a general licensee to whom he transfers depleted uranium in an industrial product or device for use authorized by the general license provided in 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of three (3) years from the date of transfer and shall show the date of each transfer, the quantity of depleted uranium in a product or device transferred, and compliance with the report requirements of this section.

Section 12. Licensing the Distribution of Naturally Occurring and Accelerator Produced Radioactive Material (NARM) in Exempt Quantities. (1) An application for a specific license to distribute NARM to persons exempted from these regulations authorized by 902 KAR 100:045 shall be approved if:

(a) The radioactive material is not contained in a food, beverage, cosmetic, drug, or other commodity designed for ingestion or inhalation by, or application to, a human being;

(b) The radioactive material is in the form of processed chemical elements, compounds, or mixtures, tissue samples, bioassay samples, counting standards, plated or encapsulated sources, or similar substances, identified as radioactive and to be used for its radioactive properties, but is not incorporated into a manufactured or assembled commodity, product, or device intended for commercial distribution; and

(c) The applicant submits copies of prototype labels and brochures **in accordance with 10 C.F.R. 32.18 and 32.19** and the cabinet approves the labels and brochures.

(2) The license issued pursuant to this section is subject to the following conditions:

(a) No more than ten (10) exempt quantities shall be sold or transferred in a single transaction. However, an exempt quantity may be composed of fractional parts of one (1) or more of the exempt quantity, if the sum of the fractions does not exceed unity.

(b) An exempt quantity shall be packaged separately and individually. No more than ten (10) packaged exempt quantities shall be contained in an outer package for transfer to persons exempt as authorized by 902 KAR 100:045. The dose rate at the external surface of the outer package shall not exceed five-tenths (0.5) millirem per hour.

(c) The immediate container of each quantity or separately packaged fractional quantity of radioactive material shall bear a durable, legible label which:

1. Identifies the radionuclide and the quantity of radioactivity; and

2. Bears the words "Radioactive Material."

(d) In addition to the labeling information required by this subsection, the label affixed to the immediate container, or an accompanying brochure, shall:

1. State that the contents are exempt from licensing agency requirements;

2. Bear the words "Radioactive Material - Not for Human Use - Introduction into Foods, Beverages, Cosmetics, Drugs, or Medicinals, or into Products Manufactured for Commercial Distribution is Prohibited - Exempt Quantities Should Not Be Combined"; and

3. Establish appropriate additional radiation safety precautions and instructions relating to the handling, use, storage, and disposal of the radioactive material.

(3)(a) A person licensed pursuant to this section shall maintain records identifying, by name and address, each person to whom radioactive material is transferred for use in accordance with 902 KAR 100:045 or the equivalent regulations of a licensing agency, and stating the kinds and quantities of radioactive material trans-

ferred.

(b) An annual summary report stating the total quantity of each radionuclide transferred under the specific license shall be filed with the cabinet.

(c) A report shall cover the year ending June 30[,] and shall be filed within thirty (30) days after June 30. If no transfers of radioactive material have been made, as authorized by this section, during the reporting period, the report shall so indicate.

Section 13. Licensing the Incorporation of Naturally Occurring and Accelerator Produced Radioactive Material (NARM) into Gas and Aerosol Detectors. **(1)** An application for a specific license authorizing the incorporation of NARM into gas and aerosol detectors to be distributed to persons exempt pursuant to 902 KAR 100:045 shall be approved if the application satisfies requirements equivalent to those contained in U.S. Nuclear Regulatory Commission 10 **C.F.R. Part 32.26.**

(2)[~~C.F.R. Part 32.26.~~**]** The maximum quantity of radium-226 in a device shall not exceed one-tenth (0.1) microcurie (3.7 kBq).

WILLIAM D. HACKER, MD FAAP, CPE
JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010

FILED WITH LRC: December 9, 2010 at 4 p.m.

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 SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, April 12, 2011)

902 KAR 100:070. Transportation of radioactive material.

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. 71, 39 C.F.R. 111.1, 49 C.F.R. 170-189

STATUTORY AUTHORITY: KRS 13B.170, 194A.050, 211.090(3), 211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes requirements for transportation of radioactive material.

Section 1. Applicability. (1) Applies to a licensee authorized by a specific or general license issued by the cabinet to receive, possess, use, or transfer radioactive material, when:

(a) The licensee delivers that material to a carrier for transport;

(b) Transports the material outside the site of usage as specified in the cabinet license; or

(c) Transports the material on public highways.

(2) No provision of this administrative regulation authorizes the possession of radioactive material.

Section 2.[~~1.~~] Requirement for a License. A person shall not deliver radioactive material to a carrier for transport, or transport radioactive material, unless:

(1) Authorized in a general or specific license issued by the cabinet; or

(2) Exempted pursuant to Section 3[~~2~~] of this administrative regulation.

Section 3.[~~2.~~] Exemptions. (1) A licensee is exempt from all the requirements of this administrative regulation with respect to shipment or carriage of the following low-level materials:

(a) Natural material and ores containing naturally occurring radionuclides that are not intended to be processed for use of these radionuclides, provided the activity concentration of the material does not exceed ten (10) times the values specified in 10 C.F.R. 71**,** Appendix A; and

(b) Materials for which the activity concentration is not greater than the activity concentration values, or for which the consignment activity is not greater than the limit for an exempt consignment found in 10 C.F.R. 71**,** Appendix A.[~~Common and contract carriers, freight forwarders, and warehousemen who are subject to the requirements of the U.S. Department of Transportation in 49 C.F.R. 170 through 189 or the U.S. Postal Service in the Domestic Mail Manual, Section C023.9.0, 39 C.F.R. 111.1, are exempt from these administrative regulations to the extent that they transport or store radioactive material in the regular course of their carriage for another or storage incident to the transportation and storage of radioactive material. Common and contract carriers who are not subject to the requirements of the U.S. Department of Transportation or U.S. Postal Service are subject to Section 1 of this administrative regulation and other applicable sections of these administrative regulations.~~]

(2) A licensee shall be exempt from requirements [~~established~~] in [~~Section 1 of~~] this administrative regulation, except for Sections 4 and 12 of this administrative regulation, with respect to shipment or carriage of the following packages, provided the packages do not contain**[**~~any~~**]** fissile material, or the material is exempt from classification as fissile material under Section 14;

(a) A package that contains no more than a Type A quantity of radioactive material;

(b) A package transported within the United States that contains no more than twenty (20) Curies (0.74 TBq) of special form plutonium-244; or

(c) The package contains only LSA or SCO radioactive material, provided:

1. The LSA or SCO material has an external radiation dose of less than or equal to one (1) rem/hour (10 mSv/hour), at a distance of three (3) meters from the unshielded material; or

2. The package contains only LSA-1 or SCO-1 material.[~~containing radioactive material having a specific activity not greater than 0.002 microcurie per gram (70 Bq/g).~~

~~(3) A licensee shall be exempt from the requirements of this administrative regulation, except that the licensee shall not be exempt from the requirements of Sections 3 and 9 of this administrative regulation, with respect to shipment or carriage of the following, if the packages contain no fissile material, or the fissile material exemption standards of 10 C.F.R. 71.53 are satisfied:~~

~~(a) A package containing no more than Type A quantities of radioactive material;~~

~~(b) A package transported between locations within the United States which contain only americium or plutonium in special form, with an aggregate radioactivity not to exceed twenty (20) curies; or~~

~~(c) A package in which the only radioactive material is LSA material or SCOs, if the external radiation level at three (3) meters from the unshielded material or objects does not exceed one (1) rem/hour (10 mS/hr).~~

~~(4) A licensee shall be exempt from the requirements of this administrative regulation, other than Sections 3 and 9 of this administrative regulation, with respect to shipment or carriage of LSA material in group LSA-1, or SCOs in group SCO-1.~~]

(3)[~~(5)~~] A physician licensed by the Commonwealth to dispense drugs in the practice of medicine shall be exempt from Section 4 [~~3~~] of this administrative regulation with respect to transport by the physician of radioactive material for use in the practice of medicine. However, a physician operating under this exemption shall be licensed pursuant to 902 KAR 100:072 [~~3~~] or equivalent regulations of the NRC or an agreement state.

Section 4.[~~3.~~] Transportation of Licensed Material. (1) A licensee who transports licensed material outside of the confines of his plant or other place of use specified in the cabinet license, or who transports on a public highway, or who delivers licensed material to a carrier for transport, shall:

(a) Comply with the applicable requirements, appropriate to the mode of transport, of the regulations of the U.S. Department of Transportation in 49 **C.F.R.[**~~C.F.R.~~**]** 107, 171[~~170~~] through 189**,** and 390 through 397; and

(b) Assure that special instructions needed to open the package safely are sent to, or have been made available to, the consignee for the consignee's use in accordance with 902 KAR 100:019,

Section 28(5).

(2) If the regulations of the U.S. Department of Transportation (DOT) are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the Department of Transportation regulations, specified in subsection (1)(a) of this section, to the same extent as if the shipment was subject to the DOT [~~administrative~~] regulations.

Section 5.[~~4.~~] General Licenses for Carriers. (1) A general license shall be issued to a common or contract carrier, not exempt under Section 3 [~~2~~] of this administrative regulation, to receive, possess, transport, and store radioactive material in the regular course of carriage for another, or storage incident to the transportation and storage, if the transportation and storage is in accordance with the applicable requirements, appropriate to the mode of transport, of the U.S. Department of Transportation relating to the loading and storage of packages, placarding of the transporting vehicle, and incident reporting.

(2) A general license shall be issued to a private carrier to transport radioactive material, if the transportation is in accordance with the applicable requirements, appropriate to the mode of transport, of the U.S. Department of Transportation relating to the loading and storage of packages, placarding of the transporting vehicle, and incident reporting.

(3) The notification of incidents referred to in the U.S. Department of Transportation requirements identified in subsection (1) of this section shall be filed with, or made to, the cabinet.

(4) A person authorized by a general license described in this section, who transports radioactive material, is exempt from the requirements of 902 KAR 100:019 and 902 KAR 100:165.

Section 6. [~~5.~~] General License: NRC Approved Packages. (1) A general license shall be issued to a licensee of the cabinet to transport**[,]** or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance (CoC), or other approval has been issued by the NRC.

(2) The general license shall apply only to a licensee who:

(a) Has a quality assurance program approved by the NRC as satisfying the provisions of 10 C.F.R. 71.101 through 137;

(b)[~~(a)~~] Has a copy of the certificate of compliance, or other approval of the package, and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment;

(c)[~~(b)~~] Complies with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of this administrative regulation and 10 **C.F.R.[**~~C.F.R.~~**]** 71.0 through 71.11, 71.81 through 71.100, and 71.101 through 71.137; [~~(c) Has registered with the NRC prior to first use of the package;~~

~~(d) Has a quality assurance program, as required by 10 C.F.R. 71.103 through 71.137, approved by the NRC;~~] and

(d)[~~(e)~~] Submits in writing to Document Control Desk, [~~the~~] Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, using an appropriate method listed in 10 C.F.R. 71.1(a), before the licensee's first use of the package, the licensee's name and license number and the package identification number specified in the package approval.

(3) The general license identified in subsection (1) of this section shall apply only if the package approval authorizes use of the package under the general license.

(4) For a Type B or fissile material package, the design of which was approved by the NRC before April 1, 1996, the general license shall be subject to additional restrictions contained in Section 7 [~~6~~] of this administrative regulation.

Section 7.[~~6.~~] Previously Approved Type B Packages. (1) A Type B package previously approved by the NRC, but not designated as B(U) or B(M) in the NRC Certificate of Compliance, may be used under the general license of Section 6[~~5~~] of this administrative regulation, with the following limitations:

(a) Fabrication of the packaging was satisfactorily completed before August 31, 1986, as demonstrated by its model number, in accordance with NRC regulations;

(b) The package shall not be used for a shipment to a location outside the United States after August 31, 1986, except under multilateral approval by the U.S. Department of Transportation, as defined in 49 **C.F.R.[**~~C.F.R.~~**]** 173.403; and

(2) A serial number that uniquely identifies each package that conforms to the approved design is assigned to, and legibly and durably marked on, the outside of each package.

(3) A Type B(U) package, a Type B(M) package, an LSA material package, or a fissile material package, previously approved by the NRC but without the designation "-85" in the identification number of the NRC Certificate of Compliance, may be used under the general license of Section 6 [~~5~~] of this administrative regulation, with the following conditions:

(a) Fabrication of the package shall have been satisfactorily completed by April 1, 1999, as demonstrated by its model number, in accordance with NRC regulations**, 10 C.F.R.**;

(b) A package used for shipment to a location outside the United States shall be subject to multilateral approval by the U.S. Department of Transportation, as defined in 49 **C.F.R.[**~~C.F.R.~~**]** 173.403; and

(c) A serial number that uniquely identifies each package that conforms to the approved design shall be assigned to, and legibly and durably marked on the outside of,
each package.

Section 8. [~~7.~~] General License: DOT Specification Container. (1) A general license shall be issued to a licensee of the cabinet to transport, or to deliver to a carrier for transport, licensed material in a specification container for fissile material, or for a Type B quantity of radioactive material, as specified in 49 **C.F.R.[**~~C.F.R.~~**]** Parts 173 and 178.

(2) The general license shall apply only to a licensee who:

(a) Has a quality assurance program approved by the cabinet as satisfying the requirements of 10 **C.F.R.[**~~C.F.R.~~**]** 71.101 [~~71.103~~] through 71.137 [~~71.136~~];

(b) Has a copy of the specification; and

(c) Complies with the terms and conditions of the specification, and the applicable requirements of this administrative regulation and 10 **C.F.R.[**~~C.F.R.~~**]** 71.0 through 71.11, 71.81 through 71.100, and 71.101 through 71.137.

(3) The general license shall be subject to the limitation that the specification container shall not be used for a shipment to a location outside the United States except by multilateral approval, as defined in 49 **C.F.R.[**~~C.F.R.~~**]** 173.403.

(4) This section expires October 1, 2008.

Section 9. [~~8.~~] General License: Use of Foreign Approved Package. (1)(a) A general license shall be issued to a licensee of the cabinet to transport, or to deliver to a carrier for transport, licensed material in a package, the design of which has been approved in a foreign national competent authority certificate and revalidated [~~validated~~] by the U.S. Department of Transportation as meeting the applicable requirements of 49 **C.F.R.[**~~C.F.R.~~**]** 171.12.

(b) Except as provided in this section, the general license shall apply only to a licensee who has a quality assurance program approved by the NRC as satisfying the
applicable provisions of 10 **C.F.R.[**~~C.F.R.~~**]** 71.101 through 71.137.

(2) The general license shall apply only to shipments made to or from locations outside the United States.

(3) The general license shall apply to a licensee who:

(a) Has copies of the applicable certificate, the revalidation, the drawings, and other documents referenced in the certificate relating to the:

1. Use and maintenance of the packaging; and

2. Actions to be taken prior to shipment; and

(b) Complies with the terms and conditions of the certificate and revalidation [~~validation~~], and with the applicable requirements of this administrative regulation and 10 **C.F.R.[**~~C.F.R.~~**]** 71.0 through 71.11, 71.81 through 71.100, and 71.101 through 71.137.

(4) With respect to the quality assurance provisions of 10 **C.F.R.[**~~C.F.R.~~**]** 71.101 through 71.137, the licensee shall be exempt from design, construction, and fabrication considerations.

Section 10. [~~9.~~] Preliminary Determinations. Before the first use of a packaging for the shipment of radioactive material:

(1) The licensee shall ascertain that there are no cracks, pinholes, uncontrolled voids, or other defects **that[**~~which~~**]** may significantly reduce the effectiveness of the packaging;

(2) If the maximum normal operating pressure will exceed thirty-five (35) kilopascal (five (5) lbf/in^2) gauge, the licensee shall test the containment system at an internal pressure at least fifty (50) percent higher than the maximum normal operating pressure [~~in order~~] to verify the capability of that system to maintain its structural integrity at that pressure; and[~~.~~]

(3) The licensee shall mark the packaging [~~package~~], conspicuously and durably, with its model number, serial number, gross weight, and a package identification number assigned by the NRC**, in accordance with 10 C.F.R.** Before applying the model number, the licensee shall determine that the packaging has been fabricated in accordance with the design approved by the NRC.

Section 11. [~~10.~~] Routine Determinations. Before making a shipment of licensed material, the licensee shall ensure that the package with its contents satisfies the applicable requirements of this administrative regulation and of the license. The licensee shall determine that:

(1) The package is proper for the contents to be shipped;

(2) The package is in unimpaired physical condition except for superficial defects, such as marks or dents;

(3) Each closure device of the packaging, including any required gasket, is properly installed and secured and free of defects;

(4) A system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;

(5) A pressure relief device is operable and set in accordance with written procedures;

(6) The package has been loaded and closed in accordance with written procedures;

(7) For fissile material, any moderator or neutron absorber, if required, is present and in proper condition;

(8) A structural part of the package **that[**~~which~~**]** could be used to lift or tie down the package during transport is rendered inoperable for that purpose unless it satisfies design requirements specified by 10 C.F.R. 71.45.

(9) The level of nonfixed, or removable, radioactive contamination on the external surfaces of each package offered for shipment is ALARA, and within the limits specified by the U.S. Department of Transportation in 49 **C.F.R.[**~~C.F.R.~~**]** 173.443;

(10) External radiation levels around the package and around the vehicle, if applicable, shall not exceed the limits specified in 49 **C.F.R.[**~~C.F.R.~~**]** 71.47 during transportation.

(11) Accessible package surface temperatures shall not exceed the limits specified in 10 **C.F.R.[**~~C.F.R.~~**]** 71.43(g) at any time during transportation.

Section 12. [~~11.~~] Air Transport of Plutonium. In addition to the requirements of a general license and exemptions stated in this administrative regulation or included by citation of U.S. Department of Transportation regulations, as may be applicable, the licensee shall assure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless:

(1) The plutonium is contained in a medical device designed for individual human application;

(2) The plutonium is contained in a material in which the specific activity is less than or equal to the activity concentration values for plutonium specified in 10 C.F.R. 71, Appendix A [~~not greater than 0.002 microcurie per gram (70 Bq/g) of material~~] and in which the radioactivity is essentially uniformly distributed;

(3) The plutonium is shipped in a single package containing no more than an A_2 quantity of plutonium in an isotope or form and is shipped in accordance with Section 4[~~3~~] of this administrative regulation;

(4) The plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the NRC; or

(5) For a shipment of plutonium by air which is subject to subsection (4) of this section, the licensee shall, through special arrangement with the carrier, require compliance with 49 C.F.R. 175.704, applicable to the air transport of plutonium;[~~.~~]

(6) Nothing in this section shall be interpreted as removing or diminishing the requirements of 10 C.F.R. 73.24.

Section 13.[~~12.~~] Advance Notification of Transport of Irradiated Reactor Fuel and Nuclear Waste. (1)(a) Before the transport of nuclear waste outside of the confines of the licensee's facility or other place of use or storage, or before the delivery of nuclear waste to a carrier for transport, a licensee shall provide advance notification of the transport to the governor, or governor's designee, of each state through which the waste will be transported.

(b) Advance notification shall be required for shipments of irradiated reactor fuel in quantities less than that subject to advance notification requirements in 10 **C.F.R.[**~~C.F.R.~~**]** 73.37(f).

(2) Advance notification shall also be required for licensed material, other than irradiated fuel, if:

(a) The nuclear waste is required to be in Type B packaging for transportation;

(b) The nuclear waste is being transported to, through, or across a state boundary to a disposal site, or to a collection point for transport to a disposal site; and

(c) The quantity of licensed material in a single package exceeds the least of the following:

1. 3,000 times the A_1 value of the radionuclides as specified in 10 C.F.R. 71, Appendix A [~~Section 13 of this administrative regulation~~] for special form radioactive material;

2. 3,000 times the A_2 value of the radionuclides as specified in 10 C.F.R. 71 Appendix A [~~Section 13 of this administrative regulation~~] for normal form radioactive material; or

3. 27,000 curies (1000 TBq).

(3) Each advance notification shall be in writing and contain the following information:

(a) The name, address, and telephone number of the shipper, carrier, and receiver of the shipment;

(b) A description of the nuclear waste contained in the shipment as required by 49 **C.F.R.[**~~C.F.R.~~**]** 172.202 and 172.203(d);

(c) The point of origin of the shipment and the seven (7) day period during which departure of the shipment is estimated to occur;

(d) The seven (7) day period during which arrival of the shipment at state boundaries is estimated to occur;

(e) The destination of the shipment, and the seven (7) day period during which arrival of the shipment is estimated to occur; and

(f) A point of contact with a telephone number for current shipment information.

(4) The notification shall be made in writing to the office of each appropriate governor or governor's designee and to the cabinet.

(a) A notification delivered by mail shall be postmarked at least seven (7) days before the beginning of the seven (7) day period during which departure of the shipment is estimated to occur.

(b) A notification delivered by messenger shall reach the office of the governor, or governor's designee, at least four (4) days before the beginning of the seven (7) day period during which departure of the shipment is estimated to occur. A copy of the notification shall be retained by the licensee for three (3) years.

(5) The licensee who finds that schedule information previously furnished will not
be met, shall telephone a responsible individual in the office of the governor, or governor's designee and the cabinet and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain for three (3) years a record of the name of the individual contacted.

(6) A licensee who cancels a nuclear waste shipment, for which advance notification has been sent, shall send a cancellation notice to the governor, or governor's designee, of each appropriate state and to the cabinet. The licensee shall state in the notice that it is a cancellation and shall identify the advance notification that is being cancelled. A copy of the notice shall be retained by the licensee for three (3) years.

Section 14. Exemption from Classification as Fissile Material. Fissile material meeting the requirements of at least one (1) of the subsections (1) through (6) of this section are exempt from classification as fissile material and from the fissile material package standards of 10 C.F.R. 71.55 and 71.59, but are subject to all other requirements of this administrative regulation, except as noted.

(1) Individual package containing two (2) grams or less fissile material;

(2) Individual or bulk packaging containing fifteen (15) grams or less of fissile material provided the package has at least 200 grams of solid nonfissile material for every gram of fissile material. Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but shall not be included in determining the required mass for solid nonfissile material;

(3)(a) Low concentrations of solid fissile material commingled with solid nonfissile material, provided that:

1. There is at least 2000 grams of solid nonfissile material for every gram of fissile
material; and

2. There is no more than 180 grams of fissile material distributed within 360 kilograms of contiguous nonfissile material.

(b) Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but shall not be included in determining the required mass of solid nonfissile material.

(4) Uranium enriched in uranium-235 to a maximum of one (1) percent by weight, and with total plutonium and uranium content of up to one (1) percent of the mass of uranium-235, provided that the mass of any beryllium, graphite, and hydrogenous material enriched in deuterium constitutes less than five (5) percent of the uranium mass;

(5) Liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of two (2) percent by mass, with a total plutonium and uranium-233 content not exceeding two one-thousands (0.002) percent of the mass of uranium, and with a minimum nitrogen to uranium atomic ratio (N/U) of two (2). The material shall be contained in at least a DOT Type A package.

(6) Packages containing, individually, a total plutonium mass of not more than 1,000 grams, of which not more than twenty (20) percent by mass may consist of plutonium-239, plutonium-241, or any combination of these radionuclides.

Section 15. General License: Fissile Material (1) A general license is issued to any licensee of the cabinet to transport fissile material, or to deliver fissile material to a carrier for transport, if the material is shipped in accordance with this section of this administration regulation. The fissile material need not be contained in a package which meets the standards of 10 C.F.R. 71.41 through 71.65 and 71.71 through 71.77, however, the material shall be contained in a Type A package. The Type A package shall also meet the DOT requirements of 49 C.F.R. 173.417(a).

(2) The general license shall apply only to a licensee who has a quality assurance program approved by the U.S. Nuclear Regulatory Commission as satisfying the provisions of 10 C.F.R. 71.101 through 71.137.

(3) The general license shall apply only when a package's contents:

(a) Contain less than a Type A quantity of radioactive material; and

(b) Contain less than 500 total grams of beryllium, graphite, or hydrogenous material enriched in deuterium.

(4) The general license shall apply only to packages containing fissile material that are labeled with a Criticality Safety Index (CSI) **that[**~~which~~**]**:

(a) Has been determined in accordance with subsection (5) of this section;

(b) Has a value less than or equal to ten (10); and

(c) For a shipment of multiple packages containing fissile material, the sum of the CSIs shall be less than or equal to fifty (50), for shipment on a nonexclusive use conveyance, and less than or equal to 100, for shipment on an exclusive use conveyance.

(5)(a) The value for the CSI shall be greater than or equal to the number calculated by the following equation:

$$CSI = 10 \left(\frac{\text{grams of U-235}}{X} + \frac{\text{grams of U-233}}{Y} + \frac{\text{grams of Pu}}{Z} \right)$$

(b) The calculated CSI shall be rounded up to the first decimal place;

(c) The values of X, Y, and Z used in the CSI equation shall be taken from 10 C.F.R. 71 Appendix A, Table A-1 or A.2, as appropriate;

(d) If Table A-2 is used to obtain the value of X, then the values of the terms in the equation for uranium-233 and plutonium shall be assumed to be zero (0); and

(e) Table A-1 values for X, Y, and X shall be used to determine the CSI if:

1. Uranium-233 is present in the package;

2. The mass of plutonium exceeds one (1) percent of the mass of uranium-235;

3. The uranium is of unknown uranium-235 enrichment or greater than twenty-four (24) percent enrichment; or

4. Substances having a moderating effectiveness (an average hydrogen density greater than water), such as, certain hydrocarbons oils or plastics, are present in any form, except as polyethylene used for packaging or wrapping.

Section 16. General License: Plutonium-beryllium Special Form Material. (1) A general license is issued to any licensee of the cabinet to transport fissile material in the form of plutonium-beryllium (Pu-Be) special form sealed sources, or to deliver Pu-Be sealed sources to a carrier for transport, if the material is shipped in accordance with this section of this administrative regulation. This material need not be contained in a package which meets the standards of 10 C.F.R. 71.41 through 71.65 and 71.71 through 71.77, however, the material shall be contained in a Type A package. The Type A package shall also meet the DOT requirements of 49 C.F.R. 173.417(a).

(2) The general license shall apply only to a licensee who has a quality assurance program approved by the U.S. Nuclear Regulatory Commission as satisfying
the provisions of 10 C.F.R. 71 Subpart H.

(3) The general licensee applies only **if[**~~when~~**]** a package's contents:

(a) Contain less than a Type A quantity of radioactive material; and

(b) Contain less than 1000 grams of plutonium, provided that plutonium-239, plutonium-241, or any combination of these radionuclides, constitutes less than 240 grams of the total quantity of plutonium in the package.

(4) The general license applies only to packages labeled with a CSI **that[**~~which~~**]**:

(a) **Have[**~~Has~~**]** been determined in accordance with subsection (5) of this section;

(b) **Have[**~~Has~~**]** a value less than or equal to 100; and

(c) For a shipment of multiple packages containing Pu-Be sealed sources, the sum of the CSIs shall be less than or equal to fifty (50), for shipment on a nonexclusive use conveyance and less than or equal to 100, for shipment on an exclusive use conveyance.

(5)(a) The value for the CSI shall be greater than or equal to the number calculated by the following equation:

$$CSI = 10 \left(\frac{\text{Grams of Pu-239 + grams of Pu-241}}{24} \right)$$

(b) The calculated CSI shall be rounded up to the first decimal place.

Section 17. External Radiation Standards for all Packages. (1) Except as provided in subsection (2) of this section, a package of radioactive materials offered for transportation shall be designed and prepared for shipment so that under conditions normally incident to transportation the radiation level shall not exceed 200 millirem/hour (mrem/h) (2 milliservierts/h) (2 mSv/h) at any point on the external surface of the package, and the transport index shall not

exceed ten (10).

(2) A package that exceeds the radiation level limits specified in subsection (1) of this section shall be transported by exclusive use shipment only, and the radiation levels for the shipment shall not exceed the following during transportation:

(a) 200 mrem/h (2 mSv/h) on the external surface of the package, unless the following conditions are met, in which case the limit is 1000 mrem/h (10 mSv/h);

1. The shipment is made in a closed transport vehicle;

2. The package is secured within the vehicle so that its position remains fixed during transportation; and

3. There are no loading or unloading operations between the beginning and end of the transportation;

(b) 200 mrem/h (2 mSv/h) at any point on the outer surface of the vehicle, including the top and underside of the vehicle, or in case of a flat-bed style vehicle, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load or enclosure, if used, and on the lower external surface of the vehicle; and

(c)1. Ten (10) mrem/h (0.1 mSv/h) at any point eighty (80) inches (2 meters) from the outer lateral surface of the vehicle, excluding the top and underside of the vehicle; or

2. In the case of a flat-bed style vehicle, an any point six and six tenths (6.6) feet (2 meters) from the vertical planes projected by the outer edges of the vehicle,
excluding the top and underside of vehicle; and

(d) Two (2) mrem/h (0.02 mSv/h) in any normally occupied space, except that this provision shall not apply to private carriers, if exposed personnel under their control wear radiation dosimetry devices as required by 902 KAR 100:019, Section 13.

(3) For shipments made under the provisions of subsection (2) of this section, the shipper shall provide specific written instructions to the carrier for maintenance of the exclusive use shipment controls. The instructions shall be included with the shipping paper information.

(4) The written instructions required for exclusive use shipments shall be sufficient so that, when followed, they will cause the carrier to avoid actions that will unnecessarily delay delivery or unnecessarily result in increased radiation levels or radiation exposure to transport workers or members of the general public.

Section 18. Assumption as to Unknown Properties. **If[**~~When~~**]** the isotopic abundance, mass, concentration, degree of moderation, or other pertinent property of fissile material in any package is not known, the licensee shall package the fissile material as if the unknown properties have credible values that will cause the maximum neutron multiplication.

Section 19. Opening Instructions. Before delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to safely open the package have been sent to, or otherwise made available to, the consignee for the consignee's use in accordance with 902 KAR 100:019, Section 28(5).

Section 20. Quality Assurance Requirements. (1) The requirements in Sections 20 through 28 shall apply to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging important to safety. As used in this administrative regulation, quality assurance comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service.

(2) Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements.

(3) The licensee, certificate holder, and applicant for a CoC are responsible for the quality assurance requirements as they apply to design, fabrication, testing, and modification of packaging.

(4) A licensee is responsible for the quality assurance provision **that[**~~which~~**]** applies to its use of a packaging for the shipment of licensed material subject to this administrative regulation.

(5) A licensee, certificate holder, and applicant for a CoC shall:

1. Establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of 10 C.F.R. 71.101 through 71.137 and satisfying any specific provisions that are applicable to the licensee's activities including procurement of packaging; and

2. Execute the applicable criteria in a graded approach to an extent that is commensurate with the quality assurance requirement's importance to safety.

(6) A licensee shall, before the use of a package for the shipment of licensed material subject to this administrative regulation, obtain U.S. Nuclear Regulatory Commission approval of its quality assurance program. Using an appropriate method listed in 10 C.F.R. 71.1(a), a licensee shall file a description of its quality assurance program, including a discussion of which requirements of this administrative regulation are applicable and how they will be satisfied, by submitting the description to: Attention: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

(7) A program for transport container inspection and maintenance limited to radiographic exposure devices, source changers, or packages transporting these devices and meeting the requirements of 902 KAR 100:100, Section 9(3) is deemed to satisfy the requirements of Section 6(2)(a) and subsection (5) of this section.

Section 21. Quality Assurance Organization. (1) The licensee, certificate holder, and applicant for a Certificate of Compliance (CoC) shall be responsible for the establishment and execution of the quality assurance program. The licensee, certificate holder, and applicant for a CoC may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part of the quality assurance program, but shall retain responsibility for the program. These activities include performing the functions associated with attaining quality objectives and the quality assurance functions.

(2) The quality assurance functions are:

(a) Assuring an appropriate quality assurance program is established and effectively executed; and

(b) Verifying, by procedures such as checking, auditing, and inspection, that
activities affecting the functions that are important to safety have been correctly performed.

(3) The persons and organizations performing quality assurance functions shall have sufficient authority and organizational freedom to:

(a) Identify quality problems;

(b) Initiate, recommend, or provide solutions; and

(c) Verify implementation of solutions.

(4) While the term "licensee" is used, the requirements in this section shall be applicable to whatever design, fabrication, assembly, and testing of the package is accomplished with respect to a package before the time a package approval is issued.

Section 22. Quality Assurance Program. (1) The licensee, certificate holder, and applicant for a Certificate of Compliance (CoC) shall establish, at the earliest practicable time consistent with the schedule for accomplishing the activities, a quality assurance program that complies with the requirements of 10 C.F.R. 71.101 through 71.137. The licensee, certificate holder, and applicant for a CoC shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which the packaging is used. The licensee, certificate holder, and applicant for a CoC shall identify the material and components to be covered by the quality assurance program, the major organizations participating in the program and the designated functions of these organizations.

(2) The licensee, certificate holder, and applicant for a CoC, through its quality assurance program, shall provide control over activities affecting the quality of the identified materials and components to an extent consistent with their importance to safety, and as necessary to assure conformance to the approved design of each individual package used for the shipment of radioactive material. The licensee, certificate holder, and applicant for a CoC shall assure that activities affecting quality are accomplished under suit-

ably controlled conditions. Controlled conditions include the use of appropriate equipment; suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and assurance that all prerequisites for the given activity have been satisfied. The licensee, certificate holder, and applicant for a CoC shall take into account the need for special controls, processes, test equipment, tools, and skills to attain the required quality, and the need for verification of quality by inspection and test.

(3) The licensee, certificate holder, and applicant for a CoC shall base the requirements and procedures of its quality assurance program on the following conditions concerning the complexity and proposed use of the package and its components:

(a) The impact of malfunction or failure of the item to safety;

(b) The design and fabrication complexity or uniqueness of the item;

(c) The need for special controls and surveillance over processes and equipment;

(d) The degree to which functional compliance can be demonstrated by inspection or test; and

(e) The quality history and degree of standardization of the item.

(4) The license, certificate holder, and applicant for a CoC shall provide for indoctrination and training of personnel performing activities affecting quality, as necessary, to assure that suitable proficiency is achieved and maintained.

(5) The licensee, certificate holder, and applicant for a CoC shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall review regularly the status and adequacy of that part of the quality assurance program they are executing.

Section 23. Handling, Storage, and Shipping Control. The licensee, certificate holder, and applicant for a CoC shall establish measures to control, in accordance with instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to be used in packaging to prevent damage or deterioration. **If[**~~When~~**]** necessary for particular products, special protective environments, such as inert gas atmosphere, and specific moisture content and temperature levels shall be specified and provided.

Section 24. Inspection, Test and Operating Status. (1) The licensee, certificate holder, and applicant for a CoC shall establish measures to indicate, by the use of markings such as stamps, tags, labels, routing cards, or other suitable means, the status of inspections and tests performed upon individual items of the packaging. These measures shall provide for the identification of items that have satisfactorily passed required inspections and tests, where necessary to preclude inadvertent by passing of the inspections and tests.

(2) The licensee shall establish measures to identify the operating status of components of the packaging, such as tagging valves and switches, to prevent
inadvertent operation.

Section 25. Nonconforming Materials, Parts, or Components. The licensee, certificate holder, and applicant for a CoC shall establish measures to control materials, parts, or components that do not conform to the licensee's requirements to prevent their inadvertent use or installation. These measures shall include, as appropriate, procedures for identification, documentation, segregation, disposition, and notification to affected organizations. Nonconforming items shall be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.

Section 26. Corrective Action. The licensee, certificate holder, and applicant for a CoC shall establish measures to assure that conditions adverse to quality, such as deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected. In the case of a significant condition adverse to quality, the measures shall assure that the cause of the condition is determined and corrective action taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken shall be documented and reported to appropriate levels of management.

Section 27. Quality Assurance Records. (1) The licensee, certificate holder, and applicant for a CoC shall maintain sufficient written records to describe the activities affecting quality. The records shall include the instructions, procedures, and drawings required by 10 C.F.R. 71.111 to prescribe quality assurance activities and shall include closely related specifications such as required qualifications of personnel, procedures, and equipment.

(2) The records shall include the instructions or procedures **that[**~~which~~**]** establish a records retention program that is consistent with applicable regulations and designates factors such as duration, location, and assigned responsibility.

(3) The licensee, certificate holder, and applicant for a CoC shall retain these records for three (3) years beyond the date when the licensee, certificate holder, applicant for a CoC last engage in the activity for which the quality assurance program was developed. If any portion of the written procedures or instructions is superseded, the licensee, certificate holder, and applicant for CoC shall retain the superseded material for three (3) years after it is superseded.

Section 28. Audits. (1) The licensee, certificate holder, and applicant for a CoC shall carry out a comprehensive system of planned and periodic audits to verify compliance with all aspects of the quality assurance program and to determine the effectiveness of the program.

(2) The audits shall be performed in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the areas being audited.

(3) Audited records shall be documented and reviewed by management having responsibility in the area audited.

(4) Follow-up action, including reaudit of deficient areas, shall be taken **as[**~~where~~**]** indicated.

Section 29. [~~Section 13.~~] Determination of A_1 and A_2. (1) Values of A_1 and A_2 shall be determined as described in 10 C.F.R. 71 Appendix A [~~for individual radionuclides, which are the bases for activity limits cited elsewhere in these administrative regulations, are established in Table A-1 of subsection (6) of this section. The curie (Ci) values specified shall be obtained by converting from the Terabecquerel (TBq) figure. The curie values shall be expressed to three (3) significant digits to assure that the difference in the TBq and Ci quantities is one-tenth (.1) of one (1) percent or less. Where values of A_1 or A_2 are unlimited, it shall be for radiation control purposes only. For nuclear criticality safety, some materials shall be subject to controls placed on fissile material.~~

~~(2) For individual radionuclides with known identities, but not listed in Table A-1 of subsection (6) of this section, the determination of the values of A_1 and A_2 shall require commission approval, except that the values of A_1 and A_2 in Table A 2 may be used without obtaining cabinet approval.~~

~~(3) In the calculations of A_1 and A_2 for a radionuclide not in Table A-1 of subsection (6) of this section, a single radioactive decay chain, in which radionuclides are present in their naturally occurring proportions, and in which no daughter nuclide has a half-life either longer than ten (10) days, or longer than that of the parent nuclide, shall be considered as a single radionuclide, and the activity to be taken into account. The A_1 or A_2 value to be applied shall correspond to the parent nuclide of that chain. In the case of radioactive decay chains in which any daughter nuclide has a half-life either longer than ten (10) days, or greater than that of the parent nuclide, the parent and those daughter nuclides shall be considered as mixtures of different nuclides.~~

~~(4) For mixtures of radionuclides the identities and respective activities of which are known, the following conditions shall apply:~~

~~(a) For special form radioactive material, the maximum quantity transported in a Type A package:~~

$$\sum_{i} \frac{B(i)}{A(i)}$$ ~~less than or equal to 1~~

(b) For normal form radioactive material, the maximum quantity

$$\sum_{i} \frac{B(i)}{A_2(i)}$$

transported in a Type A package: less than or equal to 1

Where B(i) is the activity of radionuclide I and $A_1(i)$ and $A_2(i)$ are the A_1 and A_2 values for radionuclide I, respectively. Alternatively, an A_1 value for mixtures of special form material may be determined as follows: A_1 for mixture =

$$\frac{1}{\sum_{i} \frac{f(i)}{A_1(i)}}$$

Where f(i) is the of activity of nuclide I in the mixture and $A_1(i)$ is the appropriate A_1 value for nuclide I. An A_2 value for mixtures of normal form material may be determined as follows:

$$A_2 \text{ for mixture} = \frac{1}{\sum_{i} \frac{f(i)}{A_2(i)}}$$

Where f(i) is the fraction of activity of nuclide I in the mixture and $A_2(i)$ is the appropriate A_2 value for nuclide I.

(5) If the identity of each radionuclide is known, but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped and the lowest A_1 or A_2 value, as appropriate, for the radionuclides in each group may be used in applying the formulas in subsection (4) of this section. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest A_1 or A_2 values for the alpha emitters and beta/gamma].

(6) Table A-1: Values of A_1, A_2, and specific activities of radionuclides.

Symbol of Radionuclide	Element and atomic number	-		Specific Activity
		A_1 (Ci)	A_2 (Ci)	(Ci/g)
Ac-225	Actinium (89)	16.2	0.270	5.8×10^{4}
Ac-227		1080	5.41×10^{-4}	7.2×10^{1}
Ac-228		16.2	10.8	2.2×10^{6}
Ag-105	Silver (47)	54.1	54.1	3.0×10^{4}
Ag-108m		16.2	16.2	2.6×10^{1}
Ag-110m		10.8	10.8	4.7×10^{3}
Ag-111		16.2	13.5	1.6×10^{5}
Al-26	Aluminum (13)	10.8	10.8	1.9×10^{-2}
Am-241	Americium (95)	54.1	5.41×10^{-3}	3.4
Am-242m		54.1	5.41×10^{-3}	1.0×10^{1}
Am-243		54.1	5.41×10^{-3}	2.0×10^{-1}
Ar-37	Argon (18)	1080	1080	9.9×10^{4}
Ar-39		541	541	3.4×10^{1}
Ar-41		16.2	16.2	4.2×10^{2}
Ar-42		5.41	5.41	2.6×10^{2}
As-72	Arsenic (33)	5.41	5.41	1.7×10^{6}
As-73		1080	1080	2.2×10^{4}
As-74		27.0	13.5	9.9×10^{4}
As-76		5.41	5.41	1.6×10^{6}
As-77		541	13.5	1.0×10^{6}
At-211	Astatine (85)	811	54.1	2.1×10^{6}
Au-193	Gold (79)	162	162	9.2×10^{5}
Au-194		27.0	27.0	4.1×10^{5}
Au-195		270	270	3.7×10^{3}
Au-196		54.1	54.1	1.1×10^{5}
Au-198		81.1	13.5	2.4×10^{5}
Au-199		270	24.3	2.1×10^{5}
Ba-131	Barium (56)	54.1	54.1	8.4×10^{4}
Ba-133m		270	24.3	6.1×10^{5}
Ba-133		81.1	81.1	2.6×10^{2}
Ba-140		10.8	10.8	7.3×10^{4}
Be-7	Beryllium (4)	541	541	3.5×10^{5}
Be-10		541	13.5	2.2×10^{-2}
Bi-205	Bismuth (83)	16.2	16.2	4.2×10^{4}
Bi-206		8.11	8.11	1.0×10^{5}
Bi-207		18.9	18.9	5.2×10^{1}
Bi-210m		8.11	0.811	5.7×10^{-4}
Bi-210		16.2	13.5	1.2×10^{5}
Bi-212		8.11	8.11	1.5×10^{7}
Bk-247	Berkelium (97)	54.1	5.41×10^{-3}	1.0
Bk-249		1080	2.16	1.6×10^{3}
Br-76	Bromine (35)	8.11	8.11	2.5×10^{6}
Br-77		81.1	81.1	7.1×10^{5}
Br-82		10.8	10.8	1.1×10^{6}
C-11	Carbon (6)	27	13.5	8.4×10^{8}
C-14		1080	54.1	4.5
Ca-41	Calcium (20)	1080	1080	8.5×10^{-2}
Ca-45		1080	24.3	1.8×10^{4}
Ca-47		24.3	13.5	6.1×10^{5}
Cd-109	Cadmium (48)	1080	27.0	2.6×10^{3}
Cd-113m		541	2.43	2.2×10^{2}
Cd-115m		8.11	8.11	2.5×10^{4}
Cd-115		108	13.5	5.1×10^{5}
Ce-139	Cerium (58)	162	162	6.8×10^{3}
Ce-141		270	13.5	2.8×10^{4}
Ce-143		16.2	13.5	6.6×10^{5}
Ce-144		5.41	5.41	3.2×10^{3}
Cf-248	Californium (98)	811	8.11×10^{-2}	1.6×10^{3}
Cf-249		54.1	5.41×10^{-3}	4.1
Cf-250		135	1.35×10^{-2}	1.1×10^{2}
Cf-251		54.1	5.41×10^{-3}	1.6
Cf-252		2.70	2.70×10^{-2}	5.4×10^{2}
Cf-253		1080	1.62	2.9×10^{4}
Cf-254		8.11×10^{-2}	1.62×10^{-2}	8.5×10^{3}
Cl-36	Chlorine (17)	541	13.5	3.3×10^{-2}
Cl-38		5.41	5.41	1.3×10^{8}
Cm-240	Curium (96)	1080	0.541	2.0×10^{4}
Cm-241		54.1	24.3	1.7×10^{4}
Cm-242		1080	0.270	3.3×10^{3}
Cm-243		81.1	8.11×10^{-3}	5.2×10^{1}
Cm-244		108	1.08×10^{-2}	8.1×10^{1}
Cm-245		54.1	5.41×10^{-3}	1.7×10^{-1}
Cm-246		54.1	5.41×10^{-3}	3.1×10^{-1}
Cm-247		54.1	5.41×10^{-3}	9.3×10^{-5}
Cm-248		1.08	1.35×10^{-3}	4.2×10^{-3}
Co-55	Cobalt (27)	13.5	13.5	3.1×10^{6}
Co-56		8.11	8.11	3.0×10^{4}
Co-57		216	216	8.4×10^{3}
Co-58m		1080	1080	5.9×10^{6}
Co-58		27.0	27.0	3.2×10^{4}
Co-60		10.8	10.8	1.1×10^{3}
Cr-51	Chromium (24)	811	811	9.2×10^{4}
Cs-129	Cesium (55)	108	108	7.6×10^{5}
Cs-131		1080	1080	1.0×10^{5}
Cs-132		27.0	27.0	1.5×10^{5}
Cs-134m		1080	243	8.0×10^{5}
Cs-134		16.2	13.5	1.3×10^{3}
Cs-135		1080	24.3	1.2×10^{-3}
Cs-136		13.5	13.5	7.3×10^{4}
Cs-137		54.1	13.5	8.7×10^{1}
Cu-64	Copper (29)	135	24.3	3.9×10^{6}
Cu-67		243	24.3	7.6×10^{5}
Dy-159	Dysprosium (66)	541	541	5.7×10^{3}
Dy-165		16.2	13.5	8.2×10^{6}
Dy-166		8.11	8.11	2.3×10^{5}
Er-169	Erbium (68)	1080	24.3	8.3×10^{4}
Er-171		16.2	13.5	2.4×10^{6}
Es-253	Einsteinium (99)	5400	5.41×10^{-1}	-

Es-254	-	811	8.11×10^{-2}	-
Es-254m	-	16.2	10.8	-
Es-255	-	-	-	-
Eu-147	Europium (63)	54.1	54.1	3.7×10^{4}
Eu-148	-	13.5	13.5	1.6×10^{4}
Eu-149	-	541	541	9.4×10^{3}
Eu-150	-	18.9	18.9	1.6×10^{6}
Eu-152m	-	16.2	13.5	2.2×10^{6}
Eu-152	-	24.3	24.3	1.8×10^{2}
Eu-154	-	21.6	13.5	2.6×10^{2}
Eu-155	-	541	54.1	4.9×10^{2}
Eu-156	-	16.2	13.5	5.5×10^{4}
F-18	Fluorine (9)	27.0	13.5	9.5×10^{7}
Fe-52	Iron (26)	5.41	5.41	7.3×10^{6}
Fe-55	-	1080	1080	2.4×10^{3}
Fe-59	-	21.6	21.6	5.0×10^{4}
Fe-60	-	1080	5.41	2.0×10^{-2}
Fm-255	Fermium (100)	1080	21.6	-
Fm-257	-	270	2.16×10^{-1}	-
Ga-67	Gallium (31)	162	162	6.0×10^{5}
Ga-68	-	8.11	8.11	4.1×10^{7}
Ga-72	-	10.8	10.8	3.1×10^{6}
Gd-146	Gadolinium (64)	10.8	10.8	1.9×10^{4}
Gd-148	-	81.1	8.11×10^{-3}	3.2×10^{1}
Gd-153	-	270	135	3.5×10^{3}
Gd-159	-	108	13.5	1.1×10^{6}
Ge-68	Germanium (32)	8.11	8.11	7.1×10^{3}
Ge-71	-	1080	1080	1.6×10^{5}
Ge-77	-	8.11	8.11	3.6×10^{6}
H-3	Hydrogen (1)	-	-	-
Hf-172	Hafnium (72)	13.5	8.11	1.1×10^{3}
Hf-175	-	81.1	81.1	1.1×10^{4}
Hf-181	-	54.1	24.3	1.7×10^{4}
Hf-182	-	108	0.811	2.2×10^{-4}
Hg-194	Mercury (80)	27.0	27.0	3.5
Hg-195m	-	135	135	4.0×10^{5}
Hg-197m	-	270	24.3	6.7×10^{5}
Hg-197	-	270	270	2.5×10^{5}
Hg-203	-	108	24.3	1.4×10^{4}
Ho-163	Holmium (67)	1080	1080	7.6×10^{1}
Ho-166m	-	16.2	8.11	1.8
Ho-166	-	8.11	8.11	7.0×10^{5}
I-123	Iodine (53)	162	162	1.9×10^{6}
I-124	-	24.3	24.3	2.5×10^{5}
I-125	-	541	54.1	1.7×10^{4}
I-126	-	54.1	24.3	8.0×10^{4}
I-129	-	Unlimited	Unlimited	1.8×10^{-4}
I-131	-	81.1	13.5	1.2×10^{5}
I-132	-	10.8	10.8	1.0×10^{7}
I-133	-	16.2	13.5	1.1×10^{6}
I-134	-	8.11	8.11	2.7×10^{7}
I-135	-	16.2	13.5	3.5×10^{6}
In-111	Indium (49)	54.1	54.1	4.2×10^{5}
In-113m	-	108	108	1.7×17^{7}
In-114m	-	8.11	8.11	2.3×14^{4}
In-115m	-	162	24.3	6.1×10^{6}
Ir-189	Iridium (77)	270	270	5.2×10^{4}
Ir-190	-	18.9	18.9	6.2×10^{4}
Ir-192	-	27.0	13.5	9.2×10^{3}
Ir-193m	-	270	270	6.4×10^{4}
Ir-194	-	5.41	5.41	8.4×10^{5}
K-40	Potassium (19)	16.2	16.2	6.4×10^{-6}
K-42	-	5.41	5.41	6.0×10^{6}
K-43	-	27.0	13.5	3.3×10^{6}
Kr-81	Krypton (36)	1080	1080	2.1×10^{-2}
Kr-85m	-	162	162	8.2×10^{6}
Kr-85	-	541	270	3.9×10^{2}
Kr-87	-	5.41	5.41	2.8×10^{7}
La-137	Lanthanum (57)	1080	54.1	4.4×10^{-2}
La-140	-	10.8	10.8	5.6×10^{5}
Lu-172	Lutetium (71)	13.5	13.5	1.1×10^{5}
Lu-173	-	216	216	1.5×10^{3}
Lu-174m	-	541	216	5.3×10^{3}
Lu-174	-	216	108	6.2×10^{2}
Lu-177	-	811	24.3	1.1×10^{5}
MFP	For mixed fission products, use formula for mixtures or Table A-2			
Mg-28	Magnesium (12)	5.41	5.41	5.4×10^{6}
Mn-52	Manganese (25)	8.11	8.11	4.4×10^{5}
Mn-53	-	Unlimited	Unlimited	1.8×10^{-3}
Mn-54	-	27.0	27.0	7.7×10^{3}
Mn-56	-	5.41	5.41	2.2×10^{7}
Mo-93	Molybdenum (42)	1080	189	1.1
Mo-99	-	16.2	13.5	4.8×10^{5}
N-13	Nitrogen(7)	16.2	13.5	1.5×10^{9}
Na-22	Sodium (11)	13.5	13.5	6.3×10^{3}
Na-24	-	5.41	5.41	8.7×10^{6}
Nb-92m	Niobium (41)	18.9	18.9	1.4×10^{5}
Nb-93m	-	1080	162	2.4×10^{2}
Nb-94	-	16.2	16.2	1.9×10^{-1}
Nb-95	-	27.0	27.0	3.9×10^{4}
Nb-97	-	16.2	13.5	2.7×10^{7}
Nd-147	Neodymium (60)	108	13.5	8.1×10^{4}
Nd-149	-	16.2	13.5	1.2×10^{7}
Ni-59	Nickel (28)	1080	1080	8.0×10^{-2}
Ni-63	-	1080	811	5.7×10^{1}
Ni-65	-	8.11	8.11	1.9×10^{7}
Np-235	Neptunium (93)	1080	1080	1.4×10^{3}
Np-236	-	189	2.70×10^{-2}	1.3×10^{-2}
Np-237	-	54.1	5.41×10^{-3}	7.1×10^{-4}
Np-239	-	162	13.5	2.3×10^{5}
Os-185	Osmium (76)	27.0	27.0	7.5×10^{3}
Os-191m	-	1080	1080	1.3×10^{6}
Os-191	-	270	24.3	4.4×10^{4}
Os-193	-	16.2	13.5	5.3×10^{5}
Os-194	-	5.41	5.41	3.1×10^{2}
P-32	Phosphorus (15)	8.11	8.11	2.9×10^{5}
P-33	-	1080	24.3	1.6×10^{5}
Pa-230	Protactinium (91)	54.1	2.70	3.3×10^{4}
Pa-231	-	16.2	1.62×10^{-3}	4.7×10^{-2}
Pa-233	-	135	24.3	2.1×10^{4}
Pb-201	Lead (82)	27.0	27.0	1.7×10^{6}
Pb-202	-	1080	54.1	3.4×10^{-3}
Pb-203	-	81.1	81.1	3.0×10^{5}
Pb-205	-	Unlimited	Unlimited	1.2×10^{-4}
Pb-210	-	16.2	0.243	7.6×10^{1}
Pb-212	-	8.11	8.11	1.4×10^{6}
Pd-103	Palladium (46)	1080	1080	7.5×10^{4}
Pd-107	-	Unlimited	Unlimited	5.1×10^{-4}
Pd-109	-	16.2	13.5	2.1×10^{6}
Pm-143	Promethium (61)	81.1	81.1	3.4×10^{3}
Pm-144	-	16.2	16.2	2.5×10^{3}
Pm-145	-	811	189	1.4×10^{2}
Pm-147	-	1080	24.3	9.3×10^{2}
Pm-148m	-	13.5	13.5	2.1×10^{4}
Pm-149	-	16.2	13.5	4.0×10^{5}
Pm-151	-	81.1	13.5	7.3×10^{5}

Po-208	Polonium (84)	1080	0.541	5.9×10^{2}
Po-209		1080	0.541	1.7×10^{1}
Po-210		1080	0.541	4.5×10^{3}
Pr-142	Praseodymium (59)	5.41	5.41	1.2×10^{6}
Pr-143		108	13.5	6.7×10^{4}
Pt-188	Platinum (78)	16.2	16.2	6.8×10^{4}
Pt-191		81.1	81.1	2.4×10^{5}
Pt-193m		1080	243	1.6×10^{5}
Pt-193		1080	1080	3.7×10^{1}
Pt-195m		270	54.1	1.7×10^{5}
Pt-197m		270	24.3	1.0×10^{7}
Pt-197		541	13.5	8.7×10^{5}
Pu-236	Plutonium (94)	189	1.89×10^{-2}	5.3×10^{2}
Pu-237		541	541	1.2×10^{4}
Pu-238		189	5.41×10^{-3}	1.7×10^{1}
Pu-239		541	5.41×10^{-3}	6.2×10^{-2}
Pu-240		54.1	5.41×10^{-3}	2.3×10^{-1}
Pu-241		54.1	0.270	1.0×10^{2}
Pu-242		54.1	5.41×10^{-3}	3.9×10^{-3}
Pu-244		1080	5.41×10^{-3}	1.8×10^{-5}
Ra-223	Radium (88)	54.1	0.811	5.1×10^{4}
Ra-224		8.11	1.62	1.6×10^{5}
Ra-225		16.2	0.541	3.9×10^{4}
Ra-226		8.11	0.541	1.0
Ra-228		16.2	1.08	2.7×10^{2}
Rb-81	Rubidium (37)	54.1	24.3	8.4×10^{6}
Rb-83		54.1	54.1	1.8×10^{4}
Rb-84		27.0	24.3	4.7×10^{4}
Rb-86		8.11	8.11	8.1×10^{4}
Rb-87		Unlimited	Unlimited	8.6×10^{-8}
Rb (natural)		Unlimited	Unlimited	1.8×10^{8}
Re-183	Rhenium (75)	135	135	1.0×10^{4}
Re-184m		81.1	81.1	4.3×10^{3}
Re-184		27.0	27.0	1.9×10^{4}
Re-186		108	13.5	1.9×10^{5}
Re-187		Unlimited	Unlimited	3.8×10^{-8}
Re-188		5.41	5.41	9.8×10^{5}
Re-189		108	13.5	$6.8\ 10^{5}$
Re (natural)		Unlimited	Unlimited	2.4×10^{-8}
Rh-99	Rhodium (45)	54.1	54.1	8.2×10^{4}
Rh-101		108	108	1.1×10^{3}
Rh-102m		54.1	24.3	6.2×10^{3}
Rh-102		13.5	13.5	1.2×10^{3}
Rh-103m		1080	1080	3.3×10^{7}
Rh-105		270	24.3	8.4×10^{5}
Rn-222	Radon (86)	5.41	0.108	1.5×10^{5}
Ru-97	Ruthenium (44)	108	108	4.6×10^{5}
Ru-103		54.1	24.3	3.2×10^{4}
Ru-105		16.2	13.5	6.7×10^{6}
Ru-106		5.41	5.41	3.3×10^{3}
S-35	Sulfur (16)	1080	54.1	4.3×10^{4}
Sb-122	Antimony (51)	8.11	8.11	4.0×10^{5}
Sb-124		16.2	13.5	1.7×10^{4}
Sb-125		54.1	24.3	1.0×10^{3}
Sb-126		10.8	10.8	8.4×10^{4}
Sc-44	Scandium (21)	13.5	13.5	1.8×10^{7}
Sc-46		13.5	13.5	3.4×10^{4}
Sc-47		243	24.3	8.3×10^{5}
Sc-48		8.11	8.11	1.5×10^{6}
Se-75	Selenium (34)	81.1	81.1	1.5×10^{4}
Se-79		1080	54.1	7.0×10^{-2}
Si-31	Silicon (14)	16.2	13.5	3.9×10^{7}
Si-32		1080	5.41	1.1×10^{2}
Sm-145	Samarium (62)	541	541	2.6×10^{3}
Sm-147		Unlimited	Unlimited	2.3×10^{-8}
Sm-151		1080	108	2.6×10^{1}
Sm-153		108	13.5	4.4×10^{5}
Sn-113	Tin (50)	108	108	1.0×10^{4}
Sn-117m		162	54.1	8.2×10^{4}
Sn-119m		1080	1080	3.7×10^{3}
Sn-121m		1080	24.3	5.4×10^{1}
Sn-123		16.2	13.5	8.2×10^{3}
Sn-125		5.41	5.41	1.1×10^{5}
Sn-126		8.11	8.11	2.8×10^{-2}
Sr-82	Strontium (38)	5.41	5.41	6.2×10^{4}
Sr-85m		135	135	3.3×10^{7}
Sr-85		54.1	54.1	2.4×10^{4}
Sr-87m		81.1	81.1	1.3×10^{7}
Sr-89		16.2	13.5	2.9×10^{4}
Sr-90		5.41	2.70	1.4×10^{2}
Sr-91		8.11	8.11	3.6×10^{6}
Sr-92		21.6	13.5	1.3×10^{7}
T	Tritium(1)	1080	1080	9.7×10^{3}
Ta-178	Tantalum (73)	27.0	27.0	1.1×10^{8}
Ta-179		811	811	1.1×10^{3}
Ta-182		21.6	13.5	6.2×10^{3}
Tb-157	Terbium (65)	1080	270	1.5×10^{1}
Tb-158		27.0	18.9	1.5×10^{1}
Tb-160		24.3	13.5	1.1×10^{4}
Tc-95m	Technetium (43)	54.1	54.1	2.2×10^{4}
Tc-96m		10.8	10.8	3.8×10^{7}
Tc-96		10.8	10.8	3.2×10^{5}
Tc-97m		1080	1080	1.5×10^{4}
Tc-97		Unlimited	Unlimited	1.4×10^{-3}
Tc-98		18.9	18.9	8.7×10^{-4}
Tc-99m		216	216	5.3×10^{6}
Tc-99		1080	24.3	1.7×10^{-2}
Te-118	Tellurium (52)	5.41	5.41	1.8×10^{5}
Te-121m		135	135	7.0×10^{3}
Te-121		5.41	5.41	6.4×10^{4}
Te-123m		189	189	8.9×10^{3}
Te-125m		811	243	1.8×10^{4}
Te-127m		541	13.5	9.4×10^{3}
Te-127		541	13.5	2.6×10^{6}
Te-129m		16.2	13.5	3.0×10^{4}
Te-129		16.2	13.5	2.1×10^{7}
Te-131m		18.9	13.5	8.0×10^{5}
Te-132		10.8	10.8	8.0×10^{5}
Th-227	Thorium (90)	243	0.270	3.1×10^{4}
Th-228		8.11	1.08×10^{-2}	8.2×10^{2}
Th-229		8.11	8.11×10^{-4}	2.1×10^{1}
Th-230		54.1	5.41×10^{-3}	2.1×10^{-2}
Th-231		1080	24.3	5.3×10^{5}
Th-232		Unlimited	Unlimited	1.1×10^{-7}
Th-234		5.41	5.41	2.3×10^{4}
Th (natural)		Unlimited	Unlimited	2.2×10^{-7}
Ti-44	Titanium (22)	13.5	5.41	1.7×10^{2}
Tl-200	Thallium (81)	21.6	21.6	6.0×10^{5}
Tl-201		270	270	2.1×10^{5}
Tl-202		54.1	54.1	5.3×10^{4}
Tl-204		108	13.5	4.6×10^{2}
Tm-167	Thalium (69)	189	189	8.5×10^{4}
Tm-168		21.6	21.6	8.5×10^{3}
Tm-170		108	13.5	6.0×10^{3}
Tm-171		1080	270	1.1×10^{3}
U-230	Uranium (92)	1080	0.270	2.7×10^{4}
U-232		81.1	8.11×10^{-3}	2.2×10^{1}
U-233		270	2.70×10^{-2}	9.7×10^{-3}
U-234		270	2.70×10^{-2}	6.2×10^{-3}

U-235	-	Unlimited	Unlimited	$2.2x10^{-6}$
U-236	-	270	$2.70x10^{-2}$	$6.5x10^{-5}$
U-238	-	Unlimited	Unlimited	$3.4x10^{-7}$
U (natural)	-	Unlimited	Unlimited	$7.1x10^{-7}$
U (enriched 5% or less)	-	Unlimited	Unlimited	(See Table A-3)
U (enriched more than 5%)	-	270	$2.70x10^{-2}$	(See Table A-3
U (depleted)	-	Unlimited	Unlimited	(See Table A-3)
V-48	Vanadium (23)	8.11	8.11	$1.7x10^{5}$
V-49	-	1080	1080	$8.1x10^{3}$
W-178	Tungsten (74)	27.0	27.0	$3.4x10^{4}$
W-181	-	811	811	$6.0x10^{3}$
W-185	-	1080	24.3	$9.4x10^{3}$
W-187	-	54.1	13.5	$7.0x10^{5}$
W-188	-	5.41	5.41	$1.0x10^{4}$
Xe-122	Xenon (54)	5.41	5.41	$1.3x10^{6}$
Xe-123	-	5.41	5.41	$1.2x10^{7}$
Xe-127	-	108	108	$2.8x10^{4}$
Xe-131m	-	1080	1080	$8.4x10^{4}$
Xe-133	-	541	541	$1.9x10^{5}$
Xe-135	-	108	108	$2.6x10^{6}$
Y-87	Yttrium (39)	54.1	54.1	$4.5x10^{5}$
Y-88	-	10.8	10.8	$1.4x10^{4}$
Y-90	-	5.41	5.41	$5.4x10^{5}$
Y-91m	-	54.1	54.1	$4.2x10^{7}$
Y0-91	-	8.11	8.11	$2.5x10^{4}$
Y-92	-	5.41	5.41	$9.6x10^{6}$
Y-93	-	5.41	5.41	$3.3x10^{6}$
Yb-169	Yterbium (70)	81.1	81.1	$2.4x10^{4}$
Yb-175	-	54.1	54.1	$1.8x10^{5}$
Zn-65	Zinc (30)	54.1	54.1	$8.2x10^{3}$
Zn-69m	-	54.1	13.5	$3.3x10^{6}$
Zn-69	-	108	13.5	$4.9x10^{7}$
Zr-88	Zirconium (40)	81.1	81.1	$1.8x10^{4}$
Zr-93	-	1080	5.41	$2.5x10^{-3}$
Zr-95	-	27.0	24.3	$2.1x10^{4}$
Zr-97	-	8.11	8.11	$1.9x10^{6}$

[a] International shipments of Einsteinium require multilateral approval of A_1 and A_2 values.

[b] International shipments of Fermium require multilateral approval of A_1 and A_2 values.

[c] 20 Ci for Mo99 for domestic use.

(7) Table A-2: General values for A_1 and A_2

Contents	A_1 (Ci)	A_2 (Ci)
Only beta- or gamma-emitting nuclides are known to be present	5	0.5
Alpha-emitting nuclides are known to be present, or no relevant data are available	2.70	$5.41x10^{-4}$

(8) Table A-3: Activity-mass relationships for uranium.

Uranium Enrichment[1] wt % U-235 present	Specific Activity Ci/g
0.45	$5.0x10^{-7}$
0.72	$7.1x10^{-7}$
1.0	$7.6x10^{-7}$
1.5	$1.0x10^{-6}$
5.0	$2.7x10^{-6}$
10.0	$4.8x10^{-6}$
20.0	$1.0x10^{-5}$
35.0	$2.0x10^{-5}$
50.0	$2.5x10^{-5}$
90.0	$5.8x10^{-5}$
93.0	$7.0x10^{-5}$
95.0	$9.1x10^{-5}$

[1] The figures for uranium include representative values for the activity of the uranium-234 that is concentrated during the enrichment process.]

WILLIAM D. HACKER, MD FAAP, CPE
JANIE MILLER, Secretary
APPROVED BY AGENCY: December 9, 2010
FILED WITH LRC: December 10, 2010
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 Health Services
Division of Public Health Protection and Safety
(As Amended at ARRS, April 12, 2011)

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

RELATES TO: KRS 211.842 to 211.852, 211.990(4), 10 C.F.R. 35**, 45 C.F.R. 46**

STATUTORY AUTHORITY: KRS 194A.050, 211.090, 211.844, 10 C.F.R. 35**[**, EO 1996-862, EO 2004-726**]**

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-726 effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.] KRS 211.844 requires the Cabinet for Health and Family Services to promulgate administrative regulations for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes requirements and provisions for the use of radioactive material in the healing arts, for issuance of licenses authorizing the medical use of radioactive material**[,]** and for specific licensees to possess, use, and transfer radioactive material for medical uses.

Section 1. Implementation. (1) A licensee shall implement the provisions in this administrative regulation on or before October 24, 2005, with the exception of the requirements listed in subsection (2) of this section.

(2) A licensee shall implement the training requirements in Sections 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, and 77 of this administrative regulation on or before October 25, 2007 [2005].

(3) Prior to October 25, 2007 [2005], a licensee shall satisfy the training
requirements of this administrative regulation for a Radiation Safety Officer, an authorized medical physicist, an authorized nuclear pharmacist, or an authorized user by complying with either:

(a) The appropriate training requirements in Sections 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, and 77 of this administrative regulation; or

(b) The appropriate training requirements in Section 78 of this administrative regulation.

(4) If a license condition exempted a licensee from a provision of this administrative regulation on October 24, 2005, then the license condition continues to exempt the licensee from the provision of 902 KAR 100:072.

(5) If a requirement in this administrative regulation differs from the requirement in an existing license condition, the requirement in this administrative regulation shall govern.

(6) A licensee shall continue to comply with any license condition that requires it to implement procedures required by Sections 49, 55, 56, and 57 of this administrative regulation until there is a license amendment or renewal that modifies the license condition.

Section 2. License Required. (1) A person may manufacture, produce, acquire, receive, possess, prepare, use, or transfer radioactive material for medical use only in accordance with a specific license issued by the cabinet, the U.S. Nuclear Regulatory

Commission, or another agreement state, or as allowed in subsection (2)(a) or (b) of this section.

(2) A specific license is not **required[**~~needed~~**]** for an individual who:

(a) Receives, possesses, uses, or transfers radioactive material in accordance with the administrative regulations in this chapter under the supervision of an authorized user as provided in Section 12 of this administrative regulation unless prohibited by license condition; or

(b) Prepares unsealed radioactive material for medical use in accordance with the administrative regulations in this chapter under the supervision of an authorized nuclear pharmacist or authorized user as provided in Section 12 of this administrative regulation unless prohibited by license condition.

Section 3. Maintenance of Records. Each record required by this administrative regulation shall be legible throughout the retention period specified by each section. The record **shall[**~~may~~**]** be the original or a reproduced copy or a microform if the copy or microform is authenticated by authorized personnel and the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications shall include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

Section 4. Application for License, Amendment, or Renewal. (1) An application shall be signed by the applicant's or licensee's management.

(2) An application for a license for medical use of radioactive material as described in Sections 30, 31, 33, 37, [~~36,~~] 45, 46 and 62 of this administrative regulation and **shall[**~~must~~**]** be made by:

(a) Filing an original and one (1) copy of Form RPS[~~RAPS~~]-7, **["]**Application for Radioactive Material License,**["]** that includes the facility diagram, equipment, and training and experience qualifications of the Radiation Safety Officer, authorized **user[**~~user(s)~~**]**, authorized medical **physicist[**~~physicist(s)~~**]**, and authorized nuclear **pharmacist[**~~pharmacist(s)~~**]**; and

(b) Submitting procedures required by Sections 49, 55, 56, and 57, of this administrative regulation as applicable.

(3) A request for a license amendment or renewal shall be made by:

(a) Submitting an original and one (1) copy of either:

1. Form RPS[~~RAPS~~]-7, **["]**Application for Radioactive Material License**["]**; or

2. A letter requesting the amendment or renewal; and

(b) Submitting procedures required by Sections 49, 55, 56, and 57 of this administrative regulation as applicable.

(4) In addition to the requirements in subsections (2) and (3) of this section, an application for a license or amendment for medical use of radioactive material as described in Section 62 of this administrative regulation shall also include information regarding any radiation safety aspects of the medical use of the material that is unique to the evolving technology.

(a) The applicant shall also provide specific information on:

1. Radiation safety precautions and instructions;

2. Methodology for measurement of dosages or doses to be administered to patients or human research subjects; and

3. Calibration, maintenance, and repair of instruments and equipment necessary for radiation safety.

(b) The applicant or licensee shall **[**~~also~~**]**provide **[**~~any other~~**]**information requested by the cabinet **as necessary to complete[**~~in~~**]** its review of the application.

(5) An applicant that satisfies the requirements specified in 902 KAR 100:052 of this chapter may apply for a Type A specific license of broad scope.

Section 5. License Amendments. A licensee shall apply for and receive a license amendment:

(1) Before the licensee receives, prepares, or uses radioactive material for a type of use that is permitted under this chapter, but that is not authorized on the licensee's current license issued under this chapter;

(2) Before **the licensee[**~~it~~**]** permits anyone to work as an authorized user, authorized nuclear pharmacist, or authorized medical physicist under the license, except:

(a) For an authorized user, an individual who meets the requirements in Sections 63, 68(1), 69(1), 70(1), 71(1), 72(1), 74(1), [~~73(1),~~] 76(1), 77(1), 78(2)(a), 78(3)(a), 78(4)(a), 78(7)(a), 78(9)(a), and 78(10)(a) of this administrative regulation;

(b) For an authorized nuclear pharmacist, an individual who meets the requirements in [~~902 KAR 100:072,~~] Sections 63**[,]** and 66[~~67~~](1) or 78(12)(a) [~~and 62~~];

(c) For an authorized medical physicist, an individual who meets the requirements in Sections 63 and 65[~~Section 66~~](1) or 78(11)(a) or (b) [~~and 62~~] of this administrative regulation;

(d) An individual who is identified as an authorized user, an authorized nuclear pharmacist, or authorized medical physicist:

1. On a cabinet, an agreement state or U.S. Nuclear Regulatory Commission license or other equivalent permit or license recognized by the cabinet that authorizes the use of radioactive material in medical use or in the practice of nuclear pharmacy;

2. On a permit issued by the cabinet, an agreement state or U.S. Nuclear Regulatory Commission specific license of broad scope that is authorized to permit the use of radioactive material in medical use or in the practice of nuclear pharmacy;

3. On a permit issued by a U.S. Nuclear Regulatory Commission master material licensee that is authorized to permit the use of radioactive material in medical use or in the practice of nuclear pharmacy; or

4. By a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists.

(3) Before it changes Radiation Safety Officers, except as provided in Section 10(3) of this administrative regulation;

(4) Before it receives radioactive material in excess of the amount or in a different form, or receives a different radionuclide than is authorized on the license;

(5) Before it adds to or changes the areas of use identified in the application or on the license, except for areas of use where radioactive material is used only in accordance with either Section 30 or 31 of this administrative regulation;

(6) Before it changes the **address[**~~address(es)~~**]** of use identified in the application or on the license; or

(7) Before it revises procedures required by Sections 49, 55, 56 and 57 of this administrative regulation as applicable, where the revision reduces radiation safety; and [~~.~~]

(8) Before conducting research involving human research subjects using radioactive material[~~, the licensee shall submit provisions for implementing the following requirements with the application for amendment:~~

~~(a) The research shall be conducted, funded, supported, or regulated by a federal agency that has implemented the federal policy for the protection of human subjects;~~

~~(b) Informed consent shall be obtained from the human subjects; and~~

~~(c) Prior review and approval of the research activities shall be obtained from an institutional review board as defined and described in the federal policy for the protection of human subjects~~].

Section 6. Notifications. (1) A licensee shall provide the cabinet a copy of the board certification, the cabinet, U.S. Nuclear Regulatory Commission or agreement state license, the permit issued by a U.S. Nuclear Regulatory Commission master material licensee, the permit issued by a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state licensee of broad scope, or the permit issued by a U.S. Nuclear Regulatory Commission master material license broad scope permittee [~~permute~~] for each individual no later than thirty (30) days after the date that the licensee permits the individual to work as an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist under Section 5(2)(a) through (d) of this administrative regulation.

(2) A licensee shall notify the cabinet by letter no later than thirty (30) days after:

(a) An authorized user, an authorized nuclear pharmacist, a Radiation Safety Officer, or an authorized medical physicist permanently discontinues performance of duties under the license or

has a name change;

(b) The licensee's mailing address changes;

(c) The licensee's name changes, but the name change does not constitute a transfer of control of the license as described in 902 KAR 100:040, Section 6(2) of this chapter; or

(d) The licensee has added to or changed the areas of use identified in the application or on the license if radioactive material is used in accordance with either Section 30 or 31 of this administrative regulation.

(3) The licensee shall mail the documents required in this section to the Cabinet for Health and Family Services, Radiation Health [~~and Toxic Agents Control~~] Branch, Manager, 275 East Main Street, Mailstop HS1C-A, Frankfort, Kentucky 40621.

Section 7. Exemptions Regarding Type A Specific Licenses of Broad Scope. A licensee possessing a Type A specific license of broad scope for medical use, issued under 902 KAR 100:052 of this chapter, is exempt from:

(1) Section 4(4) of this administrative regulation regarding the need to file an amendment to the license for medical use of radioactive material, as described in Section 62 of this administrative regulation;

(2) The provisions of Section 5(2) of this administrative regulation;

(3) The provisions of Section 5(5) of this administrative regulation regarding additions to or changes in the areas of use at the addresses identified in the application or on the license;

(4) The provisions of Section 6(1) of this administrative regulation;

(5) The provisions of Section 6(2)(a) of this administrative regulation for an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist;

(6) The provisions of Section 6(2)(d) of this administrative regulation regarding
additions to or changes in the areas of use identified in the application or on the license if radioactive material is used in accordance with either Section 30 or 31 [~~29 or 30~~] of this administrative regulation; and

(7) The provisions of Section 36[~~18~~](1) of this administrative regulation.

Section 8. License Issuance. (1) The cabinet shall issue a license for the medical use of radioactive material if:

(a) The applicant has filed RPS[~~RAPS~~]-7 **["]**Application for Radioactive Material License**["]** in accordance with the instructions in Section 4 of this administrative regulation;

(b) The applicant has paid any applicable fee as provided in 902 KAR 100:012 of this chapter;

(c) The cabinet finds the applicant equipped and committed to observe the safety standards established by the cabinet in this Chapter for the protection of the public health and safety; and

(d) The applicant meets the requirements of 902 KAR 100:040, 902 KAR 100:041, 100:042, and 100:045 of this chapter.

(2) The cabinet shall issue a license for mobile medical service if the
applicant:

(a) Meets the requirements in subsection (1) of this section; and

(b) Assures that individuals or human research subjects to whom unsealed radioactive material or radiation from implants containing radioactive material will be administered may be released following treatment in accordance with Section 27 of this administrative regulation.

Section 9. Specific Exemptions. The cabinet may, **as established in 10 C.F.R. 35.19,** upon application of any interested person or upon its own initiative, grant exemptions from the **administrative** regulations in this chapter that it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

Section 10. Authority and Responsibilities for the Radiation Protection Program. (1) In addition to the radiation protection program requirements of 902 KAR 100:019 of this administrative regulation [~~chapter~~], a licensee's management shall approve in writing:

(a) Requests for a license application, renewal, or amendment before submittal to the cabinet;

(b) Any individual before allowing that individual to work as an authorized user, authorized nuclear pharmacist, or authorized medical physicist; and

(c) Radiation protection program changes that do not require a license amendment and are permitted in under Section 11 of this administrative regulation**.**

(2) A licensee's management shall appoint a Radiation Safety Officer, who agrees, in writing, to be responsible for implementing the radiation protection program. The licensee, through the Radiation Safety Officer, shall ensure that radiation safety activities are being performed in accordance with licensee-approved procedures and regulatory requirements.

(3) For up to sixty (60) days each year, a licensee may permit an authorized user or an individual qualified to be a Radiation Safety Officer, under Sections 63 and 64[~~65~~], of this administrative regulation to function as a temporary radiation safety officer and to perform the functions of a Radiation Safety Officer, as provided in subsection (7) of this section, if the licensee takes the actions required in subsections (2), (5), (7), and (8) of this section and notifies the cabinet in accordance with Section 6 of this administrative regulation.

(4) A licensee may simultaneously appoint more than one (1) temporary radiation safety officer in accordance with subsection (3) of this section, if needed to ensure that the licensee has a temporary radiation safety officer that satisfies the requirements to be a Radiation Safety Officer for each of the different types of uses of radioactive material permitted by the license.

(5) A licensee shall establish the authority, duties, and responsibilities of the Radiation Safety Officer in writing.

(6) **A licensee[**~~Licensees that are~~**]** authorized for two (2) or more different types of uses of radioactive material under Sections 33, 37, and 46 of this administrative regulation or two (2) or more types of units under Section 46 of this administrative regulation shall establish a Radiation Safety Committee to oversee all uses of radioactive material permitted by the license. The committee shall include an authorized user of each type of use permitted by the license, the Radiation Safety Officer, a representative of the nursing service, and a representative of management who is neither an authorized user nor a Radiation Safety Officer. The committee may include other members the licensee considers appropriate.

(7) A licensee shall provide the radiation safety officer sufficient authority, organizational freedom, time, resources, and management prerogative to:

(a) Identify radiation safety problems;

(b) Initiate, recommend, or provide corrective actions;

(c) Stop unsafe operations; and

(d) Verify implementation of corrective actions.

(8) A licensee shall retain a record of actions taken under subsections (1), (2), and (5) of this section as follows:

(a) A licensee shall retain a record of actions taken by the licensee's management in accordance with subsection (1) of this section, for five (5) years. The record shall include a summary of the actions taken and a signature of licensee management.

(b) The licensee shall retain a copy of both authority, duties, and responsibilities of the Radiation Safety Officer, as required in subsection (5) of this section, and a signed copy of each Radiation Safety Officer's agreement to be responsible for implementing the radiation safety program, as required in subsection (5) of this section,
for the duration of the license. The records shall include the signature of the
radiation safety officer and licensee management.

Section 11. Radiation Protection Program Changes. (1) A licensee may revise its radiation protection program without cabinet approval if:

(a) The revision does not require a license amendment under Section 5 of this
administrative regulation;

(b) The revision is in compliance with **902 KAR Chapter 100[**~~the administrative regulations~~**]** and the license;

(c) The revision has been reviewed and approved by the radiation safety officer and licensee management; and

(d) The affected individuals are instructed on the revised program before the changes are implemented.

(2) A licensee shall retain a record of each radiation protection program change made in accordance with subsection (1) of this section for five (5) years. The record shall include a copy of the old and new procedures**[**,**]** the effective date of the change**[**,**]** and the signature of the licensee management that reviewed and approved the change.

Section 12. Supervision. (1) A licensee that permits the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user, as allowed by Section 2(2)(a) of this administrative regulation shall:

(a) In addition to the requirements in 902 KAR 100:165, instruct the supervised individual in the licensee's written radiation protection procedures, written directive procedures, administrative regulations of this chapter, and license conditions with respect to the use of radioactive material; and

(b) Require the supervised individual to follow the instructions of the supervising authorized user for medical uses of radioactive material, written radiation protection procedures established by the licensee, written directive procedures, administrative regulations of this chapter, and license conditions with respect to the medical use of radioactive material.

(2) A licensee that permits the preparation of radioactive material for medical use by an individual under the supervision of an authorized nuclear pharmacist or physician who is an authorized user, as allowed by Section 2(2)(b) of this administrative regulation shall:

(a) In addition to the requirements in 902 KAR 100:165, instruct the supervised individual in the preparation of radioactive material for medical use, as appropriate to that individual's involvement with radioactive material; and

(b) Require the supervised individual to follow the instructions of the supervising authorized user or authorized nuclear pharmacist regarding the preparation of radioactive material for medical use, written radiation protection procedures established by the licensee, the administrative regulations of this chapter, and license conditions.

(3) A licensee that permits supervised activities under subsections (1) and (2) of this section is responsible for the acts and omissions of the supervised individual.

Section 13. Written Directives. (1) A written directive shall be dated and signed by an authorized user before the administration of I-131 sodium iodide greater than 1.11 Megabecquerels (MBq) (Thirty (30) microcuries (μCi)), any therapeutic dosage of unsealed radioactive material or any therapeutic dose of radiation from radioactive material.

(a) If, because of the emergent nature of the patient's condition, a delay in order
to provide a written directive would jeopardize the patient's health, an oral directive shall be acceptable. The information contained in the oral directive shall be documented as soon as possible in writing in the patient's record.

(b) A written directive shall be prepared within forty-eight (48) hours of the oral
directive.

(2) The written directive shall contain the patient or human research subject's name and the following information:

(a) For any administration of quantities greater than 1.11 MBq (30 μCi) of sodium iodide I-131: the dosage;

(b) For an administration of a therapeutic dosage of unsealed radioactive material other than sodium iodide I-131: the radioactive drug, dosage, and route of administration;

(c) For gamma stereotactic radiosurgery: the total dose, treatment site, and
values for the target coordinate settings per treatment for each anatomically distinct treatment site;

(d) For teletherapy: the total dose, dose per fraction, number of fractions, and treatment site;

(e) For high dose-rate remote afterloading brachytherapy: the radionuclide, treatment site, dose per fraction, number of fractions, and total dose; or

(f) For all other brachytherapy, including low, medium, and pulsed dose rate remote afterloaders:

1. Before implantation: treatment site, the radionuclide, and dose; and

2. After implantation but before completion of the procedure: the radionuclide,
treatment site, number of sources, and total source strength and exposure time (or the total dose).

(3) A written revision to an existing written directive may be made if the revision is dated and signed by an authorized user before the administration of the dosage of unsealed radioactive material, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next fractional dose.

(a) If, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive shall be acceptable. The oral revision shall be documented as soon as possible in the patient's record.

(b) A revised written directive shall be signed by the authorized user within forty-eight (48) hours of the oral revision.

(4) The licensee shall retain a copy of the written directive as required by this section for three (3) years.

Section 14. Procedures for Administrations Requiring a Written Directive. (1) For any administration requiring a written directive, the licensee shall develop, implement, and maintain written procedures to provide high confidence that:

(a) The patient's or human research subject's identity is verified before each administration; and

(b) Each administration is in accordance with the written directive.

(2) At a minimum, the procedures required by subsection (1) of this section shall address the following items that are applicable to the licensee's use of radioactive material:

(a) Verifying the identity of the patient or human research subject;

(b) Verifying that the administration is in accordance with the treatment plan, if applicable, and the written directive;

(c) Checking both manual and computer-generated dose calculations; and

(d) Verifying that any computer-generated dose calculations are correctly transferred into the consoles of therapeutic medical units authorized by Section 46 or 62 of this administrative regulation.

(3) A licensee shall retain a copy of the procedures required under subsection (1) for the duration of the license.

Section 15. Report and Notification of Medical Events. (1) A licensee shall report any event, except for an event that results from patient intervention, in which the administration of radioactive material or radiation from radioactive material results in:

(a) A dose that differs from the prescribed dose or dose that would have resulted from the prescribed dosage by more than 0.05 Sv (5 rem) effective dose equivalent, five-tenths (0.5) Sv (50 rem) to an organ or tissue, or five-tenths (0.5) Sv (50 rem) shallow dose equivalent to the skin; and**[**:**]**

1. The total dose delivered differs from the prescribed dose by twenty (20) percent or more;

2. The total dosage delivered differs from the prescribed dosage by twenty (20) percent or more or falls outside the prescribed dosage range; or

3. The fractionated dose delivered differs from the prescribed dose, for a single fraction, by fifty (50) percent or more.

(b) A dose that exceeds 0.05 Sv (5 rem) effective dose equivalent, five-tenths
(0.5) Sv (50 rem) to an organ or tissue, or five-tenths (0.5) Sv (50 rem) shallow dose equivalent to the skin from any of the following:

1. An administration of a wrong radioactive drug containing radioactive material;

2. An administration of a radioactive drug containing radioactive material by the
wrong route of administration;

3. An administration of a dose or dosage to the wrong individual or human research subject;

4. An administration of a dose or dosage delivered by the wrong mode of treatment; or

5. A leaking sealed source.

(c) A dose to the skin or an organ or tissue other than the treatment site that exceeds by five-tenths (0.5) Sv (fifty (50) rem) to an organ or tissue and fifty (50) percent or more of the dose expected from the administration defined in the written
directive (excluding, for permanent implants, seeds that were implanted in the correct
site but migrated outside the treatment site).

(2) A licensee shall report any event resulting from intervention of a patient or human research subject in which the administration of radioactive material or radiation from radioactive material results or will result in unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

(3) The licensee shall notify the cabinet by telephone no later than the next calendar day after discovery of the medical event. The commercial telephone number of the Cabinet for Health and Family Services, Radiation Health [~~and Toxic Agents Control~~] Branch is (502) 564-3700. The twenty-four (24) hour emergency number is (800) 255-2587 [~~(502) 564-7815~~].

(4) The licensee shall submit a written report to the Cabinet for Health and Family Services [~~at Director~~], Radiation Health [~~and Toxic Agents Control~~] Branch, Manager,
275 East Main Street, Mailstop HS1C-A, Frankfort, Kentucky 40621, within fifteen (15)
days after discovery of the medical event.

(a) The written report shall include:

1. The licensee's name;

2. The name of the prescribing physician;

3. A brief description of the event;

4. Why the event occurred;

5. The effect, if any, on the **individual[**~~individual(s)~~**]** who received the administration;

6. What actions, if any, have been taken or are planned to prevent recurrence; and

7. Certification that the licensee notified the individual (or the individual's responsible relative or guardian), and if not, why not.

(b) The report shall not contain the individual's name or any other information that could lead to identification of the individual.

(5) The licensee shall provide notification of the event to the referring physician and also notify the individual who is the subject of the medical event no later than twenty-four (24) hours after its discovery, unless the referring physician personally informs the licensee either that he or she will inform the individual or that, based on medical judgment, telling the individual would be harmful. The licensee shall not be required to notify the individual without first consulting the referring physician. If the referring physician or the affected individual cannot be reached within twenty-four (24) hours, the licensee shall notify the individual as soon as possible thereafter. The licensee shall not delay any appropriate medical care for the individual, including any necessary remedial care as a result of the medical event, because of any delay in notification. To meet the requirements of this **subsection[**~~paragraph~~**]**, the notification of the individual who is the subject of the medical event may be made instead to that individual's responsible relative or guardian. If a verbal notification is made, the licensee shall inform the individual, or appropriate responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide this written description if requested.

(6) Aside from the notification requirement, nothing in this section shall affect any rights or duties of licensees and physicians in relation to each other, to individuals affected by the medical event, or to that individual's responsible relatives or guardians.

(7) A licensee shall:

(a) Annotate a copy of the report provided to the cabinet with the:

1. Name of the individual who is the subject of the event; and

2. Social Security number or other identification number, if one (1) has been assigned, of the individual who is the subject of the event; and

(b) Provide a copy of the annotated report to the referring physician, if other than the licensee, no later than fifteen (15) days after the discovery of the event.

Section 16. Report and Notification of a Dose to an Embryo/fetus or a Nursing Child. (1) A licensee shall report any dose to an embryo/fetus that is greater than fifty (50) mSv (five (5) rem) dose equivalent that is a result of an administration of radioactive material or radiation from radioactive material to a pregnant individual unless the dose to the embryo/fetus was specifically approved, in advance, by the authorized user.

(2) A licensee shall report any dose to a nursing child that is a result of an
administration of radioactive material to a breast-feeding individual that:

(a) Is greater than fifty (50) mSv (five (5) rem) total effective dose equivalent; or

(b) Has resulted in unintended permanent functional damage to an organ or a physiological system of the child, as determined by a physician.

(3) The licensee shall notify the cabinet by telephone no later than the next calendar day after discovery of a dose to the embryo/fetus or nursing child that requires a report in subsections (1) or (2) of this section. The commercial telephone number of the Cabinet for Health and Family Services, Radiation Health [~~and Toxic Agents Control~~] Branch is (502) 564-3700. The twenty-four (24) hour emergency number is (800) 255-2587 [~~(502) 564-7815~~].

(4) The licensee shall submit a written report to the Cabinet for Health and Family Services [~~at Director~~], Radiation Health [~~and Toxic Agents Control~~] Branch, Manager, 275 East Main Street, Mailstop HS1C-A, Frankfort, Kentucky 40621, within fifteen (15) days after discovery of a dose to the embryo/fetus or nursing child that requires a report in subsections (1) or (2) in this section.

(a) The written report shall include:

1. The licensee's name;

2. The name of the prescribing physician;

3. A brief description of the event;

4. Why the event occurred;

5. The effect, if any, on the **embryo or fetus[**~~embryo/fetus~~**]** or the nursing child;

6. What actions, if any, have been taken or are planned to prevent recurrence; and

7. Certification that the licensee notified the pregnant individual or mother (or the mother's or child's responsible relative or guardian), and if not, why not.

(b) The report shall not contain the individual's or child's name or any other information that could lead to identification of the individual or child.

(5) The licensee shall provide notification of the event to the referring physician and also notify the pregnant individual or mother, both hereafter referred to as the mother, no later than twenty-four (24) hours after discovery of an event that would require reporting under subsection (1) or (2) of this section, unless the referring physician personally informs the licensee either that he or she will inform the mother or that, based on medical judgment, telling the mother would be harmful. The licensee shall not be required to notify the mother without first consulting with the referring physician. If the referring physician or mother cannot be reached within twenty-four (24) hours, the licensee shall make the appropriate notifications as soon as possible thereafter. The licensee shall not delay any appropriate medical care for the **embryo or fetus[**~~embryo/fetus~~**]** or for the nursing child, including any necessary remedial care as a result of the event, because of any delay in notification. To meet the requirements of this paragraph, the notification may be made to the mother's or child's responsible relative or guardian instead of the mother. If a verbal notification is made, the licensee shall inform the mother, or the mother's or child's responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide this written description if requested.

(6) A licensee shall:

(a) Annotate a copy of the report provided to the cabinet with the:

1. Name of the pregnant individual or the nursing child who is

the subject of the event; and

2. Social Security number or other identification number, if one (1) has been assigned, of the pregnant individual or the nursing child who is the subject of the event; and

(b) Provide a copy of the annotated report to the referring physician, if other than the licensee, no later than fifteen (15) days after the discovery of the event.

Section 17. Provisions for the Protection of Human Research Subjects. (1) A licensee may conduct research involving human research subjects only if it uses the radioactive materials specified on its license for the uses authorized on its license.

(2) If the research is conducted, funded, supported, or regulated by another federal agency that has implemented the Federal Policy for the Protection of Human Subjects**, 45 C.F.R. Part 46[**~~(Federal Policy)~~**]**, the licensee shall, before conducting research:

(a) Obtain review and approval of the research from an **["]**Institutional Review Board,**"]** as defined and described in the Federal Policy **for the Protection of Human Subjects, 45 C.F.R. Part 46**; and

(b) Obtain **["]**informed consent**"]**, as defined and described in the Federal Policy **for the Protection of Human Subjects, 45 C.F.R. Part 46**, from the human research subject.

(3) If the research will not be conducted, funded, supported, or regulated by another federal agency that has implemented the Federal Policy, the licensee, shall before conducting research, apply for and receive a specific amendment to its cabinet medical use license. The amendment request shall include a written commitment that the licensee shall, before conducting research:

(a) Obtain review and approval of the research from an **["]**Institutional Review Board**"]**, as defined and described in the Federal Policy **for the Protection of Human Subjects, 45 C.F.R. Part 46**; and

(b) Obtain "informed consent", as defined and described in the Federal Policy, form the human research subject.

(4) Nothing in this section relieves the licensees from complying with the other requirements in this administrative regulation. [~~Report and Notification of a Dose Greater Than Fifty (50) mSv (5 rem) to an Individual From a Patient Released Under Section 27 of this Chapter.~~

~~(1) A licensee shall notify the Cabinet for Health and Family Services, Radiation Health and Toxic Agents Branch and file a report, if required, for any dose greater than fifty (50) mSv (5 rem) total effective dose equivalent that an individual receives from a patient released under this section.~~

~~(2) The licensee shall notify by telephone the Cabinet for Health and Family Services, Radiation Health and Toxic Agents Branch (502) 564-3700 no later than the next calendar day after the licensee becomes aware of an event that requires a report in subsection (1) of this section.~~

~~(3) The licensee shall submit a written report to the Cabinet for Health and Family Services, Radiation Health and Toxic Agents Branch, 275 East Main Street, Frankfort, Kentucky 40601, within fifteen (15) days after the licensee becomes aware of an event that requires a report in subsection (1) of this section. The individual(s) receiving this dose from an event as described in subsection (1) is hereafter referred to as identified exposed individual(s). The written report shall include:~~

~~(a) The name of the licensee;~~

~~(b) The estimated dose(s) to the exposed individual(s);~~

~~(c) A brief description of the event;~~

~~(d) Why the event occurred;~~

~~(e) What actions, if any, have been taken or are planned to prevent recurrence; and~~

~~(f) Certification that the licensee notified the identified exposed individual(s).~~

~~(4) The report shall not contain the names of the identified exposed individual(s) or the individual released under subsection (1) of this section or any other information that could lead to the identification of the exposed individual(s) or the individual released under subsection (1) of this section.~~

~~(5) The licensee shall provide notification of the event to the identified exposed individual(s) no later that twenty-four (24) hours after the licensee becomes aware of an event that would require reporting under subsection (1) of this section.~~

~~(6) The licensee shall provide the identified exposed individual(s) with a copy of the report submitted to the cabinet.~~]

Section 18. Report of a Leaking Source. A licensee shall file a report within five (5) days if a leak test required by Section 24, of this administrative regulation reveals the presence of 185 Bq (0.005 μCi) or more of removable contamination. The report shall be filed with the Cabinet for Health and Family Services [~~at Director~~], Radiation Health [~~and Toxic Agents Control~~] Branch, Manager, 275 East Main Street, Frankfort, Kentucky 40621[~~, with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001~~]. The written report shall include the model number and serial number, if assigned, of the leaking source; the radionuclide and its estimated activity; the results of the test; the date of the test; and the action taken.

Section 19. Quality Control of Diagnostic Equipment. A licensee shall establish written quality control procedures for diagnostic equipment used for radionuclide studies.

(1) As a minimum, the procedures shall include:

(a) Quality control procedures recommended by equipment manufacturers; or

(b) Procedures approved by the cabinet.

(2) The licensee shall conduct quality control procedures in accordance with written procedures.

Section 20. Possession, Use, and Calibration of Instruments Used to Measure the Activity of Unsealed Radioactive Material. (1) For direct measurements performed in accordance with Section 22, of this administrative regulation a licensee shall possess and use instrumentation to measure the activity of unsealed radioactive material before it is administered to each patient or human research subject.

(2) A licensee shall calibrate the instrumentation required in subsection (1) of this section in accordance with nationally-recognized standards or the manufacturer's instructions.

(3) A licensee shall maintain a record of instrument calibrations, required by this section, for three (3) years. The records shall include the model and serial number of the instrument, the date of the calibration, the results of the calibration, and the name of the individual who performed the calibration.

Section 21. Calibration of Survey Instruments. (1) A licensee shall calibrate the survey instruments used to show compliance with this administrative regulation [~~section~~] and 902 KAR 100:019 before first use, annually, and following a repair that affects the calibration. A licensee shall:

(a) Calibrate all scales with readings up to ten (10) mSv (1000 mrem) per hour with a radiation source;

(b) Calibrate two (2) separated readings on each scale or decade that will be used to show compliance; and

(c) Conspicuously note on the instrument the apparent dose rate from a dedicated check source as determined at the time of calibration, and the date of calibration.

(2) A licensee shall not use survey instruments if the difference between the indicated exposure rate and the calculated exposure rate is more than twenty (20) percent.

(3) A licensee shall maintain a record of each radiation survey instrument calibrations for three (3) years. The record shall include the model and serial number of the instrument, the date of the calibration, the results of the calibration, and the name of the individual who performed the calibration.

Section 22. Determination of Dosages of Unsealed Radioactive Material for Medical Use. (1) A licensee shall determine and record the activity of each dosage before medical use.

(2) For a unit dosage, this determination shall be made by:

(a) Direct measurement of radioactivity; or

(b) A decay correction, based on the activity or activity concentration determined

by:

1. A manufacturer or preparer licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements; or

2. A cabinet, [An] U.S. Nuclear Regulatory Commission, [NRC] or equivalent agreement state license [licensee] for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA;[.]

(3) For other than unit dosages, this determination shall be made by:

(a) Direct measurement of radioactivity;

(b) Combination of measurement of radioactivity and mathematical calculations; or

(c) Combination of volumetric measurements and mathematical calculations, based on the measurement made by a manufacturer or preparer licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, [or] U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements; or[.]

(4) Unless otherwise directed by the authorized user, a licensee shall not use a dosage if the dosage does not fall within the prescribed dosage range or if the dosage
differs from the prescribed dosage by more than twenty (20) percent.

(5) A licensee shall retain a record of the dosage determination, required by this section, for three (3) years. The record shall contain:

(a) The radiopharmaceutical;

(b) The patient's or human research subject's name, or identification number if
one (1) has been assigned;

(c) The prescribed dosage, the determined dosage, or a notation that the total activity is less than 1.11 MBq (30 µCi);

(d) The date and time of the dosage determination; and

(e) The name of the individual who determined the dosage.

Section 23. Authorization for Calibration, Transmission, and Reference Sources. Any person authorized by Section 2 of this administrative regulation for medical use of radioactive material may receive, possess, and use any of the following radioactive material for check, calibration, transmission, and reference use.

(1) Sealed sources, not exceeding 1.11 GBq (30 mCi) each, manufactured and distributed by a person licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, [or] U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements.

(2) Sealed sources, not exceeding 1.11 GBq (30 mCi) each, redistributed by a licensee authorized to redistribute the sealed sources manufactured and distributed by a person licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, [or] U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements, providing [if] the redistributed sealed sources are in the original packaging and
shielding and are accompanied by the manufacturer's approved instructions.

(3) Any radioactive material with a half-life not longer than 120 days in individual amounts not to exceed 0.56 GBq (15 mCi).

(4) Any radioactive material with a half-life longer than 120 days in individual
amounts not to exceed the smaller of 7.4 MBq (200 µCi) or 1000 times the quantities in 902 KAR 100:030.

(5) Technetium-99m in amounts as needed.

Section 24. Requirements for Possession of Sealed Sources and Brachytherapy Sources. (1) A licensee in possession of any sealed source or brachytherapy source shall follow the radiation safety and handling instructions supplied by the manufacturer.

(2) A licensee in possession of a sealed source shall:

(a) Test the source for leakage before its first use unless the licensee has a certificate from the supplier indicating that the source was tested within six (6) months before transfer to the licensee; and

(b) Test the source for leakage at intervals not to exceed six (6) months or at other intervals approved by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [another] agreement state in the Sealed Source and Device Registry.

(3) To satisfy the leak test requirements of this section, the licensee shall measure the sample so that the leak test can detect the presence of 185 Bq (0.005 µCi) of radioactive material in the sample.

(4) A licensee shall retain leak test records in accordance with subsection (8)(a) of this section.

(5) If the leak test reveals the presence of 185 Bq (0.005 µCi) or more of removable contamination, the licensee shall:

(a) Immediately withdraw the sealed source from use and store, dispose, or cause it to be repaired in accordance with the requirements in [902 KAR 100:005, 902 KAR 100:015, and] 902 KAR 100:019, 100:021, 100:040, and 100:058; and

(b) File a report within five (5) days of the leak test in accordance with 902 KAR 100:072, Section 18.

(6) A licensee need not perform a leak test on the following sources:

(a) Sources containing only radioactive material with a half-life of less than thirty (30) days;

(b) Sources containing only radioactive material as a gas;

(c) Sources containing 3.7 MBq (100 µCi) or less of beta or gamma-emitting material or 0.37 MBq (10 µCi) or less of alpha-emitting material;

(d) Seeds of iridium-192 encased in nylon ribbon; and

(e) Sources stored and not being used. However, the licensee shall test each source for leakage before any use or transfer unless it has been leak tested within six (6) months before the date of use or transfer.

(7) A licensee in possession of sealed sources or brachytherapy sources, except for gamma stereotactic radiosurgery sources, shall conduct a semiannual physical
inventory of all these sources in its possession. The licensee shall retain each inventory
record in accordance with subsection (8)(b) of this section.

(8) A licensee shall keep records of leaks tests and inventory of sealed sources and brachytherapy sources as follows:

(a) A licensee shall retain records of leak tests for three (3) years. The records shall include the model number**[,]** and serial number**,** if one (1) has been assigned, of each source tested; the identity of each source by radionuclide and its estimated
activity; the results of the test; the date of the test; and the name of the individual who performed the test.

(b) A licensee shall retain records of the semiannual physical inventory of sealed sources and brachytherapy sources for three (3) years. The inventory records shall contain the model number of each source, and serial number if one (1) has been assigned, the identity of each source by radionuclide and its nominal activity, the location of each source, and the name of the individual who performed the inventory.

Section 25. Labeling of Vials and Syringes. Each syringe and vial that contains unsealed radioactive material shall be labeled to identify the radioactive drug. Each syringe shield and vial shield shall also be labeled unless the label on the syringe or vial is visible when [if] shielded.

Section 26. Surveys of Ambient Radiation Exposure Rate. (1) In addition to the surveys required by 902 KAR 100:019, a licensee shall survey with a radiation detection survey instrument at the end of each day of use. A licensee shall survey all areas where unsealed radioactive material requiring a written directive was prepared for use or administered.

(2) A licensee **is not required[**does not need**]** to perform the surveys required by subsection (1) of
this section in an **area[**area(s)**]** where patients or human research subjects are confined when they cannot be released under Section 27 of this administrative regulation.

(3) A licensee shall retain a record of each survey for three (3) years. The record shall include the date of the survey, the results of the survey, the instrument used to conduct the survey, and the name of the individual who performed the survey.

Section 27. Release of Individuals Containing Unsealed Radioactive Material or Implants Containing Radioactive Material. (1)

A licensee may authorize the release from its control of any individual who has been administered unsealed radioactive material or implants containing radioactive material if the total effective dose equivalent to any other individual from exposure to the released individual is not likely to exceed five (5) mSv (fife-tenths (0.5) rem). NUREG-1556, Vol. 9 [~~(draft)~~], "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Medical Licenses," describes methods for calculating doses to other individuals and contains tables of activities not likely to cause doses exceeding five (5) mSv (0.5 rem).

(2) A licensee shall provide the released individual, or the individual's parent or guardian, with instructions, including written instructions, on actions recommended to maintain doses to other individuals as low as is reasonably achievable if the total effective dose equivalent to any other individual is likely to exceed one (1) mSv (one-tenth (0.1) rem). If the total effective dose equivalent to a nursing infant or child could exceed one (1) mSv (one-tenth (0.1) rem) assuming there were no interruption of breast-feeding, the instructions shall also include:

1. Guidance on the interruption or discontinuation of breast-feeding; and

2. Information on the potential consequences, if any, of failure to follow the guidance.

(3) A licensee shall retain a record of the basis for authorizing the release of an individual in accordance with this section, if the total effective dose equivalent is calculated by:

(a) Using the retained activity rather than the activity administered;

(b) Using an occupancy factor less than 0.25 at one (1) meter;

(c) Using the biological or effective half-life; or

(d) Considering the shielding by tissue.

(4) A licensee shall retain a record that the instructions, required by **[**~~subsection(s) of~~**]**this section, were provided to a breast-feeding female if the radiation dose to the infant or child from continued breast-feeding could result in a total effective dose equivalent exceeding five (5) mSv (five-tenths (0.5) rem).

(5) The records required by subsections (3), and (4) of this section shall be retained for three (3) years after the date of release of the individual.

(6) A report shall be filed in accordance with Section 15[~~17~~] of this chapter and submitted to the cabinet if a dose greater than 50 mSv (5 rem) is received by an individual from a patient released under this section.

Section 28. Provision of Mobile Medical Service. (1) A licensee providing mobile medical service shall:

(a) Obtain a letter signed by the management of each client for which services are rendered that permits the use of byproduct material at the client's address and
clearly delineates the authority and responsibility of the licensee and the client;

(b) Check instruments used to measure the activity of unsealed radioactive
material for proper function before medical use at each client's address or on each day of use, whichever is more frequent. At a minimum, the check for proper function required by this paragraph shall include a constancy check;

(c) Check survey instruments for proper operation with a dedicated check source before use at each client's address; and

(d) Before leaving a client's address, survey all areas of use to ensure compliance with the requirements in 902 KAR 100:019.

(2) A mobile medical service shall not have radioactive material delivered from
the manufacturer or the distributor to the client unless the client has a license allowing possession of the byproduct material. Radioactive material delivered to the client shall be received and handled in conformance with the client's license.

(3) A licensee providing mobile medical services shall retain the letter required in subsection (1)(a) and the record of each survey required in subsection (1)(d) of this section respectively:

(a) A licensee shall retain a copy of each letter required in subsection (1)(a) that permits the use of radioactive material at a client's address. Each letter shall clearly delineate the authority and responsibility of the licensee and the client and shall be retained for three (3) years after the last provision of service.

(b) A licensee shall retain the record of each survey required by subsection (1)(d) for three (3) years. The record shall include the date of the survey, the results of the survey, the instrument used to make the survey, and the name of the individual who performed the survey.

(4) The cabinet shall license mobile medicine services in accordance with this administrative regulation and applicable requirements of 902 KAR 100:012, 100:015, 100:019, 100:021, 100:040, 100:050, 100:060, 100:070, and 100:165.

Section 29. Decay-in-storage. (1) A licensee may hold radioactive material with a physical half-life of less than 120 days for decay-in-storage before disposal without regard to its radioactivity if **the licensee[**~~it~~**]**;

(a) Holds radioactive material for decay a minimum of ten (10) half-lives;

(b) Monitors radioactive material at the surface before disposal and determines that its radioactivity cannot be distinguished from the background radiation level with an appropriate radiation detection survey meter set on its most sensitive scale and with no interposed shielding; and

(c) Removes or obliterates all radiation labels, except for radiation labels on materials that are within containers and that will be managed as biomedical waste after they have been released from the licensee.

(2) A licensee shall retain a record of each disposal for three (3) years. The record shall include the:

(a) Date of the disposal;

(b) Date on which the radioactive material was placed in storage;

(c) Radionuclides disposed;

(d) Model and serial number of the survey instrument used;

(e) Background dose rate;

(f) Radiation dose rate measured at the surface of each waste container; and

(g) Name of the individual who performed the disposal.

Section 30. Use of Unsealed Radioactive Material for Uptake, Dilution, and Excretion Studies for Which a Written Directive is Not Required. Except for quantities that require a written directive under Section 13(2), of this administrative regulation a licensee may use any unsealed radioactive material prepared for medical use for uptake, dilution, or excretion studies that is:

(1) Obtained from a manufacturer or preparer licensed under 902 KAR 100:040 and 902 KAR 100:058 of this chapter, [~~the~~] U.S. Nuclear Regulatory Commission, or
equivalent agreement state requirements;

(2) Prepared by:

(a) An authorized nuclear pharmacist;

(b) A [~~,~~]physician who is an authorized user and who meets the requirements specified in Section 69 or 70 and Section 69(3)(a)2.g [~~71~~] of this administrative regulation; or

(c) An individual under the supervision of either as specified in Section 12 of this administrative regulation; or

(3) Obtained from and prepared by a licensee of the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [~~another~~] agreement state for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA; or

(4) Prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.

Section 31. Use of Unsealed Radioactive Material for Imaging and Localization Studies for Which a Written Directive is Not Required. Except for quantities that require a written directive under Section 13(2) of this administrative regulation a licensee may use any unsealed radioactive material prepared for medical use for imaging and localization studies that is:

(1) Obtained from a manufacturer or preparer licensed under 902 KAR 100:040 or 100:058 of this chapter, [~~or~~] U.S. Nuclear Regulatory Commission, or equivalent agreement state require-

ments;

(2) Prepared by:

A[a]n authorized nuclear pharmacist; [,]

A[a] physician who is an authorized user and who meets the requirements specified in Sections 69 or 70 [71] and Section 69(3)(a)2.g. of this administrative regulation; or

A[a]n individual under the supervision, [of either] as specified in Section 12 of this administrative regulation;

(3) Obtained from and prepared by a cabinet, U.S. Nuclear Regulatory Commission, or equivalent [another] agreement state licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA; or

(4) Prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.

Section 32. Permissible Radionuclide Contaminant Concentration. (1) A licensee shall not administer to humans a radiopharmaceutical containing more than:

(a) 0.15 kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m (0.15 microcurie of molybdenum-99 per millicurie of technetium-99m); or

(b) **[**More than**]** 0.02 kilobecquerel of strontium-82 per megabecquerel of rubidium-82 chloride injection (0.02 microcurie of strontium-82 per millicurie of rubidium-82 chloride); or

(c) **[**More than**]** 0.02 kilobecquerel of strontium-85 per megabecquerel of rubidium-82 chloride injection (0.2 microcurie of strontium-85 per millicurie of rubidium-82
chloride);

(2) A licensee preparing radiopharmaceuticals from radionuclide generators shall measure the concentration of radionuclide contaminant of the first eluate after receipt of a generator to demonstrate compliance with limits specified in subsection (1) of this section.

(3) A licensee required to measure radionuclide contaminant concentration, in this section, shall retain a record of each measurement for three (3) years;

(a) The record shall include, for each elution or extraction tested, the:

1. Measured activity of the radiopharmaceutical expressed in millicuries;

2. Measured activity of contaminant expressed in microcuries;

3. Ratio of the measurements in subsection (1)[(4)](a), [and] (b), and (c) of this section expressed as microcuries of contaminant per millicurie of radiopharmaceutical;

4. Date of the test; and

5. Initials of the individual who performed the test.

(b) A licensee shall report immediately to the cabinet each occurrence of contaminant concentration exceeding the limits specified in this section.

Section 33. Use of Unsealed Radioactive Material for Which a Written Directive is Required. A licensee may use any unsealed radioactive material prepared for medical use and for which a written directive is required that is:

(1) Obtained from a manufacturer or preparer licensed under 902 KAR 100:040 or 902 KAR 100:058 of this chapter, [or] U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements;

(2) Prepared by an authorized nuclear pharmacist;[,] a physician who is an
authorized user and who meets the requirements specified in Section 69 or 70 [71]
of this administrative regulation, or an individual under the supervision, [of either] as specified in Section 12 of this administrative regulation;

(3) Obtained from and prepared by a cabinet, U.S. Nuclear Regulatory Commission, or equivalent [another] agreement state licensee for use in research in accordance with an Investigational New Drug (IND) protocol accepted by FDA; or

(4) Prepared by the licensee for use in research in accordance with an Investigational New Drug (IND) protocol accepted by FDA.

Section 34. Safety Instruction. (1) In addition to 902 KAR 100:165, a licensee shall provide radiation safety instruction, initially and at least annually, to personnel caring for the patient or the human research subjects receiving radiopharmaceutical therapy and hospitalized for compliance with Section 27 of this administrative regulation. To satisfy this requirement, the instruction shall describe the licensee's procedures for:

(a) Patient or human research subject control;

(b) Visitor control:

1. Routine visitation to hospitalized individuals in accordance with 902 KAR 100:019, Section 10(1)(a) of this chapter; and

2. Visitation authorized in accordance with 902 KAR 100:019, Section 10(6)[(3)] of this chapter;

(c) Contamination control;

(d) Waste control; and

(e) Notification of the Radiation Safety Officer, or his or her designee, and the
authorized user if the patient or the human research subject has a medical emergency or dies.

(2) A licensee shall retain a record of individuals receiving safety instructions [required by Sections 34, 40, and 49 of this administrative regulation] for three (3) years. The record shall include a list of the topics covered, the date of the instruction, the **name[**name(s)**]** of the attendee(s), and the name(s) of the individual(s) who provided the instruction.

Section 35. Safety Precautions. (1) For each patient or human research subject who cannot be released under Section 27 of this administrative regulation a licensee shall:

(a) Quarter the patient or the human research subject either in:

1. A private room with a private sanitary facility; or

2. A room, with a private sanitary facility, with another individual who also has received therapy with unsealed radioactive material and who also cannot be released under Section 27 of this administrative regulation;

(b) Visibly post the patient's or the human research subject's room with a "Radioactive Materials" sign:

(c) Note on the door or in the patient's or human research subject's chart where
and how long visitors may stay in the patient's or the human research subject's room; and

(d) Either monitor material and items removed from the patient's or the human research subject's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument
set on its most sensitive scale and with no interposed shielding, or handle the material
and items as radioactive waste.

(2) A licensee shall notify the radiation safety officer, or his or her designee, and the authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

Section 36. Suppliers for Sealed Sources or Devices for Medical Use. For medical use, a licensee shall only use:

(1) Sealed sources or devices manufactured, labeled, packaged, and distributed in accordance with a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [requirements of another] agreement state;

(2) Sealed sources or devices noncommercially transferred from a 902 KAR 100:072 license, U.S. Nuclear Regulatory Commission, or equivalent State Medical License[licensee]; or

(3) Teletherapy sources manufactured and distributed in accordance with a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [requirements of another] agreement state.

Section 37. Use of Sources for Manual Brachytherapy. A licensee shall use only brachytherapy sources for therapeutic medical uses:

(1) As approved in the Sealed Source and Device Registry; or

(2) In research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA if the requirements of Section 36(1) of this administrative regulation are

met.

Section 38. Surveys After Source Implant and Removal. (1) Immediately after implanting sources in a patient or a human research subject, the licensee shall make a survey to locate and account for all sources that have not been implanted.

(2) Immediately after removing the last temporary implant source from a patient or a human research subject, the licensee shall make a survey of the patient or the human research subject with a radiation detection survey instrument to confirm that all sources have been removed.

(3) A licensee shall retain a record of the surveys required by subsections (1) and (2) of this section for three (3) years. Each record shall include the date and results of the survey, the survey instrument used, and the name of the individual who made the survey.

Section 39. Brachytherapy Sources Accountability. (1) A licensee shall maintain accountability at all times for all brachytherapy sources in storage or use.

(2) As soon as possible after removing sources from a patient or a human research subject, a licensee shall return brachytherapy sources to a secure storage area.

(3) A licensee shall maintain a record of the brachytherapy source accountability for three (3) years for:

(a) Temporary implants, the record shall include:

1. The number and activity of sources removed from storage, the time and date they were removed from storage, the name of the individual who removed them from storage, and the location of use; and

2. The number and activity of sources returned to storage, the time and date they were returned to storage, and the name of the individual who returned them to storage.

(b) Permanent implants, the record shall include:

1. The number and activity of sources removed from storage, the date they were removed from storage, and the name of the individual who removed them from storage;

2. The number and activity of sources not implanted, the date they were returned to storage, and the name of the individual who returned them to storage; and

3. The number and activity of sources permanently implanted in the patient or human research subject.

Section 40. Safety Instruction. In addition to the requirements of 902 KAR 100:165 of this chapter. (1) The licensee shall provide radiation safety instruction, initially and at least annually, to personnel caring for patients or human research subjects who are receiving brachytherapy and cannot be released under Section 27 of this administrative regulation. To satisfy this requirement, the instruction shall be commensurate with the duties of the personnel and shall include the:

(a) Size and appearance of the brachytherapy sources;

(b) Safe handling and shielding instructions;

(c) Patient or human research subject control;

(d) Visitor control, including both:

1. Routine visitation of hospitalized individuals in accordance with 902 KAR
100:019, Section 10(1)(a) of this chapter; and

2. Visitation authorized in accordance with 902 KAR 100:019, Section 10(6)[~~(3)~~] of this chapter; and

(e) Notification of the Radiation Safety Officer, or his or her designee, and an authorized user if the patient or the human research subject has a medical emergency
or dies.

(2) A licensee shall retain a record of individuals receiving instruction for three (3) years. The record shall include a list of the topics covered, the date of the instruction, the **name[**~~name(s)~~**]** of the **attendee[**~~attendee(s)~~**]**, and the **name[**~~name(s)~~**]** of the **individual[**~~individual(s)~~**]** who provided the instruction.

Section 41. Safety Precautions. (1) For each patient or human research subject who is receiving brachytherapy and cannot be released under Section 27 of this administrative regulation a licensee shall:

(a) Not quarter the patient or the human research subject in the same room as an individual who is not receiving brachytherapy;

(b) Visibly post the patient's or human research subject's room with a "Radioactive Materials" sign; and

(c) Note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room.

(2) A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source:

(a) Dislodged from the patient; and

(b) Lodged within the patient following removal of the source applicators.

(3) A licensee shall notify the Radiation Safety Officer, or his or her designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

Section 42. Calibration Measurements of Brachytherapy Sources. (1) Before the first medical use of a brachytherapy source on or after October 24, 2005, a licensee shall have:

(a) Determined the source output or activity using a dosimetry system that meets the requirements of Section 51(1) of this administrative regulation;

(b) Determined source positioning accuracy within applicators; and

(c) Used published protocols currently accepted by nationally recognized bodies to meet the requirements of subsection (1)(a) and (b) of this section.

(2) A licensee may use measurements provided by the source manufacturer or by a calibration laboratory accredited by the American Association of Physicists in Medicine that are made in accordance with subsection (1) of this section.

(3) A licensee shall mathematically correct the outputs or activities determined in subsection (1) of this section for physical decay at intervals consistent with one (1) percent physical decay.

(4) A licensee shall retain a record of each calibration of brachytherapy sources required by this section for three (3) years after the last use of the source. The record shall include:

(a) The date of the calibration;

(b) The manufacturer's name, model number, and serial number for the source and the instruments used to calibrate the source;

(c) The source output or activity;

(d) The source positioning accuracy within the applicators; and

(e) The name of the individual, source manufacturer, or the calibration laboratory that performed the calibration [~~signature of the authorized medical physicist~~].

Section 43. Decay of strontium-90 sources for ophthalmic treatments. (1) Only an authorized medical physicist shall calculate the activity of each strontium-90 source that is used to determine the treatment times for ophthalmic treatments. The decay shall be based on the activity determined under Section 42 of this administrative regulation.

(2) A licensee shall retain a record of the activity of each strontium-90 source for the life of the source. The record shall include:

(a) The date and initial activity of the source as determined under Section 42 of this administrative regulation; and

(b) For each decay calculation, the date and the source activity as determined under subsection (1) of this section.

Section 44. Therapy-related computer systems. The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally-recognized bodies. At a minimum, the acceptance testing shall include, as applicable, verification of:

(1) The source-specific input parameters required by the dose calculation algorithm;

(2) The accuracy of dose, dwell time, and treatment time calculations at representative points;

(3) The accuracy of isodose plots and graphic displays; and

(4) The accuracy of the software used to determine sealed source positions from radiographic images.

Section 45. Use of Sealed Sources for Diagnosis. A licensee shall use only sealed sources for diagnostic medical uses as approved in the Sealed Source and
Device Registry.

Section 46. Use of a Sealed Source in a Remote Afterloader Unit, Teletherapy Unit, or Gamma Stereotactic Radiosurgery Unit. A licensee shall use sealed sources in photon emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units for therapeutic medical uses:

(1) As approved in the Sealed Source and Device Registry; or

(2) In research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA provided [~~if~~] the requirements of Section 36(1) of this administrative regulation are met.

Section 47. Surveys of Patients and Human Research Subjects Treated with a Remote Afterloader Unit. (1) Before releasing a patient or a human research subject from licensee control, a licensee shall survey the patient or the human research subject and the remote afterloader unit with a portable radiation detection survey instrument to confirm that the **source[**~~source(s)~~**]** has been removed from the patient or human research subject and returned to the safe shielded position.

(2) A licensee shall retain a record of the surveys for three (3) years. Each record shall include the date and results of the survey, the survey instrument used, and the name of the individual who made the survey.

Section 48. Installation, Maintenance, Adjustment, and Repair. (1) Only a person specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [~~another~~] agreement state shall install, maintain, adjust, or repair a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit that involves work on the **source[**~~source(s)~~**]** shielding, the **source[**~~source(s)~~**]** driving unit, or other electronic or mechanical component that could expose the **source[**~~source(s)~~**]**, reduce the shielding around the **source[**~~source(s)~~**]**, or compromise the radiation safety of the unit or the **source[**~~source(s)~~**]**.

(2) Except for low dose-rate remote afterloader units, only a person specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [~~another~~] agreement state shall install, replace, relocate, or remove a sealed source or source contained in other remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units.

(3) For a low dose-rate remote afterloader unit, only a person specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [~~another~~] agreement state or an authorized medical physicist shall install, replace, relocate, or remove a sealed **source[**~~source(s)~~**]** contained in the unit.

(4) A licensee shall retain a record of the installation, maintenance, adjustment, and repair of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units for three (3) years. For each installation, maintenance, adjustment and repair, the record shall include the date, description of the service, and **name[**~~name(s)~~**]** of the **individual[**~~individual(s)~~**]** who performed the work.

Section 49. Safety Procedures and instructions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units. (1) A licensee shall:

(a) Secure the unit, the console, the console keys, and the treatment room when not in use or unattended;

(b) Permit only individuals approved by the authorized user, Radiation Safety Officer, or authorized medical physicist to be present in the treatment room during treatment with the **source[**~~source(s)~~**]**;

(c) Prevent dual operation of more than one (1) radiation producing device in a treatment room if applicable; and

(d) Develop, implement, and maintain written procedures for responding to an abnormal situation **if[**~~when~~**]** the operator is unable to place the **source[**~~source(s)~~**]** in the shielded position, or remove the patient or human research subject from the radiation field with controls from outside the treatment room. These procedures shall include:

1. Instructions for responding to equipment failures and the names of the individuals responsible for implementing corrective actions;

2. The process for restricting access to and posting of the treatment area to minimize the risk of inadvertent exposure; and

3. The names and telephone numbers of the authorized users, the authorized
medical physicist, and the radiation safety officer to be contacted if the unit or console operates abnormally.

(2) A copy of the procedures required by subsection (1)(d) of this section shall be physically located at the unit console.

(3) A licensee shall post instructions at the unit console to inform the operator of:

(a) The location of the procedures required by subsection (1)(d) of this section; and

(b) The names and telephone numbers of the authorized users, the authorized medical physicist, and the radiation safety officer to be contacted if the unit or console operates abnormally.

(4) A licensee shall provide instruction, initially and at least annually, to all individuals who operate the unit, as appropriate to the individual's assigned duties, in:

(a) The procedures identified in paragraph (1)(d) of this section; and

(b) The operating procedures for the unit.

(5) A licensee shall ensure that operators, authorized medical physicists, and authorized users participate in drills of the emergency procedures, initially and at least annually.

(6) A licensee shall retain a record of individuals receiving instructions for three (3) years. The record shall include a list of the topics covered, the date of the instruction, the **name[**~~name(s)~~**]** of the **attendee[**~~attendee(s)~~**]**, and the **name[**~~name(s)~~**]** of the **individual[**~~individual(s)~~**]** who provided the instruction.

(7) A licensee shall retain a copy of the procedures until the licensee no longer possesses the remote afterloader, teletherapy unit, or gamma stereotactic radiosurgery unit.

Section 50. Safety Precautions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units. (1) A licensee shall control access to the treatment room by a door at each entrance.

(2) A licensee shall equip each entrance to the treatment room with an electrical interlock system that **shall[**~~will~~**]**:

(a) Prevent the operator from initiating the treatment cycle unless each treatment
room entrance door is closed;

(b) Cause the **source[**~~source(s)~~**]** to be shielded when an entrance door is opened; and

(c) Prevent the **source[**~~source(s)~~**]** from being exposed following an interlock interruption until all treatment room entrance doors are closed and the **source[**~~source(s)~~**]** on-off control is reset at the console.

(3) A licensee shall require any individual entering the treatment room to assure, through the use of appropriate radiation monitors, that radiation levels have returned to ambient levels.

(a) Each radiation monitor shall be equipped with a backup power supply separate from the power supply to the unit. This backup power supply may be a battery system.

(b) If the radiation monitor is inoperable, the licensee shall require any individual entering the treatment room to use a survey instrument or audible alarm personal dosimeter to monitor for any malfunction of the source exposure mechanism that may result in an exposed or partially exposed source. The instrument or dosimeter shall be checked with a dedicated check source for proper operation at the beginning of each day of use. The licensee shall keep a record as described in this section.

(c) A licensee shall promptly repair or replace the radiation monitor if it is inoperable.

(4) Except for low-dose remote afterloader units, a licensee shall construct or equip each treatment room with viewing and intercom systems to permit continuous observation of the patient or the human research subject from the treatment console during irradiation.

(5) For licensed activities **in which a source is[**~~where sources~~

~~are~~**]** placed within the patient's or human research subject's body, a licensee shall only conduct treatments **that[**~~which~~**]** allow for expeditious removal of a decoupled or jammed source.

(6) In addition to the requirements specified in subsections (1) through (5) of this section, a licensee shall:

(a) For medium dose-rate and pulsed dose-rate remote afterloader units, require:

1. An authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit to be physically present during the initiation of all patient treatments involving the unit; and

2. An authorized medical physicist and either an authorized user or an individual, under the supervision of an authorized user, who has been trained to remove the source **applicator[**~~applicator(s)~~**]** in the event of an emergency involving the unit, to be immediately available during continuation of all patient treatments involving the unit.

(b) For high dose-rate remote afterloader units, require:

1. An authorized user and an authorized medical physicist to be physically present during the initiation of all patient treatments involving the unit; and

2. An authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit, to be physically present during continuation of all patient treatments involving the unit.

(c) For gamma stereotactic radiosurgery units, require an authorized user and an authorized medical physicist to be physically present throughout all patient treatments involving the unit.

(d) Notify the Radiation Safety Officer, or **his or her[**~~his/her~~**]** designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

(7) A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source:

(a) Remaining in the unshielded position; or

(b) Lodged within the patient following completion of the treatment.

Section 51. Dosimetry Equipment. (1) Except for low dose-rate remote afterloader sources **in which[**~~where~~**]** the source output or activity is determined by the manufacturer, a licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one (1) of the following two (2) conditions shall be met:

(a) The system shall have been calibrated using a system or source traceable to the National Institute of Science and Technology (NIST) and published protocols accepted by nationally recognized bodies**[;]** or by a calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration shall have been performed within the previous two (2) years and after any servicing that may have affected system calibration; or

(b) The system shall have been calibrated within the previous four (4) years. Eighteen (18) to thirty (30) months after that calibration, the system shall have been intercompared with another dosimetry system that was calibrated within the past twenty-four (24) months by NIST or by a calibration laboratory accredited by the AAPM. The results of the intercomparison shall indicate that the calibration factor of the licensee's system had not changed by more than two (2) percent. The licensee shall not use the intercomparison result to change the calibration factor. If intercomparing dosimetry systems to be used for calibrating sealed sources for therapeutic units, the licensee shall use a comparable unit with beam attenuators or collimators, as applicable, and sources of the same radionuclide as the source used at the licensee's facility.

(2) The licensee shall have a dosimetry system available for use for spot-check output measurements, if applicable. To satisfy this requirement, the system may be compared with a system that has been calibrated in accordance with subsection (1) of this section. This comparison shall have been performed within the previous year and after each servicing that may have affected system calibration. The spot-check system may be the same system used to meet the requirement in subsection (1) of this section.

(3) The licensee shall retain a record of each calibration, intercomparison, and comparison in accordance with this section for the duration of the license. For each calibration, intercomparison, or comparison, the record shall include:

(a) The date;

(b) The manufacturer's name, model numbers and serial numbers of the instruments that were calibrated, intercompared, or compared as required by subsections (1) and (2) of this section;

(c) The correction factor that was determined from the calibration or comparison or the apparent correction factor that was determined from an intercomparison; and

(d) The names of the individuals who performed the calibration, intercomparison, or comparison.

Section 52. Full Calibration Measurements on Teletherapy Units. (1) A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit:

(a) Before the first medical use of the unit;

(b) Before medical use under the following conditions:

1. **If[**~~Whenever~~**]** spot-check measurements indicate that the output differs by more than five (5) percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

2. Following replacement of the source or following reinstallation of the teletherapy unit in a new location; or

3. Following any repair of the teletherapy unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and

(c) At intervals not exceeding one (1) year.

(2) To satisfy the requirement of subsection (1) of this section, full calibration measurements shall include determination of:

(a) The output within +/- three (3) percent for the range of field sizes and for the distance or range of distances used for medical use;

(b) The coincidence of the radiation field and the field indicated by the light beam localizing device;

(c) The uniformity of the radiation field and its dependence on the orientation of the useful beam;

(d) Timer accuracy and linearity over the range of use;

(e) On-off error; and

(f) The accuracy of all distance measuring and localization devices in medical use.

(3) A licensee shall use the dosimetry system described in Section 51(1) of this administrative regulation to measure the output for one (1) set of exposure conditions. The remaining radiation measurements required in subsection (2)(a) of this section may be made using a dosimetry system that indicates relative dose rates.

(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally-recognized bodies.

(5) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section for physical decay for intervals not exceeding one (1) month for cobalt-60, six (6) months for cesium-137, or at intervals consistent with one (1) percent decay for all other nuclides.

(6) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (5) of this section shall be performed by the authorized medical physicist.

(7) A licensee shall retain a record of each calibration for three (3) years. The record shall include:

(a) The date of the calibration;

(b) The manufacturer's name, model number, and serial number of the teletherapy, remote afterloader, and gamma stereotactic radiosurgery **unit[**~~unit(s)~~**]**, the **source[**~~source(s)~~**]**, and the instruments used to calibrate the **unit[**~~unit(s)~~**]**;

(c) The results and an assessment of the full calibrations;

(d) The results of the autoradiograph required for low dose-rate remote afterloader units; and

(e) The signature of the authorized medical physicist who performed the full calibration.

Section 53. Full calibration measurements on remote after-

loader units. (1) A licensee authorized to use a remote afterloader unit for medical use shall perform full calibration measurements on each unit:

(a) Before the first medical use of the unit;

(b) Before medical use under the following conditions:

1. Following replacement of the source or following reinstallation of the unit in a new location outside the facility; and

2. Following any repair of the unit that includes removal of the source or major repair of the components associated with the source exposure assembly;

(c) At intervals not exceeding one (1) quarter for high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader units with sources whose half-life exceeds seventy-five (75) days; and

(d) At intervals not exceeding one (1) year for low dose-rate remote afterloader units.

(2) To satisfy the requirement of subsection (1) of this section, full calibration measurements shall include, as applicable, determination of:

(a) The output within ± five (5) percent;

(b) Source positioning accuracy to within ± one (1) millimeter;

(c) Source retraction with backup battery upon power failure;

(d) Length of the source transfer tubes;

(e) Timer accuracy and linearity over the typical range of use;

(f) Length of the applicators; and

(g) Function of the source transfer tubes, applicators, and transfer tube-applicator interfaces.

(3) A licensee shall use the dosimetry system described in Section 51[~~subsection~~](1) of this administrative regulation to measure the output.

(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally-recognized bodies.

(5) In addition to the requirements for full calibrations for low dose-rate remote afterloader units in subsection (2) of this section, a licensee shall perform an autoradiograph of the **source[**~~source(s)~~**]** to verify inventory and **source[**~~source(s)~~**]** arrangement at intervals not exceeding one (1) quarter.

(6) For low dose-rate remote afterloader units, a licensee may use measurements provided by the source manufacturer that are made in accordance with subsections (1) through (5) of this section.

(7) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section for physical decay at intervals consistent with one (1) percent physical decay.

(8) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (7) of this section shall be performed by the authorized medical physicist.

(9) A licensee shall retain a record of each calibration for three (3) years. The record shall include:

(a) The date of the calibration;

(b) The manufacturer's name, model number, and serial number of the teletherapy, remote afterloader, and gamma stereotactic radiosurgery **unit[**~~unit(s)~~**]**, the **source[**~~source(s)~~**]**, and the instruments used to calibrate the **unit[**~~unit(s)~~**]**;

(c) The results and an assessment of the full calibrations;

(d) The results of the autoradiograph required for low dose-rate remote afterloader units; and

(e) The signature of the authorized medical physicist who performed the full calibration.

Section 54. Full calibration measurements on gamma stereotactic radiosurgery units (1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform full calibration measurements on each unit:

(a) Before the first medical use of the unit;

(b) Before medical use under the following conditions:

1. Whenever spot-check measurements indicate that the output differs by more than five (5) percent from the output obtained at the last full calibration corrected.

2. Following replacement of the sources or following reinstallation of the gamma mathematically for radioactive decay**.[**~~;~~**]** stereotactic radiosurgery unit in a new location**.[**~~;~~**]** and

3. Following any repair of the gamma stereotactic radiosurgery unit that includes removal of the sources or major repair of the components associated with the source assembly; and

(c) At intervals not exceeding one (1) year, with the exception that relative helmet factors need only be determined before the first medical use of a helmet and following any damage to a helmet.

(2) To satisfy the requirement of subsection (1) of this section, full calibration measurements shall include determination of:

(a) The output within ± three (3) percent;

(b) Relative helmet factors;

(c) Isocenter coincidence;

(d) Timer accuracy and linearity over the range of use;

(e) On-off error;

(f) Trunnion centricity;

(g) Treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;

(h) Helmet microswitches;

(i) Emergency timing circuits; and

(j) Stereotactic frames and localizing devices (trunnions).

(3) A licensee shall use the dosimetry system described in Section 51(1) of this administrative regulation to measure the output for one (1) set of exposure conditions. The remaining radiation measurements required in subsection (2)(a) of this section may be **made[**~~ade~~**]** using a dosimetry system that indicates relative dose rates.

(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally recognized bodies.

(5) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section at intervals not exceeding one (1) month for cobalt-60 and at intervals consistent with one (1) percent physical decay for all other radionuclides.

(6) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (5) of this section shall be performed by the authorized medical physicist.

(7) A licensee shall retain a record of each calibration for three (3) years. The record shall include:

(a) The date of the calibration;

(b) The manufacturer's name, model number, and serial number of the teletherapy, remote afterloader, and gamma stereotactic radiosurgery **unit[**~~unit(s)~~**]**, the **source[**~~source(s)~~**]**, and the instruments used to calibrate the **unit[**~~unit(s)~~**]**;

(c) The results and an assessment of the full calibrations;

(d) The results of the autoradiograph required for low dose-rate remote afterloader units; and

(e) The signature of the authorized medical physicist who performed the full calibration.

Section 55. Periodic Spot-checks for Teletherapy Units. (1) A licensee authorized to use teletherapy units for medical use shall perform output spot-checks on each teletherapy unit once in each calendar month that shall include determination of:

(a) Timer accuracy, and timer linearity over the range of use;

(b) On-off error;

(c) The coincidence of the radiation field and the field indicated by the light beam localizing device;

(d) The accuracy of all distance measuring and localization devices used for medical use;

(e) The output for one (1) typical set of operating conditions measured with the dosimetry system described in Section 51(2) of this administrative regulation; and

(f) The difference between the measurement made in subsection (1)(e) of this section and the anticipated output, expressed as a percentage of the anticipated output (i.e., the value obtained at last full calibration corrected mathematically for physical decay).

(2) A licensee shall perform measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual shall not be required to actually perform the spot-check measurements.

(3) A licensee shall have the authorized medical physicist review the results of each spot-check within fifteen (15) days. The authorized medical physicist shall notify the licensee as soon as

possible in writing of the results of each spot-check.

(4) A licensee authorized to use a teletherapy unit for medical use shall perform safety spot-checks of each teletherapy facility once in each calendar month and after each source installation to assure proper operation of:

(a) Electrical interlocks at each teletherapy room entrance;

(b) Electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation (restriction of source housing angulation or elevation, carriage or stand travel and operation of the beam on-off mechanism);

(c) Source exposure indicator lights on the teletherapy unit, on the control console, and in the facility;

(d) Viewing and intercom systems;

(e) Treatment room doors from inside and outside the treatment room; and

(f) Electrically assisted treatment room doors with the teletherapy unit electrical power turned off.

(5) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(6) A licensee shall retain a record of each spot-check for teletherapy units for three (3) years. The record shall include:

(a) The date of the spot-check;

(b) The manufacturer's name, model number, and serial number of the teletherapy unit, source and instrument used to measure the output of the teletherapy unit;

(c) An assessment of timer linearity and constancy;

(d) The calculated on-off error;

(e) A determination of the coincidence of the radiation field and the field indicated by the light beam localizing device;

(f) The determined accuracy of each distance measuring and localization device;

(g) The difference between the anticipated output and the measured output;

(h) Notations indicating the operability of each entrance door electrical interlock,
each electrical or mechanical stop, each source exposure indicator light, and the viewing and intercom system and doors; and

(i) The name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.

(7) A licensee shall retain a copy of the procedures required by subsection (2) of this section until the licensee no longer possesses the teletherapy unit.

Section 56. Periodic Spot-checks for Remote Afterloader Units. (1) A licensee authorized to use a remote afterloader unit for medical use shall perform spot-checks of each remote afterloader facility and on each unit:

(a) Before the first use of a high dose-rate, medium dose-rate, or pulsed dose-rate remote afterloader unit on a given day;

(b) Before each patient treatment with a low dose-rate remote afterloader unit; and

(c) After each source installation.

(2) A licensee shall perform the measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual shall not be required to actually perform the spot check measurements.

(3) A licensee shall have the authorized medical physicist review the results of each spot-check within fifteen (15) days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(4) To satisfy the requirements of subsection (1) of this section, spot-checks shall, at a minimum, assure proper operation of:

(a) Electrical interlocks at each remote afterloader unit room entrance;

(b) Source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;

(c) Viewing and intercom systems in each high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader facility;

(d) Emergency response equipment;

(e) Radiation monitors used to indicate the source position;

(f) Timer accuracy;

(g) Clock (date and time) in the unit's computer; and

(h) Decayed **source[**~~source(s)~~**]** activity in the unit's computer.

(5) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(6) A licensee shall retain a record of each spot-check for remote afterloader units for three (3) years. The record shall include, as applicable:

(a) The date of the spot-check;

(b) The manufacturer's name, model number, and serial number for the remote afterloader unit and source;

(c) An assessment of timer accuracy;

(d) Notations indicating the operability of each entrance door electrical interlock, radiation monitors, source exposure indicator lights, viewing and intercom systems, and clock and decayed source activity in the unit's computer; and

(e) The name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.

(7) A licensee shall retain a copy of the procedures required by subsection (2) of
this section until the licensee no longer possesses the remote afterloader unit.

Section 57. Periodic Spot-checks for Gamma Stereotactic Radiosurgery Units. (1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform spot-checks of each gamma stereotactic radiosurgery facility and on each unit:

(a) Monthly;

(b) Before the first use of the unit on a given day; and

(c) After each source installation.

(2) A licensee shall:

(a) Perform the measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual shall not be required to actually perform the spot check measurements.

(b) Have the authorized medical physicist review the results of each spot-check within fifteen (15) days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(3) To satisfy the requirements of subsection (1)(a) of this section, spot-checks shall, at a minimum:

(a) Assure proper operation of:

1. Treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;

2. Helmet microswitches;

3. Emergency timing circuits; and

4. Stereotactic frames and localizing devices (trunnions).

(b) Determine:

1. The output for one (1) typical set of operating conditions measured with the dosimetry system described in Section 51(2) of this administrative regulation;

2. The difference between the measurement made in subsection (3)(b)1. of this section and the anticipated output, expressed as a percentage of the anticipated output (**[**~~i.e.,~~**]**the value obtained at last full calibration corrected mathematically for physical decay);

3. Source output against computer calculation;

4. Timer accuracy and linearity over the range of use;

5. On-off error; and

6. Trunnion centricity.

(4) To satisfy the requirements of subsection (1)(b) and (c) of this section, spot-checks shall assure proper operation of:

(a) Electrical interlocks at each gamma stereotactic radiosurgery room entrance;

(b) Source exposure indicator lights on the gamma stereotactic radiosurgery unit, on the control console, and in the facility;

(c) Viewing and intercom systems;

(d) Timer termination;

(e) Radiation monitors used to indicate room exposures; and

(f) Emergency off buttons.

(5) A licensee shall arrange for the repair of any system identified in subsection (3) of this section that is not operating properly as soon as possible.

(6) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(7) A licensee shall retain a record of each spot-check for gamma stereotactic radiosurgery units required by this section for three (3) years. The record shall include:

(a) The date of the spot-check;

(b) The manufacturer's name, model number, and serial number for the gamma stereotactic radiosurgery unit and the instrument used to measure the output of the unit;

(c) An assessment of timer linearity and accuracy;

(d) The calculated on-off error;

(e) A determination of trunnion centricity;

(f) The difference between the anticipated output and the measured output;

(g) An assessment of source output against computer calculations;

(h) Notations indicating the operability of radiation monitors, helmet microswitches, emergency timing circuits, emergency off buttons, electrical interlocks, source exposure indicator lights, viewing and intercom systems, timer termination, treatment table retraction mechanism, and stereotactic frames and localizing devices (trunnions); and

(i) The name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.

(8) A licensee shall retain a copy of the procedures required by subsection (2) of this section until the licensee no longer possesses the gamma stereotactic radiosurgery unit.

Section 58. Additional Technical Requirements for Mobile Remote Afterloader Units. (1) A licensee providing mobile remote afterloader service shall:

(a) Check survey instruments before medical use at each address of use or on each day of use, whichever is more frequent; and

(b) Account for all sources before departure from a client's address of use.

(2) In addition to the periodic spot-checks required by Section 56 of this administrative regulation a licensee authorized to use mobile afterloaders for medical use shall perform checks on each remote afterloader unit before use at each address of use. At a minimum, checks shall be made to verify the operation of:

(a) Electrical interlocks on treatment area access points;

(b) Source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;

(c) Viewing and intercom systems;

(d) Applicators, source transfer tubes, and transfer tube-applicator interfaces;

(e) Radiation monitors used to indicate room exposures;

(f) Source positioning (accuracy); and

(g) Radiation monitors used to indicate whether the source has returned to a safe shielded position.

(3) In addition to the requirements for checks in subsection (2) of this section, a licensee shall ensure overall proper operation of the remote afterloader unit by conducting a simulated cycle of treatment before use at each address of use.

(4) If the results of the checks required in subsection (2) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(5) A licensee shall retain a record of each check for mobile remote afterloader units for three (3) years. The record shall include:

(a) The date of the check;

(b) The manufacturer's name, model number, and serial number of the remote afterloader unit;

(c) Notations accounting for all sources before the licensee departs from a facility;

(d) Notations indicating the operability of each entrance door electrical interlock, radiation monitors, source exposure indicator lights, viewing and intercom system, applicators, source transfer tubes, and transfer tube applicator interfaces, and source positioning accuracy; and

(e) The signature of the individual who performed the check.

Section 59. Radiation Surveys. (1) In addition to the survey requirement in 902 KAR 100:019, Section 12, a person licensed under this administrative regulation shall conduct surveys to ensure that the maximum radiation levels and average radiation levels from the surface of the main source safe with the **source[**~~source(s)~~**]** in the shielded position do not exceed the levels stated in the Sealed Source and Device Registry.

(2) The licensee shall conduct the survey required by subsection (1) of this section at installation of a new source and following repairs to the **source[**~~source(s)~~**]** shielding, the **source[**~~source(s)~~**]** driving unit, or other electronic or mechanical component that could expose the source, reduce the shielding around the **source[**~~source(s)~~**]**, or compromise the radiation safety of the unit or the **source[**~~source(s)~~**]**.

(3) A licensee shall maintain a record of radiation surveys of treatment units for the duration of use of the unit. The record shall include:

(a) The date of the measurements;

(b) The manufacturer's name, model number and serial number of the treatment unit, source, and instrument used to measure radiation levels;

(c) Each dose rate measured around the source while the unit is in the off position and the average of all measurements; and

(d) The signature of the individual who performed the test.

Section 60. Five (5) year Inspection for Teletherapy and Gamma Stereotactic Radiosurgery Units. (1) A licensee shall have each teletherapy unit and gamma stereotactic radiosurgery unit fully inspected and serviced during source replacement or at intervals not to exceed five (5) years, whichever comes first, to assure proper functioning of the source exposure mechanism.

(2) This inspection and servicing may only be performed by persons specifically licensed to do so by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [~~another~~] agreement state.

(3) A licensee shall maintain a record of the five (5) year inspections for teletherapy and gamma stereotactic radiosurgery units for the duration of use of the unit. The record shall contain:

(a) The inspector's radioactive materials license number;

(b) The date of inspection;

(c) The manufacturer's name and model number and serial number of both the treatment unit and source;

(d) A list of components inspected and serviced, and the type of service; and

(e) The signature of the inspector.

Section 61. Therapy-related Computer Systems. The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing shall include, as applicable, verification of:

(1) The source-specific input parameters required by the dose calculation algorithm;

(2) The accuracy of dose, dwell time, and treatment time calculations at representative points;

(3) The accuracy of isodose plots and graphic displays;

(4) The accuracy of the software used to determine sealed source positions from radiographic images; and

(5) The accuracy of electronic transfer of the treatment delivery parameters to the treatment delivery unit from the treatment planning system.

Section 62. Other Medical Uses of Radioactive Material or Radiation from Radioactive Material. A licensee may use radioactive material or a radiation source approved for medical use which is not specifically addressed in Sections 30, 31, 33, 37, 45, and 46

of this administrative regulation if:

(1) The applicant or licensee has submitted the information required by Section 4(2) through (4) of this administrative regulation; and

(2) The applicant or licensee has received written approval from the cabinet in a license or license amendment and uses the material in accordance with the administrative regulations and specific conditions the cabinet considers necessary for the medical use of the material.

Section 63. Recentness of Training. The training and experience specified in Sections 64 [~~65~~] through 77 [~~78~~] of this administrative regulation shall have been obtained within the seven (7) years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

Section 64. [~~Visiting Authorized User, Visiting Authorized Medical physicist, and Visiting Authorized Nuclear Pharmacist.~~

~~(1) A licensee may permit a visiting authorized user, visiting authorized medical physicist, or visiting authorized nuclear pharmacist to use licensed material for medical use under the terms of the licensee's license for sixty (60) days each year if:~~

~~(a) The visiting authorized user has the prior written permission of the licensee's management and, if the use occurs on behalf of an institution, the institution's Radiation Safety Committee, if applicable;~~

~~(b) The licensee has a copy of the cabinet, U.S. Nuclear Regulatory Commission, or another agreement state license that identifies the visiting authorized user by name as an authorized user for medical use or the visiting authorized nuclear pharmacist as an authorized nuclear pharmacist for nuclear pharmacy use, or the visiting authorized medical physicist for similar types of therapeutic medical units for which the individual is requesting authorized medical physicist status. The supervising authorized user shall not be required to be present for each use of radioactive material; and~~

~~(c) Only those procedures for which the visiting authorized user, or visiting authorized medical physicist, or visiting authorized nuclear pharmacist is specifically authorized by the cabinet, U.S. Nuclear Regulatory Commission, or another agreement state license are performed by that individual.~~

~~(2) A licensee need not apply for a license amendment in order to permit a visiting authorized user, or visiting authorized medical physicist, or visiting authorized nuclear pharmacist to use licensed material as described in this section.~~

~~(3) A licensee shall retain copies of the records specified in this section for five (5) years from the date of the last visit.~~

~~Section 65.~~] Training for Radiation Safety Officer. Except as provided in Section 67 [~~68~~] of this administrative regulation, the licensee shall require an individual fulfilling the responsibilities of the radiation safety officer as provided in 902 KAR 100:072, Section 10 to be an individual who:

(1) Is certified by a specialty board whose certification process [~~includes all of the requirements in subsection (1) of this section and whose certification~~] has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [~~another~~] agreement state and who meets the requirements in subsections (4) and (5) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to: [~~;or~~]

(a)1. Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of twenty (20) college credits in physical science;

2. Have five (5) or more years of professional experience in health physics (graduate training may be substituted for no more than two (2) years of the required experience) including at least three (3) years in applied health physics; and

3. Pass an examination administered by diplomats of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurements of radioactivity, radiation biology, and radiation dosimetry**[:]** or

(b)1. Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

2. Have two (2) years of full-time practical training**, two (2) years of supervised experience, or two (2) years of a combination of full-time practical training and[**~~and/or~~**]** supervised experience in medical physics;

a. Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state; or

b. In clinical nuclear medicine facilities providing diagnostic **or[**~~and/or~~**]** therapeutic services under the direction of physicians who meet the requirements for authorized users in 902 KAR 100:072, Sections 67, 69, or 70 of this administrative regulation;

3. Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety; or

(2)(a) Has completed a structured educational program consisting of both:

1. 200 hours of classroom and laboratory [~~didactic~~] training in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Radiation biology; and

e. Radiation dosimetry; and

2. One (1) year of full-time radiation safety experience under the supervision of the individual identified as the radiation safety officer on a cabinet, U.S. Nuclear Regulatory Commission, or equivalent [~~another~~] agreement state license or permit issued by a Commission master material licensee that authorizes similar **type[**~~type(s)~~**]** of **use[**~~use(s)~~**]** of radioactive material involving the following:

a. Shipping, receiving, and performing related radiation surveys;

b. Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure
radionuclides;

c. Securing and controlling radioactive material;

d. Using administrative controls to avoid mistakes in the administration of radioactive material;

e. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;

f. Using emergency procedures to control radioactive material; and

g. Disposing of radioactive material: or

(3)(a) Is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state under 902 KAR 100:072, Section 65(1), and has experience in radiation safety for similar types of use of radioactive material for which the licensee is seeking the approval of the individual as Radiation Safety Officer, and who meets the requirements in subsections (4) and (5) of this section; or

(b) Is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the licensee's license and has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual has radiation safety officer responsibilities, and

(4) Has obtained written attestation, signed by a preceptor Radiation Safety Officer, that the individual has satisfactorily completed the requirements in subsections (5) and in (1)(a)1 and 2 or (1)(b)1 and 2 or (2)(a) or (3)(a) of this section, and has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee; and

(5) Has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by a radiation safety officer, authorized medical physicist, authorized nuclear pharmacist, or authorized user, as appropriate, who is authorized for the

type[~~type(s)~~**]** of use for which the licensee is seeking approval. [~~(b) Has obtained written certification, signed by a preceptor radiation safety officer, that the individual has satisfactorily completed the requirements in subsection (2)(a) of this section and has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee or~~

~~(c) Is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the licensee's license and has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual has radiation safety officer responsibilities.~~]

Section 65.[~~66.~~] Training for an Authorized Medical Physicist. Except as provided in Section 67 [~~68~~] of this administrative regulation the licensee shall require the authorized medical physicist to be an individual who:

(1) Is certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state and who meets the [~~includes all of the training and experience~~] requirements in subsection (2)(b) and (3) of this section [~~and whose certification has been recognized by the cabinet, U.S. Nuclear Regulatory Commission or another agreement state~~]. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(b) Have a two (2) years of full-time practical training**, two (2) years of supervised experience, or two (2) years of a combination of full-time practical training and[**~~and/or~~**]** supervised experience in medical physics:

1. Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state; or

2. In clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to one (1) million electron volts) and brachytherapy services under the direction of physicians who meet the requirements of authorized users in Section 67, 74, or 77 of this administrative regulation, and

(c) Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

(2)(a) Holds a master's or doctor's degree in physics, [~~biophysics, radiological physics,~~] medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;[~~or health physics~~] and has completed one (1) year of full-time training in medical physics [~~therapeutic radiological physics~~] and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the **type[**~~type(s)~~**]** of use for which the individual is seeking authorization. This training and work experience shall be conducted in clinical radiation facilities that provides high-energy, external beam therapy (photons and electrons with energies greater than or equal to one (1) million electron volts) and brachytherapy services and shall include:

1. Performing sealed source leak test and inventories;

2. Performing decay corrections;

3. Performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

4. Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(b) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (3), and (1)(a) and (b), or subsection (2)(a) and (3) of this section, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation shall be signed by a preceptor authorized medical physicist who meets the requirements in Sections 65 or 67 of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

(3) Has training for the **type[**~~type(s)~~**]** of use for which authorization is sought that includes hands-on device operation, safety operations, clinical use, and the operation of a treatment planning system. This training requirement **shall[**~~may~~**]** be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the **type[**~~type(s)~~**]** of use for which the individual is seeking authorization. [~~at a medical institution that includes the tasks listed in Sections 24, 43, 52, 53, 54, 55, 56, 57 and 59 of this administrative regulation as applicable; and~~

~~(3) Has obtained written certification that the individual has satisfactorily completed the requirements in subsection (2)(a) of this section and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written certification shall be signed by a preceptor authorized medical physicist who meets the requirements of this section or equivalent agreement state requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status.~~]

Section 66. [~~67.~~] Training for an Authorized Nuclear Pharmacist. Except as provided in Section 67 [~~68~~] of this administrative regulation the licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

(1) Is certified [~~as a nuclear pharmacist~~] by a specialty board whose certification process [~~includes all of the requirements in subsection (2) of this section and whose certification~~] has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [~~another~~] agreement state and who meets the requirements in subsection (2)(b) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Have graduated from a pharmacy program accredited by the American Council on Pharmaceutical Education (ACPE) or have passed the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination;

(b) Hold a current, active license to practice pharmacy;

(c) Provide evidence of having acquired at least **4,000[**~~4000~~**]** hours of training and experience in nuclear pharmacy practice. Academic training may be substituted for no more than **2,000[**~~2000~~**]** hours of the required training and experience; and

(d) Pass an examination in nuclear pharmacy administered by diplomats of the specialty board, that assesses knowledge and competency in procurement, compounding, quality assurance, dispensing, distribution, health and safety, radiation safety, provision of information and consultation, monitoring patient outcomes, research and development; or

(2)(a) Has completed 700 hours in a structured educational program consisting of both:

1. 200 hours of classroom and laboratory [~~Didactic~~] training in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Chemistry of radioactive material for medical use; and

e. Radiation biology; and

2. Supervised practical experience in a nuclear pharmacy involving:

a. Shipping, receiving, and performing related radiation surveys;

b. Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

c. Calculating, assaying, and safely preparing dosages for patients or human
research subjects;

d. Using administrative controls to avoid medical events in the administration of
radioactive material; and

e. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures; and

(b) [(c)] Has obtained written attestation [certification], signed by a preceptor authorized nuclear pharmacist, that the individual has satisfactorily completed the requirements in subsections (1)(a), (1)(b) and (1)(c) or (2)(a) [subsection (2)(a)] of this section and has achieved a level of competency sufficient to function independently as an authorized nuclear pharmacist.

Section 67. [68.] Training for Experienced Radiation Safety Officer, Teletherapy or Medical Physicist, Authorized Medical Physicist, Authorized User, [and] Nuclear Pharmacist and Authorized Nuclear Pharmacist. (1)(a) An individual identified as a Radiation Safety Officer, a teletherapy or medical physicist, or a nuclear pharmacist on a cabinet, U.S. Nuclear Regulatory Commission, or equivalent [another] agreement state license or a permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [another] agreement state broad scope licensee or master material license permit or by a master material license permittee of broad scope before October 24, 2005 shall not be required to comply with the training requirements of Section 64, 65, or 66, [or 67] of this administrative regulation respectively:

(b) An individual identified as a radiation safety officer, an authorized medical physicist, or an authorized nuclear pharmacist on a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state license or a permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or agreement state broad scope licensee or master material license permit or master material licensee permittee of broad scope between October 24, 2002 and April 29, 2005 **is not required to[**need not**]** comply with the training requirements of Section 64, 65, or 66 of this administration regulation respectively.

(2)(a) Physicians, dentists, or podiatrists identified as authorized users for the medical use of radioactive material on a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [another] agreement state, a permit issued by a Commission master material licensee, a permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [another] agreement state broad scope licensee, or a permit issued by a Commission master material license broad scope permittee before October 24, 2002 [2005] who perform only those medical uses for which they were authorized on that date shall not be required to comply with the training requirements of 902 KAR 100:072, Sections 68 [69] through 77.

(b) Physicians, dentists, or podiatrists identified as authorized users for the medical use of radioactive material on a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state, a permit issued by a master material licensee, a permit issued by the cabinet, U.S. Nuclear Regulatory Commission or agreement state broad scope licensee or a permit issued by a U.S. Nuclear Regulatory Commission master material license broad scope permittee who performs only those medical uses for which they were authorized between October 24, 2002 and April 29, 2005 shall not be required to comply with the training requirements of Sections 68 through 77.

Section 68.[69.] Training for Uptake, Dilution, and Excretion Studies. Except as provided in Section 67 [68] of this administrative regulation the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under Section 30 of this administrative regulation to be a physician who:

(1)(a) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3)(b) of this section and who [whose certification] has been recognized by the cabinet, U.S. Nuclear Regulatory Commission or equivalent [an] agreement state and who meets the requirements in subsection (3)(b) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

1. Complete sixty (60) hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies as described in subsection (3)(a)1 **and[**through**]** 2 of this section; and

2. Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

(2) Is an authorized user under Section 69 or 70 [or 71], of this administrative regulation or U.S. Nuclear Regulatory Commission or equivalent agreement state requirements; or

(3)(a) Has completed sixty (60) hours of training and experience, including a minimum of eight (8) hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience shall include:

1. Classroom and laboratory training, in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Chemistry of radioactive material for medical use; and

e. Radiation biology; and

2. Work experience, under the supervision of an authorized user who meets the requirements in Section 67, 68, 69, or 70, [or 71] of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements, involving:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

b. Performing quality control procedures on [Calibrating] instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

c. Calculating, measuring, and safely preparing patient or human research subject dosages;

d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

e. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

f. Administering dosages of radioactive drugs to patients or human research
subjects; and

(b) Has obtained written attestation [certification], signed by a preceptor
authorized user who meets the requirements in Section 67, 68, 69, or 70 [, or 71] of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) or (3)(a) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under Section 30 of this administrative regulation.

Section 69. [70.] Training for Imaging and Localization Studies. Except as provided in Section 67 [68] of this administrative regulation the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under Section 31 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process [includes all of the requirements in subsection (3)(b) of this section and whose certification] has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [an] agreement state and who meets the requirements in subsection (3)(b) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Complete 700 hours of training and experience in basis radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for imaging and localization studies that includes the topics listed in subsection (3)(a)1 through 2.g of this section; and

(b) Pass an examination, administered by diplomats of the specialty board, which assesses knowledge and competence in

radiation safety, radionuclide handling, and quality control; or

(2) Is an authorized user under Section 70 [~~71~~] of this administrative regulation and meets the requirements in subsection (3)(a)2.g of this section, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements; or

(3) (a) Has completed 700 hours of training and experience, including a minimum of eighty (80) hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience shall include, at a minimum:

1. Classroom and laboratory training[~~,~~] in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Chemistry of radioactive material for medical use; and

e. Radiation biology; and

2. Work experience, under the supervision of an authorized user, who meets the requirements in Section 67, 69 or 70 and Section 69(3)(a)2.g, [~~or Section 71~~] of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements, involving:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

b. Performing quality control procedures on [~~Calibrating~~] instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

c. Calculating, measuring, and safely preparing patient or human research
subject dosages;

d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

e. Using procedures to safely contain spilled radioactive material and using proper decontamination procedures;

f. Administering dosages of radioactive drugs to patients or human research subjects; and

g. Eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

(b) Has obtained written attestation [~~certification~~], signed by a preceptor authorized user who meets the requirements in Sections 67, 69, or 70 or Section 69(3)(a)2.g [~~71~~] of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) or (3)(a) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under Sections 30 and 31 of this administrative regulation.

Section 70.[~~71.~~] Training for Use of Unsealed Radioactive Material for Which a Written Directive Is Required. Except as provided in Section 67 [~~68~~] of this administrative regulation the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under Section 33 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process [~~includes all of the requirements in subsection (2)(a)2.g. and (2)(b) [(3)] of this section and whose certification~~] has been recognized by the cabinet, U.S. Nuclear Regulatory Commission or equivalent [~~another~~] agreement state, and who meets the requirements in subsection (2)(a)2.f and (b) of this section. To be recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty. These residency training programs shall include 700 hours of training and experience as described in subsection (2)(a)1 through 2.e of this section. Eligible training programs shall be approved by: [~~; or~~]

1. Residency Review Committee of the Accreditation Council for Graduate Medical Education;

2. Royal College of Physicians and Surgeons of Canada; or

3. Committee on Post-Graduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by the diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed radioactive material for which a written directive is required; or

(2)(a) Has completed 700 hours of training and experience, including a minimum or 200 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience shall include:

1. Classroom and laboratory training in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Chemistry of radioactive material for medical use; and

e. Radiation biology; and

2. Work experience, under the supervision of an authorized user who meets the requirements of Sections 67 and 70 of this administrative regulation, or [~~subsections (1) and (2) of this section,~~] U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements. A supervising authorized user, who meets the requirements in Section 70[~~71~~](2) of this administrative regulation, shall have experience in administering dosages in the same dosage category or categories (**[**~~i.e.,~~**]**Section 70[~~71~~](2)(a)2.f[~~g(i), (ii), (iii), or (iv)~~]) of this administrative regulation as the individual requesting authorized user status. The work experience shall involve:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

b. Performing quality control procedures on [~~Calibrating~~] instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;

c. Calculating, measuring, and safely preparing patient or human research subject dosages;

d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

e. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;

f. [~~Eluting generator systems, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and~~

~~g.~~] Administering dosages of radioactive drugs to patients or human research subjects involving a minimum of three (3) cases in each of the following categories for which the individual is requesting authorized user status:

(i) Oral administration of less than or equal to 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131, for which a written directive is required;

(ii) Oral administration of greater than 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131;

(iii) Parenteral administration of any beta emitter or a photon-emitting radionuclide with a photon energy less than 150 keV, for which a written directive is required; **or[**~~and/or~~**]**

(iv) Parenteral administration of any other radionuclide, for which a written directive is required; and

(b) Has obtained written attestation [~~certification~~] that the individual has satisfactorily completed the requirements in subsection (1)[~~(2)~~](a) and (2)(a)2.f or (2)(a) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under Section 33 of this administrative regulation. The written attestation [~~certification~~] shall be signed by a preceptor authorized user who meets the requirements [~~of subsections (1) and (2)~~] of this section, and section 67 of this administrative regulation or U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements. The preceptor authorized user, who meets the requirements in [~~of~~] subsection (2) of this section, shall have experience in administering dosages in the same dosage category or categories (**[**~~i.e.,~~**]**Section 70[~~71~~](2)(a)2.f[~~g(i), (ii), (iii), or (iv)~~]) of this administrative regulation as the individual requesting authorized user status.

Section 71.[~~72.~~] Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 Gigabecquerels (33 millicuries). Except as provided in Section 67[~~68~~] of this administrative regulation, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 Gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3)(a) and (b) of this section and whose certification has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [~~another~~] agreement state and who meets the requirements in subsection (3)(c) of this section;

(2) Is an authorized user under Section 70 [~~71(1), 71(2)~~] of this administrative regulation for uses listed in Section 70[~~71~~](2)(a)2.f.[~~g.~~](i) [~~or (ii)~~], or Section 72 of this administrative regulation, [~~or~~] U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements; or

(3) (a) Has successfully completed eighty (80) hours of classroom and laboratory training, applicable to the medical use of sodium iodide I–131 for procedures requiring a written directive. The training shall include:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity;

4. Chemistry of radioactive material for medical use; and

5. Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in Section 67, 70, 71,[~~(1), 71(2)~~], or 72[~~, 73~~] of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements. A supervising authorized user who meets the requirements in Section 70 [~~71~~](2)(a) of this administrative regulation shall have experience in administering dosages as specified in Section 70[~~71~~](2)(a)2.f.[~~g.~~](i) or (ii) of this administrative regulation. The work experience shall involve:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

2. Performing quality control procedures on [~~Calibrating~~] instruments used to determine the activity of dosages and performing checks for proper operation for survey meters;

3. Calculating, measuring, and safely preparing patient or human research subject dosages;

4. Using administrative controls to prevent a medical event involving the use of radioactive material;

5. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

6. Administering dosages to patients or human research subjects, that includes at least three (3) cases involving the oral administration of less than or equal to 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Has obtained written attestation [~~certification~~] that the individual has satisfactorily completed the requirements in subsection (3)[~~paragraphs~~](a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under Section 33 of this administrative regulation. The written attestation [~~certification~~] shall be signed by a preceptor authorized user who meets the requirements in Section 67, 70, 71 [~~(1), 71(2)~~], or 72[~~, 73~~] of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements. A preceptor authorized user, who meets the requirement in Section 70[~~71~~](2) of this administrative regulation shall also have experience in administering dosages as specified in Section 70(2)(a)2.f.[~~g.~~](i) or (ii) of this administrative regulation.

Section 72.[~~73.~~] Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries). Except as provided in Section 67 [~~68~~] of this administrative regulation the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3)(a) and (b) of this section, and whose certification has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [~~another~~] agreement state and who meets the requirements in subsection of (3)(c) of this section; or

(2) Is an authorized user under Section 70 [~~71(1), 71(2)~~] of this administrative regulation for uses listed in Section 70(2)(a)2.f.[~~g.~~](ii) of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements; or

(3)(a) Has successfully completed eighty (80) hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training shall include:

1. Radiation physics and instrumentation;

2. Radiation protection; and

3. Mathematics pertaining to the use and measurement of radioactivity;

4. Chemistry of radioactive material for medical use; and

5. Radiation biology;

(b) Has work experience, under the supervision of an authorized user who meets the requirements in Section 67, 70 and 72 [71~~(1), 71(2), 73~~] of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements. A supervising authorized user, who meets the requirements in Section 70[~~71~~](2) of this administrative regulation, shall also have experience in administering dosages as specified in Section 70[~~71~~](2)(a)2.f.(ii) [~~g.(i)~~] of this administrative regulation. The work experience shall involve:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

2. Performing quality control procedures on [~~Calibrating~~] instruments used to determine the activity of dosages and performing checks for proper operation for survey meters;

3. Calculating, measuring, and safely preparing patient or human research subject dosages;

4. Using administrative controls to prevent a medical event involving the use of radioactive material;

5. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

6. Administering dosages to patients or human research subjects, that includes at least three (3) cases involving the oral administration of greater than 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Has obtained written attestation [~~certification~~] that the individual has satisfactorily completed the requirements in subsection (3)[~~paragraphs~~](a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under Section 33 of this administrative regulation. The written attestation [~~certification~~] shall be signed by a preceptor authorized user who meets the requirements in Section 67, 70 or 72 [~~71(1), 71(2), 72, or 73~~] of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements. A preceptor authorized user, who meets the requirements in Section 70[~~71~~](2) of this administrative regulation, shall have experience in administering dosages as specified in [~~902 KAR 100:072,~~] Section 70(2)(a)2.f.[~~g.~~](ii).

Section 73. Training for the Parenteral Administration of Unsealed Radioactive Material Requiring a Written Directive. Except as provided in Section 67 of this administrative regulation, the licensee shall require an authorized user for the parenteral administration requiring a written directive, to be a physician who:

(1) Is an authorized user under Section 70 for uses listed in Section 70(2)(a)2.f.(iii) or Section 70(2)(a)2.f.(iv) or of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state regulations;**[**~~**or**~~**]**

(2) Is an authorized user under Sections 74 or 77 of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state and who meets the requirements in subsection (4) of this section;**[**~~**or**~~**]**

(3) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state under Sections 74 or 77 of this administrative regulation; and who meets the requirements in subsection (4) of this section**; or[.]**

(4)(a) Has successfully completed eighty (80) hours of classroom and laboratory training, applicable to parenteral administrations, for which a written directive is required, of any beta emitter or any photon-emitting radionuclide with a photon energy less that 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. The training shall include:

1. Radiation physics and instrumentation;

2 Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity;

4. Chemistry of radioactive material for medical use; and

5. Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in Sections 67, 70, and 73 of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state, in the parenteral administration, for which a written directive is required, of any beta emitter, or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. A supervising authorized user who meets the requirements in Section 70 shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(iii) and/or Section 70(2)(a)2.f.(iv). The work experience shall involve:

1. Ordering, receiving, and unpacking radioactive materials safely, and performing the related radiation surveys;

2. Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;

3. Calculating, measuring, and safely preparing patient or human research subjects dosages;

4. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

5. Using procedures to contain spilled radioactive material safely, and using proper decontamination procedures; and

6. Administering dosages to patients or human research subjects, that include at least three (3) cases involving the parenteral administration, for which a written directive is required, of any beta emitter, or photon-emitting radionuclide with a photon energy less than 150 keV and/or at least three (3) cases involving the parenteral administration of any other radionuclide, for which a written directive is required; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (2) or (3) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed radioactive material requiring a written directive. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Sections 67, 70, or 73 of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state. A preceptor authorized user, who meets the requirements in Section 70, shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(iii) and/or Section 70(2)(a)2.f.(iv) of this administrative regulation.

Section 74. [~~75.~~] Training for Use of Manual Brachytherapy Sources. Except as provided in Section 67 [~~68~~] of this administrative regulation, the licensee shall require an authorized user of a manual brachytherapy source for the uses authorized under Section 37 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process [~~includes all of the requirements in subsection (2)(c) of this section and whose certification~~] has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [~~another~~] agreement state and who meets the requirements in (2)(c) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a minimum or three (3) years of residency training in a radiation oncology program approved by the:

1. Residency Review Committee of the Accreditation Council for Graduate Medical Education; or

2. Royal College of Physicians and Surgeons of Canada; or

3. Committee on Post-Graduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by diplomats of the specialty board, that tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or

(2)(a) Has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources that includes:

1. 200 hours of classroom and laboratory training in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity; and

d. Radiation biology; and

2. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in Sections 67 and 74 of this administrative regulation, [~~of this section~~] U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements at a medical institution, involving:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

b. Checking survey meters for proper operation;

c. Preparing, implanting, and removing brachytherapy sources;

d. Maintaining running inventories of material on hand;

e. Using administrative controls to prevent a medical event involving the use of radioactive material; [~~and~~]

f. Using emergency procedures to control radioactive material; and

(b) Has completed [~~obtained~~] three (3) years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in sections 67 and 74 of this administrative regulation [~~of this section~~], U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subsection (2)(a)2. of this section; and

(c) Has obtained written attestation [~~certification~~], signed by a preceptor authorized user who meets the requirements of this section and Sections 67 and 74 of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) or (2)(a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized under Section 37 of this administrative regulation.

Section 75. Training for Ophthalmic Use of Strontium-90. Except as provided in Section 67 [~~68~~] of this administrative regulation the licensee shall require the authorized user of strontium-90 for ophthalmic radiotherapy to be a physician who:

(1) Is an authorized user under Section 74 of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements; or

(2)(a) Has completed twenty-four (24) hours of classroom and laboratory training applicable to the medical use of strontium-90 for ophthalmic radiotherapy. The training shall include:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity; and

4. Radiation biology; and

(b) Supervised clinical training in ophthalmic radiotherapy un-

der the supervision of an authorized user at a medical institution, clinic, or private practice that includes the use of strontium-90 for the ophthalmic treatment of five (5) individuals. This supervised clinical training shall involve:

1. Examination of each individual to be treated;

2. Calculation of the dose to be administered;

3. Administration of the dose; and

4. Follow up and review of each individual's case history; and

(c) Has obtained written attestation [~~certification~~], signed by a preceptor authorized user who meets the requirements in Sections 67, 74, and 75 of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements, that the individual has satisfactorily completed the requirements in subsection[~~subsections (1) and~~] (2) of this section and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

Section 76. Training for use of sealed sources for diagnosis. Except as provided in Section 67 [~~68~~] of this administrative regulation, the licensee shall require the authorized user of a diagnostic sealed source for use in a device authorized under Section 45 of this administrative regulation to be a physician, dentist, or podiatrist who:

(1) Is certified by a specialty board whose certification process includes all of the requirements in subsection (2) and (3) of this section and whose certification has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [~~another~~] agreement state; or

(2) Has completed [~~had~~] eight (8) hours of classroom and laboratory training in basic radionuclide handling techniques specifically applicable to the use of the device. The training shall include:

(a) Radiation physics and instrumentation;

(b) Radiation protection;

(c) Mathematics pertaining to the use and measurement of radioactivity; and

(d) Radiation biology; and

(3) Has completed [~~(e)~~] training in the use of the device for the uses requested.

Section 77. Training for Use of Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units. Except as provided in Section 67 [~~68~~] of this administrative regulation, the licensee shall require an authorized user of a sealed source for a use authorized under Section 46 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process [~~includes all of the requirements in subsection (2) of this section and whose certification~~] has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent [~~another~~] agreement state and who meets the requirements in (2)(c) and (3) of this section. To have its certification recognized, a specialty board shall require all candidates for certification to**:[;]**

(a) Successfully complete a minimum of three (3) years of residency training in a radiation therapy program approved by the:

1. Residency Review Committee of the Accreditation Council for Graduate Medical Education;

2. Royal College of Physicians and Surgeons of Canada; or

3. Committee on Post-Graduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, remote afterloaders and external beam therapy; or

(2)(a) Has completed a structured educational program in basic radionuclide techniques applicable to the use of a sealed source in a therapeutic medical unit that includes:

1. 200 hours of classroom and laboratory training in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity; and

d. Radiation biology; and

2. 500 hours of work experience, under the supervision of an authorized user

who meets the requirements in Sections 67 and 77 of this administrative regulation [~~of this section~~], U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements at a medical institution, involving:

a. Reviewing full calibration measurements and periodic spot-checks;

b. Preparing treatment plans and calculating treatment doses and times;

c. Using administrative controls to prevent a medical event involving the use of radioactive material;

d. Implementing emergency procedures to be followed in the event of the abnormal operation of the medical unit or console;

e. Checking and using survey meters; and

f. Selecting the proper dose and how it is to be administered; and

(b) Has completed three (3) years of supervised clinical experience in radiation therapy [~~oncology~~], under an authorized user who meets the requirements in Sections 67 and 77 of this administrative regulation, U.S. Nuclear Regulatory Commission, [~~of this~~] or equivalent agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subsection (2)(a)2 of this section; and

(c) Has obtained written attestation [~~certification~~] that the individual has satisfactorily completed the requirements in subsection (1)(a) or (2)(a) and (b), and (3) [~~(2)(a) and (b)~~] of this section, and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation [~~certification~~] shall be signed by a preceptor authorized user who meets the requirements in Sections 67 and 77 of this administrative regulation [~~of this section~~], U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

(3)[~~3.~~**]** Has received training in device operation, safety procedures, and clinical use for the **type[**~~type(s)~~**]** of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the **type[**~~type(s)~~**]** of use for which the individual is seeking authorization.

Section 78. Alternative Training. During a two (2) year period after the effective date of October 24, 2005, alternative training and experience requirements shall be available. Licensees shall have the option of complying with either the training requirements of Section 78 of this administrative regulation or the new requirements in Sections 65 through 77 of this administrative regulation. After October 24, 2007 [~~2005~~], licensee shall not have the option of using Section 78 of this administrative regulation. Except as provided in Section 67 [~~68~~] of this administrative regulation, the licensee shall require for:

(1) A Radiation Safety Officer, an individual fulfilling the responsibilities of the radiation safety officer as provided in Section 10 of this administrative regulation to be an individual who:

(a) Is certified by the:

1. American Board of Health Physics in Comprehensive Health Physics;

2. American Board of Radiology;

3. American Board of Nuclear Medicine;

4. American Board of Science in Nuclear Medicine;

5. Board of Pharmaceutical Specialties in Nuclear Pharmacy;

6. American Board of Medical Physics in radiation oncology physics;

7 Royal College of Physicians and Surgeons of Canada in nuclear medicine;

8. American Osteopathic Board of Radiology; or

9. American Osteopathic Board of Nuclear Medicine;

(b) Has had classroom and laboratory training and experience as follows:

1. 200 hours of classroom and laboratory training that includes:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Radiation biology; and

e. Radiopharmaceutical chemistry; and

2. One (1) year of full time experience as a radiation safety technologist at a medical institution under the supervision of the individual identified as the radiation safety officer on a cabinet, U.S. Nuclear Regulatory Commission, or equivalent [another] agreement state license that authorizes the medical use of radioactive material; or

(c) Is an authorized user identified on the licensee's license.

(2) Authorized user of a radiopharmaceutical for uptake, dilution, and excretion in Section 30(1) of this administrative regulation to be a physician who:

(a) Is certified in:

1. Nuclear medicine by the American Board of Nuclear Medicine;

2. Diagnostic radiology by the American Board of Radiology;

3. Diagnostic radiology or radiology by the American Osteopathic Board of Radiology;

4. Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

5. American Osteopathic Board of Nuclear Medicine in nuclear medicine;

(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, and supervised
clinical experience as follows:

1. Forty (40) hours of classroom and laboratory training that includes:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Radiation biology; and

e. Radiopharmaceutical chemistry; and

2. Twenty (20) hours of supervised clinical experience under the supervision of an authorized user and that includes:

a. Examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

b. Selecting the suitable radiopharmaceuticals and calculating and measuring the
dosages;

c. Administering dosages to patients or human research subjects and using syringe radiation shields;

d. Collaborating with the authorized user in the interpretation of radioisotope test results; and

e. Patient or human research subject follow up; or

(c) Has successfully completed a six (6) month training program in nuclear medicine as part of a training program that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified
in paragraph (b) of this section.

(3) Authorized user for imaging and localization studies using a radiopharmaceutical, generator, or reagent kit in Section 31(1) of this administrative
regulation to be a physician who:

(a) Is certified in:

1. Nuclear medicine by the American Board of Nuclear Medicine;

2. Diagnostic radiology by the American Board of Radiology;

3. Diagnostic radiology or radiology by the American Osteopathic Board of Radiology;

4. Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

5. American Osteopathic Board of Nuclear Medicine in nuclear medicine;

(b) Has had classroom and laboratory training in basic radioisotope handling
techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, supervised work experience, and supervised clinical experience as follows:

(c) 1. 200 hours of classroom and laboratory training that includes:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Radiopharmaceutical chemistry; and

e. Radiation biology;

2. 500 hours of supervised work experience under the supervision of an authorized user that includes:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

b. Calibrating dose calibrators and diagnostic instruments and performing checks
for proper operation of survey meters;

c. Calculating and safely preparing patient or human research subject dosages;

d. Using administrative controls to prevent the medical event of radioactive material;

e. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

f. Eluting technetium-99m from generator systems, measuring and testing the eluate for molybdenum-99 and alumina contamination, and processing the eluate with reagent kits to prepare technetium-99m labeled radiopharmaceuticals; and

3. 500 hours of supervised clinical experience under the supervision of an
authorized user that includes:

a. Examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

b. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

c. Administering dosages to patients or human research subjects and using syringe radiation shields;

d. Collaborating with the authorized user in the interpretation of radioisotope test results; and

e. Patient or human research subject follow up; or

(c) Has successfully completed a six (6) month training program in nuclear medicine that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in paragraph (b) of this section.

(4) The authorized user of radiopharmaceuticals for therapeutic use in Section 33 of this administrative regulation to be a physician who:

(a) Is certified by:

1. The American Board of Nuclear Medicine;

2. The American Board of Radiology in radiology, therapeutic radiology, or radiation oncology;

3. The Royal College of Physicians and Surgeons of Canada in nuclear medicine; or

4. The American Osteopathic Board of Radiology after 1984; or

(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of therapeutic radiopharmaceuticals, and supervised clinical experience as follows:

1. Eighty (80) hours of classroom and laboratory training that includes:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity; and

d. Radiation biology; and

2. Supervised clinical experience under the supervision of an

authorized user at a medical institution that includes:

a. Use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in ten (10) individuals; and

b. Use of iodine-131 for treatment of thyroid carcinoma in three (3) individuals.

(5) The authorized user of only iodine-131 for the treatment of hyperthyroidism to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating hyperthyroidism, and supervised clinical experience as follows:

(a) Eighty (80) hours of classroom and laboratory training that includes:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity; and

4. Radiation biology; and

(b) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for diagnosis of thyroid function, and the treatment of hyperthyroidism in ten (10) individuals.

(6) The authorized user of only iodine-131 for the treatment of thyroid carcinoma to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating thyroid carcinoma, and supervised clinical experience as follows:

(a) Eighty (80) hours of classroom and laboratory training that includes:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity; and

4. Radiation biology; and

(b) Supervised clinical experience under the supervision of an authorized user
that includes the use of iodine-131 for the treatment of thyroid carcinoma in three (3) individuals.

(7) The authorized user of a brachytherapy source in Section 36 of this administrative regulation for therapy to be a physician who:

(a) Is certified in:

1. Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

2. Radiation oncology by the American Osteopathic Board of Radiology;

3. Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

4. Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(b) Is in the active practice of therapeutic radiology, has had classroom and laboratory training in radioisotope handling techniques applicable to the therapeutic use of brachytherapy sources, supervised work experience, and supervised clinical experience as follows:

1. 200 hours of classroom and laboratory training that includes:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity; and

d. Radiation biology;

2. 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

b. Checking survey meters for proper operation;

c. Preparing, implanting, and removing sealed sources;

d. Maintaining running inventories of material on hand;

e. Using administrative controls to prevent a medical event involving radioactive material; and

f. Using emergency procedures to control radioactive material; and

3. Three (3) years of supervised clinical experience that includes one (1) year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and an additional two (2) years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:

a. Examining individuals and reviewing their case histories to determine their suitability for brachytherapy treatment, and any limitations or contraindications;

b. Selecting the proper brachytherapy sources and dose and method of administration;

c. Calculating the dose; and

d. Post-administration follow-up and review of case histories in collaboration with the authorized user.

(8) The authorized user of only strontium-90 for ophthalmic radiotherapy to be a physician who is in the active practice of therapeutic radiology or ophthalmology, and has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of strontium-90 for ophthalmic radiotherapy, and a period of supervised clinical training in ophthalmic radiotherapy as follows:

(a) Twenty-four (24) hours of classroom and laboratory training that includes:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity; and

4. Radiation biology; and

(b) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution that includes the use of strontium-90 for the ophthalmic treatment of five individuals that includes:

1. Examination of each individual to be treated;

2. Calculation of the dose to be administered;

3. Administration of the dose; and

4. Follow up and review of each individual's case history.

(9) The authorized user of a sealed source for diagnosis in a device listed in Section 45 of this administrative regulation to be a physician, dentist, or podiatrist who:

(a) Is certified in:

1. Radiology, diagnostic radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

2. Nuclear medicine by the American Board of Nuclear Medicine;

3. Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or

4. Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(b) Has had eight (8) hours of classroom and laboratory training in basic radioisotope handling techniques specifically applicable to the use of the device that includes:

1. Radiation physics, mathematics pertaining to the use and measurement of radioactivity, and instrumentation;

2. Radiation biology;

3. Radiation protection; and

4. Training in the use of the device for the uses requested.

(10) The authorized user of a sealed source for therapeutic medical devices listed in Section 46 of this administrative regulation to be a physician who:

(a) Is certified in:

1. Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

2. Radiation oncology by the American Osteopathic Board of Radiology;

3. Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology";

4. Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(b) Is in the active practice of therapeutic radiology, and has had classroom and laboratory training in basic radioisotope tech-

niques applicable to the use of a sealed source in a therapeutic medical device, supervised work experience, and supervised clinical experience as follows:

1. 200 hours of classroom and laboratory training that includes:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity; and

d. Radiation biology;

2. 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:

a. Review of the full calibration measurements and periodic spot-checks;

b. Preparing treatment plans and calculating treatment times;

c. Using administrative controls to prevent medical events;

d. Implementing emergency procedures to be followed in the event of the abnormal operation of the medical device or console; and

e. Checking and using survey meters; and

3. Three (3) years of supervised clinical experience that includes one (1) year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two (2) years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:

a. Examining individuals and reviewing their case histories to determine their suitability for teletherapy, remote afterloader, or gamma stereotactic radiosurgery treatment, and any limitations or contraindications;

b. Selecting the proper dose and how it is to be administered;

c. Calculating the doses and collaborating with the authorized user in the review of patients' or human research subjects' progress and consideration of the need to modify originally prescribed doses as warranted by patients' or human research subjects' reaction to radiation; and

d. Postadministration follow up and review of case histories.

(11) The authorized medical physicist shall be an individual who:

(a) Is certified by the American Board of Radiology in:

1. Therapeutic radiological physics;

2. Roentgen ray and gamma ray physics;

3. X-ray and radium physics; or

4. Radiological physics; or

(b) Is certified by the American Board of Medical Physics in radiation oncology physics; or

(c) Holds a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and has completed one (1) year of full time training in therapeutic radiological physics and an additional year of full time work experience under the supervision of a medical physicist at a medical institution that includes the tasks listed in Sections 24, 52, 53, 54, 55, 56, 57 and 58 of this administrative regulation as applicable.

(12) The authorized nuclear pharmacist to be a pharmacist who:

(a) Has current board certification as a nuclear pharmacist by the Board of Pharmaceutical Specialties; or

(b)1. Has completed 700 hours in a structured educational program consisting of both:

a. Didactic training in the following areas:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity;

(iv) Chemistry of radioactive material for medical use; and

(v) Radiation biology; and

b. Supervised experience in a nuclear pharmacy involving the following:

(i) Shipping, receiving, and performing related radiation surveys;

(ii) Using and performing checks for proper operation of dose calibrators, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

(iii) Calculating, assaying, and safely preparing dosages for patients or human research subjects;

(iv) Using administrative controls to avoid mistakes in the administration of radioactive material;

(v) Using procedures to prevent or minimize contamination and using proper decontamination procedures; and

2. Has obtained written certification, signed by a preceptor authorized nuclear pharmacist, that the above training has been satisfactorily completed and that the individual has achieved a level of competency sufficient to independently operate a nuclear pharmacy.

(13) An authorized experienced nuclear pharmacist must be a pharmacist who has completed a structured educational program as specified in subsection (12)(b)(1) of this section before December 2, 1994, and who is working in a nuclear pharmacy would qualify as an experienced nuclear pharmacist. An experienced nuclear pharmacist shall not be required to comply with the requirements for a preceptor statement (subsection (12)(b)(2) of this section) and recentness of training (Section 63 of this administrative regulation) to qualify as an authorized nuclear pharmacist.

Section 79. Food and Drug Administration (FDA), Other Federal and State Requirements. Nothing in this administrative regulation relieves the license from complying with applicable FDA, other federal and state requirements governing radioactive drugs or devices. **[**~~Section 80. Adoption Without Change. (1) The following material is adopted without change:~~

~~(a) "56 F.R. 117" (October 24, 2005);~~

~~(b) "45 C.F.R. Part 690" (June 18, 1991); and~~

~~(c) "49 C.F.R. Part 11" (June 18, 1991).~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.~~**]**

WILLIAM D. HACKER, MD FAAP, CPE
JANIE MILLER, Secretary
APPROVED BY AGENCY: December 9, 2010
FILED WITH LRC: December 10, 2010
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, Phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, April 12, 2011)

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

RELATES TO: KRS 211.842 **-[**~~to~~**]** 211.852, 211.990(4), 10 C.F.R. 19.11 to 19.17, 30.7, 30.10

STATUTORY AUTHORITY: KRS 13B.170, 194A.050, 211.090(3), 211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation**[**~~,~~**]** and the handling and disposal of radioactive waste. This administrative regulation establishes notices, instructions, and reports for the protection of workers who may be exposed to radiation in their employment.

Section 1. Posting of Notices to Workers. (1) A licensee or registrant shall post current copies of the following documents:

(a) **[**~~The requirements of~~**]**This administrative regulation and 902 KAR 100:019, relating to standards for protection against radiation;

(b) The license, certificate of registration, conditions or documents incorporated into the license by reference, and amendments to the license;

(c) The operating procedures for work under the license or registration; and

(d) A notice of violation involving radiological working conditions, proposed imposition of civil penalty, or order issued as authorized by 902 KAR 100:170, and responses from the licensee or registrant.

(2) If posting of a document specified in subsection (1)(a), (b), or (c) of this section is not practical [~~practicable~~], the licensee or registrant **shall[**~~may~~**]** post a notice **that[**~~which~~**]** describes the document and states where it may be examined.

(3) Cabinet form KR-441, ["]Notice to Employees["], [~~incorporated by reference,~~] shall be prominently posted by a licensee or registrant.

(4) Documents, notices, or forms posted as required by this section shall:

(a) Appear in a sufficient number of places to permit an individual engaged in work under the license or registration to observe them on the way to or from a particular work location to which the document applies;

(b) Be conspicuous; and

(c) Be replaced if defaced or altered.

(5)(a) Cabinet documents posted as required by subsection (1)(d) of this section shall be posted within two (2) working days after receipt of the documents from the cabinet;

(b) The licensee's or registrant's response shall be posted within two (2) working days after dispatch from the licensee or registrant; and

(c) The documents shall remain posted for a minimum of five (5) working days or until action correcting the violation has been completed, whichever is later.

Section 2. Instructions to Workers. (1) An individual likely to receive in a year,
during the course of employment, an occupational dose in excess of 100 millirems (one (1) mSV) shall be:

(a) Kept informed of the storage, transfer, or use of sources of radiation in the licensee's or registrant's workplace;

(b) Informed of health protection problems, to the individual and potential offspring, associated with exposure to radioactive material or radiation, and instructed in precautions or procedures to minimize exposure**[,]** and in the purposes and functions of protective devices employed;

(c) Instructed in, and instructed to observe, to the extent within the worker's control, the applicable requirements of 902 KAR Chapter 100[,] and licenses issued thereunder[,] for the protection of personnel from exposures to radiation or radioactive material;

(d) Instructed of their responsibility to report promptly to the licensee or registrant a condition **that[**~~which~~**]** may lead to or cause a violation of the Act, 902 KAR Chapter 100 or license conditions, or unnecessary exposure to radiation or radioactive material;

(e) Instructed in the appropriate response to warnings made in the event of an unusual occurrence or malfunction that may involve exposure to radiation or radioactive material; and

(f) Informed of the radiation exposure reports **that[**~~which~~**]** workers may request as authorized by Section 3 of this administrative regulation.

(2) In determining the individuals subject to the requirements of this section, a licensee or registrant shall take into consideration assigned activities during normal and abnormal situations involving exposure to radioactive material or radiation **that[**~~which~~**]** can reasonably be expected to occur during the life of a licensed or registered facility. The extent of the instructions shall be commensurate with potential radiological health protection problems in the workplace.

Section 3. Notifications and Reports to Individuals. (1) Radiation exposure data for an individual[,] and the results of measurements, analyses, and calculations of radioactive material deposited or retained in the body of an individual, shall be reported to the individual.

(2) The information reported shall include data and results obtained as required by 902 KAR Chapter 100, orders, or license conditions[,] as shown in records maintained by the licensee or registrant as required by 902 KAR 100:019, Section 34.

(3) Each notification and report shall:

(a) Be in writing;

(b) Include the following identifying data:

1. The name of the licensee or registrant;

2. The name of the individual; and

3. The individual's identification or Social Security number.

(c) Include the individual's exposure information; and

(d) Contain the following statement: "This report is furnished to you under the provisions of the Kentucky Cabinet for Health and Family Services' radiation administrative regulations, 902 KAR 100:165. Preserve this report for further reference."

(4) A licensee or registrant shall advise the worker annually of the worker's exposure to radiation or radioactive material as shown in records maintained by the licensee or registrant required by 902 KAR 100:019, Section 34.

(5) At the request of a worker formerly engaged in work controlled by the licensee
or the registrant, a licensee or registrant shall furnish to the worker a report of the worker's exposure to radiation or radioactive material. The report shall:

(a) Be furnished within thirty (30) days from the time request is made, or within thirty (30) days after the exposure of the individual has been determined by the licensee or registrant, whichever is later;

(b) Cover the period of time the worker's activities involved exposure to radiation from radioactive materials licensed by, or radiation machines registered with, the cabinet; and

(c) Include the dates and locations of work under the license or registration in which the worker participated during this period.

(6) If a licensee or registrant is required, pursuant to 902 KAR 100:019, Sections 40, 41, and 42, to report to the cabinet an exposure of an individual to radiation or radioactive material, the licensee or the registrant shall also provide the individual a report on the exposure data included in the report to the cabinet. The reports shall be transmitted to the individual at a time not later than the transmittal to the cabinet.

(7)(a) At the request of a worker who is terminating employment in work involving exposure to radiation or radioactive material[,] during the current year, the licensee or registrant shall provide to the worker, or to the worker's designee, at termination[,] a written report regarding the radiation dose received by that worker from operations of the licensee or registrant during the current year or fraction thereof.

(b) If the most recent individual personnel monitoring results are not available at the time of termination, a written estimate of the dose shall be provided.

(c) Estimated doses shall be clearly indicated as estimated doses.

Section 4. Presence of Representatives of Licensees or Registrants and Workers during Inspection. (1) A licensee or registrant shall afford to the cabinet at all reasonable times opportunity to inspect materials, machines, activities, facilities, premises, and records required by 902 KAR Chapter 100.

(2) During an inspection, cabinet inspectors may consult privately with workers as specified in Section 5 of this administrative regulation. The licensee or registrant may accompany cabinet inspectors during other phases of an inspection.

(3) If, during the inspection, an individual has been authorized by the workers to represent them during cabinet inspections, the licensee or registrant shall notify the inspectors of the authorization and shall give the workers' representative an opportunity to accompany the inspectors during the inspection of physical working conditions.

(4) The workers' representative shall be routinely engaged in work under control of the licensee or registrant and shall have received instructions as specified in Section 2 of this administrative regulation.

(5) Different representatives of licensees or registrants and workers may accompany the inspectors during different phases of an inspection if there is no resulting interference with the conduct of an inspection. However, only one (1) workers' representative at a time may accompany the inspectors.

(6) With the approval of the licensee or registrant and the

workers' representative, an individual who is not routinely engaged in work under control of the licensee or registrant, for example, a consultant to the licensee or registrant or to the workers' representative, shall be afforded the opportunity to accompany cabinet inspectors during the inspection of physical working conditions.

(7) A cabinet inspector shall refuse to permit accompaniment by an individual who deliberately interferes with a fair and orderly inspection.

(8) Unless specifically authorized, an individual accompanying an inspector shall not have access to an area containing information classified[,] by an agency of the U.S. government[,] as a national security interest.

(9) Unless previously authorized by the licensee or registrant, a worker's representative shall not have access to an area containing proprietary information.

Section 5. Consultation with Workers during Inspection. (1) If necessary to conduct an effective and thorough inspection, a cabinet inspector may consult privately with a worker concerning a matter of occupational radiation protection or other matter related to 902 KAR Chapter 100, licenses, or registrations.

(2) During the course of an inspection, a worker may bring [~~privately~~] to the attention of the inspectors, either orally or in writing, a past or present condition **that[**~~which~~**]** he has reason to believe may have contributed to or caused a violation of the Act, 902 KAR Chapter 100, or license condition, or an unnecessary exposure of an individual to radiation from licensed radioactive material or a registered radiation machine under the licensee's or registrant's control. A written notice shall comply with the requirements of Section 6(1) of this administrative regulation.

(3) The requirements of subsection (2) of this section shall not be interpreted as authorization to disregard instructions required by Section 2 of this administrative regulation.

Section 6. Requests by Workers for Inspections. (1)(a) A worker or representative of workers who believes that a violation of the Act, 902 KAR Chapter 100, or a license condition exists or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the Cabinet for Health and Family Services, Radiation Health [~~and Toxic Agents~~] Branch.

(b) The notice shall:

1. Be in writing;

2. Set forth the specific grounds for the notice; and

3. Be signed by the worker or representative of the workers.

(c) A copy shall be provided to the licensee or registrant by the cabinet no later than at the time of inspection. If the worker giving the notice requests, his name and the name of individuals referred to in the notice shall not appear in the copy or on a record published, released, or made available by the cabinet, except for good cause shown.

(2) **In accordance with 49 C.F.R. 19.16,** if, upon receipt of the notice, the Manager, Radiation Health [~~and Toxic Agents~~] Branch, determines that the complaint meets the requirements established in subsection (1) of this section, and that there are reasonable grounds to believe that the alleged violation exists or has occurred, **the manager of the Radiation and Health Branch[**~~he~~**]** shall cause an inspection to be made as soon as practicable, to determine if the alleged violation exists or has occurred. An inspection authorized by this section **may[**~~need~~**]** not be limited to matters referred to in the complaint.

(3) A licensee**, registrant, contractor,[**~~or registrant, or contractor~~**]** or subcontractor of a licensee or registrant, shall not discharge or discriminate against a worker because the worker has:

(a) Filed a complaint;

(b) Instituted or caused to be instituted a proceeding under 902 KAR 100:170;

(c) Testified or is about to testify in a proceeding; or

(d) Exercised an option on behalf of himself or others afforded by this administrative regulation.

Section 7. Inspections not Warranted; Informal Review. (1)(a) If the Cabinet for Health and Family Services, Radiation Health [~~and Toxic Agents~~] Branch determines, with respect to a complaint under Section 6 of this administrative regulation, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the cabinet shall notify the complainant in writing of the determination.

(b) The complainant may obtain a review of the determination by submitting a written statement of position with the Commissioner, Department for Public Health. The commissioner shall provide the licensee or registrant with a copy of the statement by certified mail[,] excluding, at the request of the complainant, the name of the complainant.

(c) The licensee or registrant may submit an opposing written statement of position with the commissioner, who shall provide the complainant with a copy of the statement by certified mail.

(2) Upon the request of the complainant, the commissioner shall hold an administrative hearing in accordance with 902 KAR 1:400.

(3) If the Radiation Health [~~and Toxic Agents~~] Branch determines that an inspection is not warranted because the requirements of Section 6(1) of this administrative regulation have not been met, the complainant shall be notified, in writing, of the determination. The determination shall be without prejudice to the filing of a new complaint meeting the requirements of Section 6(1) of this administrative regulation.

Section 8. Employee Protection. (1) Discrimination by a cabinet licensee, an applicant for a cabinet license, a registrant or a contractor or subcontractor of a cabinet licensee, registrant or applicant against an employee for engaging in protected activities **shall be[**~~is~~**]** prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment.

(a) The protected activities include **in part[**~~but are not limited to~~**]**:

1. Providing the cabinet or his or her employer information about alleged violations or possible violations of requirements of 902 KAR Chapter 100;

2. Refusing to engage in a practice made unlawful under these requirements, if the employee has identified the alleged illegality to the employer;

3. Requesting the cabinet to institute action against his or her employer for enforcement of these requirements;

4. Testifying in a cabinet proceeding, [~~or~~] before Congress, or at a federal or state proceeding[,] regarding a provision, or proposed provision, of 902 KAR Chapter 100; **and**

5. Assisting or participating in, or is about to assist or participate in, a protected activity.

(b) A protected activity shall retain its protected status even if no formal proceeding is initiated as a result of the employee assistance or participation.

(c) This section shall not be applied to an employee alleging discrimination who, acting without direction from his or her employer[,] or the employer's agent, deliberately causes a violation of the Act or the administrative regulations promulgated under the Act.

(2) An employee who believes that he or she has been discharged or discriminated against for engaging in a protected activity may seek a remedy through an administrative proceeding in the Department of Labor.

(a) The aggrieved employee shall file a complaint[,] within 180 days after the occurrence of the alleged violation[,] with the **Kentucky** Department of Labor, Employment Standards Administration, Wage and Hour Division.

(b) If warranted by the evidence presented, the **Kentucky** Department of Labor **may[**~~shall~~**]** order reinstatement, back pay, and compensatory damages[,] as appropriate to the case.

(3) A violation of subsections (1) or (5) of this section[,] or Section 1(3) of this administrative regulation[,] by a cabinet licensee, an applicant for a cabinet license, or a contractor or subcontractor of a cabinet licensee or applicant shall constitute grounds for:

(a) Denial, revocation, or suspension of the license;

(b) Imposition of a penalty; or

(c) Other enforcement action.

(4)(a) An action taken by an employer[,] or others[,] **that[**~~which~~**]**

adversely affects [~~affect~~] an employee **shall[**~~may~~**]** be predicated upon nondiscriminatory grounds.

(b) The prohibition applies if the adverse action occurs because the employee has engaged in a protected activity.

(c) An employee's engagement in a protected activity does not automatically render him or her immune from discharge or discipline for legitimate reasons, or from adverse action dictated by nonprohibited considerations.

(5) An agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor, shall not contain a provision **that[**~~which~~**]** has the potential to prohibit, restrict, or discourage an employee from participating in protected activity, including providing information to the cabinet or to his or her employer on alleged violations or other matters within cabinet's regulatory responsibilities.

Section 9. Deliberate Misconduct. (1) This section applies to:

(a) Licensee; [~~A licensee,~~]

(b) Registrant; [~~registrant,~~]

(c) Certificate [~~certificate~~] of registration holder;[~~,~~]

(d) Applicant [~~applicant~~] for a license, or certificate of registration;[~~,~~]

(e) Employee [~~employee~~] of any person identified in this section [~~, a licensee, certificate of registration holder, or applicant~~]; or[~~,~~]

(f)[~~a~~] Contractor [~~contractor~~], including a supplier, [~~or~~] consultant, or subcontractor[~~,~~] to any person identified in this section. [~~employee of a contractor or subcontractor of a licensee or certificate of registration holder or applicant for a license or certificate of registration, who knowingly provides to a licensee, registrant, applicant, certificate holder, contractor, or subcontractor, components, equipment, materials, or other goods or services that relate to a licensee's, certificate holder's, or applicant's activities in 902 KAR Chapter 100, shall not:~~]

(2) Any person identified in subsection 1 of this section shall not:

(a) Engage in deliberate misconduct that causes or may have caused, if not detected, a licensee, registrant, certificate of registration holder, or applicant to be in violation of a rule, administrative regulation, **order;[**~~or order; or a~~**]** term, condition, or limitation of a license issued by the cabinet; or

(b) Deliberately submit to the cabinet, a licensee, registrant, certificate of registration holder, an applicant, or a licensee's, certificate holder's, or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the cabinet.

(3) [~~(2)~~] A person who violates subsection (2) [~~(1)~~] of this section shall be subject to enforcement action[~~,~~] in accordance with the procedures in 902 KAR 100:170.

(4) For the purposes of subsection (2)(a) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(a) May cause a licensee, registrant, certificate holder, or applicant for a license, registration, or certificate to be in violation of the rule, regulation, order or a term, condition, or limitation of a license, registration, or certificate issued by the cabinet; or

(b) Constitutes a violation or a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, registrant, certificate holder, applicant, or the contractor or subcontractor of any of them.

Section 10. Incorporation by Reference. (1) **[**~~Cabinet for Health and Family Services~~**]**Form KR-441, **"**[~~"~~]Notice to Employees", edition **2/2011[**~~8/05~~**]**[~~2/85~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Office of the Commissioner of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. until 4:30 p.m.

WILLIAM D. HACKER, MD FAAP, CPE
JANIE MILLER, Secretary

APPROVED BY AGENCY: December 9, 2010
FILED WITH LRC: December 10, 2010
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

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 10:030. Antidegradation policy implementation methodology.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 176.430, 224.01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100-224.71-145, 224.73-100-224.73-120, 30 U.S.C. 1201 -1328[~~, EO 2008-507, 2008-531~~]

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. 130, 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1315, 1316, 1341, 1342, 1344

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. KRS 224.70-100 declares that the policy of the commonwealth is to conserve its waters for legitimate uses, safeguard from pollution the uncontaminated waters of the commonwealth, prevent the creation of any new pollution in the waters of the commonwealth, and abate any existing pollution. [~~EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.~~] This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy.

Section 1. Categorization and Implementation. These antidegradation procedures shall not preempt the power or authority of a local government to provide by ordinance for a higher level of protection through antidegradation implementation for a discharger located within that local government's jurisdiction to a surface water of the commonwealth. The following procedures shall govern implementation of the antidegradation policy of 401 KAR 10:029, Section 1, for a point source discharge. Surface waters shall be placed into one (1) of four (4) categories listed in this section and each category shall have implementation procedures as follows:

(1) Outstanding national resource water. Surface waters of the commonwealth categorized as outstanding national resource waters are listed in Table 1 of this subsection.

Table 1
SURFACE WATERS CATEGORIZED AS OUTSTANDING NATIONAL RESOURCE WATER

Stream	Segment	River Miles	County
Red River	Upstream to Island off SR 1067 to Downstream Wild River Boundary at SR 746	49.2 to 68.6	Menifee/Wolfe
Underground River System	Within Mammoth Cave National Park Boundary		Edmonson/ Hart/Barren
South Fork of Cumberland River	Downstream Wild River Boundary to Tennessee State line	44.3 to 54.8	McCreary
Surface Waters within Reelfoot Lake National Wildlife Refuge	Reelfoot Lake National Wildlife Refuge Proclamation Boundary in Kentucky	2040 Acres	Fulton
War Fork of Station Camp Creek	Basin above South Fork of Station Camp Creek to Steer Fork	0.0 to 13.8	Jackson
Marsh Creek	Mouth to 1.9 miles upstream of Kentucky 478	0.0 to 15.0	McCreary
Rock Creek	State border to White Oak Creek	4.1 to 21.9	McCreary
Rockcastle River	Lower end of Narrows to 0.2 miles downstream of Kentucky 80 bridge	8.95 to 22.4	Laurel/Pulaski

(a) Categorization criteria. A surface water shall be categorized as an outstanding national resource water if:

1. The surface water meets, at a minimum, the requirements for an outstanding state resource water as provided in 401 KAR 10:031, Section 8; and

2. The surface water demonstrates national ecological or recreational significance.

(b) Implementation procedure.

1. Water quality shall be maintained and protected in an outstanding national resource water.

2. A new discharger or expanded discharge that may result in permanent or long-term changes in water quality shall be prohibited.

3. The cabinet may approve temporary or short-term changes in water quality if the changes to the outstanding national resource water do not have a demonstrable impact on the ability of the water to support the designated uses.

(2) Exceptional water. Surface waters of the commonwealth categorized as an exceptional water are listed in Table 2 of this subsection.

Table 2
SURFACE WATERS CATEGORIZED AS EXCEPTIONAL WATER

Stream	Segment	River Miles	County
BIG SANDY RIVER BASIN			
Hobbs Fork of Pigeonroost Fork of Wolf Creek*	Mouth to Headwaters	0.0-3.9	Martin
Lower Pigeon Branch of Elkhorn Creek*	Left Fork to Headwaters	0.6-1.9	Pike
Russell Fork of Levisa Fork of Big Sandy River*	Clinch Field RR Yard off HWY 80 to Virginia State Line	15.0-16.5	Pike
Toms Branch of Elkhorn Creek*	Mouth to Headwaters	0.0-1.6	Pike
Unidentified Tributary of Hobbs Fork*	Hobbs Fork of Pigeonroost Fork to Headwaters	0.0-0.6	Martin
LITTLE SANDY RIVER BASIN			
Arabs Fork of Big Sinking Creek*	Clay Fork to Headwaters	0.0-5.1	Elliott
Big Caney Creek*	Grayson Lake to Headwaters	1.8-15.3	Elliott, Rowan
Big Sinking Creek of Little Sandy River*	SR 986 to Clay Fork and Arab Fork	6.1-15.8	Carter, Elliott
Meadow Branch of	Mouth to	0.0-1.4	Elliott

Little Fork of Little Sandy River*	Headwaters		
Middle Fork of Little Sandy River*	Mouth to Sheepskin Branch	0.0-3.4	Elliott
Nichols Fork of Little Fork of Little Sandy River*	Green Branch to Headwaters	0.0-2.0	Elliott
Laurel Creek of Little Sandy River*	Carter School Rd Bridge to Headwaters	7.6-14.7	Elliott, Rowan
LICKING RIVER BASIN			
Blackwater Creek of Licking River*	Eaton Creek to Greasy Fork	3.8-11.7	Morgan
Blanket Creek of Licking River	Mouth to Unidentified Tributary	0.0-1.9	Pendleton
Botts Fork of Brushy Fork of Licking River*	Mouth to Landuse Change	0.0-2.1	Menifee
Bowman Creek of Licking River	Mouth to Unidentified Tributary	0.0-6.0	Kenton
Brushy Fork of Meyers Creek*	Cave Run Lake Backwaters to Headwaters	0.7-5.6	Menifee
Brushy Fork of South Fork of Grassy Creek*	Mouth to Headwaters	0.0-5.8	Pendleton
Bucket Branch of North Fork of Licking River*	Mouth to Headwaters	0.0-1.9	Morgan
Cedar Creek of Licking River	Mouth to North Branch of Cedar Creek	0.0-1.7	Robertson
Craney Creek of Licking River	Mouth to Headwaters	0.0-11.2	Morgan, Rowan
Devils Fork of North Fork of Licking River*	Mouth to Headwaters	0.0-8.5	Elliott, Morgan
Flour Creek of Licking River	Mouth to Unidentified Tributary	0.0-2.2	Pendleton
Grovers Creek of Kincaid Creek*	Kincaid Lake Backwaters to Unidentified Tributary	0.5-3.4	Bracken, Pendleton
Licking River	SR 211 to unnamed Rd off Slatey Point Rd	159.5-170.6	Bath, Rowan
North Fork of Licking River*	Cave Run Lake Backwaters to Devils Fork	8.4-13.4	Morgan
Sawyers Fork of Cruises Creek	Mouth to Headwaters	0.0-3.3	Kenton
Slabcamp Creek of Craney Creek of Licking River	Mouth to Headwaters	0.0-3.7	Rowan
Slate Creek of Licking River	Mouth to Mill Creek	0.0-13.6	Bath
South Fork Grassy Creek of Grassy Creek of Licking River*	Mouth to Greasy Creek	0.0-19.8	Kenton, Pendleton
Unidentified Tributary of Shannon Creek of North Fork of Licking River	Mouth to Headwaters	0.0-2.2	Mason
Welch Fork of Brushy Fork of Licking River*	Mouth to First Road Crossing	0.0-1.0	Menifee
West Creek of Licking River*	Mouth to Headwaters	0.0-9.8	Harrison, Robertson
KENTUCKY RIVER BASIN			
Backbone Creek of Sixmile Creek of Kentucky River*	Mouth to Scrabble Creek	0.0-1.65	Franklin, Henry, Shelby
Bear Branch of North Fork of Kentucky River	Above Sediment Pond to Headwaters	0.3-1.2	Perry
Big Double Creek of Red Bird River*	Mouth to confluence of Left and Right Forks of Big Double Creek	0.0-4.4	Clay
Bill Branch of Laurel Fork of Greasy Creek*	Mouth to Right Fork and Left Fork Creek	0.0-0.3	Leslie
Billey Fork of Millers Creek	Land Use Change to Headwaters	2.6-8.8	Lee, Elliott
Boyd Run of North Elkhorn Creek	Mouth to Cherry Run	0.0-0.9	Scott
Bill Oak Branch of Left Fork of Buffalo Creek	Mouth to Headwaters	0.0-0.6	Owsley
Buffalo Creek of South Fork of Kentucky River*	Mouth to Right Fork and Left Fork	0.0-1.6	Owsley
Cavanaugh Creek*	South Fork of Station Camp Creek to Foxtown Rd	0.0-8.3	Jackson
Chester Creek of Middle Fork of Red River*	Mouth to Headwaters	0.0-2.8	Wolfe
Clear Creek of Kentucky River*	Mouth to East Fork Clear Creek	0.0-9.0	Woodford
Clemons Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-4.8	Breathitt
Coles Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-6.2	Breathitt
Craig Creek of Kentucky River*	Mouth to Unidentified Tributary	0.5-2.7	Woodford
Deep Ford Branch of Cutshin Creek	Above Pond to Headwaters	0.3-1.3	Leslie
Drennon Creek of Kentucky River*	Fivemile Creek to Town Branch	8.7-12.2	Henry
East Fork of Indian Creek of Indian Creek of Red River*	West Fork of Indian Creek to Headwaters	0.0-9.0	Menifee
Elisha Creek of Red Bird River*	Land Use Change (Residential) to the confluence of Right Fork and Middle Fork Elisha Creek	0.8-1.8	Leslie
Emily Run of Drennon Creek	Mouth to Unidentified Tributary	0.0-4.0	Henry
Evans Fork of Billey Fork of Millers Creek*	Mouth to Headwaters	0.0-3.0	Estill
Falling Rock Branch of Clemons Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-0.7	Breathitt
Gilberts Creek of Kentucky River	Mouth to Unidentified Tribu-	0.0 to 2.6	Anderson

	tary		
Gladie Creek of Red River*	Land Use Change to Long Branch	0.35 to 7.3	Menifee
Goose Creek of South Fork of Kentucky River	Mouth to Laurel Creek	0.0-9.1	Clay, Leslie
Griers Creek of Kentucky River*	Kentucky River Backwaters to Unidentified Tributary	0.1 to 3.5	Woodford
Grindstone Creek of Kentucky River*	Kentucky River Backwaters to Headwaters	0.1 to 1.9	Franklin
Hardwick Creek of Red River	Mouth to Little Hardwick Creek	0.0-3.25	Powell
Hell For Certain of Middle Fork of Red River	Mouth to Big Fork	0.0-2.1	Leslie
Hines Creek of Kentucky River*	Kentucky River Backwaters to confluence with Unidentified Tributary	0.1 to 1.9	Madison
Honey Branch of Greasy Creek of Middle Fork of Kentucky River*	Mouth to Headwaters	0.0-1.35	Leslie
Hopper Cave Branch of Cavanaugh Creek*	Mouth to Headwaters	0.0-1.8	Jackson
Indian Creek of Eagle Creek*	Mouth to Headwaters	0.0 to 5.4	Carroll
Indian Fork of Sixmile Creek of Kentucky River*	Mouth to Headwaters	0.0-3.3	Shelby
John Carpenter Fork of Clemons Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-1.2	Breathitt
Katies Creek of Red Bird River	Mouth to Headwaters	0.0-4.0	Clay
Laurel Fork of Left Fork Buffalo Creek of Buffalo Creek*	Cortland Fork to Big Branch	0.0-3.75	Owsley
Left Fork of Big Double Creek of Kentucky River*	Mouth to Headwaters	0.0-1.5	Clay
Line Fork of North Fork of Kentucky River*	Defeated Creek to Headwaters	12.2-28.6	Letcher
Little Middle Fork of Elisha Creek of Red Bird River*	Mouth to Headwaters	0.0-0.75	Clay
Little Millseat Branch of Clemons Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-1.2	Breathitt
Little Sixmile Creek of Sixmile Creek of Kentucky River*	Mouth to Headwaters	0.0-5.3	Henry
Lower Howard Creek of Kentucky River	Mouth to West Fork	0.0-2.7	Clark
Lulbegrud Creek of Red River	Mouth to Falls Branch	0.0-7.3	Clark, Powell
Middle Fork of Kentucky River	Mouth to Upper Twin Creek	0.0-12.7	Lee, Owsley
Middle Fork of Kentucky River*	Hurts Creek to Greasy Creek	75.6-85.8	Leslie
Middle Fork of Red River	South Fork of Red River to Natural Bridge State Park Lake	1.8-7.2	Powell
Mikes Branch of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters	0.0-0.7	Owsley
Mill Creek of Kentucky River*	Upstream of Mouth to Headwaters	0.5-8.3	Owen
Millseat Branch of Clemons Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-1.85	Breathitt
Muddy Creek of Kentucky River*	Elliston, Kentucky to Viney Creek	13.8-20.65	Madison
Musselman Creek of Eagle Creek*	Mouth to Headwaters	0.0-9.0	Grant
Red Bird River of South Fork of Kentucky River	Mouth to Big Creek	0.0-15.3	Clay
Right Fork of Buffalo Creek of Kentucky River*	Mouth to Headwaters	0.0-11.75	Owsley
Right Fork of Elisha Creek of Redbird River	Mouth to Headwaters	0.0-3.3	Leslie
Roaring Fork of Lewis Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-0.9	Breathitt
Rock Lick Creek of South Fork of Station Camp Creek*	Mouth to Headwaters	0.0-9.6	Jackson
Sand Ripple Creek of Kentucky River*	Kentucky River Backwaters to Headwaters	0.1-3.9	Henry
Severn Creek of Kentucky River*	Kentucky River Backwaters to North Fork of Severn Creek	1.35-3.0	Owen
Shaker Creek of Kentucky River	Near Mouth to Shawnee Run	0.1-1.4	Mercer
Shelly Rock Fork of Millseat Branch of Clemons Fork*	Mouth to Headwaters	0.0-0.6	Breathitt
Sixmile Creek of Kentucky River*	Little Sixmile Creek to Dam	7.1-15.3	Henry
South Fork of Kentucky River	Mouth to Sexton Creek	0.0-27.8	Owsley
South Fork of Red River	Mouth to Sandlick Fork	0.0-4.2	Powell
South Fork of Station Camp Creek of Kentucky River*	Mouth to Rock Lick Creek	0.0-9.7	Jackson
Spruce Branch of Redbird River*	Mouth to Headwaters	0.0-1.0	Clay
Station Camp Creek of Kentucky River*	Landuse Change to South Fork of Station Camp Creek	18.0-22.8	Estill
Steeles Run of Elkhorn Creek	Mouth to Unidentified Tributary	0.0-4.2	Fayette
Steer Fork of War Fork of Station Camp Creek*	Mouth to Headwaters	0.0-2.7	Jackson
Sturgeon Creek of Kentucky River*	Duck Fork to Little Sturgeon Creek	1.3-13.7	Lee, Owsley
Sugar Creek of Redbird River*	Landuse Change to	0.6-5.4	Leslie

	Headwaters		
Sulphur Lick Creek of Elkhorn Creek	Mouth to Headwaters	0.0-5.2	Franklin
Unidentified Tributary of Cawood Branch of Beech Fork*	Mouth to Headwaters	0.0-2.1	Leslie
Unidentified Tributary of Cedar Creek of Kentucky River*	Mouth to Headwaters	0.0-1.4	Owen
Unidentified Tributary of Glenns Creek of Kentucky River*	Mouth to Headwaters	0.0 to 1.9	Woodford
Unidentified Tributary of Jacks Creek of Kentucky River*	Mouth to Headwaters	0.0-1.15	Madison
Unidentified Tributary of Kentucky River*	Land Use Change to Headwaters	0.1-1.4	Franklin
Unidentified Tributary of Line Fork of North Fork of Kentucky River* (LCW)	Mouth to Headwaters	0.0-0.6	Letcher
War Fork of Station Camp Creek*	Mouth to Headwaters	0.0-13.8	Jackson
Watches Fork of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters	0.0-1.0	Owsley
Wolfpen Creek of Red River*	Mouth to Headwaters	0.0-3.6	Menifee
SALT RIVER BASIN			
Brashears Creek of Salt River	Guist Creek to Bullskin and Clear Creek	13.0-25.9	Shelby, Spencer
Cedar Creek of Salt River*	Mouth to Greens Branch	0.0-5.2	Bullitt
Chaplin River of Salt River*	Thompson Creek to Cornishville, KY	40.9-54.2	Washington
Doctors Fork of Chaplin River	Mouth to Begley Branch	0.0-3.8	Boyle
Guist Creek of Brashears Creek	Mouth to Jeptha Creek	0.0-15.7	Spencer
Harts Run of Wilson Creek of Rolling Fork of Salt River*	Mouth to Headwaters	0.0-1.8	Bullitt
Indian Creek of Thompson Creek of Chaplin River of Salt River	Mouth to Unidentified Tributary	0.0-0.9	Mercer
Lick Creek of Long Lick Creek of Beech Fork of Salt River*	Mouth to 0.1miles below Dam	0.0-4.1	Washington
Otter Creek of Rolling Fork of Salt River*	Landuse Change to confluence of East Fork and Middle Fork Otter Creek	1.7-2.9	Larue
Overalls Creek of Wilson Creek of Rolling Fork of Salt River*	Mouth to Headwaters of Middle Fork of Overalls Creek	0.0-3.2	Bullitt
Salt Lick Creek of Rolling Fork of Salt River*	Mouth to Headwaters	0.0-8.6	Larue, Marion
Sulphur Creek of Chaplin River*	Mouth to confluence of Cheese Lick and Brush Creek	0.0-10.0	Anderson, Mercer, Washington
Unidentified Tributary of Glens Creek of Chaplin River	Mouth to Headwaters	0.0-2.3	Washington
West Fork of Otter Creek of Rolling Fork of Salt River*	Mouth to Headwaters	0.0-5.1	Larue
Wilson Creek of Rolling Fork of Salt River*	Mouth to Headwaters	0.0-18.4	Bullitt, Nelson
GREEN RIVER BASIN			
Beaverdam Creek of Green River*	Mouth to Headwaters	0.0-14.5	Edmonson
Big Brush Creek of Green River	Brush Creek to Poplar Grove Branch	13.0-17.3	Green
Cane Run of Nolin River*	Nolin River Lake Backwaters to Headwaters	0.8-6.5	Hart
Caney Fork of Peter Creek*	Mouth to Headwaters	0.0-6.7	Barren
Clifty Creek of Rough River*	Barton Run to Western Kentucky Parkway	7.3-17.2	Grayson
Clifty Creek of Wolf Lick Creek*	Little Clifty Creek to Sulphur Lick	7.6-13.4	Todd
East Fork of Little Barren River*	Red Lick Creek to Flat Creek	18.9-20.7	Metcalfe
Elk Lick Creek	Duck Lick Creek to Barren Fork Creek and Edger Creek	3.6 to 11.8	Allen
Ellis Fork of Damron Creek*	Mouth to Headwaters	0.0-3.2	Adair, Russell
Falling Timber Creek of Skaggs Creek*	Landuse Change to Headwaters	10.8-15.2	Barren, Metcalfe
Fiddlers Creek of North Fork of Rough River*	Mouth to Headwaters	0.0-5.9	Breckinridge
Forbes Creek of Buck Creek of East Fork of Pond River*	Mouth to Unidentified Tributary	0.0-4.1	Christian
Gasper River of Barren River*	Clear Fork to Wiggington Creek	17.2-35.6	Logan, Warren
Goose Creek of Green River*	Mouth to Little Goose Creek	0.0-8.5	Casey, Russell
Green River	Downstream Mammoth Cave National Park Boundary to Lynn Camp Creek	185.0-250.3	Edmonson, Hart
Halls Creek of Rough River*	Unidentified Tributary to Headwaters	7.15-9.6	Ohio
Lick Creek of West Fork of Drakes Creek*	Mouth to Headwaters	0.0-10.2	Simpson
Linders Creek of Rough River*	Mouth to Sutzer Creek	0.0-7.9	Hardin
Little Beaverdam Creek of Green River*	Mouth to SR 743	0.0-11.65	Edmonson, Warren
Little Short Creek of Rough River*	Mouth to Headwaters	0.0-3.1	Grayson
Lynn Camp Creek	Mouth to Lindy	0.0-8.5	Hart

of Green River*	Creek		
McFarland Creek of West Fork of Pond River*	Grays Branch to Unidentified Tributary	1.5-5.0	Christian
Meeting Creek of Rough River*	Little Meeting Creek to Petty Branch	5.2-14.0	Grayson, Hardin
Muddy Creek of Caney Creek of Rough River*	Landuse Change to Headwaters	13.0-15.5	Ohio
North Fork of Rough River*	Buffalo Creek to Reservoir Dam	22.1-26.9	Breckinridge
Peter Creek of Barren River*	Caney Fork to Dry Fork	11.6-18.5	Barren
Pond Run of Rough River*	Landuse Change to Headwaters	1.4-6.8	Breckinridge, Ohio
Puncheon Creek	Mouth to Tennessee State Line	0.0-3.8	Logan
Rough River*	Linders Creek to Vertrees Creek	138.0-149.4	Hardin
Russell Creek of Green River*	Mouth to Columbia WWTP	0.0-40.0	Green, Adair
Russell Creek of Green River*	Reynolds Creek to confluence with Hudson Creek and Mount Olive Creek	56.9-66.3	Adair, Russell
Sixes Creek of Indian Camp Creek*	Wild Branch to Headwaters	2.0-7.5	Ohio
Sulphur Branch of Alexander Creek*	Mouth to Headwaters	0.0-3.0	Edmonson
Thompson Branch of West Fork of Drakes Creek	Webb Branch to Tennessee State Line	0.3-1.5	Simpson
Trammel Creek of Drakes Creek*	Mouth to Tennessee State Line	0.0-30.6	Allen, Warren
Unidentified Tributary of Green River*	Landuse Change to Headwaters	1.7-3.2	Adair
Unidentified Tributary of White Oak Creek*	Hovious Rd Crossing to SR 76	0.4-2.9	Adair
West Fork of Pond River*	Unidentified Tributary to East Branch of Pond River	12.45-22.5	Christian
LOWER CUMBERLAND RIVER BASIN			
Crooked Creek of Cumberland River*	Energy Lake Backwaters to Headwaters	3.0-9.4	Trigg
Donaldson Creek of Cumberland River*	Craig Branch to Unidentified Tributary	3.2-7.2	Trigg
Elk Fork of Red River of Cumberland River*	Tennessee State Line to Dry Branch	7.5-23.1	Todd
Sugar Creek of Cumberland River*	Lick Creek to Unidentified Tributary	2.2-6.9	Livingston
West Fork of Red River of Cumberland River*	Tennessee State Line to Montgomery Creek	16.1-26.5	Christian
Whippoorwill Creek of Red River of Cumberland River*	Mouth to Vicks Branch	0.0-13.2	Logan
TENNESSEE RIVER BASIN			
Blood River of Kentucky Lake (Tennessee River)*	McCullough Fork to Tennessee State Line	15.15-18.7	Calloway
Clarks River of Tennessee River	Persimmon Slough to Middle Fork Creek	28.7-30.7	Marshall
Grindstone Creek of Kentucky Lake (Blood River of Tennessee River)*	Kentucky Lake Backwaters to Headwaters	0.7-2.9	Calloway
Panther Creek of Kentucky Lake (Blood River of Tennessee River)*	Kentucky Lake Backwaters to Headwaters	0.5-5.7	Calloway
Soldier Creek of West Fork of Clarks River*	Mouth to South Fork of Soldier Creek	0.0-5.7	Marshall
Sugar Creek of Kentucky Lake (Tennessee River)*	Kentucky Lake Backwaters to Buzzard Roost Road	2.5-3.2	Calloway
Sugar Creek of West Fork Clarks River*	Mouth to Unnamed Reservoir	0.0-3.9	Graves
Trace Creek of West Fork of Clarks River*	Mouth to Neeley Branch	0.0-3.35	Graves
Unidentified Tributary of Unidentified Tributary of Panther Creek of West Fork of Clarks River*	Mouth to Headwaters	0.0-1.7	Graves
West Fork of Clarks River*	Soldier Creek to Duncan Creek	20.1-23.5	Graves
Wildcat Creek of Kentucky Lake (Blood River of Tennessee River)*	Ralph Wright Road Crossing to Headwaters	2.8-6.8	Calloway
TRADEWATER RIVER BASIN			
East Fork of Flynn Fork of Tradewater River*	Landuse Change to Headwaters	2.15-4.6	Caldwell
Piney Creek of Tradewater River*	Lake Beshear Backwaters to Headwaters	4.5-10.2	Caldwell, Christian
Sandlick Creek of Tradewater River*	Camp Creek to Headwaters	4.5-8.6	Christian
Tradewater River*	Dripping Springs Branch to Buntin Lake Dam	126.2-133.9	Christian
Unidentified Tributary of Piney Creek of Tradewater River*	Mouth to Headwaters	0.0-2.9	Caldwell
Unidentified Tributary of Sandlick Creek of Tradewater River*	Mouth to Headwaters	0.0-1.4	Christian
OHIO RIVER BASIN (Minor Tributaries)			
Crooked Creek*	Rush Creek to City Lake Dam	18.1-26.4	Crittenden
Double Lick Creek of Woolper Creek*	Mouth to Headwaters	0.0-3.5	Boone
Garrison Creek*	Mouth to Headwaters	0.0-4.85	Boone

Kinniconick Creek*	McDowell Creek to Headwaters	5.2-50.9	Lewis
Little South Fork of Big South Fork	Land Use Change to Headwaters	1.2-5.8	Boone
Middle Fork of Massac Creek*	Hines Road to Headwaters (Pond)	3.1-6.4	McCracken
Second Creek*	Ohio River Backwaters to Headwaters	0.4-2.9	Boone
Unidentified Tributary of Big Sugar Creek*	I-71 to Headwaters	1.0-1.8	Gallatin
Unidentified Tributary of Corn Creek*	Mouth to Headwaters	0.0-2.3	Trimble
Unidentified Tributary of Massac Creek*	Mouth to Headwaters	0.0-1.7	McCracken
West Fork of Massac Creek*	SR 724 to Little Massac Creek	3.6-6.2	McCracken
Yellowbank Creek*	Ohio River Backwaters to Headwaters	2.0-12.0	Breckinridge
LAKE			
Metropolis	Entire Lake		McCracken
MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)			
Jackson Creek*	Mouth to Headwaters	0.0-3.0	Graves
Obion Creek*	Hurricane Creek to Little Creek	26.7-37.1	Hickman
Terrapin Creek*	Tennessee State Line to Confluence of East and West Forks	2.7-6.0	Graves
LAKES			
Murphy's Pond	Entire Pond and Preserve Area		Hickman
Swan	Entire Lake		Ballard
UPPER CUMBERLAND RIVER BASIN			
Bad Branch of Poor Fork of Cumberland River*	Mouth to Headwaters	0.0-3.0	Letcher
Bark Camp Creek of Cumberland River*	Mouth to Martins Fork	0.0-4.0	Whitley
Beaver Creek of Cumberland River*	Lake Cumberland Backwaters to confluence of Freeman Fork and Middle Fork	2.4-7.1	McCreary
Bee Lick Creek of Brushy Creek of Buck Creek	Mouth to Warren Branch	0.0-5.7	Pulaski
Brownies Creek of Cumberland River*	Blacksnake Branch to Headwaters	9.3-16.75	Bell, Harlan
Brush Creek of Roundstone Creek *	Wolf Creek to Reemergence of Sinking Creek	1.1-7.6	Rockcastle
Brushy Creek of Buck Creek*	Mouth to Headwaters	0.0-16.5	Pulaski
Buck Creek of	0.8 river mile	11.7-55.0	Lincoln,
Cumberland River*	upstream of confluence of Hurricane Creek to Lake Cumberland Backwaters		Pulaski
Bunches Creek of Cumberland River*	Mouth to confluence of Amos Falls Branch and Seminary Branch	0.0-3.3	Whitley
Cane Creek of Rockcastle River*	Mouth to Headwaters	0.0-11.85	Laurel
Clifty Creek of Brushy Creek of Buck Creek	Mouth to Rocky Branch	0.0-2.7	Pulaski
Cogur Fork of Indian Creek*	Mouth to Headwaters	0.0-7.95	McCreary
Cumberland River	Wild River Boundaries	549.65-566.1	McCreary, Whitley
Dog Slaughter Creek of Cumberland River*	Mouth to confluence of North Fork and South Fork of Dog Slaughter Creek	0.05-1.15	Whitley
Eagle Creek of Cumberland River*	Mouth to Headwaters	0.05-6.75	McCreary
Fugitt Creek of Clover Fork of Cumberland River*	Landuse Change to Headwaters	0.5-4.6	Harlan
Horse Lick Creek of Rockcastle River*	Mouth to Clover Bottom	0.0-12.3	Jackson, Rockcastle
Howards Creek of Illwill Creek of Wolf River*	Dale Hollow Reservoir Backwaters to Headwaters	0.6-4.6	Clinton
Indian Creek of Cumberland River*	Laurel Fork to Barren Fork	2.4-6.8	McCreary
Jackie Branch of Bark Camp Creek*	Mouth to Headwaters	0.0-1.65	Whitley
Kilburn Fork of Indian Creek	Mouth to Headwaters	0.0-7.2	McCreary
Laurel Creek of Marsh Creek	Mouth to Laurel Creek Dam	0.0-9.0	McCreary
Laurel Fork of Clear Fork of Cumberland River*	Tennessee State Line to Tiny Branch	4.3-13.1	Whitley
Laurel Fork of Middle Fork of Rockcastle River*	Mouth to Headwaters	0.0-12.3	Jackson
Left Fork of Fugitt Creek of Clover Fork of Cumberland River	Mouth to Headwaters	0.0-1.5	Harlan
Little South Fork of Cumberland River*	Lake Cumberland Backwaters to Langham Branch	4.4-35.5	McCreary, Wayne
Marsh Creek of Cumberland River*	Laurel Creek to Kentucky/Tennessee State Line	8.8-26.5	McCreary
Martins Fork of Cumberland River	Rough Branch to Headwaters	27.2-32.7	Harlan
McFarland Creek of Cumberland River	Little McFarland Creek to Spring Branch	0.8-6.2	Monroe
Meshack Creek of Cumberland River	Mouth to Pitcock Branch	0.0-2.8	Monroe

Middle Fork of Rockcastle River*	Mouth to confluence of Indian Creek and Laurel Fork	0.0-7.9	Jackson
Mud Camp Creek of Cumberland River*	Mouth to Collins Branch	0.0-1.2	Cumberland
Mud Camp Creek of Cumberland River*	Unidentified Tributary to Headwaters	3.8-8.8	Cumberland, Monroe
Otter Creek of Cumberland River	Lake Cumberland Backwaters to Carpenter Fork	14.0-22.1	Wayne
Poor Fork of Cumberland River*	Franks Creek to Headwaters	42.1-52.4	Letcher
Presley House Branch of Poor Fork of Cumberland River*	Mouth to Headwaters	0.0-1.5	Letcher
Puncheoncamp Branch of Rock Creek of South Fork of Cumberland River*	Mouth to Headwaters	0.0-1.85	McCreary
Rock Creek of South Fork of Cumberland River*	White Oak Creek to Tennessee State Line	4.0-21.5	McCreary
Rockcastle River	Wild River Boundaries	8.95-54.7	Laurel, Pulaski
Shillalah Creek of Clear Fork of Yellow Creek*	Mouth to Headwaters	0.0-5.5	Bell
Sinking Creek of Rockcastle River*	Mouth to White Oak Creek	0.0-9.9	Laurel
Sulphur Creek of Wolf River of Obey River*	Dale Hollow Reservoir Backwaters to Headwaters	1.7-5.1	Clinton
South Fork of Dog Slaughter Creek of Cumberland River*	Mouth to Headwaters	0.0-4.6	Whitley
South Fork of Rockcastle River	Mouth to White Oak Creek	0.0-5.8	Laurel
Unidentified Tributary (across from Hemlock Grove) of Rock Creek of South Fork of Cumberland River*	Mouth to Headwaters	0.0-1.3	McCreary
Unidentified Tributary (RMI 17.0 of Rock Creek) of Rock Creek of South Fork of Cumberland River*	Mouth to Headwaters	0.0-1.2	McCreary
Watts Branch of Rock Creek of South Fork of Cumberland River*	Mouth to Headwaters	0.0-2.6	McCreary
Watts Creek of Cumberland River*	Camp Blanton Reservoir to Headwaters	2.4-4.4	Harlan

*Waterbodies in the cabinet's reference reach network

(a) Categorization criteria. A surface water shall be categorized as an exceptional water if any of the following criteria are met:

1. Surface water is designated as a Kentucky Wild River and is not categorized as an outstanding national resource water;

2. Surface water is designated as an outstanding state resource water as established in 401 KAR 10:031, Section 8(1)(a)1, 2, and 3 and Section 8(1)(b);

3. Surface water contains either of the following:

a. A fish community that is rated "excellent" by the use of the Index of Biotic Integrity included in Development and Application of the Kentucky Index of Biotic Integrity (KIBI), 2003; or

b. A macroinvertebrate community that is rated "excellent" by the Macroinvertebrate Bioassessment Index included in "The Kentucky Macroinvertebrate Bioassessment Index," 2003; or

4. Surface water in the cabinet's reference reach network.

(b) Implementation procedure. The implementation procedure for exceptional water shall be as established in subsection (3)(b) of this section.

(3) High quality water.

(a) Categorization criteria.

1. A surface water shall be categorized as high quality water if the surface water is not listed as an outstanding national resource water or an exceptional water in Table 1 or 2 of this section and if the surface water does not meet the criteria for impaired water as provided for in subsection 4(a) of this section.

2. A surface water shall be categorized as a high quality water if the surface water is listed as an outstanding state resource water in 401 KAR 10:026 and is not listed as an outstanding national resource water in Table 1 or an exceptional water in Table 2 of this section.

(b) Implementation procedure. A KPDES permit application for a new or expanded discharge into a high quality or exceptional water shall be subject to the provisions of this paragraph. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

1. The activities identified in this subparagraph shall not be subject to the antidegradation implementation procedures in paragraph (b) of this subsection.

a. The renewal of a KPDES permit that does not authorize pollutant loading to the receiving stream in excess of that previously authorized;

b. An increase in pollutant loading within the limits previously approved by the KPDES permit; or

c. A new or expanded discharge that the applicant demonstrates shall not consume more than ten (10) percent of the available assimilative capacity of the receiving stream outside of a designated mixing zone or zone of initial dilution for each new or increased pollutant in the discharge. The cumulative impact of this category of discharges shall not consume more than ten (10) percent of the available assimilative capacity of the receiving stream outside of a designated mixing zone or zone of initial dilution.

2. The activities identified in clauses a. through d. of this subparagraph shall constitute compliance with the alternatives and socioeconomic analysis requirements if addressed in the manner established in this subparagraph rather than as established in subparagraph 3. of this paragraph, unless the permittee chooses to satisfy applicable antidegradation requirements pursuant to subparagraph 3. of this paragraph.

a. A general permit issued pursuant to 401 KAR 5:050 through 5:080.

(i) The cabinet may, upon receipt of a notice of intent to be covered under a general permit, require additional analyses**[**~~, control measures,~~**]** or other conditions if necessary to comply with antidegradation requirements.

(ii) **If the activity permitted by the general permit may result in a lowering of water quality,** the cabinet shall describe in the Fact Sheet how the general permit complies with the alternatives analysis and socioeconomic demonstration [~~antidegradation~~] requirements of subparagraph 3.a. and b. of this paragraph [~~this subsection~~] upon each general permit issuance.

(iii) **If the requirements and conditions in a general permit will prevent a lowering of water quality, the cabinet shall describe in the Fact Sheet that the general permit complies with the antidegradation policy established in 401 KAR 10:039, Section 1.**

(iv) The public shall be notified of an activity granted coverage under a general permit on the cabinet's Web page, which shall include the facility name, location, and receiving water.

b. The approval of a POTW's regional facility plan pursuant to 401 KAR 5:006 shall constitute compliance with the alternatives analysis and socioeconomic demonstration for a regional facility.

c. A new or expanded discharge associated with a project

identified in the Kentucky Transportation Cabinet's six (6) year road plan, as established in KRS 176.430.

(i) The alternatives analysis for lowering water quality requirement shall be satisfied if an alternatives analysis for the project has been submitted.

(ii) The socioeconomic demonstration shall be satisfied if the project has been approved by the General Assembly and included in the Kentucky Transportation Cabinet's six (6) year road plan and evaluated pursuant to the provisions of KRS 176.430(4)(i).

(iii) An antidegradation review shall not be required for maintenance of existing highway facilities.

d. An individual MS4 permit issued pursuant to 401 KAR 5:050 through 5:080**.[**~~shall satisfy the alternatives analysis and socioeconomic demonstration~~**]**[~~antidegradation~~]**[**~~requirements of antidegradation implementation if:~~**]**

(i) **If the activity permitted by the MS4 permit may result in a lowering of water quality,[**~~The permit incorporates a provision that requires the permit holder to perform an alternatives analysis and socioeconomic demonstration~~ [~~address antidegradation requirements~~] ~~for a new or expanded discharge; or~~

~~(ii)~~**]** the cabinet **shall describe[**~~describes~~**]** in the Fact Sheet how the MS4 permit complies with the alternatives analysis and socioeconomic demonstration requirements of subparagraph 3.a. and b. of this paragraph**.**

(ii) If the requirement and conditions in the MS4 permit will prevent a lowering of water quality, the cabinet shall describe in the Fact Sheet that the MS4 Permit complies with the antidegradation policy established in 401 KAR 10:029, Section 1.[~~permit includes practices and procedures to control discharges from new or expanded municipal outfalls that comply with antidegradation requirements~~].

3. An application for a KPDES permit subject to this paragraph shall contain information demonstrating that the lowering of water quality is necessary to accommodate important economic or social development in the area in which the water is located.

a. The socioeconomic demonstration shall consider the following factors:

(i) The boundaries of the affected community;

(ii) The potential effect on employment, including a comparison of local unemployment rates and state and national unemployment rates;

(iii) The potential effect on median household income levels, including a comparison of the present median household income level, projected median household income level, and number of households affected in the defined community;

(iv) The potential effect on tax revenues, including current tax revenues in the affected community compared to projected increase in tax revenues generated by the permitted project;

(v) The potential effect of the facility on the environment and public health; and

(vi) Other potential economic or social effect to the community that the applicant includes in the application.

b. The alternatives analysis shall consider the following factors:

(i) Pollution prevention measures, such as changes in plant processes, source reductions, or substitution with less toxic substances;

(ii) The use of best management practices to minimize impacts;

(iii) Recycle or reuse of wastewater, waste by-products, or production materials and fluids;

(iv) Application of water conservation methods;

(v) Alternative or enhanced treatment technology;

(vi) Improved operation and maintenance of existing treatment systems;

(vii) Seasonal or controlled discharge options;

(viii) Land application or infiltration to capture pollutants and reduce surface runoff, on-site treatment, or alternative discharge locations; and

(ix) Discharge to other treatment facilities.

c. Information required pursuant to this subparagraph shall be submitted on the Socioeconomic Demonstration and Alternatives Analysis form.

4. A permit applicant who has failed to demonstrate the necessity and social or economic development importance for lowering water quality shall not receive a permit unless:

a. The applicant demonstrates, through a revised submission, the necessity for lowering revised water quality in accordance with subparagraph 3. of this paragraph; or

b. The applicant demonstrates that the discharge can meet the requirements established in subparagraph 1.c. of this paragraph.

5. A permit applicant who demonstrates the necessity and social or economic development importance for lowering water quality shall meet the requirements of the KPDES program, 401 KAR 5:050 through 5:080.

6. The cabinet's determination shall be documented in the permit Fact Sheet and included in the administrative record for the permit or action.

(4) Impaired water.

(a) Categorization criteria. A surface water categorized as impaired for applicable designated uses shall be a water identified pursuant to 33 U.S.C. 1315(b).

1. Surface water categorized as impaired shall be assessed by the cabinet as not fully supporting any applicable designated uses.

2. A surface water shall not be categorized as impaired water if the surface water is listed as an outstanding state resource water in 401 KAR 10:026.

3. A surface water shall not be categorized as impaired for the purposes of this administrative regulation if the surface water is listed only as mercury impaired for fish consumption.

(b) Implementation procedure.

1. All existing uses shall be protected and the level of water quality necessary to protect those existing uses shall be assured in impaired water.

2. The process to allow a discharge into an impaired water and to assure protection of the water shall be regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program, 401 KAR 5:050-5:080.

Section 2. Procedure for Recategorizing Water. This section shall apply to the recategorization of surface water to outstanding national resource water and exceptional water. The redesignation of water to outstanding state resource water shall be governed by the procedures in 401 KAR 10:026.

(1) The cabinet may propose to recategorize certain water to outstanding national resource water and exceptional water if the water meets the criteria set forth in Section 1(1)(a) or (2)(a) of this administrative regulation.

(a) If the cabinet proposes to recategorize these waters, it shall provide notice and an opportunity for public hearing.

(b) The cabinet shall provide the documentation requirements of this section for those surface waters it proposes to recategorize.

(2) A person may request recategorization of a surface water to an outstanding national resource water or exceptional water by filing a petition with the cabinet.

(a) The petition shall include the name and address of the petitioner and the information and documentation necessary to recategorize the particular water as required by subsection (4) of this section.

(b) The petitioner shall have the burden of proof that the recategorization is appropriate.

(c) The cabinet shall provide notice of the petition and an opportunity for a public hearing.

(d) The cabinet shall review the petition, supporting documentation, and any comments received from the public to determine if the proposed water qualifies for recategorization.

(e) The cabinet shall document the determination to grant or deny recategorization as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

(3) If a water is to be recategorized, the cabinet shall publish notice of the recategorization.

(a) A permit issued after the date of publication shall be issued with limitations based on the new category.

(b) When the cabinet reviews its water quality standards pursuant to the provisions of Section 303 of the Clean Water Act, 33 U.S.C. 1313, the cabinet shall propose to have all recategorized water promulgated as an amendment to this administrative regulation.

(4) The following information, documentation, and data shall

support a petition for recategorization:

(a) A petition for outstanding national resource water shall include:

1. A USGS 7.5 minute topographic map or its equivalent showing those surface waters to be recategorized including a description consisting of a river mile index with any existing and proposed discharge points;

2. Existing uses and water quality data for the surface water for which the recategorization is proposed. If adequate data are unavailable, additional studies shall be required by the cabinet;

3. Descriptions of general land uses and specific land uses adjacent to the surface water for which the recategorization is proposed;

4. The existing and designated uses of the water upstream and downstream of the proposed recategorized water;

5. General physical characteristics of the surface water including width, depth, bottom composition, and slope;

6. The frequency of occasions when there is no natural flow in the surface water and the $7Q_{10}$ and harmonic mean flow values for the surface water and adjacent surface waters;

7. An assessment of the existing and potential aquatic life habitat in the surface water under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented including the occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota;

8. A documented rationale as to why the water qualify for the recategorization; and

9. The rationale used to support the national significance of the water.

(b) A petition for exceptional water shall include the following:

1. A United States Geological Survey 7.5 minute topographic map or its equivalent showing the surface water to be recategorized including a description consisting of a river mile index with existing and proposed discharge points;

2. Descriptions of general land uses, including:

a. Mining;

b. Agriculture;

c. Recreation;

d. Low, medium, and high density residential, commercial, or industrial uses; and

e. Specific land uses adjacent to the surface water for which the recategorization is proposed;

3. The frequency of occasions when there is no natural flow in the surface water and the $7Q_{10}$ and annual mean flow values for the surface water; and

4. Fish or benthic macroinvertebrate collection data and an Index of Biotic Integrity or Macroinvertebrate Bioassessment Index calculation from a waterbody if criteria specified in Section 1(2)(a)3 of this administrative regulation are utilized.

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

(a) "Development and Application of the Kentucky Index of Biotic Integrity (KIBI)", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet;

(b) "The Kentucky Macroinvertebrate Bioassessment Index", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet; and

(c) "Socioeconomic Demonstration and Alternative Analysis", KPDES Form SDAA, April 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 14, 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 implements the antidegradation policy of 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy. This administrative regulation establishes categorization criteria, lists many surface waters assigned to specific categories, and provides for recategorization of water.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to manage water resources and to provide for the prevention, abatement, and control of water pollution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100, which requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.70-100 declares that the policy of the Commonwealth is to conserve its waters for legitimate uses and to safeguard from pollution the uncontaminated waters of the Commonwealth, prevent the creation of any new pollution in the waters of the Commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus manage water resources and prevent water pollution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by implementing the antidegradation policy for the protection of surface waters of the Commonwealth as required by the authorizing statutes.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment to the administrative regulation considers cumulative impacts when calculating limits for de minimus discharges into high quality waters. De minimus discharges are those that will not consume more than ten percent of the available assimilative capacity of a receiving stream, outside a designated mixing zone or zone of initial dilution. The amendment also clarifies the alternatives analysis and socioeconomic demonstration procedures for general permits, MS4 permits, and road plan projects.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is part of the water quality standards required by the Clean Water Act, 40 C.F.R. 131, and used in the comprehensive management of water resources, as required by KRS 224.10-100. As required by 40 C.F.R. 131.21, the Cabinet submitted this administrative regulation for EPA's approval after the last revision, effective in 2009. EPA approved in part, but disapproved in part, the most recent revision of this administrative regulation. This proposed amendment is to amend the provisions of the administrative regulation that EPA did not approve, in order to obtain full approval of Kentucky's antidegradation implementation policy methodology.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.10-100, which requires the Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.70-100 declares that the policy of the Commonwealth is to conserve its waters for legitimate uses and to: safeguard from pollution the uncontaminated waters of the Commonwealth, prevent the creation of any new pollution in the waters of the Commonwealth, and abate any existing pollution. This amendment clarifies the procedures to protect the surface waters of the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendments to the administrative regulation will allow the Cabinet to implement federally approved water quality standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The cabinet has not issued any permits that relied on the de minimus exemption to antidegradation review. The cabinet has been implementing the administrative regulation consistent with EPA's recommended revisions. The proposed amendment will not affect any permitted entities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Because there are not any permits that rely on the de minimus exemption to antidegradation review, no regulated entity will have to take action to comply with this proposed amendment. The other proposed amendments are simply clarifications to the wording of the regulation and will not change the way the requirements are implemented.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are not any permits that rely on the de minimus exemption to antidegradation review, no costs are associated with this proposed amendment. The other proposed amendments are simply clarifications to the wording of the regulation and will not affect the cost of complying with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Because there are not any permits that rely on the de minimus exemption to antidegradation review, no regulated entity will be impacted by this proposed amendment. The other proposed amendments are simply clarifications to the wording of the regulation and will not change the way the requirements are implemented.

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

Initially: There are no initial costs to the agency to implement the

(a) amendment to this administrative regulation.

(b) On a continuing basis: There are no additional continuing costs to the agency to implement the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of revenue will be the General Fund, as appropriated by the Kentucky General Assembly, and federal funds.

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

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

(9) TIERING: Is tiering applied? Yes, tiering is used in this administrative regulation. This regulation tiers the requirements of the antidegradation policy implementation based on the water quality where the applicant proposes to discharge. There are three tiers of implementation of the antidegradation policy.

The requirements for the most protected waters, Outstanding National Resource Waters, are established in Section 1(1)(b). A discharger may not discharge into an Outstanding National Resource Water if the discharge may result in permanent or long-term changes in water quality.

The majority of waters in the Commonwealth are in the second tier, Exceptional or High Quality Waters. The requirements for discharges to these categories of water are established in Section 1(3)(b). Applicants proposing a new or expanded discharge to these second-tier waters must demonstrate that the discharge will not exceed ten percent of the cumulative assimilative capacity of the receiving stream outside of a mixing zone, or demonstrate that the lowering of water quality is necessary to accommodate important economic or social development in the area in which the water is located.

The final tier of requirements is for Impaired Waters, established in Section 1(4)(b). The process to allow a discharge into an impaired water and to assure protection of the water shall be regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program, 401 KAR 5:050-5:080.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendment to this administrative regulation may affect the wastewater treatment divisions of local government if they will have new or expanded discharges into high quality waters that propose to use less than ten percent of a water's cumulative assimilative capacity.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70-110 mandate action taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to state or local agencies to implement the proposed amendment to this regulation. There are costs associated with complying with the antidegradation policy established in this regulation, but those costs are unchanged by this amendment and antidegradation policy is mandated by the federal government in 40 C.F.R. 131.12.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local agencies to administer the proposed amendment to this regulation. There are costs associated with complying with the antidegradation policy established in this regulation, but those costs are unchanged by this amendment and antidegradation policy is mandated by the federal government in 40 C.F.R. 131.12.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. For Kentucky to maintain its delegation over the National Pollutant Discharge Elimination System permit program, the Clean Water Act requires that Kentucky comply with the programmatic requirements of 40 C.F.R. Part 131, including the requirement for implementing an antidegradation policy. The federal regulations require the adoption of an antidegradation policy for delegated states.

2. State compliance standards. KRS 224.10-100, 224.70-100

3. Minimum or uniform standards contained in the federal mandate. 33 U.S.C. 1313, 40 C.F.R. 131.12

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

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

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 6:030. Examination prerequisites for principal certification.

RELATES TO: KRS 161.020, 161.027, 161.030
STATUTORY AUTHORITY: KRS 161.027
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires a certificate of legal credentials for any public school position for which a certificate is issued. KRS 161.027 requires the Education Professional Standards Board to develop or select appropriate tests, establish minimum scores for successful completion, and establish a reasonable fee to be charged for actual cost of administration of the tests, for an applicant seeking certification as principal, and further requires that each applicant for certification as school principal with less than two (2) years of appropriate experience complete a one (1) year internship program developed by the Education Professional Standards Board. This administrative regulation establishes the examination requirements for certification as principal required under KRS 161.027.

Section 1. (1)(a) The certificate for school principal shall be valid for serving in the position of principal or assistant principal.

(b) A new applicant for certification as a school principal, including vocational school principal, shall successfully complete the prerequisite tests specified in Section 2 of this administrative regulation prior to certification as a school principal.

(c) A score on a test completed more than five (5) years prior to application for certification shall not be acceptable.

(2) In addition to the examination requirement specified in Section 2 of this administrative regulation, an applicant for certification shall successfully complete a one (1) year internship program as required by 16 KAR 7:020 if the applicant has had less than two (2) years of successful experience as a principal in another state.

Section 2. An applicant for certification as principal shall complete the following tests and attain the minimum score specified for each test:

(1) School Leaders Licensure Assessment (1011) - 160; and

(2)(a) Until August 31, 2011, the Kentucky Specialty Test of Instructional and Administrative Practices - eighty-five (85) percent correct responses; and

(b) Beginning September 1, 2011, the Kentucky Specialty Test of Instructional and Administrative Practices (1015) administered by the Educational Testing Service with no passing score.

Section 3. The successful completion of the School Leaders Licensure Assessment shall not be required for an applicant who has:

(1) Two (2) years of experience as a certified principal in another state; and

(2) Successfully completed a nationally administered test in the area of educational leadership and administration.

Section 4. (1) An applicant for certification as principal shall take the required School Leaders Licensure Assessment on a date established by the Educational Testing Service [~~(ETS)~~]. An applicant shall authorize that test results be forwarded to the Education Professional Standards Board by the Educational Testing Service[~~ETS~~].

(2) Public announcement of a testing date and location shall be issued sufficiently in advance to permit registration as required by the Educational Testing Service[~~ETS~~] and the Education Professional Standards Board.

(3)[~~(4)~~] An applicant shall seek information regarding the dates and location of the test 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 5. (1) For the required School Leaders Licensure Assessment, the applicant shall pay all fees assessed by the Educational Testing Service.

(2)(a) Until August 31, 2011, an applicant.[~~ETS~~

~~(2)~~] for the Kentucky Specialty Test of Instructional and Administrative Practices[~~, an applicant~~] shall pay a fee of eighty (80) dollars, and

(b) Beginning September 1, 2011, an applicant for the Kentucky Specialty Test of Instructional and Administrative Practices shall pay all fees assessed by the Educational Testing Service.

Section 6. An applicant who fails to achieve a minimum score on a required test as specified in Section 2 of this administrative regulation shall be permitted to retake the test or tests during a regularly-scheduled test administration.

Section 7. A temporary certificate issued in accordance with KRS 161.027(6)(a) shall not be extended for an applicant who does not successfully complete the assessments within the year.

Section 8. (1) For an applicant applying for a certificate under KRS 161.027(6)(b), the school superintendent of the employing district shall submit a request that shall include an affirmation that the applicant pool consisted of three (3) or less applicants who met the requirements for selecting a principal.

(2) The temporary certificate issued in accordance with KRS 161.027(6)(b) shall not be extended beyond the one (1) year period.

Section 9. (1) To provide for confidentiality of information, the Education Professional Standards Board shall report individual scores on the Kentucky Specialty Test of Instructional and Administrative Practices to the individual applicant. The scores shall not be released to other individuals or agencies.

(2) A score shall not be used by the Education Professional Standards Board in an individually identifiable form other than for purposes of determining eligibility for certification as school principal.

Section 10. On an annual or biennial basis, the Education Professional Standards Board shall collect and analyze data provided by the Educational Testing Service through score and institution reports which permit evaluation of the examination prerequisites covered by this administrative regulation.

LORRAINE WILLIAMS, Chairperson
APPROVED BY AGENCY: March 7, 2011
FILED WITH LRC: March 28, 2011 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 31, 2011 at 9 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the written examination prerequisites and the corresponding passing scores for principal certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to principal preparation candidates of the assessment requirements for obtaining and maintaining a principal certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 places the responsibility of selecting the assessments and determining the minimum acceptable level of achievement on each assessment on the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the required principal certification assessments and their corresponding minimum acceptable scores.

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

(a) How the amendment will change this existing administrative regulation: This amendment notifies future principal candidate that the Kentucky Specialty Test of Instructional and Administrative Practices will be administered by the Educational Testing Service (ETS) beginning September 1, 2011. The test will be required for all principal candidates, but a passing score will not be established until data can be collected for validation of the score by ETS.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the required assessments and corresponding scores are adequately set to produce the most competent educators.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statues, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the required assessments and corresponding passing scores for Kentucky principal certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment transfers the current administration of the Kentucky Specialty Test of Instructional and Administrative Practices to the Educational Testing Service (ETS) which will provide principal candidates the availability to take the test simultaneously with the national principal test (SLLA), as well as expand into an online version of the test. ETS will also be able to ensure that the test is secure and validated.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 Kentucky school districts, 30 educator preparation programs, and educators seeking new and additional administrator certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The school districts will not be required to take any additional action. The educator preparation programs will need to continue to direct students to this regulation or the Education Professional Standards Board Web site for current assessment requirements. Applicants will need to continue to refer to this regulation or the Education Professional Standards board website for current assessment requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There may be a minimal additional cost to the principal candidates to take the test in the future.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs and applicants will be positively affected by additional testing times for this test, as well as future online options. The districts will be positively affected by a supply of competent principals.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for a principal certificate will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, regional universities, and the Education Professional Standards Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028(1) and 161.030

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be none.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a revenue costing regulation, but merely establishes the testing requirements for teacher candidates to obtain certification.

PERSONNEL BOARD
(Amendment)

101 KAR 1:325. Probationary periods.

RELATES TO: KRS 18A.005, 18A.0751(1)(e), (4)(e), 18A.111
STATUTORY AUTHORITY: KRS 18A.005, 18A.075(1),

18A.0751(1)(e), (4)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751(1)(e) requires the Personnel Board to promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.0751(4)(e) authorizes the Personnel Board to promulgate administrative regulations to establish an initial probationary period in excess of six (6) months for specific job classifications. KRS 18A.111 establishes requirements governing initial and promotional probationary periods for classified service. This administrative regulation establishes the requirements relating to probationary periods.

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or final month, depending upon the length of initial probationary period, except as provided in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
1555	Resort Park Manager I	12 months
1556	Resort Park Manager II	12 months
1557	Resort Park Manager III	12 months
[~~1584~~	~~Historic Site and Museum Manager~~	~~12 months~~]
1585	Park Manager I/Historic Site Manager	12 months
1586	Park Manager II	12 months
1588	Park Manager III	12 months
2001	Conservation Officer Recruit[~~Wildlife and Boating Law Enforcement Officer Recruit~~]	12 months
2201	Correctional Officer	8 months
[~~2301~~	~~Arson Investigator I~~	~~12 months~~
~~2302~~	~~Arson Investigator II~~	~~12 months~~
~~2305~~	~~Hazardous Devices Investigator~~	~~12 months~~]
2308	Facilities Security Sergeant	12 months
2309	Facilities Security Lieutenant	12 months
2313	State Park Ranger Recruit	12 months
2322	Facilities Security Officer II	12 months
[~~2330~~	~~KVE (Kentucky Vehicle Enforcement) Officer I~~	~~12 months~~]
2350	Mounted Patrol Officer Recruit	12 months
2401	Police Telecommunicator I	12 months
2403	Police Telecommunicator II	12 months
2404	Police Telecommunications Shift Supervisor	12 months
2405	Police Telecommunications Supervisor	12 months
2408	CVE[~~KVE~~] Inspector I	12 months
2410	CJIS (Criminal Justice Information System) Compliance Specialist I	12 months
2411	CJIS Compliance Specialist II	12 months
2412	CJIS Compliance Specialist III	12 months
2413	CJIS Compliance Supervisor	12 months
2415	Transportation Operations Center Specialist I	12 months
2433	Polygraph Examiner II	12 months
2434	Polygraph Examiner I	12 months
2460	Driver's Test Administrator	12 months
2468	Fish and Wildlife Telecommunicator I[~~Communications Dispatcher I~~]	12 months
3254	Boiler Inspector I	12 months
3268	Fire Protection Systems Inspector	12 months
3416	Financial Institutions Examiner I	12 months
3417	Financial Institutions Examiner II	12 months
3432	Financial Institutions Examiner III	12 months
3433	Financial Institutions Examiner IV	12 months
3434	Financial Institutions Examiner Specialist	12 months
3551	Insurance Fraud Investigator II	12 months
[~~3553~~	~~Insurance Fraud Investigator Supervisor~~	~~12 months~~]
4056	Forensic Firearms and Toolmark Examiner I	12 months
4058	Forensic Chemist I	12 months
4059	Forensic Chemist II	12 months
4061	Forensic Biologist I	12 months
4062	Forensic Biologist II	12 months
4125	Therapy Program Assistant	9 months
4140	Houseparent I	12 months
4141	Houseparent II	12 months
4143	Audiologist I	12 months
4301	Patient Aide I	9 months
4550	Medical Investigator I	12 months
4551	Medical Investigator II	12 months
5120	Student Development Associate	12 months
5121	Student Development Assistant	12 months
5362	KSB/KSD (Kentucky School for the Blind/Kentucky School for the Deaf) Administrator I	12 months
5364	KSB/KSD Administrator III	12 months
5365	KSB/KSD Administrator IV	12 months
5366	KSB/KSD Administrator V	12 months
5367	KSB/KSD Administrator VI	12 months
6215	Disability Adjudicator I	12 months
6248	Juvenile Facility Superintendent I	12 months
6249	Juvenile Facility Superintendent III	12 months
6250	Facilities Regional Administrator	12 months
6251	Youth Services Program Supervisor	12 months
6252	Juvenile Facility Superintendent II	12 months
6267	Human Rights Specialist[~~Field Supervisor~~]	12 months
6290	Administrative Hearing Officer I	12 months
6292	Human Rights Enforcement Branch Manager	12 months
6296	Human Rights Research/Information Compliance Supervisor	12 months
6297	Human Rights Housing Compliance Supervisor	12 months
6298	Human Rights Employment/Public Accommodations Compliance Supervisor	12 months
6299	Human Rights Compliance Enforcement Officer II	12 months
6301	Probation and Parole Officer I	12 months
6401	Youth Worker I	12 months
6404	Youth Worker Supervisor	12 months
6410	Juvenile Services District Supervisor	12 months
7213	Forestry District Equipment Supervisor	12 months
7215	Nursery Foreman	12 months
7217	Nursery Superintendent	12 months
[~~7221~~	~~Forester I~~	~~12 months~~]
7222	Forester[~~II~~]	12 months
7224	Forester Chief[~~III~~]	12 months
7226	Forester District	12 months
7231	Rural Fire Suppression Technical Advisor	12 months
7232	Forestry Program Specialist	12 months
7235	Forestry Program Manager	12 months
7236	Forestry Program Supervisor	12 months
7250	Forest Ranger Technician I	12 months
7251	Forest Ranger Technician II	12 months
7252	Forest Ranger Technician III	12 months
7253	Forest Ranger Technician District	12 months
8326	Right-of-way Agent I	12 months
9635	Criminal Intelligence Analyst I	12 months

9636	Criminal Intelligence Analyst II	12 months
9816	Public Advocate Investigator I	12 months
9859	Environmental Administrative Hearing Officer	12 months
9866	Mitigation Specialist I	12 months
9885	Investigator I	12 months

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. When the employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.[~~(4) If an applicant is appointed to a position from a competitive register, the appointment shall be considered an initial appointment.~~]

Section 2. Promotional Probationary Period. (1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. A written notification shall be sent to the employee to advise the employee of the effective date of reversion. A copy of the notice of reversion shall be forwarded to the Secretary of Personnel on the same date notice is delivered to the employee.

(3) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the appropriate month following promotion, as required by KRS 18A.005(27), except as provided in KRS 18A.111.

(4) The promotional probationary period shall be the same length as the initial probationary period for each job classification.

Section 3. Probationary Period Upon Reinstatement. (1) An employee who is reinstated, except an employee ordered reinstated pursuant to KRS 18A.111(3), to a position in the classified service no later than twelve (12) months after the beginning of a break in the classified service shall be reinstated with status.

(2) An employee who is reinstated to the classified service more than twelve (12) months after a break in service, except an employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period.

MARK A. SIPEK, Executive Director

APPROVED BY AGENCY: April 12, 2011

FILED WITH LRC: April 12, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2011, at 9 a.m. at the Kentucky Personnel Board, 28 Fountain Place, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business June 1, 2011. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Boyce A. Crocker, General Counsel, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 564-1693.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Boyce A. Crocker

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation sets forth the classifications for which an initial probationary period in excess of six (6) months is required.

(b) The necessity of this administrative regulation: To establish the appropriate probationary periods for classifications throughout state government.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.0751(4)(e) requires the Personnel Board to promulgate an administrative regulation listing the job classifications for which an initial probationary period in excess of six (6) months is required. It also makes clear that a promotional probationary period shall mirror the initial promotional period for a particular job classification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the classifications for which an initial probationary period in excess of six (6) months is required.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment provides an initial probationary period of twelve months for Audiologist I, Fire Protection Systems Inspector, Probation and Parole Officer I, Criminal Intelligence Analyst I and Criminal Intelligence Analyst II. The Insurance Fraud Investigator Supervisor is being returned to a six-month probationary period, at the agency's request. Several classifications which are obsolete, as identified by the Personnel Cabinet, would also be removed. Certain classifications have a proposed title change.

(b) The necessity of the amendment to this administrative regulation: Secretary of the Personnel Cabinet has recommended changes to the classifications for which an initial probationary period in excess of six (6) months is required; as well as renaming certain classifications and deleting certain obsolete classifications.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consists of changes to the list of classifications for which an initial probationary period in excess of six (6) months is required; as well as renaming certain classifications and deleting obsolete classifications. It also makes clear that a promotional probationary period shall mirror the initial promotional period for a particular job classification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to meet state agency needs and allow for longer probationary periods for Audiologist I, Fire Protection Systems Inspector, Probation and Parole Officer I, Criminal Intelligence Analyst I and Criminal Intelligence Analyst II; for shorter probationary periods for the Insurance Fraud Investigator Supervisor classification; as well as renaming certain classifications and deleting obsolete classifications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state employees appointed to the listed classifications, and the state government agencies that employ them.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Cabinet for Health and Family Services, Kentucky State Police, the Public Protection Cabinet, and the Department of Corrections will be able to more fully observe the job performance of initial probationary employees in the affected classifications to determine if those employees should gain status in the classified service.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

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

(9) TIERING: Is tiering applied? This regulation must apply equally to all classified employees in all state agencies with classified employees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service or requirements of a state or local government (including cities, counties, fire department, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire department, or school districts) will be impacted by this administrative regulation?

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire department, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire department, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

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

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

Revenues (+\–):

Expenditures (+\–):

Other Explanation:

PERSONNEL CABINET
(Amendment)

101 KAR 2:095. Classified service administrative regulations.

RELATES TO: KRS 18A.030(2), 18A.110

STATUTORY AUTHORITY: KRS 18A.030, 18A.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate administrative regulations which govern the maintenance of employee records, the maintenance of other records and reports in the cabinet, and for other conditions of employment. This administrative regulation establishes those requirements.

Section 1. Definitions. (1) "Approved charitable federation" means a charitable organization which:

(a) Qualifies as a charitable federation with a substantial Kentucky presence; and

(b) Has been approved by the Secretary of Personnel for participation in the campaign pursuant to Section 8(3) of this administrative regulation.

(2) "Charitable federation" means a legally constituted grouping, made up of or supporting at least ten (10) health and human welfare organizations, all of which:

(a) Qualify as exempt voluntary charitable organizations under 26 U.S.C. 501(c)(3); and

(b) Have a substantial Kentucky presence.

(3) "Designated nonprofit agency" means an organization with proof of tax-exempt status under 26 U.S.C. 501(c)(3) which is written in on a pledge card by a state employee as a choice to receive contributions.

(4) "State employee" means, for purposes of Section 8 of this administrative regulation, a person, including an elected public official, who is employed by a department, board, agency or branch of state government, except one (1) relating to a state college or university.

(5) "Substantial Kentucky presence" means a facility, staffed by professionals or volunteers, available to provide its services and open at least fifteen (15) hours a week and with a regional or statewide presence that meets the requirements of Section 8(2) of this administrative regulation.

Section 2. Attendance; Hours of Work. (1) The number of hours a full-time employee shall be required to work shall be thirty-seven and one-half (37 1/2) hours per week <u>or forty (40) hours per week,</u> unless specified otherwise by the appointing authority or the statutes.

(2) The normal work day shall be from 8 a.m. to 4:30 p.m., local time, Monday through Friday.

(3) An appointing authority may require an employee to work hours and days other than regular days and hours, including an overtime or inclement weather schedule if it is in the best interest of the agency.

(4) An employee who works for an agency which requires more than one (1) shift or seven (7) days a week operation may be reassigned from one shift to another or from one post to another or alternate days off by the agency to meet staffing requirements or to maintain security or provide essential services of the agency.

(5) An employee shall give reasonable notice in advance of absence from a work station.

Section 3. Work Station and Temporary Assignment. (1) Each employee shall be assigned a work station by the appointing authority.

(2) A work station may be changed to better meet the needs of the agency.

(3) An employee may be temporarily assigned to a different work station in a different county for a period of up to sixty (60) calendar days. Temporary assignment may be renewed with the approval of the Secretary of Personnel. A temporarily reassigned employee shall be reimbursed for travel expenses in accordance with regulatory provisions and the appointing authority shall notify the employee in writing prior to the effective date of the action.

(4) An appointing authority may assign an employee to work in a different site within the county of employment.

Section 4. Dual Employment. (1) An employee holding a full-time position with the Commonwealth shall not hold another state position except upon recommendation of the appointing authority and the written approval of the secretary.

(2) A complete list of all employees holding more than one (1) state position shall be furnished to the Legislative Research Commission quarterly by the secretary.

Section 5. Notice of Resignation and Retirement. (1) An employee who desires to terminate his service with the state shall submit a written resignation or notice of retirement to the appointing authority.

(2) A resignation or notice of retirement shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be attached to the personnel action effecting the separation and be filed in the employee's service record in the agency and the Personnel Cabinet.

(3) Failure of an employee to give fourteen (14) calendar days notice with his resignation or notice of retirement may result in forfeiture of accrued annual leave.

(4) The effective date of a separation shall be the last work day

unless the employee has been approved for the use of annual,[~~or~~] compensatory, or sick leave prior to termination.

Section 6. Records and Reports. (1) An appointing authority shall provide a request to the Personnel Cabinet for a personnel action or status change.

(a) The Secretary of the Personnel Cabinet shall determine which personnel actions warrant a Personnel Action Notification to the employee.

(b) The secretary shall provide a Personnel Action Notification to eh appointing authority.

(c)[~~use the Request for Personnel Position Action Form P-1 to report a personnel action or status change. The secretary shall inform an appointing authority which personnel actions or status changes shall be reported.~~] The appointing authority shall provide a copy of a Personnel Action Form to the employee affected by the action.

(2) The secretary shall maintain a leave record showing for each employee:

(a) Annual leave earned, used and unused;

(b) Sick leave earned, used and unused;

(c) Compensatory leave earned, used and unused; and

(d) Special leave or other leave with or without pay.

Section 7. Telecommuting. (1) Telecommuting shall be a work arrangement where a selected state employee is allowed to perform the normal duties and responsibilities of his position through the use of computer or telecommunications at home or another place apart from the employee's usual work station.

(2) An appointing authority may establish a telecommuting program for all or any part of the agency.

(3) Eligibility and selection for participation in a telecommuting program shall be the decision of the agency, with no implied or specific right to participation being granted to an employee.

(4) The telecommuter's conditions of employment shall remain the same as for a nontelecommuting employee.

(a) Employee salary, benefits and employer-sponsored insurance coverage shall not change as a result of telecommuting.

(b) The telecommuter shall be responsible for the security and confidentiality of data, as well as the protection of state-provided equipment, used and accessed during telecommuting.

(c) The telecommuter shall agree to maintain a clean, safe workplace.

(d) An on-site visit by the employer for monitoring of safety issues shall be arranged in advance.

Section 8. Requirements for the Kentucky Employees Charitable Campaign. (1) General purpose. The purpose of the Kentucky Employees Charitable Campaign shall be to:

(a) Provide an opportunity for employees to contribute to eligible Kentucky organizations through the state's payroll deduction process;

(b) Ensure accountability for participants in regard to the funds raised;

(c) Encourage the involvement of state employees as responsible citizens;

(d) Give recognition to state employee volunteers; and

(e) Minimize workplace disruption and administrative costs to Kentucky taxpayers by allowing only one (1) statewide payroll deduction charitable solicitation per year.

(2) An organization shall be considered to have a substantial Kentucky presence if the requirements established in this subsection are met.

(a) Services shall be available to state employees in the local community.

(b) Services shall directly benefit human beings whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically disabled.

(c) Services shall consist of:

1. Care, research, education or prevention in the fields of human health or social adjustment and rehabilitation;

2. Relief for victims of natural disasters and other emergencies; or

3. Assistance to those who are impoverished and in need of food, shelter, clothing and basic human welfare services.

(3) The secretary shall approve a charitable organization for participation in the campaign if the charitable organization demonstrates:

(a) Proof of tax exempt status under 26 U.S.C. 501(c)(3);

(b) Proof of current registration and compliance with the reporting requirements of the Secretary of State and the Office of the Attorney General;

(c) Proof of financial responsibility, including:

1. Adoption of a detailed annual budget;

2. Use of generally accepted accounting principles and procedures;

3. The board of directors' approval for deviations from the approved budget; and

4. An annual financial audit;

(d) Proof of direction by an active volunteer board of directors which meets regularly and whose members serve without compensation;

(e) A written nondiscrimination policy;

(f) Public disclosure of fund raising administrative costs with a statement demonstrating that, if fund and administrative expenses are in excess of twenty-five (25) percent of total support and revenue, actual expense for those purposes are reasonable under all the circumstances in its case; and

(g) Publication of an annual report available to the general public, which includes a full description of the organization's Kentucky activities including fundraising activities.

(4) A federation may apply on behalf of all their member organizations if both the federation and all federation members meet the criteria established in subsection (3) of this section.

(5) Authority of the Secretary of Personnel.

(a) The Secretary of Personnel shall have the full authority over the procedures and policies relating to the operation of the Kentucky Employees Charitable Campaign.

(b) The secretary shall designate a group of state employees to compose the Kentucky Employees Charitable Campaign Committee to make recommendations on related matters.

(c) The committee shall be composed of a cross-section of state employees, involving the large cabinets and small agencies.

(d) The chair of the committee shall be appointed by the secretary.

(6) Functions of the committee. The committee shall make recommendations on the following:

(a) Designation of a campaign administrator.

1. The campaign administrator shall serve for a minimum period of two (2) years.

2. The campaign administrator shall be charged to manage and administer the charitable fund campaign for the Commonwealth, subject to the direction and control of the Secretary of Personnel. The campaign administrator shall have statewide workplace campaign experience and have the necessary staff and volunteer support to administer the Kentucky Employee Charitable Campaign;

(b) Establishment of minimum amount, based on cost effectiveness, that an employee may authorize to be deducted for each approved federation;

(c) The format of the brochure, pledge card and other promotional materials for the annual campaign;

(d) The dates and duration of the campaign;

(e) The annual campaign budget submitted by the campaign administrator; and

(f) The costs of the campaign, which shall be detailed in the budget, shall be borne by each recipient organization proportionally.

(7) Charitable federations to apply for statewide campaign.

(a) A federation desiring inclusion shall make application by February 15 of each year.

(b) A federation that has previously participated in the campaign shall update its application with a letter and a copy of the most recent year's audit.

(c) A charitable organization that has previously participated in the campaign shall be eligible if it fulfills all conditions of eligibility.

(8) The campaign administrator. The campaign administrator shall:

(a) Provide staffing to manage and administer the annual campaign. This shall include preparing drafts of campaign materials for consideration by the Secretary of Personnel;

(b) Serve as the central accounting point for both campaign cash and for payroll deductions received from the Personnel Cabinet including:

1. The preparation and submission of an annual campaign budget. Costs of the campaign shall be divided among recipient organizations; and

2. A separate account maintained for managing the income and expenses of the campaign;

(c) Distribute campaign funds received from the Personnel Cabinet to participating organizations in accordance with agreed upon time periods. This shall include distribution of funds to designated nonprofit agencies;

(d) Provide an end-of-campaign report to the Secretary of Personnel and to participating organizations; and

(e) Annually furnish a financial statement prepared by a certified public accountant.

Section 9. Workplace Violence Policy. (1) Workplace violence shall be prohibited and include:

(a) The attempted, threatened, or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or

(b) A threatening statement, harassment or behavior that gives a state employee or member of the general public reasonable cause to believe that his health or safety is at risk.

(2) Examples of prohibited workplace violence shall include:

(a) Threats of harm;

(b) Brandishing or displaying a weapon or an object that looks like a weapon in a manner which would present a safety risk to a state employee or a member of the general public or threatens or intimidates them;

(c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;

(d) Stalking;

(e) Striking, slapping or otherwise physically attacking another person; and

(f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions which create a risk to the health or safety of a state employee or the public or threatens or intimidates them.

(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

Section 10. Issuance of Paychecks to State Employees. (1) A paycheck shall be issued to a state employee on the 15th and 30th day of each month.

(2) If the regularly scheduled pay date falls on a weekend, a paycheck shall be issued on the preceding Friday.

(3) If the regularly scheduled pay date falls on a state holiday as defined in KRS 18A.190, a paycheck shall be issued on the workday preceding the holiday.

Section 11. Incorporation by Reference. (1) Personnel Action Notification, PAN-0901, 2011,[~~Request for Personnel Position Action Form P-1, July 1998,~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor,[~~200 Fair Oaks Lane, 5th Floor,~~] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: March 31, 2011

FILED WITH LRC: March 31, 2011 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2011 at 10 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2011 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements governing employee records, the maintenance and handling of these records, and other conditions of employment.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the oversight and maintenance of the state merit system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to satisfy the statutory requirement of establishing for the state a system of personnel administration based on merit principles. The regulation assists in the consistent application and treatment for classified employees on all matters related to state employment.

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

(a) How the amendment will change this existing administrative regulation: The amendments codify the use of the Personnel Action Form, which will be utilized after April 1, 2011 with the implementation of the Kentucky Human Resource Information System (KHRIS). Previously, the Personnel Action Form (P-1 Form) was utilized and incorporated by reference with this regulation. In KHRIS, P-1 Forms are eliminated and replaced by the Personnel Action Notification, which is incorporated by reference. The emergency amendment is necessary to delete the reference to the P-1 Form and replace it with the Personnel Action Notification. Other amendments include the recognition of the 40-hour work week schedule for state employees and that an employee's last regular work day can also be a day in which the employee was on sick leave, as well as the other types of leave indicated. The necessity of the amendment to this administrative regulation: This amendment is necessary for the implementation of KHRIS. An ordinary amendment to the administrative regulation is not sufficient as the P-1 form currently incorporated will no longer be in existence upon the implementation of KHRIS on April 1, 2011.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation sets forth the requirements governing employee records, the maintenance and handling of these records, and other conditions of employment. These amendments are necessary for the regulation to accurately reflect these requirements and changes due to KHRIS. These amendments are authorized pursuant to the authority provided in KRS 18A.110 and 18A.030(2).

(d) How the amendment will assist in the effective administration of the statutes: These amendments are necessary for the regulation to accurately reflect the handling of employee records and employee notices regarding these records, as required by KRS 18A.030 and 18A.110.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A classified employees and other individuals subject to the provisions of 101 KAR 2:095 will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All actions which are required to comply with the amendments to the regulation have been taken by the Personnel Cabinet during the implementation of KHRIS. Agencies will now be required to forward on the Personnel Action Notification (PAN), as opposed to the P-1 form currently in existence.

(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 anticipated to each of the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue that do not otherwise exist.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. All merit, classified employees are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 18A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030 (2) and 18A.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? No revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments within this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments within this regulation.

PERSONNEL CABINET
(Amendment)

101 KAR 2:102. Classified leave administrative regulations.

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394, 344.030, 29 U.S.C. 201, et. seq., 2601, et seq.

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 344.030, 29 U.S.C. 201, et seq., 2601, et seq.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave. This administrative regulation establishes the leave requirements for classified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits and returns to state service, shall not receive credit for months of service prior to retirement.

(g) A part-time employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.

(h) An employee who is eligible for state contributions for health benefits under the provisions of KRS Chapter18A shall have worked or been on paid leave, other than educational leave, during

any part of the previous pay period.

(i) Annual leave may be carried from one (1) calendar year to the next as provided in this paragraph:

Months of Service	Maximum Amount	37.5 Hour Week Equivalent	40 Hour Week Equivalent
0-59	30 workdays	225 hours	240 hours
60-119 months	37 workdays	277.50 hours	296 hours
120-179 months	45 workdays	337.50 hours	360 hours
180-239 months	52 workdays	390 hours	416 hours
240 months and over	60 workdays	450 hours	480 hours

(j) Leave in excess of the maximum amounts specified in paragraph (i) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(k) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a) If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2)(i) of this section. Following payment of annual leave at resignation any remaining annual[~~,~~] leave[~~remaining~~] after the payment of the maximum[~~provided~~] shall not be paid to the employee or converted to sick leave and shall be removed from the balance.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns one (1) day and is employed the next workday, shall retain his accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and

2. The successor employer has agreed to credit him with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) A former employee who has been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee who is appointed, reinstated or reemployed, other than a former employee receiving benefits under a state retirement system, shall be credited with the unused sick leave balance credited to him upon separation.

(j) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) An appointing authority shall grant or may require the use of sick leave with or without pay if an employee:

1. Is unable to work due to medical, dental or optical examination or treatment;

2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested. The appointing authority may also require an employee to produce a certificate from an appropriate medical health professional certifying the employee's fitness to return to duty before the employee is permitted to return to work;

3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor's statement certifying the employee's need to care for a family member; or

4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others[~~; or~~

~~5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this subparagraph shall be limited to three (3) days~~].

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) An employee eligible for state contributions for life insurance under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than education leave, during any part of the previous month.

(d) An employee who is eligible for state contributions for health benefits under the provisions of KRS Chapter 18A shall have worked or been paid leave, other than educational leave, during any part of the previous pay period.

(e) Sick leave shall be used in increments of hours or one-quarter (1/4) hours.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.

(g) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff or retirement.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and

2. The employee has used or been paid for all accumulated annual, sick and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status.

(c) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(d) An appointing authority may grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working

days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay;

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave;

3. Is unable to return to his former position;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he is qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during service in the classified service.

(4) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, an employee shall notify the immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601, et seq., and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of[~~accumulated annual or sick leave,~~] unpaid family and medical leave[~~, or a combination thereof,~~] for the birth, placement, or adoption of the employee's[~~a~~] child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, upon the employee's request, the agency shall permit:

(a) The employee to reserve ten (10) days of accumulated sick leave and be placed on FMLA leave; or

(b) The employee to use accrued paid leave concurrently with FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, or administrative agency or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes[~~Statues~~] and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 to 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next work week following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of the regular work schedule.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be:

1. 239.99 hours by an employee in a non policy-making position; or

2. 240 hours by an employee in a policy-making position[~~240 hours~~].

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensa-

tory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An appointing authority may require an employee who has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours.

(c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment for fifty (50) hours at the regular rate of pay. If the appointing authority or the designee approves the payment, an employee's leave balance shall be reduced accordingly.

(d) An employee who is not in a policy-making position shall be paid for fifty (50) hours at the regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(e) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(f) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(g) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United State Public Health Service Reserve, or the Kentucky National Guard shall be relieved from the civil duties, to serve under order or training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of the duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 8. Funeral and Bereavement Leave. (1) An employee who has lost an immediate family member by death may utilize not more than three (3) days of accrued sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof, if approved by the appointing authority.

(2) For purposes of funeral and bereavement leave, an immediate family member includes the employee's spouse, parent, grandparent, child, brother or sister, or the spouse of any of them, and may be granted to include other relatives of close association if approved by the appointing authority.

Section 9. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relates to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(a) Leave shall not exceed sixty (60) working days.

(b) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(c) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(d) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

Section 10.[~~9.~~] Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provision of the Fair Labor Standards Act; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned the employment.

Section 11.[~~10.~~] Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early in the event of adverse weather conditions such as tornado, flood, blizzard, or ice storm, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory or sick leave shall charge leave as originally requested.

(3) If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available.

(b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual

or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shutdown shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 12.[~~11.~~] Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

Section 13.[~~12.~~] Incorporation by Reference. (1) "Overtime Compensation Form", September 1999, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: March 31, 2011

FILED WITH LRC: March 31, 2011 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2011 at 10:30 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2011 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation details the various types of classified leave available to state employees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the various types of leave available for state classified employees, and the requirements for these types of leave.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the consistent application and treatment for classified employees on all employment leave matters.

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

(a) How the amendment will change this existing administrative regulation: The amendments include clarification on the maximum amount of compensatory leave that can be accrued before an automatic reduction and payment for 50-hours of compensatory leave. This automatic payment is commonly referred to as a "block-50." With the implementation of the Kentucky Human Resource Information System (KHRIS), this amount cannot total more than 239.99, or an automatic "block-50" will occur. An additional amendment creates a new title and separate section for funeral leave, which is now referred to as "Funeral and Bereavement Leave," and utilized within KHRIS. There are no changes to the amount of leave available or the instances in which an employee may utilize funeral leave. Other amendments include clarification surrounding any annual leave balances that remain once an employee resigns and receives pay for the maximum amount of annual leave. Any remaining annual leave, as is currently the case, is not paid and is removed from the balance automatically within KHRIS. Finally, there are additional calculations on the maximum carry-over amount for those employees on a 40-hour work schedule included within the amendments, and clarification regarding FMLA protections for the birth or placement of a child.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for the implementation of KHRIS. An ordinary amendment to the administrative regulation is not sufficient as the regulation will conflict with the handling of employee leave within the KHRIS system once KHRIS is implemented April 1, 2011.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave.

(d) How the amendment will assist in the effective administration of the statutes: These amendments are necessary for the regulation to accurately reflect the handling of employment leave with KHRIS, and are required by KRS 18A.030 and 18A.110.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A classified employees and other individuals subject to the provisions of 101 KAR 2:102 will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All actions which are required to comply with the amendments to the regulation have been taken by the Personnel Cabinet during the implementation of KHRIS.

(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 anticipated to each of the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue that do not otherwise exist.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. All merit, classified employees are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 18A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2) and 18A.110(7)(g).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments within this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments within this regulation.

PERSONNEL CABINET
(Amendment)

101 KAR 3:015. Leave administrative regulations for the unclassified service.

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394, 344.030, 29 U.S.C. 201 et. seq., 2601 et seq.

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 344.030, 29 U.S.C. 201 et seq., 2601 et seq.

NECESSITY, FUNCTION, AND CONFORMITY; KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. This administrative regulation establishes the leave requirements for unclassified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits and returns to state service, shall not receive credit for months of service prior to retirement.

(g) A part-time or interim employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.

(h) An employee who is eligible for state contributions for health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous pay period.

(i) Annual leave may be carried from one (1) calendar year to the next as provided in this paragraph:

Months of Service	Maximum Amount	37.5 hour week equivalent	40 hour week equivalent
0-59	30 workdays	225 hours	240 hours
60-119 months	37 workdays	277.50 hours	296 hours
120-179 months	45 workdays	337.50 hours	360 hours
180-239 months	52 workdays	390 hours	416 hours
240 months and over	60 workdays	450 hours	480 hours

(j) Leave in excess of the maximum amounts specified in paragraph (i) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(k) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick

leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a) If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2)(i) of this section. Following payment of annual leave at resignation any remaining annual, leave [~~remaining~~] after the payment of the maximum[~~provided~~] shall not be paid to the employee or converted to sick leave and shall be removed from the balance.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns or is terminated one (1) day and is employed the next workday, shall retain his accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and

2. The successor employer has agreed to credit him with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service. An employee with 240 or more months of service as of August 25, 1999 shall have the additional ten (10) days credited to the sick leave balance.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) A former employee who has been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee, other than a former employee receiving benefits under a state retirement system, who is appointed to an unclassified position, shall be credited with the unused sick leave balance upon separation.

(j) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) An appointing authority shall grant or may require the use of accrued sick leave with pay if an employee:

1. Is unable to work due to medical, dental or optical examination or treatment;

2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested;

3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor's statement certifying the employee's need to care for a family member;

4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others[~~; or~~

~~5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this subparagraph shall be limited to three (3) days~~].

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) An employee eligible for state contributions for life insurance under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than education leave, during any part of the previous month.

(d) An employee who is eligible for state contributions for health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous pay period.

(e) Sick leave shall be used in increments of hours or one-quarter (1/4) hours.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.

(g) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff or retirement.

(h) The duration of an interim employee's appointment shall not be extended by the use or approval for sick leave with or without pay.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay to an employee for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and

2. The employee has used or been paid for all accumulated annual, sick and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status.

(c) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(d) An appointing authority may grant sick leave without pay to an employee, other than an interim employee, who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay;

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave;

3. Is unable to return to his former position;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for

which he is qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during his service in the classified service.

(4) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If he is too ill to work, an employee shall notify his immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 20 U.S.C. 2601, et seq., and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of[~~accumulated annual or sick leave,~~] unpaid family and medical leave[~~, or a combination thereof,~~] for the birth, placement, or adoption of the employee's[~~a~~] child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, the agency shall not designate the leave as FMLA leave until:

(a) The employee's leave balance has been exhausted; or

(b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, or administrative agency or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 to 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next workweek following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of his regular work schedule.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be:

1. 239.99 hours by an employee in a non policy-making position; or

2. 240 hours by an employee in a policy-making position.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An appointing authority may require an employee who is not in a policy-making position and has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours.

(c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. If the appointing authority or his designee approves the payment, an employee's leave balance shall be reduced accordingly.

(d) An employee who is not in a policy-making position shall be paid for fifty (50) hours at his regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(e) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, he shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(f) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(f) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties, to serve under order on training duty without loss of his regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of the duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 8. Funeral and Bereavement Leave. (1) An employee who has lost an immediate family member by death may utilize not more than three (3) days of accrued sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof, if approved by the appointing authority.

(2) For purposes of funeral and bereavement leave, an immediate family member includes the employee's spouse, parent, grandparent, child, brother or sister, or the spouse of any of them, and may be granted to include other relatives of close association if approved by the appointing authority.

Section 9. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months or the conclusion of the administration in which the employee is serving, whichever comes first.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relates to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3)(a) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(b) Leave shall not exceed sixty (60) working days.

(c) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(d) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(e) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether he has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

Section 10.[~~9.~~] Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for his absence to his supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provision of the Fair Labor Standards Act; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned his employment.

Section 11.[~~10.~~] Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early in the event of adverse weather conditions such as tornado, flood, blizzard or ice storm, shall have the time of his absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory or sick leave shall charge leave as originally requested.

(3) If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available.

(b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 12.[~~11.~~] Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave. An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

Section 13.[~~12.~~] Incorporation by Reference. (1) Overtime Compensation Form, September 1999, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: March 31, 2011

FILED WITH LRC: March 31, 2011 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2011 at 11a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2011 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation details the various types of unclassified leave available to state employees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the various types of leave available for state unclassified employees, and the requirements for these types of leave.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the consistent application and treatment for unclassified employees on all employment leave matters.

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

(a) How the amendment will change this existing administrative regulation: The amendments include clarification on the maximum amount of compensatory leave that can be accrued before an automatic reduction and payment for 50-hours of compensatory leave. This automatic payment is commonly referred to as a "block-50." With the implementation of the Kentucky Human Resource Information System (KHRIS), this amount cannot total more than 239.99, or an automatic "block-50" will occur. An additional amendment creates a new title and separate section for funeral leave, which is now referred to as "Funeral and Bereavement Leave," and utilized within KHRIS. There are no changes to the amount of leave available or the instances in which an employee may utilize funeral leave. Other amendments include clarification surrounding any annual leave balances that remain once an employee resigns and receives pay for the maximum amount of annual leave. Any remaining annual leave, as is currently the case, is not paid and is removed from the balance automatically within KHRIS. Finally, there are additional calculations on the maximum carry-over amount for those employees on a forty (40)-hour work schedule included within the amendments, and clarification regarding FMLA protections for the birth or placement of a child.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for the implementation of KHRIS. An ordinary amendment to the administrative regulation is not sufficient as the regulation will conflict with the handling of employee leave within the KHRIS system once KHRIS is implemented April 1, 2011.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave.

(d) How the amendment will assist in the effective administration of the statutes: These amendments are necessary for the regulation to accurately reflect the handling of employment leave with KHRIS, and are required by KRS 18A.030 and 18A.110.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A unclassified employees and other individuals subject to the provisions of 101 KAR 3:015 will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All actions which are required to comply with the amendments to the regulation have been taken by the Personnel Cabinet during the implementation of KHRIS.

(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 anticipated to each of the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue that do not otherwise exist.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. All non-merit, unclassified

employees are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 18A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2) and 18A.110(7)(g).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments within this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments within this regulation.

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

301 KAR 2:095. Importation of cervid carcasses and parts.

RELATES TO: KRS 150.180, 150.280, 150.290

STATUTORY AUTHORITY: KRS 150.025(1), 150.720(2)[~~150.02, 150.720~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations reasonably necessary to carry out the purposes of KRS Chapter 150. KRS 150.720(2) authorizes the department and the Department of Agriculture to hold a person responsible for all costs incurred in the investigation, response, and eradication of a disease if the person imports a diseased animal into the Commonwealth. This administrative regulation establishes procedures for the importation and possession of whole cervid carcasses or carcass parts from states that have known cases of chronic wasting disease.[~~to carry out the purposes of KRS Chapter 150, including the management and conservation of wildlife. KRS 150.720 authorizes the department to promulgate administrative regulations pertaining to health requirements and eradication and prevention of wildlife diseases. This administrative regulation establishes procedures for the importation and possession of whole cervid carcasses or carcass parts from states that have known cases of Chronic Wasting Disease.~~]

Section 1. Definitions. (1) "Cervid" means a member of the family Cervidae.

(2) "Chronic wasting disease" or "CWD"[~~(CWD)"~~] means a fatal disease affecting the brain of cervids which belongs to a group of diseases called transmissible spongiform encephalopathies.

(3) "Clean" means having no meat matter or tissue attached to the carcass part.

(4) "Importation" means the transportation of a cervid carcass or carcass part into the Commonwealth.

(5) "Infected state" means a state that has a known case of chronic wasting disease.[~~"Importation" means the transportation of a cervid carcass or carcass part into the Commonwealth.~~]

(6) "Whole" means the entire carcass whether eviscerated or not, prior to the carcass being processed.

Section 2. Importation and Possession. (1) A person shall not import or possess a whole cervid carcass or carcass part from an infected state without first converting the carcass or part, pursuant to subsection (2) and (3) of this section. [~~Prohibition on the Importation and Possession of a Whole Cervid Carcass or Carcass Part from an Infected State. (1) It shall be unlawful for a person to import or possess a whole cervid carcass or carcass part from an infected state unless he has converted the carcass or part as specified in subsection (2) or (3) of this section.~~]

(2) A person may import a cervid carcass or a carcass part from an infected state if the carcass or carcass part does not have any part of the spinal column or head attached; [~~if:~~

~~(a) Quarters or other portions of meat have no part of the spinal column or head attached; or~~

~~(b) Meat has been boned out.~~]

(3) A person may possess the following inedible parts of a cervid carcass lawfully taken from an infected state:[~~from an infected area:~~]

(a) Antlers;

(b) Antlers that are attached to a clean skull plate;

(c) A clean skull;

(d) Clean upper canine teeth;

(e) A finished taxidermy product; or

(f) The hide.

(4) A licensed taxidermist may accept a cervid head with an intact skull originating from an infected state if the taxidermist:

(a) Contacts the department within forty-eight (48) hours after receiving the cervid head;

(b) Provides to the department the hunter's name and address; and

(c) Transfers the skull with the intact brain to the department once the skull plate has been removed.

BENJY KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY THE AGENCY: April 14, 2011
FILED WITH LRC: April 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011, at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing five (5) business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by May 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, extension 4507, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes procedures for the importation and possession of whole cervid carcasses or carcass parts from states that have documented cases of Chronic Wasting Disease (CWD).

(b) The necessity of this administrative regulation: To prevent the importation of cervid parts most likely to be contaminated with the agent that causes CWD into the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations to carry out the purposes of KRS Chapter 150, including the management and conservation of wildlife. KRS 150.720 authorizes the department to hold individuals responsible for importing diseased animals into the state, contrary to administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by helping to protect the state's deer and elk herds from CWD.

(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 a taxidermist to accept a carcass part from a hunter who has taken an animal in a CWD–positive state. The taxidermist must notify the department, provide the name and address of the hunter, and transfer the skull and brain to the department to be in compliance.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow taxidermists to possess disease risk cervid parts, to report cases of illegal importation of these parts, and to transfer possession of these parts to the department.

(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: Currently there are 376 licensed taxidermists 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: A licensed taxidermist who accepts an intact cervid head from a CWD-positive state must report acceptance to the department within 48 hours, provide the department with the name and address of the hunter, and transfer possession of high-risk cervid parts to the department.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A taxidermist will be allowed to accept and prepared mounts of cervid heads imported illegally by a hunter without penalty if the taxidermist contacts the department.

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

(a) Initially: There will be no additional cost to the agency to implement this regulation.

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

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because all individuals and all taxidermists are required to be in compliance in the same way.

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' Wildlife and Law Enforcement Divisions will be affected by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 and 150.720.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This amendment will have negligible impact on local governments, out-of-state hunters, taxidermists, and local economies.

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

301 KAR 2:300. Black bears.

RELATES TO: KRS 150.010, 150.092, 150.170, 150.175[~~, 150.180, 150.300, 150.305, 150.340, 150.360, 150.370, 150.395, 150.990~~]

STATUTORY AUTHORITY: KRS 150.025(1)[~~, 150.120(4),~~] 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. KRS 150.390(1) restricts the possession, taking, or pursuit of bears in any manner contrary to the provisions of KRS Chapter 150 or its administrative regulations.[~~KRS 150.025 and 150.390 authorize the department to promulgate administrative regulations governing hunting seasons, bag limits, methods of taking and other matters necessary to carry out the purpose of KRS Chapter 150. This administrative regulation establishes the hunting season, prescribes legal methods of taking, and establishes harvest reporting requirements for black bear hunting. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.~~]

Section 1.Definitions. (1) "Adult" means an individual who is at least eighteen (18) years of age.

(2) "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.

(3) "Arrow" means the projectile fired from a bow or crossbow.

(4) "Baited area" means an area where feed, grains, or other substances capable of luring black bears have been placed.

(5) "Barbed broadhead" means a point or portion of a blade

projecting backward from a broadhead designed to hold an arrow within an animal.

(6) "Bear" means the species Ursus americanus;

(7) "Bear permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to take one (1) black bear of either sex.

(8) "Bear zone" means the following Kentucky counties: Harlan, Letcher, and Pike.

(9) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(10) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(11) "Fully-automatic firearm" means a firearm which fires more than one (1) time with a single pull from 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 which is loaded from the rear of the barrel.

(14) "Muzzle-loading gun" means a rifle, shotgun, or handgun which is loaded from the discharging end of the barrel or discharging end of the receiver.

(15) "Shotshell" means ammunition discharged from a shotgun.

(16) "Youth" means a person under the age of sixteen (16) by the day of the hunt.

Section 2. Feeding and Pursuing Black Bears. A person shall not:

(1) Engage in any direct or indirect feeding of black bears; or

(2) Pursue or chase black bears with dogs.

Section 3. License and Bear Permit Requirements. (1) A bear permit may only be purchased by a resident of Kentucky; and

(2) Unless exempted by KRS 150.170, a person hunting bear shall have a valid Kentucky hunting license and valid bear permit while hunting.

Section 4. Hunter Restrictions. (1) A person shall not:

(a) Harvest a bear except during daylight hours;

(b) Use[~~Bear Damage Control. The department may authorize department personnel to remove or destroy a bear causing property damage. A person authorized to destroy a bear causing damage shall not:~~

~~(1) Move the bear without attaching a disposal permit provided by the department to the carcass; and~~

~~(2) Remove the disposal permit until the carcass is processed.~~

~~Section 5. Hunter Restrictions. (1) A bear hunter:~~

~~(a) Shall not harvest~~

~~bear except during daylight hours;~~

~~(b) Shall not use~~] dogs, except leashed tracking dogs may be used to recover wounded bears;

(c) Hunt[~~Shall not hunt~~] bear on a baited area:

1. While bait is present; or

2. For thirty (30) days after the bait has been removed;

(d) Harvest:[~~.Shall not harvest:~~]

1. A female bear that has a cub; or

2. A bear that weighs less than seventy-five (75) pounds;

(e) Harvest[~~Shall not harvest~~] a bear that is swimming; and

(f) Harvest a bear if the person[~~Shall not harvest a bear if the hunter~~] is in a vehicle, boat or on horseback, except that a hunter in possession of a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform;

(g) Harvest a bear in a den; or

(h) Disturb a bear in a den for the purpose of taking the bear when it exits the dens.

(2) An adult shall accompany and maintain control of a youth who is hunting bear with a firearm.

Section 5. Weapon Restrictions. (1) A person shall not use the following to take a bear:[~~6. Weapon Restrictions. (1) A bear hunter shall not use or carry, except as provided by KRS 237.110 while bear hunting:~~]

(a) A device capable of taking a bear other than[~~except~~] a firearm, crossbow, or archery equipment;

(b) A modern firearm less than.270 caliber;

(c) A muzzle-loading firearm less than.50 caliber;

(d) A shotgun less than twenty gauge;

(e) Rimfire ammunition;

(f) A fully automatic weapon;

(g) A firearm with a magazine capacity greater than ten (10) rounds;

(h) Steel-jacketed ammunition;

(i) Tracer bullet ammunition;

(j) A shotshell containing more than one (1) projectile;

(k) A broadhead smaller than seven-eighths (7/8) inch wide;

(l) A barbed broadhead;

(m) A crossbow without a working safety device;

(n) A chemically treated arrow; and

(o) An arrow with a chemical attachment.

(2) A person shall not take a bear with a handgun that:

(a) Does not have a barrel length of at least six (6) inches;

(b) Does not have a bore diameter of at least 0.270 inches; and

(c) Does not fire a bullet that produces at least 550 ft/lbs of energy at 100 yards.

Section 6.[~~A handgun used to hunt bear shall have a barrel length of at least six (6) inches, have a bore diameter of at least 0.270 inches (.270 caliber), and when fired, the bullet shall produce at least 550 ft/lbs of energy at 100 yards.~~

~~(3) A person authorized to carry a concealed deadly weapon pursuant to KRS 237.110, shall not use that firearm to harvest a bear unless that firearm conforms to the provisions of subsection (1) of this section.~~

~~Section 7.~~] Hunter Orange Clothing Requirements. (1) During any modern gun or muzzle-loading season for bears, a person hunting any species, and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except these requirements shall not apply to a person hunting:

(a) Waterfowl; or

(b) Furbearers at night during a legal furbearer season.

(2)[~~.~~

~~(2) Requirements in this section shall not apply to a person:~~

~~(a) Hunting waterfowl; or~~

~~(b) Hunting furbearers at night during a legal furbearer season.~~

~~(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.

Section 7.[~~8.~~] Bear Zone Season Dates and Bag Limits. (1) A person shall only harvest a bear in the Bear Zone.

(2) The bear season shall be for two (2) consecutive days beginning on the second Saturday in December.[~~A hunter may take bear using weapons described in Section 4 of this administrative regulation for two (2) consecutive days beginning the third Saturday in December, effective December 2009.~~]

(3) A person shall not take more than one (1) bear in a license year.

Section 8. Bear Quota and Season Closure. (1) The bear season shall close after daylight hours on the day when the following quota has been reached:

(a) Ten (10) bears; or

(b) Five (5) female bears.[~~9. Bear Quota and Season Closure. (1) The bear season shall close on the day when the quota of:~~

~~(a) Ten (10) bears have been harvested; or~~

~~(b) Five (5) female bears have been harvested.~~]

(2) A bear hunter shall call 800-858-1549[~~1-800-858-1549~~] after 9 p.m. each day of the legal bear season to determine if the annual quota has been reached.

Section 9.[~~10.~~] Bear Sanctuaries. (1) The following areas within the Bear Zone shall be closed to bear hunting:

(a) Hensley-Pine Mountain Wildlife Management Area; and

(b) The area surrounding Hensley-Pine Mountain Wildlife Management Area: starting at the intersection of Sand Hill Bottom Road and North US Hwy 119 in Cumberland, the boundary proceeds northeast along North US Hwy 119 to the intersection of US Hwy 119 and Kentucky Hwy 2035. The boundary then proceeds west along Kentucky Hwy 2035 to the intersection of Kentucky Hwy 2035 and Kentucky Hwy 931. The boundary continues southwest along Kentucky Hwy 931 to the intersection of Kentucky Hwy 931 and Kentucky Hwy 160, then proceeds southwest along Kentucky Hwy 160 to the intersection of Kentucky Hwy 160 and Kentucky Hwy 463 in Gordon. The boundary then proceeds south and east along Kentucky Hwy 160 to the intersection of Kentucky Hwy 160 and Sand Hill Bottom Road in Cumberland, then south along Sand Hill Bottom Road to the intersection with North US Hwy 119, completing the boundary.

(2) Kentucky resident landowners, their spouses, and dependent children may hunt bears on their own property within the closed area referenced in paragraph (b) of this subsection[~~subsection (b) of this section~~].

Section 10. Harvest Recording and Check-in Requirements. (1) Immediately after harvesting a bear, and before moving the carcass, a person shall record on a hunter's log the:

(a) Species taken;

(b) Date taken;

(c) County where taken; and

(d) Sex of the bear.

(2) A person who has harvested a bear shall:

(a) Retain and possess a completed hunter's log when the person is in the field during the season;

(b) Register a harvested bear at a department-operated check station immediately after leaving the field;

(c) Telecheck the bear before leaving the check station by:

1. Calling 800-245-4263 and completing the telecheck process; and

2. Recording the confirmation number on the hunter's log; and

(d) Attach to the carcass a department issued tag prior to leaving the check station.[~~11. Harvest Recording and Check-in Requirements. Immediately after harvesting a bear, and before moving the carcass, a person shall:~~

~~(1) Record in writing the:~~

~~(b) The date taken;~~

~~(c) The county where taken; and~~

~~(d) Sex of the bear.~~

~~(2) This information shall be recorded on a hunter's log.~~

~~(3) Retain the completed hunter's log in possession whenever the hunter is in the field during the current season.~~

~~(4) A successful hunter shall register a harvested bear at a department operated check in station immediately after leaving the field. Before leaving the check in station, a successful bear hunter shall telecheck the bear by calling 1-800-245-4263 and record the confirmation number on a hunter's log.~~

~~(5) After registering a bear, the hunter shall attach a tag, issued by the department, to the carcass.~~]

BENJY KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY THE AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011, at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing five (5) business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by May 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, extension 4507, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes black bear hunting seasons, prescribes legal methods of take, and establishes legal methods of tagging and checking requirements for black bear hunting in Kentucky.

(b) The necessity of this administrative regulation: To allow for safe and effective harvest and the long-term conservation and management of black bears in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. KRS 150.390(1) restricts the possession, taking, or pursuit of bears in any manner contrary to the provisions of KRS Chapter 150 or its regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will fulfill the purposes of KRS 150.025 and 150.390 by defining the seasons, bag limits, and methods of take used to manage black bears 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: This amendment will move the 2-day black bear hunt from the third weekend in December to the second weekend in December, and prohibits the take of black bears from winter dens. This amendment also removes the prohibition of hunters carrying certain types of weapons while hunting to conform to the requirements of SB 64 passed in 2010.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to improve hunter success by moving the hunt earlier in the season. Likewise, this amendment will minimize the possibility of illegal kill of females with young by prohibiting the take of bears from winter dens. It is also necessary to bring this regulation into compliance with previously passed legislation.

(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 hunters that pursue black bears will be affected by this regulatory amendment. In 2010, there were 335 licensed bear hunters in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Hunters wishing to pursue bears must now hunt on the second weekend in December, rather than the third and hunters cannot shoot into a den to take a bear. Likewise, hunters cannot disturb a bear in its den for the purpose of harvesting that animal upon exit from the den.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Harvest success for bear hunters

should improve by moving the season forward by one week. Since the first bear hunt in 2009, hunter success has been minimal due to snowstorms on the third weekend of each season. Likewise, prohibiting the take of bears from winter dens will minimize the likelihood of hunters inadvertently killing a female bear with young, which is illegal.

(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 any other fees or to increase funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No. Tiering was not used because all bear hunters are subject to the same seasons, methods of taking, bag limits, harvest recording procedures, and checking requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. KRS 150.390(1) restricts the possession, taking, or pursuit of bears in any manner contrary to the provisions of Chapter 150 or its regulations.

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

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

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

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

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

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

Revenues (+/-): None; see 4(a) and (b) above.

Expenditures (+/-): None; see 4(c) and (d) above.

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:005. Definitions related to 401 KAR Chapter 42.

RELATES TO: KRS 224.01, 224.10, 224.60, 40 C.F.R. 280 Subpart A[~~Part 281,~~] 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.60-105, 42 U.S.C. 6991k, 6991e [~~40 C.F.R. Part 280, Part 281, 42 U.S.C. 6991c~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the [~~Environmental and Public Protection~~] cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tanks [~~tank (UST) systems~~] by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements[~~standards~~] to protect human health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. [~~401 KAR Chapter 42 identifies requirements for UST systems.~~] This administrative regulation defines terms used throughout 401 KAR Chapter 42.

Section 1. Definitions. (1) "Aboveground release" means a[~~any~~] UST system release to the surface of the land or to surface water. This includes[~~, but is not limited to,~~] UST system releases from the aboveground portion of a UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

(2) "Actual cost" means the cost incurred by the person performing the services or supplying the products.

(3) "Ancillary equipment" means any devices used to distribute, meter, or control the flow of regulated substances to and from a UST system, including[~~, but not limited to,~~] piping, fittings, flanges, valves, and pumps.

(4) "Assets" is defined by KRS 224.60-120(3).

(5) "Automatic line leak detector" means:

(a) Electronic line leak detector; or

(b) Mechanical line leak detector.

(6) "Background" means the concentration of substances consistently present in the environment at, or regionally proximate to, a UST system release, but outside of the influence of the UST system release. There are two (2) types of background as follows:

(a) Natural background is the amount of naturally-occurring substances in the environment, exclusive of that from anthropogenic sources; and

(b) Ambient background is the amount of both naturally-occurring substances and ubiquitous anthropogenic substances in the environment at levels that are representative of the region surrounding the UST facility and at levels not attributable to activities on the property.

(7)[~~(6)~~] "Belowground release" means a[~~any~~] UST system release to the subsurface of the land or to groundwater. This includes[~~, but is not limited to,~~] UST system releases from the belowground portions of a UST system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

(8)[~~(7)~~] "Beneath the surface of the ground" means, for purposes of identifying an underground storage tank system as set forth in KRS 224.60-100, beneath the ground surface or otherwise covered with earthen materials.

(9)[~~(8)~~] "Bodily injury and property damage" is defined by KRS 224.60-115(1).

(10) "Cabinet" is defined by KRS 224.01-010(9).

(11)[~~(9)~~] "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a UST system can be cathodically protected through the application of either galvanic anodes or impressed current.

(12)[~~(10)~~] "Cathodic protection tester" means a person accredited or certified as being a cathodic protection tester in accordance with 401 KAR 42:030. [~~who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems; At a minimum, a cathodic protection tester has education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.~~

~~(11) "Certified company" means a person certified pursuant to 401 KAR 42:316.~~

~~(12) "Certified contractor" means a person certified pursuant to 401 KAR 42:314.~~]

(13) "Change in service" means continued use of a UST system that previously stored a regulated substance to store a nonregulated substance.

(14) "Claim" is defined by KRS 224.60-115(3).

(15) "Compatible" means the ability of two (2) or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the UST system under conditions likely to be encountered in the UST system.

(16) "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a UST system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two (2) UST systems shall be allocated equally between them.

(17) "Consumptive use" means, with respect to heating oil, consumed on the premises where stored.

(18) "Contamination" means degradation in the quality of surface water, sediment, groundwater, air, soil, or bedrock as a result of human activities.

(19) "Contract" means the legally-binding written agreement for performance of corrective action entered into by an owner or operator and a contracting eligible company or partnership eligible [~~certified~~] pursuant to 401 KAR 42:316.

(20) "Corrective action":

(a) For purposes of 401 KAR 42:250, 42:290, 42:300, [~~42:314,~~] 42:316; 42:330, 42:335 and 42:340, is defined in KRS 224.60-115; or

(b) For purposes of 401 KAR 42:011, 42:020, 42:030, 42:040, 42:045, 42:050, 42:060, 42:070, 42:080, 42:090, 42:095, and 42:200, means those actions necessary to protect human health and the environment if there is a UST system release. Corrective action may include remedial actions to clean up contaminated groundwater, surface waters or soil, actions to address residual effects after initial corrective action is taken, and actions taken to restore or replace potable water supplies. Corrective action may also include actions necessary to monitor, assess, and evaluate a UST system release, as well as actions necessary to monitor, assess, and evaluate the effectiveness of remedial action after a UST system release has occurred.

(21) [~~"Corrective action agreement" means a written agreement for reimbursement between the cabinet, the owner or operator, and the certified contractor, which applies to corrective action or interim action to be performed.~~

~~(22)~~] "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be accredited or certified as being qualified [~~a corrosion expert~~] by the National Association of Corrosion Engineers (NACE International), or a professional engineer licensed [~~registered~~] by the Kentucky State Board of Licensure [~~Registration~~] for Professional Engineers and Land Surveyors with certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(22) "Delivery prohibition" means prohibiting the delivery, deposit, or acceptance of a regulated substance to an underground storage tank that has been determined to be ineligible by the cabinet for such delivery, deposit, or acceptance.

(23) "Dielectric material" means a material that does not conduct direct electrical current.

(24) "Dispenser" means a device that is used to transfer regulated substances from a UST system to a point outside of the UST system.

(25) "Division" is defined by KRS 224.60-115(6).

(26) "Domestic-use cistern" means a cistern constructed in a manner to allow the infiltration of groundwater and is currently used or potentially used by humans for consumption or other uses resulting in dermal or inhalation exposure.

(27) "Domestic-use spring" means a spring actively accessed by humans for consumption or other uses resulting in dermal or inhalation exposure.

(28) "Domestic-use well" means a well currently used or potentially used by humans for consumption or other uses resulting in dermal or inhalation exposure.

(29) "Double-walled piping" means piping consisting of an inner wall and an outer wall with an interstitial space between the inner and outer wall.

(30) "Double-walled tank" means a tank consisting of an inner wall and an outer wall with an interstitial space between the inner and outer wall.

(31)[~~(25) "Domestic-use well, spring, cistern, or well head protection area" means a well, spring, cistern, or well head protection area currently used or potentially used by humans for personal, commercial, or agriculture purposes.~~

~~(26)~~] "Electrical equipment" means underground equipment containing dielectric fluid used for the operation of equipment such as transformers and buried electrical cable.

(32) "Eligible company or partnership" means a person issued a letter of eligibility in accordance with 401 KAR 42:316.

(33) [~~(27)~~] "Empty" means all regulated substances have been removed from the UST system using commonly employed practices so that not[~~no~~] more than two and five-tenths (2.5) centimeters (one (1) inch) of residue, or three-tenths (0.3) percent by weight of the total capacity of the UST system, remain in the system.

(34)[~~(28)~~] "Entry level" means an amount equal to the financial responsibility the owner or operator shall establish and maintain in accordance with KRS 224.60-120.

(35) "Environmental emergency" is defined by KRS 224.01-400(1)(d).

(36) [~~(29)~~] "Environmentally sensitive feature" means surface waters and jurisdictional wetland areas. The term shall not include road-side ditches or manmade drainage ways that do not discharge to surface waters or wetland areas within a fifty (50) meter radius of the excavation zone.

(37)[~~(30)~~] "EPA identification number" means the number assigned by the U.S. EPA or the cabinet to each hazardous waste generator; transporter; and treatment, storage, or disposal facility.

(38)[~~(31)~~] "Excavation zone" means the volume containing the UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

An excavation zone may contain more than one (1) UST system.

(39)[~~(32)~~] "Existing UST system" means a UST system used to contain an accumulation of regulated substances or for which installation [~~has~~] commenced on or before December 22, 1988. Installation is considered to have commenced if:

(a) The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the UST facility or installation of the UST system; and

(b)1. A continuous, physical construction or installation program has begun at the UST facility; or

2. The owner or operator has entered into contractual obligations, that cannot be canceled or modified without substantial loss, for physical construction at the UST facility or installation of the UST system to be completed within a reasonable time.

(40)[~~(33)~~] "Facility" is defined by KRS 224.60-115(7).

(41)[~~(34)~~] "Farm tank" means a tank located on a tract of land devoted to the production of crops (including nurseries) or raising animals (including fish hatcheries) and associated residences and improvements.

(42)[~~(35)~~] "Federal agency" means any department, agency, or

other instrumentality of the federal government, any independent agency or establishment of the federal government, including any government corporation, and the U.S. Government Printing Office.

(43)[~~(36)~~] "Federal regulations" is defined by KRS 224.60-115(8).

(44)[~~(37)~~] "Financial ability" means the capacity of a petroleum storage tank owner or operator to finance the performance of corrective action.

(45)[~~(38)~~] "Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

(46)[~~(39)~~] "Free product" is defined by KRS 224.60-115(9).

(47)[~~(40)~~] "Guarantor" is defined by KRS 224.60-120(4).

(48)[~~(41)~~] "Gathering lines" means pipelines, equipment, facilities, and buildings used in the transportation of oil or gas during oil or gas production or gathering operations.

(49)[~~(42)~~] "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(50)[~~(43)~~] "Hazardous substance UST system" means a UST system that contains a hazardous substance identified in Section 101(14) of CERCLA (but not including any substance regulated as a hazardous waste under 401 KAR Chapters 31 through 39), or contains a mixture of this type of hazardous substance and petroleum and is not a petroleum UST system.

(51)[~~(44)~~] "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels if used as substitutes for one (1) of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(52)[~~(45)~~] "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(53)[~~(46)~~] "Hydrogeologically downgradient" means in the direction from a point of higher hydrostatic pressure to a point of lower hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a higher water table elevation exists to a point where a lower water table elevation exists, as defined by wells or piezometers.

(54)[~~(47)~~] "Hydrogeologically upgradient" means in the direction from a point of lower hydrostatic pressure to a point of higher hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a lower water table elevation exists to a point where a higher water table elevation exists, as defined by wells or piezometers.

(55) "Independent third-party evaluator" means a consulting firm, test laboratory, not-for-profit research organization, or educational institution with no organizational or financial conflict of interest.

(56) "Interior lining" means corrosion and chemical resistance materials that are applied to the inside of the tank to protect the internal surface of the tank from corrosion.

(57) "Interstitial space" means the area between the inner and outer wall of double-walled tanks or double-walled piping;

(58) "Liquid-tight" means impervious to the passage of water or a liquid regulated substance.

(59) [~~(48) "Leak detection system" means a method of monthly monitoring capable of detecting a failure in a UST system of either the primary or secondary containment system, or capable of detecting the presence of a UST system release of a regulated substance outside the UST system.~~

~~(49)~~] "Liquid trap" means a sump, well cellar, or other trap used in association with oil and gas production, gathering, and extraction operations (including gas production plants) for the purpose of collecting oil, water, and other liquids.

(60)[~~(50)~~] "Maintenance" means the normal operational upkeep to prevent a UST system from releasing a regulated substance.

(61)[~~(51)~~] "Monitoring" means the act of systematically collecting and accessing data on operational parameters or on the quality of the air, soil, bedrock, groundwater, sediment, or surface water.

(62)[~~(52)~~] "Motor fuel" is defined by KRS 224.60-115(12).

(63)[~~(53)~~] "Net worth" is defined by KRS 224.60-120(3).

(64)[~~(54)~~] "Newly discovered UST system" means a UST system at a UST facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence.

(65)[~~(55)~~] "New UST system" means a UST system that will be used to contain an accumulation of regulated substances and for which installation [~~has~~] commenced after December 22, 1988.

(66)[~~(56)~~] "Noncommercial purposes" means, with respect to motor fuel, not for resale.

(67)[~~(57)~~] "Occurrence" is defined by KRS 224.60-115(13).

(68)[~~(58)~~] "Off-site" means any area beyond the point of compliance.

(69) "On-site" means the area within the point of compliance.

(70)[~~(60)~~] "On the premises where stored" means, with respect to heating oil, UST systems located on the same property where the stored heating oil is used.

(71)[~~(61)~~] "Operation" means the storage and dispensing of a regulated substance from a UST system.

(72)[~~(62)~~] "Operational life" means the period beginning when installation of the UST system has commenced and ending when the UST system is closed under 401 KAR 42:070.

(73)[~~(63)~~] "Operator" means a[~~any~~] person in control of, or having responsibility for, the daily operation of the UST system.

(74)[~~(64)~~] "Original invoice" means an original or duplicate copy of an itemized list of all products or services obtained, including the itemized cost thereof provided to the contractor or owner or operator by the person supplying the products or providing the services.

(75)[~~(65)~~] "Overfill release" means a UST system release that occurs if a UST system is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

(76)[~~(66)~~] "Owner" means:

(a) For[~~If~~] a UST system in use on November 8, 1984, or brought into use after that date, a[~~any~~] person who owns a UST system used for storage, use, or dispensing of a regulated substance; and

(b) For[~~If~~] a UST system in use before November 8, 1984, but no longer in use on that date, a[~~any~~] person who owned the UST system immediately before the discontinuation of its use.

(77)[~~(67)~~] "Permanent closure" means either removing the UST system from the ground or filling the UST system with an inert solid material or a combination of both methods.

(78)[~~(68)~~] "Permanently closed" means a UST system was:

(a) Closed prior to December 22, 1988 in accordance with the requirements of the Kentucky Fire Marshal, and [~~in accordance with~~] applicable industry standards when closure occurred, and in a manner that prevents [~~any~~] future use of the UST system;

(b) Closed after December 22, 1988, but prior to April 18, 1994 [~~December 19, 1990~~], in accordance with 40 C.F.R. 280.71 through 280.74; or

(c) [~~Closed after December 19, 1990, but prior to April 18, 1994, in accordance with administrative regulations in effect at that time;~~

~~(d) Closed after April 18, 1994, but prior to January 1, 1996, in accordance with the emergency administrative regulations that took effect on February 15, 1994;~~

~~(e) Closed after January 1, 1996 in accordance with 401 KAR 42:070 or 401 KAR 42:071 in effect at that time; or~~

~~(f)~~] Closed in accordance with 401 KAR 42:070 after September 1, 2011 [~~the effective date of this administrative regulation~~].

(79)[~~(69)~~] "Person" is defined by KRS 224.60-115(14).

(80)[~~(70)~~] "Petroleum" is defined by KRS 224.60-115(15).

(81)[~~(71)~~] "Petroleum storage tank" is defined by KRS 224.60-115(16) [~~2224.60-115(16)~~];

(82)[~~(72)~~] "Petroleum storage tank operator" is defined by KRS 224.60-115(17);

(83)[~~(73)~~] "Petroleum storage tank owner" is defined by KRS 224.60-115(18).

(84)[~~(74)~~] "Petroleum UST system" means a UST system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. The term includes those

containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(85)[~~(75)~~] "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials (for example, concrete, steel, plastic, or a combination of these types of materials).

(86)[~~(76)~~] "Pipeline facilities" means new and existing pipe rights-of-way and any associated equipment, facilities, or buildings, including gathering lines.

(87)[~~(77)~~] "Point of compliance" means the property boundaries of the property on which the UST facility is located.

(88) "Product deliverer" means a person who delivers or deposits regulated substances into a UST system.

~~(89)[(78) "Preestablished fixed cost" means the cost determined by the cabinet to be reimbursed from the Petroleum Storage Tank Environmental Assurance Fund for actions taken as a result of a written directive from the cabinet or corrective action agreement.~~

~~(79)~~] "Ranking system" means the system for determining the sequence by which written directives shall be issued in order to address the completion of corrective action, and the subsequent reimbursement of those eligible costs [~~extent of environmental harm and financial ability~~], as established by 401 KAR 42:290;

(90)[~~(80)~~] "Registration" or "register" shall have the same meaning as "notification" or "notice", as used in 40 C.F.R. Part 280 Subpart B.

(91)[~~(81)~~] "Regulated substance" is defined by KRS 224.60-100(2)

(92)[~~(82)~~] "Release" is defined by KRS 224.60-115(20).

(93)[~~(83)~~] "Release detection" or "leak detection" means a method of determining whether:

(a) A release of a regulated substance has occurred from the UST system into the environment; or

(b) A regulated substance has infiltrated the interstitial space of a UST system [~~a UST system release has occurred~~].

(94)[~~(84)~~] "Repair" means to restore a UST system component that has caused a UST system release of a regulated substance or that exhibits an unusual operating condition [~~from a UST system~~].

(95)[~~(85)~~] "Residential tank" means a tank located on property used primarily for dwelling purposes.

(96)[~~(86)~~] "Residual tank materials" means [~~any~~] accumulated tank water, bottom sediments, mixture of product and water, or other material remaining in a tank after removal of tank contents.

(97)[~~(87)~~] "Secretary" is defined by KRS 224.01-010(24).

(98) [~~means the Secretary of the Environmental and Public Protection Cabinet.~~

~~(88)~~] "Septic tank" means a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from the receptacle is distributed for disposal through the soil, and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

(99) "Statistical Inventory Reconciliation (SIR)" means a leak-detection system that uses computer software to conduct a statistical analysis of inventory, delivery, and dispensing data collected over a period of time to determine if a UST system is leaking.

(100)[~~(89)~~] "Storm-water or wastewater collection system" means piping, pumps, conduits, and [~~any~~] other equipment used to collect or transport the flow of surface water run-off resulting from precipitation or domestic, commercial, or industrial wastewater to or from retention areas or any areas where treatment is designated to occur.

(101) "Sump" means a subsurface area designed to provide access to underground UST system equipment.

(102)[~~(90)~~] "Surface impoundment" means a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials) that is not an injection well.

(103)[~~(91)~~] "Surface water" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and [~~any~~] subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection to the surface. Effluent ditches and lagoons used for waste treatment that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the Commonwealth.

(104) "Suspected UST System Release" means the observation of an unusual operating condition or an unconfirmed UST system release.

(105)[~~(92)~~] "Tank" means a stationary component of a UST system, excluding the connected underground piping, underground ancillary equipment, and containment system, if any, [~~device~~] designed to contain an accumulation of regulated substances and constructed of nonearthen materials (for example, concrete, steel, plastic, or a combination of these materials) that provide structural support.

(106)[~~(93)~~] "Tank contents" means [~~any~~] accumulated tank water, bottom sediments, or mixture of product and water that is removed from a tank at one (1) time by the same method and that is accepted by a recycling facility.

(107)[~~(94)~~] "Temporary closure" means taking a UST system out of operation pursuant to the requirements of 401 KAR 42:070.

(108)[~~(95)~~] "Third party" is defined by KRS 224.60-115(22).

(109) "Trip blank" means a sample of analyte-free media taken from the laboratory to the sampling site and returned to the laboratory unopened. A trip blank is used to document contamination attributable to shipping and field handling procedures per cooler per sampling event.

(110) "Under-dispenser containment" means a liquid-tight containment system underneath a dispenser.

(111)[~~(96)~~]"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the UST system situated on or above the surface of the floor.

(112)[~~(97)~~] "Underground utility conduits" means a[~~any~~] manmade underground conduit installed for utility purposes either on or off site.

(113) "Underground storage tank" is defined by KRS 224.60-100(1).

(114)[~~(98)~~] "Upgrade" means the addition of or retrofitting of UST system components to improve the ability of a UST system to prevent a UST system release. Examples of upgrades include the addition of cathodic protection, improvements to the interior lining, and improvements of spill and overfill controls.

(115)[~~(99)~~] "UST facility" or "site" means, with respect to an[~~any~~] owner or operator, all UST systems which are owned or operated by an owner or operator and are located on a single parcel of property or on a[~~any~~] contiguous or adjacent property.

(116)[~~(100)~~] "UST system", "tank system", or "underground storage tank system" means an underground storage tank [~~(as defined in KRS 224.60-100)~~], connected underground piping, and underground ancillary equipment[~~, and containment system~~], if any.

(117)[~~(101)~~] "UST system release" means [~~any~~] spilling, leaking, emitting, discharging, escaping, leaching, or disposing of[~~or~~] a regulated substance from a UST system into groundwater, surface water, surface or subsurface soils[~~, or interstitial space between a UST system and its secondary barrier or secondary containment~~]. The term shall not include spilling, leaking, emitting, discharging, escaping, leaching, or disposing that is permitted or authorized by Kentucky or federal law.

(118)[~~(102)~~] "UST system release detection" means method, that complies with the requirements of 401 KAR 42:040, for determining whether a UST system release has occurred.

(119) "Unusual Operating Condition" means a condition observed during the normal operation of an underground storage tank system that shall be reported to the cabinet pursuant to 401 KAR 42:050. Unusual operating conditions include the erratic behavior of product dispensing equipment; the sudden loss of product from a portion of the UST system; the unexplained presence of water in the tank exceeding two (2) inches; failing results from a tank or line tightness test; failing results of a corrosion protection evaluation; unexplained failing results from a release detection method or device; unexplained inventory discrepancies; two (2) consecutive months of inconclusive statistical inventory reconciliation (SIR) results; unexplained equipment failure or malfunction; unexplained presence of vapors; infiltration of liquid into the interstitial space of a UST system; unexplained overfill or release detection alarms; or evidence of a release of a regulated substance.

(120) "Vapor intrusion" means the presence of volatile and semi-volatile organic compounds in residential or commercial buildings, assessed in accordance with the Release Response and Initial Abatement Requirements Outline, resulting from contaminated subsurface media originating from a UST system release.

(121)[~~(103)~~] "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 42 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.	
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.)
C.F.R.	Code of Federal Regulations
DEP	Kentucky Department for Environmental Protection
KAR	Kentucky Administrative Regulation
KRS	Kentucky Revised Statute
SARA	Superfund Amendments and Authorization Act of 1986
U.S.C.	United States Code
U.S. EPA	United States Environmental Protection Agency
UST	Underground Storage Tank

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the terms used in 401 KAR Chapter 42.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the terms used throughout 401 KAR Chapter 42.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by defining terms consistent with the federal regulations.

(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 statute by defining terms that are used throughout 401 KAR Chapter 42.

(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 deletes terms that were not used and adds terms that need defining in accordance with federal requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to define new terms and clarify the meaning of old terms.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by being consistent with federal requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute by adding new terms and clarifying old terms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 3,700 registered UST facilities 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: There are no actions required. This is a regulation that defines terms used throughout 401 KAR Chapter 42.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost for complying with a definition regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no benefit to compliance. This is a definition 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 associated with implementing this amendment.

(b) On a continuing basis: There is no cost associated with implementing this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to implement this amendment is tank fees, the PSTEAF, and grants from US EPA.

(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 fee increase will be necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This is a definition regulation, no fees are established or affected.

(9) TIERING: Is tiering applied? Tiering is applied in some of the definitions.

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 of Waste Management.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.60-105

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

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

(b) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate revenue.

(c) How much will it cost to administer this program for the first year? There is no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 280.12

2. State compliance standards. KRS 224.60-105

3. Minimum or uniform standards contained in the federal mandate. Definitions for 40 C.F.R. 280.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The definition for repair is broader than the federal definition. This is to allow the agency to ask owners and operators to make repairs to UST systems that exhibit unusual operating conditions.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:011. Scope of Underground Storage Tank Program.

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart A, [~~Part 281,~~] 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105[~~, 40 C.F.R. Part 280 Subpart A, Part 281, 42 U.S.C. 6991c~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [~~Environmental and Public Protection~~] cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks [~~tank (UST) systems~~] by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility and other requirements [~~standards~~] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. [~~401 KAR Chapter 42 identifies requirements for UST systems.~~] This administrative regulation establishes the scope of the cabinet's Underground Storage Tank Program, including provisions for exclusions and[~~,~~] deferrals[~~, and interim prohibitions~~].

Section 1. [~~Application of Federal Regulations. The requirements for program applicability, interim prohibition requirements, and definitions for UST systems are governed by 40 C.F.R. Part 280 Subpart A and this administrative regulation.~~

~~Section 2.~~] Applicability, Exclusions and Deferrals. (1) The requirements of 401 KAR Chapter 42 shall apply to all owners and operators of UST systems, except as provided in subsections (3) and (4) [~~(1) and (2)~~] of this section.

(2) A UST system used for dual purposes, at least one (1) of which is regulated, shall meet the requirements of 401 KAR Chapter 42.

(3) [~~Any UST system listed in subsection (2) of this section shall meet the requirements of Section 3 of this administrative regulation.~~

~~(1)~~] Exclusions. The following [~~UST systems~~] are excluded from the requirements of 401 KAR Chapter 42:

(a) UST systems containing wastes identified as hazardous in 401 KAR Chapter 31, and UST systems containing mixtures of hazardous waste and other regulated substances;

(b) Wastewater treatment tank systems [~~that are part of a wastewater treatment facility regulated under the Clean Water Act, as amended (33 U.S.C. 1251 et seq.)~~];

(c) Equipment and machinery containing regulated substances for operational purposes, such as hydraulic lift tanks and electrical equipment tanks;

(d) UST systems having a capacity of 110 gallons or less;

(e) UST systems containing a de minimis concentration of regulated substances;

(f) Emergency spill or overflow containment UST systems that are emptied immediately after use; [~~and~~]

(g) Exclusions listed in KRS 224.60-100(1)(a) through (i);

(h) UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.);

(i) UST systems that are part of an emergency generator system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission under Appendix A of 10 C.F.R. Part 50;

(j) Airport hydrant fuel distribution systems; and

(k) UST systems with field-constructed tanks.

(4) Deferrals. With the exception of UST systems installed after April 1, 2012, 401 KAR 42:040 does not apply to UST systems that store fuel solely for use by emergency power generators. [~~UST systems excluded from the definition of "underground storage tank" provided in KRS 224.60-100.~~

~~(2) Deferrals. This subsection identifies UST systems that are deferred from compliance with some of the requirements of 401 KAR Chapter 42.~~

~~(a) 401 KAR 42:040 does not apply to UST systems that store fuel solely for use by emergency power generators.~~

~~(b) 401 KAR 42:020, 401 KAR 42:030, 401 KAR 42:040, and 401 KAR 42:050 do not apply to the following UST systems:~~

~~1. Wastewater treatment tank systems that are not part of a wastewater treatment facility regulated under the Clean Water Act, as amended (33 U.S.C. 1251 et seq.);~~

~~2. UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.);~~

~~3. UST systems that are part of an emergency generator system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission under Appendix A of 10 C.F.R. Part 50;~~

~~4. Airport hydrant fuel distribution systems; and~~

~~5. UST systems with field-constructed tanks.~~

~~(3) Dual-purpose UST System. A UST system used for dual purposes, one (1) of which is regulated, shall meet the requirements of 401 KAR Chapter 42.~~

~~Section 3. Interim Prohibition for Deferred UST Systems. (1) Except as provided in subsection (2) of this section, a person shall not install a UST system listed in Section 2(2) of this administrative regulation for the purpose of storing regulated substances unless the system (whether of single- or double-wall construction):~~

~~(a) Will prevent UST system releases due to corrosion or structural failure for the operational life of the UST system;~~

~~(b) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent a UST system release; and~~

~~(c) Is constructed or lined with material that is compatible with the stored substance.~~

~~(2)(a) A UST system without corrosion protection may be installed at a UST facility that is determined by a corrosion expert not to be corrosive enough to cause it to have a UST system release due to corrosion during its operating life.~~

~~(b) Owners and operators shall maintain records that demonstrate compliance with paragraph (a) of this subsection for the remaining life of the tank.~~

~~(3) The document incorporated by reference in Section 4 of this administrative regulation shall be used in meeting the require-~~

~~ments of subsections (1) and (2) of this section.~~

~~Section 4. Incorporation by Reference. (1) The National Association of Corrosion Engineers Standard RP0285-2002, Item Number 21030, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection", April 2002, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Blvd., Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~

~~(3) This material may also be obtained by calling the Division of Waste Management at (502) 564-5981 or on the Division's Web page located at www.waste.ky.gov.~~]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the types of underground storage tanks that will be subject to the requirements of 401 KAR Chapter 42.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the scope of the underground storage tank program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing the scope of the underground storage tank program consistent with the federal 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 the scope of the underground storage tank program.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing administrative regulation by placing many of the UST systems that were previously deferred into the excluded category. It deletes the interim prohibition language.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the scope of the underground storage tank program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by establishing the scope of the underground storage tank program that is consistent with the federal program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute by excluding those underground storage tanks which will not be regulated by the agency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Anyone owning an underground storage tank that is not excluded in accordance with this administrative regulation will be subject to the requirements of 401 KAR Chapter 42.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are not actions to take in accordance with this amendment. This administrative regulation establishes the scope of the underground storage tank program. Many of the UST systems that were previously deferred have become excluded in this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Not applicable.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not applicable.

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

(a) Initially: It will not cost the agency any additional funding to implement this amendment.

(b) On a continuing basis: It will not cost the agency any additional funding to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will be funded using tank fees and grants from the US EPA.

(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 to increase fees to implement this amendment.

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

(9) TIERING: Is tiering applied? Yes. The requirements of 401 KAR 42:040 do not apply to emergency generator underground storage tanks.

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)?

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 of Waste Management; any agency with underground storage tanks.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 40 C.F.R. 280.10, KRS 224.60-105

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

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

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

(c) How much will it cost to administer this program for the first year? The Division of Waste will not incur additional costs to implement the amendment.

(d) How much will it cost to administer this program for subse-

quent years? The Division of Waste will not incur additional costs to implement the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. Subpart A

2. State compliance standards. KRS 224.60-105

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 280.10; 40 C.F.R. 280.11

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal mandate currently requires deferral of certain requirements for particular systems.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The US EPA has notified states of draft language that is consistent with the approach for exclusions found in the proposed amendment to this administrative regulation.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:020. UST systems: design, construction, installation, and registration.

RELATES TO: KRS 224.01, 224.10, 224.60, Chapter 322, Chapter 322A, 40 C.F.R. Part 280 Subpart B[, Part 281,] 42 U.S.C. 6991c, 42 U.S.C. 6991k, 6991e

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105,, 42 U.S.C. 6991k, 6991e [40 C.F.R. Part 280 Subpart B, Part 281, 42 U.S.C. 6991c]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [Environmental and Public Protection] cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks [tank (UST) systems] by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements [standards] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. [401 KAR Chapter 42 identifies requirements for UST systems.] This administrative regulation establishes requirements concerning performance standards, registration, designated compliance managers and UST facility employees, and alternatives for upgrading existing UST systems.

Section 1. Registrations. (1)(a) The owner shall submit, to the cabinet, a UST Facility Registration Form, DEP 7112 for each UST facility within thirty (30) days of bringing a UST system into operation.

(b) The form shall be signed by the owner and operator of the UST system; and

(c) The form shall be notarized.

(2)(a) Except as established in Section 2 of this administrative regulation, the owner shall submit to the cabinet an amended UST Facility Registration Form, DEP 7112 within thirty (30) days of any change to information contained within the most recently submitted UST Facility Registration Form;

(b) The form shall be signed by the owner and operator of the UST system; and

(c) The form shall be notarized.

(3) An amended UST Facility Registration Form, DEP 7112 shall be submitted for a UST system being placed into temporary closure for more than six (6) months.

(4) An unregistered UST system discovered during permanent closure activities conducted in accordance with 401 KAR 42:070 shall be listed on the Closure Assessment Report incorporated by reference in 401 KAR 42:070.

(5) With the exception of unregistered UST systems discovered during permanent closure activities in accordance with subsection (4) of this section, an unregistered UST system that, after October 1, 2011, is determined to have been in operation after January 1, 1974, shall register in accordance with Section 1(1) of this administrative regulation.

Section 2. Change of Address for UST Owner. An owner shall notify the cabinet of an address change by one (1) of the following:

(1) Submittal of an amended UST Facility Registration Form, DEP 7112; or

(2) Submittal of an Address Change Form for Owners of UST Systems, DEP 0060.

Section 3.[Application of Federal Regulations. (1) The requirements concerning performance standards, registration, and alternatives for upgrading UST systems are governed by 40 C.F.R. Part 280, Subpart B and this administrative regulation.

(2) 40 C.F.R. 280.22(b) allows for state forms to be used in lieu of federal forms for registration of UST systems. The "UST Facility Registration Form", DEP 7112, (August 2006) shall be used in meeting the requirements of this administrative regulation, 40 C.F.R. 280 Subpart B and 401 KAR 42:200.

Section 2. New Registrations. The current owner of a UST system or UST systems shall notify the cabinet of the existence of the UST system or systems by completing the "UST Facility Registration Form", DEP 7112, (August 2006). This form shall be submitted to the cabinet no later than thirty (30) days after installation of the UST system or systems and shall be signed by the owner and operator of the UST system or systems.

Section 3. Amended Registrations. (1) The owner or operator shall submit an amended "UST Facility Registration Form", DEP 7112, (August 2006), that specifically indicates all amendments, within thirty (30) days of any change to the following items:

(a) Owner or operator of the UST system or systems;

(b) Description of the UST system or systems; or

(c) Financial responsibility.

(2) If an unregistered UST system or systems is discovered during permanent closure activities pursuant to 401 KAR 42:070, an amended "UST Facility Registration Form", DEP 7112, (August 2006), shall be submitted to the cabinet to register the newly-discovered UST system.

Section 4.] Changes of Ownership. (1) If ownership of a UST system changes, the new owner shall complete and submit an amended ["]UST Facility Registration Form["], DEP 7112, [(August 2006),] to indicate the new ownership. The form shall include the previously-assigned agency interest number and shall be submitted to the cabinet within thirty (30) days after the transaction.

(2) If an owner sells a UST system, the seller shall:

(a) Advise the new owner of the obligation to submit an amended ["]UST Facility Registration Form["], DEP 7112, [(August 2006),] to the cabinet that indicates the change in ownership; and

(b) Submit to the cabinet, within thirty (30) days after the transaction, a copy of the properly-executed deed or other mutually-executed legal document supporting the sale of the UST system, along with a letter indicating the UST facility name as registered with the cabinet, the UST facility location, and the agency interest number.

Section 4.[5.] Issuance of a Certificate of Registration and Reimbursement Eligibility. Upon a determination by the cabinet that the ["]UST Facility Registration Form["], DEP 7112, [(August 2006),] is complete and accurate, the cabinet shall issue a ["]Certif-

icate of Registration and Reimbursement Eligibility[", DEP 7113[, ~~(August 2006). Upon acceptance of the completed form, the cabinet shall assign an agency interest number and shall notify the owner, in writing, of the agency interest number~~].

Section 5. Notification Requirements. Requirements for notification shall be as established in 40 C.F.R. 280.22.

Section 6. Notice and Verification of Installation of Underground Storage Tank and Piping. (1)(a) Owners shall submit the Notice of Intent to Install Underground Storage Tank or Piping, DEP 8044, to the appropriate Division of Waste Management Regional Office at least fourteen (14) days prior to installation of an underground storage tank or an entire piping run to afford the division representative the opportunity to be present during installation;

(b) If a division representative fails to be present on the date scheduled for installation, the installation may proceed.

(2) After April 1, 2012, owners and operators shall submit a Verification of Installation of a UST System Tank or Piping, DEP 7115, to the cabinet within thirty (30) days after bringing a UST system, tank or entire piping run into operation.

Section 7. Operational Training Requirements. (1) By May 1, 2012, owners or operators of UST systems at existing UST facilities shall designate at least one (1) individual, who shall be trained in accordance with subsections (5) and (6) of this section within thirty (30) days of designation, as the primary designated compliance manager (DCM) for a UST facility.

(2) After May 1, 2012, owners or operators of newly installed or newly acquired UST systems shall designate at least one (1) individual, who shall be trained in accordance with subsections (5) and (6) of this section within thirty (30) days of designation, as the primary designated compliance manager (DCM) for a UST facility, within thirty (30) days of the submittal of a UST Facility Registration Form, DEP 7112, unless an established primary DCM designation has been maintained.

(3) If the primary DCM no longer holds DCM status, the owner or operator shall, within thirty (30) days, designate another individual as primary DCM who shall, unless already trained as an associate DCM, obtain training in accordance with subsections (5) and (6) of this section within thirty (30) days of designation.

(4)(a) Owners or operators shall designate a primary DCM who may receive compliance related correspondence from the Underground Storage Tank Branch;

1. Owners or operators may designate themselves as the primary DCM, or

2. Owners or operators may designate another individual as the primary DCM;

(b) Owners or operators may designate multiple individuals as an associate DCM for a UST facility.

(5) Operational training, in accordance with this administrative regulation, shall be accomplished through use of the cabinet training system. Individuals unable to use or access the cabinet training system shall contact the Underground Storage Tank Branch for alternate designation and operational training procedures.

(6) Through completion of operational training in accordance with subsection (5) of this section, a DCM shall demonstrate an in-depth understanding of:

(a) UST system operation, maintenance, inspection, and testing requirements including, at a minimum: UST system spill prevention, overfill prevention, release detection, secondary containment, corrosion protection, product compatibility, and notification requirements as applicable to the current configuration of the UST system in accordance with this administrative regulation and 401 KAR 42:030, and 42:040;

(b) UST system recordkeeping requirements in accordance with 401 KAR 42:030 and 42:040;

(c) UST system release reporting, release response, temporary closure, permanent closure, initial abatement, and financial responsibility requirements in accordance with 401 KAR 42:050, 42:060, 42:070, and 42:090;

(d) All relevant equipment and its compliance with performance standards in accordance with 401 KAR 42:030 and 42:040;

(e) Requirements for delivery prohibition in accordance with 401 KAR 42:045; and

(f) UST facility employee training requirements in accordance with Section 8 of this administrative regulation.

(7) The owner or operator shall ensure that all DCMs successfully repeat the training annually, within twelve (12) months of the most recent training date.

Section 8. UST Facility Employee Training Requirements. (1) The owner or operator shall ensure that all employees associated with the operation of the UST system receive annual training in the following areas:

(a) Response to an equipment alarms;

(b) Fire extinguisher operation;

(c) Spill and overfill response;

(d) Threat to the public or to the environment caused by spills or releases;

(e) Emergency shut-off procedures; and

(f) Contact telephone numbers in response to emergencies caused by a release or a threatened release from a UST system.

(2) The owner or operator shall maintain a list of all employees trained in accordance with this administrative regulation. The owner or operator shall maintain written records of all training documentation supplied to UST facility employees and shall make those records available to the cabinet upon request.

Section 9. Performance Standards for new UST systems. (1) Performance standards for new UST systems shall be as established in 40 C.F.R. 280.20; and

(2) In addition to the performance standards in subsection (1) of this section, UST systems installed after April 1, 2012 shall meet the performance standards of Section 11 of this administrative regulation.

Section 10. Upgrading of existing UST systems. Upgrading requirements for existing UST systems shall be established in 40 C.F.R. 280.21.

Section 11. Double-Walled Tanks and Piping. (1) All new UST systems installed on or after April 1, 2012 shall be designed and manufactured with double-walled construction, and shall meet the requirements in the UST System Installation and Maintenance Outline, including continuous electronic interstitial monitoring.

(2) All existing single-walled piping shall be permanently closed in accordance with 401 KAR 42:070, when an associated UST is permanently closed.

(3) Owners and operators shall install double-walled piping in accordance with the UST System Installation and Maintenance Outline when 100 percent of a piping run, extending from the tank to the farthest dispenser or other end-use equipment, excluding connectors, is replaced.

(4) Newly installed piping that is associated with a newly installed UST system dispenser, located in an area where a UST system dispenser did not previously exist, shall be designed and manufactured with double-walled construction and shall meet the requirements in the UST System Installation and Maintenance Outline.

(5) An existing tank may not be removed and reinstalled unless:

(a) The tank meets the requirements of the UST System Installation and Maintenance Outline;

(b) The tank is inspected and tested by the equipment's manufacturer prior to being reinstalled; and

(c) The owner or operator provides a written certification from the manufacturer that the tank is suitable for reinstallation.

Section 12. Under-Dispenser Containment (UDC) and Sumps. (1) Beginning April 1, 2012, all newly installed UST system dispensers, located in an area where a UST system dispenser did not previously exist, shall have UDC installed in accordance with this administrative regulation and the UST System Installation and Maintenance Outline.

(2) If equipment below the shear valve used to connect an existing UST system dispenser to the piping is replaced on or after

April 1, 2012, UDC shall be installed in accordance with this administrative regulation and the UST System Installation and Maintenance Outline.

(3) All sumps installed on or after April 1, 2012 shall meet the liquid-tight containment requirements in the UST System Installation and Maintenance Outline.

(4) For all new or replaced tanks or piping installed on or after April 1, 2012, the following UST system components, associated with the new or replaced tanks or piping, shall be contained within liquid-tight contained sumps in accordance with the requirements of the UST System Installation and Maintenance Outline:

(a) All underground product piping connections at the top of a tank;

(b) All submersible pumps; and

(c) Any point where piping is joined underground;

(5) Owners or operators shall maintain written records of all installations of sumps and UDC, installed after April 1, 2012, for the operating life of the sump or UDC. These records shall be made available to the cabinet upon request.

(6) When a sump sensor monitoring device detects the presence of a liquid, the owner or operator shall ensure that the sump is immediately inspected.

(a)1. If free product is discovered within a sump, a suspected release shall be reported in accordance with 401 KAR 42:050; and

2. Free product shall be recovered and disposed of properly;

(b) If liquid, other than free product, is discovered within a sump, the sump shall be further inspected to determine the source of liquid infiltration and repaired as necessary.

Section 13. Emergency Shutoff Valves. (1) All pressurized piping systems which connect tanks to UST system dispensers shall be installed with emergency shutoff valves for each supply line at the base of each UST system dispenser.

(2) The emergency shutoff valves shall be rigidly anchored to the UST system dispenser island or another appropriate anchoring point in a manner that allows the emergency shutoff valve to close automatically in the event of severe impact to a UST system dispenser.

(3) An emergency shutoff valve found to be defective, inoperable, leaking, not functioning as designed by the manufacturer, or not rigidly anchored shall be immediately repaired or replaced by the owner or operator.

Section 14. Nonmetallic Piping. (1) All new or replaced underground nonmetallic piping installed after April 1, 2012 shall meet or exceed the Standard for Safety established by Underwriters Laboratories Inc. in Standard for Nonmetallic Underground Piping for Flammable Liquids - UL 971.

(2) The owner or operator shall repair non-metallic piping in accordance with 401 KAR 42:030 or permanently close nonmetallic piping in accordance with 401 KAR 42:070 if the piping exhibits any of the conditions identified in UST Systems: Inspecting and Maintaining Sumps and Spill Buckets, EPA 510-R-05-001.

Section 15. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

Section 16. [~~6. Interior Lining Inspection. (1) The interior lining of a UST system shall be inspected ten (10) years after installation of the UST system. Follow-up inspections shall occur on five (5) year intervals.~~

~~(2) The "Interior Lining Inspection Form", DEP 8050, (August 2006) shall be completed when an inspection is conducted and submitted to the cabinet within thirty (30) days of the inspection.~~

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

(a) "UST Facility Registration Form", DEP 7112, April 2011[~~(August 2006)~~];

(b) "Address Change Form for Owners of UST Systems", DEP 0060, (April 2011);

(c) "Certificate of Registration and Reimbursement Eligibility", DEP 7113, April 2011[~~(August 2006)~~]; and

(d) "UST System Installation and Maintenance Outline", April 2011;

(e) "Notice of Intent to Install Underground Storage Tank or Piping", DEP 8044, April 2011;

(f) "Installation Verification and Compatibility Form", DEP 7115, April 2011;

(g) "Standards for Nonmetallic Underground Piping for Flammable Liquids", July 1, 2005, Underwriters Laboratories Inc. UL-971; and

(h) "UST Systems: Inspecting and Maintaining Sumps and Spill Buckets", EPA 510-R-05-001, May 2005. [~~(c) "Interior Lining Inspection Form", DEP 8050 (August 2006).~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor [~~Underground Storage Tank Branch, 81 C. Michael Davenport Blvd.~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained at the Division of Waste Management's Web site at http://waste.ky.gov/ust. [~~by calling the Division of Waste Management at (502) 564-5981 or on the division's Web page located at www.waste.ky.gov.~~]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements concerning performance standards, registration, designated compliance managers and UST facility employees, and alternatives for upgrading existing UST systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to incorporate the provisions required by the federal Energy Policy Act of 2005.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by incorporating the requirements of the federal program for underground storage tanks.

(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 statute by establishing minimum requirements for registration, perfor-

mance standards, employee training, and upgrading of UST systems.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the federal regulation references and incorporates provisions required by the federal Energy Policy Act of 2005.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to keep the program current with the federal requirements for underground storage tanks.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statute by incorporating the requirements for new UST systems going in the ground and training for UST facility employees in accordance with the federal Energy Policy Act of 2005.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by incorporating the requirements of the Energy Policy Act of 2005.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 3,700 UST facilities in Kentucky, with approximately 11,500 underground storage tanks.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are new requirements for new UST systems going in the ground. The entities will have to install secondarily contained tanks and piping. There is also a requirement for verification of what was installed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It should not cost an entity any more money to install a double-walled system than it would to install a single-walled system. The industry is moving to double-walled and the price is comparable to single-walled systems. There should not be a cost associated with filling out the forms required by this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By installing double-walled systems, there should be a less of a chance of a release to the environment from a UST system.

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

(a) Initially: The new requirements for registration, installation, and verification should not cost additional funds from the agency to implement.

(b) On a continuing basis: The new requirements for registration, installation, and verification should not cost additional funds from the agency to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation is funded through tank fees and grants from the US EPA.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. The requirements for new installations after April 1, 2012 will all be 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)?

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 of Waste Management.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 40 C.F.R. 280 Subpart B, 42 U.S.C. 6991c, 42 U.S.C. 6991k, 42 U.S.C. 6991e; KRS 224.60

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 280 Subpart B; 42 U.S.C. 6991c, 42 U.S.C. 6991k, 42 U.S.C. 6991e

2. State compliance standards. KRS 224.60-105

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 280 Subpart B, 42 U.S.C. 6991c, 42 U.S.C. 6991k, 42 U.S.C. 6991e

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

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

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:030. UST system general operating requirements.

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart C, [~~40 C.F.R. Part 281,~~] 42 U.S.C. 6991c, 42 U.S.C. 6991k, 42 U.S.C. 6991e

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 42 U.S.C. 6991k, 42 U.S.C. 6991e, [~~40 C.F.R. Part 280 Subpart C, 40 C.F.R. Part 281, 42 U.S.C. 6991c~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [~~Environmental and Public Protection~~] cabinet to develop and conduct programs that [~~which~~] provide for the prevention, abatement, and control of contaminants which may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting [~~UST system releases~~], corrective actions, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105(3)

requires the cabinet to establish a regulatory program which implements federal requirements for underground storage tanks [~~and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations. 401 KAR Chapter 42 identifies requirements for underground storage tanks.~~] This administrative regulation establishes requirements for spill and overfill control, operation and maintenance of corrosion protection, compatibility, repairs, and reporting and recordkeeping.

Section 1. Spill and Overfill Control. Spill and overfill control requirements shall be as established in 40 C.F.R. 280.30.

Section 2. Spill Containment Devices (Spill Buckets). (1) All spill containment devices installed after April 1, 2012, shall be double-walled, liquid-tight, compatible with the substance being stored in the tank, and installed in accordance with the manufacturers' instructions.

(2)(a) All double-walled spill containment devices installed after April 1, 2012 shall be tested at installation, and every twelve (12) months thereafter, for liquid-tightness using a hydrostatic test, or a test method approved by the double-walled spill containment device's manufacturer.

(b) The test shall be documented on Spill Containment Device Test, DEP 4065 or on a standardized form provided by the testing equipment manufacturers if the form contains, at a minimum, the same information.

1. Failing test results shall be submitted to the Underground Storage Tank Branch within seven (7) days of the test date;

2. Passing test results shall be submitted to the Underground Storage Tank Branch within thirty (30) days of the test date;

(c) Owners and operators shall maintain written records to document the current test results until the next test is performed.

(3) Owners and operators shall immediately repair or replace a damaged, defective, or leaking spill containment device.

(4) Owners and operators shall not allow regulated substances, liquids, or debris to accumulate in a spill containment device. Owners and operators shall remove all liquid accumulations and debris from a spill containment device immediately**.**

Section 3. Under-Dispenser Containment and Sumps. (1) Sumps and UDC shall be tested for liquid-tightness at least every three (3) years. Testers shall conduct a hydrostatic, vacuum, or other manufacturer-approved integrity test to verify liquid-tightness.

(2) Owners and operators shall maintain written documentation of the test results for at least three (3) years.

(3)(a) Failing test results shall be submitted to the Underground Storage Tank Branch within seven (7) days of the test date;

(b) Passing test results shall be submitted to the Underground Storage Tank Branch within thirty (30) days of the test date;

Section 4. Overfill Prevention Devices. All overfill prevention devices installed after April 1, 2012 shall be installed in an extractable fitting to allow for inspection, maintenance, and testing of the device.

Section 5. Corrosion Protection. (1) UST system components that routinely contain product and are regularly or intermittently in contact with soil, water, or backfill shall be protected from corrosion.

(2) Owners or operators with steel tanks or piping that do not have corrosion protection installed in accordance with subsection (1) of this section shall remove all regulated substances and initiate permanent closure, in accordance with 401 KAR 42:070, by January 1, 2012.

Section 6. Operation and Maintenance of Corrosion Protection. Requirements for operation and maintenance of corrosion protection shall be as established in 40 C.F.R. 280.31.

Section 7. Cathodic Protection System Evaluation. (1) A cathodic protection system evaluation shall be required within 180 days from the date of installation, repair, or modification of a cathodic protection system and at least every three (3) years thereafter.

(2) If the cathodic protection system fails an evaluation, but the cathodic protection system evaluator determines the failure may be attributable to adverse physical conditions related to the evaluation and determines that the system is otherwise in good working condition, then a reevaluation may be performed within ninety (90) days of the failing evaluation. A reevaluation shall only be performed once for a failed system evaluation. If the cathodic protection system fails the reevaluation then repairs or modifications shall be completed as soon as practicable, but not more than ninety (90) days after the performance of the evaluation,

(3) If the cathodic protection system fails the evaluation, and it does not qualify for the ninety (90) day reevaluation period in subsection (2) of this section, then repairs or modifications shall be completed as soon as practicable, but not more than ninety (90) days after the performance of the evaluation.

(4) If the cathodic protection system evaluation results are inconclusive as a result of inconsistent remote and local potential readings, a corrosion expert shall evaluate the cathodic protection system and make a determination regarding cathodic protection system adequacy for the UST facility.

(5)(a) The owner or operator shall complete the 60-Day Record of Rectifier Operation for Impressed Current Cathodic Protection System, DEP 8054, every sixty (60) days; and

(b) The form shall be retained by the owner or operator for at least three (3) years and made available to the cabinet upon request.

(6) The owner or operator shall ensure that a cathodic protection system evaluator completes, signs, and submits to the cabinet, the applicable forms incorporated by reference in Section 13, paragraphs (1)(a) and (b) of this administrative regulation for the purpose of cathodic protection system evaluation within thirty (30) days of system evaluation.

Section 8. Impressed Current Cathodic Protection System Design or Modification. The design of, or modifications to, an impressed current corrosion protection system shall only be conducted by a person qualified as a corrosion expert.

Section 9. Cathodic Protection System Evaluators. (1) To test cathodic protection systems, a person shall have completed a third-party corrosion protection tester training, which includes, at a minimum, the following:

(a) Basics of corrosion;

(b) Underground corrosion;

(c) Corrosion prevention;

(d) Assessing physical conditions for corrosion potential;

(e) Hands on field experience in the testing of both impressed current and sacrificial anode systems, which includes:

1. Using reference cells;

2. Taking remote readings for appropriate systems;

3. How to read and understand a rectifier;

4. Taking measurements/ -850 criterion; and

5. Typical and nontypical problems;

(f) Review of EPA's regulatory requirements for corrosion protection; and

(g) Review of standards and recommended practices from corrosion protection publications including, NACE, API, NFPA, STI, and ASTM.

(2) Owners or operators shall ensure that individuals, qualified to perform cathodic protection system evaluations in accordance with subsection (1) of this section, submit to the cabinet upon request, documentation verifying that the training requirements have been met.

Section 10. Compatibility. (1) Requirements for compatibility shall be as established in 40 C.F.R. 280.32; and

(2) The owner or operator of a UST system installed after April 1, 2012 shall submit the Installation Verification and Compatibility Form, DEP 7115 within thirty (30) days of bringing the UST system into operation in order to verify that the UST system is compatible with the regulated substance stored.

(3) A UST System Compatibility Form, DEP 6089 shall be

submitted to the cabinet when the regulated substance stored is no longer covered by a previously submitted Installation Verification and Compatibility Form, DEP 7115 or UST System Compatibility Form, DEP 6089.

Section 11. UST System Repairs. (1) UST system repairs allowed shall be as established in 40 C.F.R. 280.33.

(2) UST system repairs shall be performed by a contractor certified by the State Fire Marshal's Office, in accordance with 815 KAR 30:060.

(3) Owners and operators of UST systems shall ensure that repairs will prevent releases due to structural failure or corrosion.

(4)(a) Prior to returning the repaired tank or piping to service, owners and operators shall conduct a tank or line tightness test, adequate to detect a release from the repaired portion of the tank or piping, using a testing method certified by an independent third-party evaluator that is capable of detecting a one-tenth (0.1) gallon per hour leak rate.

(b) Owners and operators shall submit the results of all tank or line tightness tests in accordance with 401 KAR 42:040, Section 4.

Section 12. Upgrading Interior-lined Steel Tanks with External Corrosion Protection. (1) Not later than December 22, 2013, all existing steel tanks equipped with interior lining as the sole method of corrosion protection shall be upgraded by the addition of an impressed current cathodic protection system or shall be permanently closed in accordance with 401 KAR 42:070.

(2)(a) A manned-entry integrity assessment of a steel tank, conducted by a contractor certified by the State Fire Marshal's Office pursuant to 815 KAR 30:060 utilizing a method certified by an independent third-party evaluator, shall be performed prior to upgrading an interior-lined steel tank with an impressed current cathodic protection system. The manned-entry integrity assessment shall be performed not more than twelve (12) months prior to the addition of an impressed current cathodic protection system.

(b) Documentation of the manned-entry integrity assessment and results, including the average tank metal thickness, shall be submitted to the cabinet on the Manned Entry Integrity Assessment, DEP 8050 within thirty (30) days of the assessment being conducted.

(3) If the integrity assessment determines that the average metal thickness of the steel tank is less than seventy-five (75) percent of the tank's original metal thickness, the steel tank shall not be upgraded and shall be permanently closed in accordance with 401 KAR 42:070.

Section 13. Recordkeeping. Requirements for recordkeeping shall be as established in 40 C.F.R. 280.34(b) and (c).

Section 14. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

Section 15. [~~Application of Federal Regulations. (1) The requirements for spill and overflow control, operation and maintenance of corrosion protection, compatibility, repairs, reporting and recordkeeping for underground storage tanks are governed by 40 C.F.R. Part 280, Subpart C and this administrative regulation.~~

~~(2) The forms incorporated by reference in Section 4 of this administrative regulation shall be submitted to the cabinet within thirty (30) days of completion of cathodic protection system testing to document the results of the tests which are required by subsection (1) of this section.~~

~~Section 2. Cathodic Protection System Evaluation. To test cathodic protection systems in the Commonwealth of Kentucky, a person shall:~~

~~(1) Meet the definition of "Cathodic protection tester" as defined by 401 KAR 42:005;~~

~~(2) At a minimum, be certified as a "Cathodic protection tester" by NACE International; or~~

~~(3) Have completed corrosion protection tester training, which includes the following:~~

~~(a) Basics of corrosion;~~

~~(b) Underground corrosion;~~

~~(c) Corrosion prevention;~~

~~(d) Assessing physical conditions for corrosion potential;~~

~~(e) Review of EPA's regulatory requirements for corrosion protection;~~

~~(f) Hands on field experience in the testing of both impressed current and sacrificial anode systems, which includes:~~

~~1. Using reference cells;~~

~~2. Taking remote readings;~~

~~3. How to read and understand a rectifier;~~

~~4. How to use a test station;~~

~~5. Taking measurements/ -850 criterion; and~~

~~6. Typical and nontypical problems; and~~

~~(g) Review of standards and recommended practices from corrosion protection materials including, NACE, API, NFPA and ASTM.~~

~~Section 3. Actions Required as a Result of the Cathodic Protection System Evaluation. (1) If the cathodic protection is adequate, the cathodic protection system shall be retested within three (3) years of the date of testing.~~

~~(2) If the cathodic protection system fails the evaluation, but the Cathodic protection tester determines the failure may be attributable to adverse testing conditions and determines the system is otherwise in good working condition, then a retest may be performed within ninety (90) days of the failing evaluation. Action to repair or modify the cathodic protection system shall not be required during the ninety (90) day retesting period. If the retest conducted within the ninety (90) day retesting period indicates a system failure, then repairs or modifications shall be completed as soon as practicable, but no more than ninety (90) days after the expiration of the ninety (90) day retesting period.~~

~~(3) If the cathodic protection system fails the evaluation, and it does not qualify for the ninety (90) day retesting period in subsection (2) of this section, then repairs or modifications shall be completed as soon as practicable, but no more than ninety (90) days after the performance of the evaluation.~~

~~(4) A cathodic protection system evaluation shall be required within 180 days after the installation, repair, or modification of a cathodic protection system.~~

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

(a) "Galvanic (Sacrificial Anode) Cathodic Protection System Evaluation", DEP 8052, April 2011[~~January 2006~~];

(b) "Impressed Current Cathodic Protection System Evaluation", DEP 8053, April 2011[~~January 2006~~];

(c) "60-Day Record of Rectifier Operation for Impressed Current Cathodic Protection System", DEP 8054, April 2011[~~January 2006~~].

(d) "UST System Compatibility Form", DEP 6089, April 2011;

(e) "Spill Containment Device Test", DEP 4065, April 2011; and

(f) "Manned Entry Integrity Assessment", DEP 8050, April 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor [~~Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Division of Waste Management's Web site at http://waste.ky.gov/ust [~~page located at www.waste.ky.gov.~~]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for spill and overfill control, operation and maintenance of corrosion protection, compatibility, repairs, and recordkeeping.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the general operating requirements for UST systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing the general operating requirements for UST systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing the general operating requirements for UST systems.

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

(a) How the amendment will change this existing administrative regulation: The amendment specifies the federal sections of 40 C.F.R. Subpart C. It also includes the specific forms that are required in Kentucky. The amendment adds extension language. The amendment also adds the required provisions from the federal Energy Policy Act of 2005.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the specific forms that are required in Ky and to incorporate provisions of the federal Energy Policy Act of 2005.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by including the provisions of the federal Energy Policy Act of 2005.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute by making the program current with federal requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 3,700 registered UST facilities 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: Regulated entities will have to submit the appropriate forms and operate their UST systems in accordance 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): It should not cost the entities additional money to fill out the forms required by this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying, the entities will be less likely to have environmental releases.

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

(a) Initially: There is no additional cost to the agency to implement this amendment.

(b) On a continuing basis: There is no additional cost to the agency to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment will be implemented and enforced with funds from tank fees and the US EPA.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All UST systems have to meet the general operating requirements established in 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)?

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 of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 40 C.F.R. 280 Subpart C; KRS 224.60-105; 42 U.S.C. 6991k; 42 U.S.C. 6991e

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost additional funding to implement.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost additional funding to implement.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 280 Subpart C; 42 U.S.C. 6991k; 42 U.S.C. 6991e

2. State compliance standards. KRS 224.60-105

3. Minimum or uniform standards contained in the federal

mandate. 40 C.F.R. 280 Subpart C; Energy Policy Act of 2005

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment requires owners and operators to use Kentucky specific forms.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:040. UST system release detection.

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart D, [~~Part 281,~~] 42 U.S.C. 6991c, 6991k, 6991e

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 42 U.S.C. 6991k, 6991e [~~40 C.F.R. Part 280 Subpart D, Part 281, 42 U.S.C. 6991c~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [~~Environmental and Public Protection~~] Cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks [~~tank (UST) systems~~] by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements [~~standards~~] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. [~~401 KAR Chapter 42 identifies requirements for UST systems.~~] This administrative regulation establishes the requirements for UST system release detection and recordkeeping.

Section 1. General Requirements for all UST Systems. General requirements for all UST systems shall be as established in 40 C.F.R. 280.40.

Section 2. Requirements for Petroleum UST Systems. Requirements for petroleum UST systems shall be as established in 40 C.F.R. 280.41.

Section 3. Requirements for Hazardous Substance UST Systems. Requirements for hazardous substance UST systems shall be as established in 40 C.F.R. 280.42.

Section 4. System Integrity Testing and Reporting. (1) The following tests shall be performed in accordance with the equipment manufacturer's instructions, 401 KAR 42:020, 42:030 and this administrative regulation: [~~Application of Federal Regulations. (1) The requirements for UST system release detection and recordkeeping for UST systems are governed by 40 C.F.R. Part 280 Subpart D and this administrative regulation.~~

~~(2) The documents incorporated by reference in Section 3 of this administrative regulation shall be used in meeting the requirements of subsection (1) of this section.~~

~~(3) The results of the following tests required by 40 C.F.R. Part 280 Subpart D shall be submitted to the cabinet within thirty (30) days of the test completion:~~]

(a) [~~Annual~~] Line Tightness Test [~~for Pressurized Piping~~];

(b) Automatic [~~Annual Operational~~] Line Leak Detector Test;

(c) Operational Test of Electronic Release Detection Monitoring Equipment; and

(d) [~~Five (5) year~~] Tank Tightness Test[~~; and~~

~~(d) Tri-annual Line Tightness Test for American Suction Piping~~].

(2)(a) Results of a test conducted in accordance with subsection (1) of this section shall be submitted on:

1. For line tightness tests: "Line Tightness Test", DEP 4064;

2. For automatic line leak detector test: "Automatic Line Leak Detector Operational Test", DEP 4062;

3. For operational test of electronic release detection monitoring equipment: "Electronic Release Detection Equipment Test", DEP 4063; and

4. For tank tightness test: "Tank Tightness Test", DEP 4066;

(b) Results for a test conducted in accordance with subsection (1) of this section may be submitted on a standardized form provided by the testing equipment manufacturer if the form contains, at a minimum, the same information as the form listed in paragraph (a) of this subsection.

(3)(a) Owners and operators shall immediately report to the cabinet, as a suspected release in accordance with 401 KAR 42:050, failing results of a test performed in accordance with subsection (1) of this section.

(b) All documentation of failing test results shall be submitted to the Underground Storage Tank Branch within seven (7) days of the test date.

(c) All documentation of passing test results shall be submitted to the Underground Storage Tank Branch within thirty (30) days of the test date.

Section 5. Tank and Line Tightness and Line Leak Detector Testers. (1) Owners and operators shall ensure that tests of tanks and piping for tightness and operational tests of automatic line leak detectors are conducted by a person who meets the following requirements:

(a) Uses testing equipment and methods that are certified, as of the time of testing, by an independent third-party evaluator;

(b) Has completed a training course conducted or endorsed by the manufacturer of the testing equipment;

(c) Maintains training credentials as prescribed by the manufacturer of the testing equipment; and

(d) Provides a copy of their training credentials to the cabinet upon request.

(2) Failure to provide credentials as established in subsection (1)(d) of this section, upon written request from the cabinet, shall render the test results invalid.

Section 6. Methods of release detection for tanks and piping. (1) Effective April 1, 2012, methods of release detection for tanks and piping installed prior to April 1, 2012 shall be as established in 40 C.F.R. 280.43 (b), (c), (d), (g), (h), and 280.44;

(2) Owners and operators may use automatic tank gauging (ATG) or statistical inventory reconciliation (SIR) as a release detection method for tanks installed, prior to April 1, 2012, provided that the SIR method is certified, as of the time of testing, by an independent third-party evaluator.

(3)(a) In accordance with the UST System Installation and Maintenance Outline, electronic interstitial monitoring shall be the primary method of release detection for all UST systems installed after April 1, 2012.

(b) Owners and operators shall only install electronic devices which are capable of printing sensor readings. Owners and operators shall obtain a record, at least once every thirty (30) days, to verify that release detection is being performed and that releases have not occurred.

(4) For UST systems installed prior to April 1, 2012 for which the owner or operator has established electronic interstitial monitoring as the primary method of release detection:

(a) For electronic devices which are capable of printing sensor readings, owners and operators shall obtain a record, at least once every thirty (30) days, to verify that release detection is being performed and that releases have not occurred; or

(b) For electronic devices which are not capable of printing sensor readings, a monthly log shall be maintained and documented on Visual Interstitial Log, DEP 5041, to verify that release detection is being performed and that releases have not occurred.

(5) All release detection records for the most recent monthly verification, and for the preceding twelve (12) months, shall be maintained.

(6) All electronic release detection monitoring equipment for the UST system shall be operationally tested annually in accordance with the equipment manufacturer's instructions and be ca-

pable of detecting a leak rate equivalent to one-tenth (0.1) gallons-per-hour.

(a) The test shall be performed by a person utilizing testing equipment and methods that are certified, as of the time of testing, by an independent third-party evaluator; and

(b) A copy of the tester's training credentials shall be provided to the cabinet upon request.

(7) Owners and operators shall not remove, alter, or disable release detection monitoring equipment, required to be maintained under this administrative regulation, in a manner that would render the equipment inaccurate or inoperable.

Section 7. Line Leak Detectors. (1) All pressurized piping systems shall be equipped with an automatic line leak detector (ALLD).

(2)(a) All ALLDs shall be performance-tested annually by a qualified individual meeting the requirements of Section 5 of this administrative regulation.

(b) All ALLD performance-testing shall be simulated at the dispenser located furthest away from the ALLD or at the highest elevation above the ALLD.

(c) All ALLDs shall be installed within the UST system during the test as it would be during normal operation.

(d) For electronic line leak detectors, the performance test shall verify that the automatic line leak detector will shut down the Submersible Turbine Pump (STP) and is capable of detecting a leak rate equivalent to three (3) gallons-per-hour at ten (10) pounds per square inch of line pressure.

(e) For mechanical line leak detectors, the performance test shall verify that the automatic line leak detector will be capable of detecting a leak rate equivalent to three (3) gallons-per-hour at ten (10) pounds per square inch of line pressure while reducing the flow in accordance with manufacturer's recommendation. In addition, the test shall verify that the STP relay switch is not malfunctioning permanently in the on position, which would prevent the mechanical line leak detector from operating properly.

Section 8. Release detection recordkeeping. Requirements for release detection recordkeeping shall be as established in 40 C.F.R. 280.45.

Section 9. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

Section 10. [~~2. Extensions. The owner or operator of a UST system may request extension of a time frame for any report required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.~~

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

(a) "Automatic Line Leak Detector", DEP4062, April 2011;

(b) "Line Tightness Test", DEP 4064, April 2011;

(c) "Tank Tightness Test", DEP 4066, April 2011;

(d) "Electronic Release Detection Equipment Test", DEP 4063 April 2011; and

(e) "Visual Interstitial Log", DEP 5041, April 2011. [~~"Site Assessment Outline for External UST System Release Detection Methods (Groundwater, Vapor, and Interstitial Monitoring)" (August 2006); and~~

~~(b) "External UST System Release Detection Well Form", DEP Form 8051 (January 2006).~~]

(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Underground Storage Tank Branch, 200 Fair Oaks Lane, Second Floor[~~81 C. Michael Davenport Blvd.~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained by calling the Division of Waste Managements' Web site at http://waste.ky.gov. [~~Management at (502) 564-5981 or on the division's Web page located at www.waste.ky.gov.~~]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for UST system release detection and recordkeeping.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for UST system release detection and recordkeeping.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing requirements for leak detection and record keeping.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing requirements for leak detection and record keeping.

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

(a) How the amendment will change this existing administrative regulation: The amendment incorporates standardized forms to be submitted to document results of release detection testing. It also establishes requirements for those individuals conducting testing.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to be consistent with federal regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by implementing the federal requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by requiring leak detection and recordkeeping.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 3,700 registered UST facilities 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: Regulated entities will have to conduct testing and submit results to the agency.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The requirement already exists to conduct the test. It should not cost additional money to submit results to the agency.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Conducting testing in accordance with this amendment should give owners an idea about the status of releases from the UST system.

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

(a) Initially: It will not cost the agency additional money to implement this amendment.

(b) On a continuing basis: It will not cost the agency additional money to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment will be implemented and enforced with funding from tank fees and the US EPA.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. The testing requirements are 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 Division of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.60-105; 40 C.F.R. 280 Subpart D; 42 U.S.C. 6991k, 42 U.S.C. 6991e

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 280 Subpart D; 42 U.S.C. 6991k, 42 U.S.C. 6991e

2. State compliance standards. KRS 224.60-105

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 280 Subpart D; 42 U.S.C. 6991k, 42 U.S.C. 6991e

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

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

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:050. UST system release reporting, investigation, and confirmation.

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart E, [~~40 C.F.R. Part 281,~~] 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105[~~, 40 C.F.R. Part 280 Subpart E, 40 C.F.R. Part 281, 42 U.S.C. 6991c~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [~~Environmental and Public Protection~~] cabinet to develop and conduct programs which provide for the prevention, abatement, and control of contaminants that[~~which~~] may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting [~~UST system releases~~], corrective actions, closures, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program which implements federal requirements for underground storage tanks [~~and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations~~]. 401 KAR Chapter 42 identifies requirements for underground storage tanks. This administrative regulation establishes the requirements for reporting of suspected UST system releases, and investigation of off-site impacts.

Section 1. UST System Release Reporting. (1) Reporting of suspected releases shall be as established in 40 C.F.R. 280.50; and

(2) [~~Application of Federal Regulations. The requirements for reporting of suspected UST system releases and investigation of off-site impacts for underground storage tank systems are governed by 40 C.F.R. Part 280 Subpart E and this administrative regulation.~~

~~Section 2. Suspected UST System Release Reporting.~~] A suspected or confirmed UST system release shall be reported immediately to the Environmental Response Branch [~~Team~~] at (800) 928-2380 or (502) 564-2380.

Section 2. Declared Environmental Emergencies for UST Systems. During the course of an environmental emergency declared by the Environmental Response Branch, the cabinet shall have the authority to prevent delivery, deposit, or storage of regulated substances and require all actions necessary to protect human health and the environment.

Section 3. Investigation Due to Off-site Impacts. Investigations due to off-site impacts shall be as established in 40 C.F.R. 280.51.

Section 4. Suspected Release Investigation and Confirmation Steps. (1) Steps for suspected release investigation and confirmation shall be as established in 40 C.F.R. 280.52; and

(2) Owners and operator shall perform a site check in accordance with the Site Check Outline, incorporated by reference in 401 KAR 42:060, when directed in writing by the cabinet.

Section 5. Reporting and Cleanup of Spills and Overfills. (1) Except as established in subsection (2) of this section, reporting and cleanup requirements for spills and overfills shall be as established in 40 C.F.R. 280.53;

(2) The reporting requirements for spills and overfills for diesel shall be as established in KRS 224.01-400(11).

Section 6. Extensions. (1) With the exception of the reporting requirements in Sections 1(2) and 5 of this administrative regulation, the owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment. [~~Section 3. Extensions. With the exception of the reporting requirements in Section 2 of this administrative regulation, the owner or operator of a UST system may request an extension of the timeframe for reports required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.~~]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the release reporting requirements for USTs and the requirements for investigations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to be consistent with the release reporting and investigation of off-site impacts required by federal regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by implementing the federal requirements and by specifying the reportable quantity for diesel.

(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 reportable quantities and procedures for releases from USTs.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing statute by breaking down the federal subpart into specific sections. The amendment also clarifies the reporting requirement for diesel. The amendment clarifies the role of the Environmental Response Branch during a declared emergency.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to be consistent with KRS 13A, and to clarify reporting requirements for diesel and the role of the Environmental Response Branch during a declared emergency.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by referring to the federal requirements when applicable.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by imposing the federal regulations when applicable, and the state reportable quantity for diesel.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 3,700 UST facilities registered with the Division of Waste Management.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment clarifies that UST facility owners and operators shall report confirmed UST system releases to the Environmental Response Branch.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It should not cost additional money to the UST system owner or operator to report a confirmed release.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By reporting a confirmed release, the UST system owner or operator may be eligible for PSTEAF reimbursement if corrective action is necessary.

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

(a) Initially: There is no additional cost to the agency to implement this amendment.

(b) On a continuing basis: There is no additional cost to the agency to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding will come from tank fees, US EPA, and PSTEAF.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or affect any fees.

(9) TIERING: Is tiering applied? Yes. The threshold for reporting a release for gasoline and diesel are different. However, the reporting requirements for spills and overfills are the same once the threshold quantity is met.

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)?

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Environmental Protection.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.60-105, 224.01-400

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 280 Subpart E

2. State compliance standards. KRS 224.60-105, 224.01-400

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 280.50, 40 C.F.R. 280.51, 40 C.F.R. 280.52, and 40 C.F.R. 280.53

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The requirements for spill and overfill reporting for diesel fuel are statutorily set in KRS 224.01-400(11).

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:060. UST System release response and corrective action for UST systems containing petroleum or hazardous substances.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.60, 40 C.F.R. Part 280 Subpart F, [~~Part 281,~~] 42 U.S.C. 6991-6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137[~~, 40 C.F.R. Part 280 Subpart F, Part 281, 42 U.S.C. 6991c~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [~~Environmental and Public Protection~~] cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks [~~tank (UST) systems~~] by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements [~~standards~~] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. [~~401 KAR Chapter 42 identifies requirements for UST systems.~~] This administrative regulation establishes the requirements for UST system release response, site characterization, corrective action, and public participation.

Section 1. 1. General Requirements. General requirements shall be as established in 40 C.F.R. 280.60.

Section 2. Initial Response. Initial response requirements shall be as established in 40 C.F.R. 280.61.

Section 3. Initial Abatement Measures and Site Check. (1) Requirements for initial abatement and site check shall be as established in 40 C.F.R. 280.62 and 280.63.

(2) The following documents shall be used to meet the requirements of subsection (1) of this section:

(a) Release Response and Initial Abatement Requirements Outline;

(b) Site Check Outline;

(c) Site Check Report Form, DEP 6082;

(d) Vapor Intrusion Building Assessment, DEP 0058; and

(e) Vapor Intrusion Assessment, DEP 0057.

Section 4. Free Product Removal. Removal of free product shall be as established in 40 C.F.R. 280.64.

Section 5. Investigations for Soil and Groundwater Cleanup. (1) Investigations for soil and groundwater cleanup shall be as established in 40 C.F.R. 280.63 and 280.65.

(2) The following documents shall be used in meeting the requirements of subsection (1) of this section:

(a) Site Investigation Outline;

(b) Over-Excavation Report Form, DEP 4067; and

(c) Site Investigation Report Form, DEP 8049;

(3) Owners and operators shall undertake, as directed in writing by the cabinet, corrective actions necessary to ensure all domestic-use wells, domestic-use springs, and domestic-use cisterns impacted by a release from a regulated UST system meet the maximum contaminant levels specified in 401 KAR Chapter 8, applicable to the regulated substance stored.

Section 6. Corrective Action Plan. (1) Requirements for a corrective action plan shall be as established in 40 C.F.R. 280.66;

(2) The following documents shall be used to meet the requirements of subsection (1) of this section:

(a) Corrective Action Outline;

(b) Over-Excavation Report Form, DEP 4067;

(c) Corrective Action Report Certification, DEP 5040; and

(d) Corrective Action Monitoring Report Form, DEP 8045.

Section 7. Public Participation. Public participation shall be as established in 40 C.F.R. 280.67.

Section 8. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment. [~~Application of Federal Regulations. (1) The requirements for UST system release response, site characterization, corrective action and public participation for UST systems are governed by 40 C.F.R. Part 280 Subpart F and this administrative regulation.~~

~~(2) The documents incorporated by reference in Section 4 of this administrative regulation shall be used in meeting the requirements of subsection (1) of this section.~~

~~Section 2. Extensions. The owner or operator of a UST system may request an extension of the time frame for reports required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.~~]

Section 9.[~~3.~~] No Further Action Letter. (1) If a UST facility has met all applicable requirements in 401 KAR Chapter 42, the cabinet shall issue a no further action letter [~~for the UST facility~~].

(2) Any unpaid registration fees due in accordance with 401 KAR 42:200, shall be paid in-full prior to the cabinet issuing a no further action letter [~~to any UST facility~~].

(3) Upon a determination by the cabinet that a threat to human health or the environment exists, related to a release or permanent closure for which a No Further Action letter was previously issued, the cabinet may revoke the No Further Action letter and require necessary action in accordance with 401 KAR Chapter 42.

Section 10.[~~4.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Release Response and Initial Abatement Requirements Outline", April 2011;

(b) "Site Check Outline", April 2011;

(c) "Site Check Report Form", DEP 6082, April 2011;

(d) "Vapor Intrusion Building Assessment", DEP 0058, April 2011;

(e) "Vapor Intrusion Assessment", DEP 0057, April 2011;

(f) "Site Investigation Outline", April 2011;

(g) "Over-Excavation Report Form", DEP 4067, April 2011;

(h) "Site Investigation Report Form", DEP 8049, April 2011;

(i) "Corrective Action Outline", April 2011;

(j) "Corrective Action Report Certification", DEP 5040, April 2011; and

(k) "Corrective Action Monitoring Report Form", DEP 8045, April 2011.[~~"Site Check Outline", (August 2006);~~

~~(b) "Site Investigation Outline", (August 2006);~~

~~(c) "Corrective Action Plan Outline", (August 2006);~~

~~(d) "UST System Release Response and Initial Abatement Requirements Outline", (August 2006); and~~

~~(e) "Site Investigation Checklist Form", DEP 8049, (August 2006).~~]

(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor [~~Underground Storage Tank Branch, 81 C. Michael Davenport Blvd.~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Division of Waste Management's Web site at http://waste.ky.gov/ust. [~~may also be obtained by calling the Division of Waste Management at (502) 564-5981 or on the division's Web page located at www.waste.ky.gov.~~]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for UST system release response, site characterization, corrective action, and public participation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because it refers to the federal requirements for corrective action, public participation, site characterization, and UST system release response.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by requiring at least the federal program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statute by establishing the requirements for UST system release response, site characterization, corrective action, and public participation.

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

(a) How the amendment will change this existing administrative regulation: The amendment incorporates forms and outlines to be used for UST system release response, site characterization, and corrective action.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make changes to the outlines and forms UST owners will use. This amendment should shift the focus from site characterization to corrective actions at UST facilities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by using the screening levels developed as part of the UK study to determine the extent of contamination in site characterization. The amendment also clarifies the breakdown of the federal requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute by clarifying the requirements for UST system release response, site characterization, and corrective action.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 3,700 UST facilities registered with the agency.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will have to use the revised outlines and forms to comply with the requirements of this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It should not cost the regulated entities additional funding to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the regulated entities will remediate sites to levels that protect human health and the environment.

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

(a) Initially: There is no additional cost to the agency to implement this amendment.

(b) On a continuing basis: There is no additional cost to the agency to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment will be funded by the PSTEAF, tank fees, and grants from the US EPA.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. The requirements for UST system releases, site characterization, and corrective actions are 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 Division of Waste Management.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 40 C.F.R. 280 Subpart F, KRS 224.60-105, 224.60-137.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost additional money to implement.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost additional money to implement.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 280 Subpart F

2. State compliance standards. KRS 224.60-105

3. Minimum or uniform standards contained in the federal mandate. Requirements for site check, site investigation, and corrective action

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky requires Kentucky specific forms for site investigation and corrective action activities.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:070. Out-of-service UST systems, temporary closure and permanent closure of UST systems, and change[-] in[-] service of UST systems.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.60, 40 C.F.R. Part 280 Subpart G, [~~Part 281,~~] 42 U.S.C. 6991-6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137[~~, 40 C.F.R. Part 280 Subpart G, Part 281, 42 U.S.C. 6991c~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [~~Environmental and Public Protection~~] cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks [~~tank (UST) systems~~] by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements [~~standards~~] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. [~~401 KAR Chapter 42 identifies requirements for UST systems.~~] This administrative regulation establishes the requirements for out-of-service UST systems, temporary and permanent closure of UST systems, and change in service of UST systems.

Section 1. [~~Application of Federal Regulations. The requirements for temporary closure, permanent closure, change-in-service, record-keeping, and applicability to previously closed UST systems are governed by 40 C.F.R. Part 280 Subpart G and this administrative regulation.~~

~~Section 2.~~] Applicability. (1) This administrative regulation shall apply to an[~~any~~] owner or operator of a UST system that has a UST system release confirmed after October 1, 2011 [~~the effective date of this administrative regulation~~], or has submitted a "Notice of Intent to Permanently Close Underground Storage Tank System" DEP 7114, [~~(January 2006)~~], that has been received by the appropriate Division of Waste Management [~~cabinet's~~] regional office after October 1, 2011 [~~the effective date of this administrative regulation~~].

(2) With the exception of those UST systems addressed in subsection (3) of this section, the owners and operators of a UST system who have, prior to October 1, 2011 [~~the effective date of this administrative regulation~~], either submitted a notice of intent to permanently close underground storage tank systems, or reported a confirmed release to the cabinet, shall comply with the closure requirements [~~and corrective action requirements~~] in existence when the notice of intent to permanently close underground storage tank systems was received by the appropriate Division of Waste Management [~~cabinet's~~] regional office or the confirmed release was reported to the cabinet. This subsection shall not apply to the screening levels for lead in soil, which shall be addressed in accordance with 401 KAR 42:080, Section 1(3).

(3) An owner or operator shall comply with the permanent closure requirements that were in place prior to April 18, 1994 for:

(a) A UST system that was taken out of operation prior to April 18, 1994, regardless of the submittal date of the Notice of Intent to Permanently Close Underground Storage Tank System;

(b) A Notice of Intent to Permanently Close Underground Storage Tank System was submitted after December 22, 1988 but prior to April 18, 1994; or

(c) A confirmed release was reported prior to April 18, 1994, regardless of the submittal date of the Notice of Intent to Permanently Close Underground Storage Tank System.

Section 2. [~~(3) A UST system owner or operator that chooses to remove a UST system from the ground that was permanently~~

~~closed in place, or empty and taken out of service, prior to December 22, 1988 shall comply with the requirements that were in place prior to April 18, 1994 regardless of the submittal date of the Notice of Intent Form.~~

~~(4) If the cabinet determines that a UST system that closed before December 22, 1988 poses a current or potential threat to human health, safety, or the environment, the owner or operator shall assess the excavation zone and close the UST system in accordance with this administrative regulation.~~

~~(5) The documents incorporated by reference in Section 9 of this administrative regulation shall be used in meeting the requirements of this administrative regulation.~~

~~Section 3.~~] Temporary Closure. (1) If a UST system is temporarily closed, the owners and operators shall continue operation and maintenance of corrosion protection and UST system release detection in accordance with 401 KAR 42:030 and 401 KAR 42:040. If a UST system release is suspected or confirmed, the owners and operators shall comply with 401 KAR 42:050 and 401 KAR 42:060. UST system release detection is not required as long as the UST system is empty.

(2) In addition to the requirements of subsection (1) of this section, if a UST system is temporarily closed for more than three (3) months, the owners and operators shall comply with the following requirements:

(a) Leave vent lines open and functioning;

(b) Cap and secure all other lines, pumps, man ways, and ancillary equipment; [~~and~~]

(3) In addition to the requirements of subsections (1) and (2) of this section, if a UST system is temporarily closed for more than six (6) months, the owners and operators shall [~~(c)~~] submit an amended "UST Facility Registration Form", DEP 7112, [~~(August 2006), (~~]incorporated by reference in 401 KAR 42:020[~~)~~] to the cabinet indicating that the UST system has changed to temporary closure status.

(4)[~~(3)(a)~~] If a UST system is temporarily closed for more than twelve (12) months, and does not meet the performance standards of 401 KAR 42:030 and 42:040, [~~42:020, then~~] the UST system shall be permanently closed in accordance with the Closure Outline.

(5) If an UST system is temporarily closed for more than twelve (12) months, and meets the performance standards for corrosion protection, spill containment and overfill prevention, and leak detection in accordance with 401 KAR 42:020, 42:030, and 42:040, owners and operators shall conduct tank and piping tightness tests on the temporarily closed tanks and piping prior to returning the UST system to operation.

Section 3. Notice of Intent for ~~[Section 4 of this administrative regulation.~~

~~(b) The owners and operators shall permanently close the substandard UST system at the end of this twelve (12) month period, unless the cabinet provides an extension of the twelve (12) month temporary closure period. The cabinet may grant an extension if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.~~

~~Section 4.~~] Permanent Closure and Changes in Service. (1)(a) Owners and operators shall notify the cabinet of their intent to permanently close or make a change in service for a UST system a minimum of two (2) weeks (fourteen (14) calendar days) prior to beginning either the permanent closure or change in service in accordance with Sections 4 and 5 of this administrative regulation [~~under subsections (2) and (3) of this section~~]. This notice shall be submitted on the [~~"~~]Notice of Intent to Permanently Close Underground Storage Tank System[~~"~~] DEP 7114, [~~(January 2006)~~]. Initial abatement action shall not alleviate the owners and operators from notifying the cabinet of the intent to permanently close a UST system; however, the cabinet may specify a shorter notification time prior to permanent closure.

(b) The [~~"~~]Notice of Intent to Permanently Close Underground Storage Tank System[~~"~~] DEP 7114, [~~(January 2006),~~] shall only be valid for twelve (12) months following submittal to the cabinet.

Section 4. Permanent Closure or Change in Service. Owners or operators performing permanent closure or change in service of a UST system shall comply with the requirements of the Closure Outline. [~~The closure assessment required under Section 5 of this administrative regulation shall be performed after submitting notification to the cabinet, but prior to completing the permanent closure or change in service.~~

~~(2) To permanently close a UST system, the owners and operators shall empty and clean the UST system by removing all tank contents and residual tank materials. All UST systems permanently taken out of service shall be either removed from the ground or filled with an inert solid material.~~

~~(3) Continued use of a UST system to store a nonregulated substance shall constitute a change in service. Before a change in service, the owners and operators shall empty and clean the UST system by removing the tank contents and residual tank materials. The owners and operators shall also conduct a closure assessment in accordance with Section 5 of this administrative regulation.~~]

Section 5. Assessing the Site for [~~at a Temporary Closure,~~] Permanent Closure or Change in Service. (1)(a) In order to complete [~~Before completing~~] permanent closure or change in service of a UST system, [~~or at the end of the twelve (12) month temporary closure period identified in Section 3(3) of this administrative regulation,~~] the owners and operators shall measure for the presence of a UST system release in accordance with the Closure Outline.

(b) Permanent closure activities shall be reported to [~~where contamination is most likely to be present. In selecting sample types, sample locations, and measurement methods, the owners and operators shall consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a UST system release. In accordance with 401 KAR 42:080, the requirements of this paragraph shall be satisfied if one (1) of the external UST system release detection methods allowed in 401 KAR 42:040 is operating in accordance with the requirements in 401 KAR 42:040 at the time of closure and indicates that no UST system release has occurred during the life of the UST system.~~

~~(b) The closure assessment required by paragraph (a) of this subsection shall be performed in accordance with the requirements of the "Closure Outline", (August 2006). The "Closure Assessment Report", (DEP 8055, (August 2006), shall be received by~~] the cabinet within ninety (90) days after UST system removal, closure in place, or change in service, in accordance with the closure Outline.

(2) If analytical results from permanent closure sampling indicate that further actions are necessary, those actions shall be determined at the written direction of the cabinet, in accordance with 401 KAR 42:060. [~~contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered under subsection (1) of this section, or by any other manner, initial abatement, site checks, site investigations, corrective action, and public participation, shall be performed in accordance with 401 KAR 42:060.~~]

(3) The handling, transportation, and disposal of a[~~any~~] regulated substance from a UST system and [~~any~~] contaminated soils, backfill materials, groundwater, cleaning liquids, and other similar materials generated during activities performed pursuant to this administrative regulation shall be performed in accordance with applicable requirements of 401 KAR Chapters 30 through 49.

Section 6. Applicability to previously closed UST systems. Applicability to previously closed UST systems shall be as established in 40 C.F.R. 280.73.

Section 7. Closure Records. (1)(a) Owners or operators shall submit a Closure Assessment Report, DEP 8055, within ninety (90) days of the date of permanent closure or a change in service, in accordance with the Closure Outline.

(b) The Closure Assessment Report shall be signed by a professional engineer or a professional geologist pursuant to KRS Chapters 322 and 322A.

(2) Owners or operators shall submit Certification of Properly Cleaned USTs, DEP 5039, to the cabinet when a UST system is permanently closed by removal.

Section 8. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

Section 9. [~~Closure Records. In accordance with 401 KAR 42:030 and this administrative regulation, the owners and operators shall maintain records that demonstrate compliance with closure requirements under Section 5 of this administrative regulation. The results of the closure assessment required by Section 5 of this administrative regulation shall be maintained for at least three (3) years after receipt of the closure letter indicating that no further action is required for the permanent closure or change in service.~~

~~Section 7. Extensions. The owner or operator of a UST system may request extension of the time frame for reports required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.~~

~~Section 8.~~] No Further Action Letter. (1) If a UST facility has met all applicable requirements in 401 KAR Chapter 42, the cabinet shall issue a no further action letter [~~for the UST facility~~].

(2) Any unpaid registration fees due in accordance with 401 KAR 42:200, shall be paid in full prior to the cabinet issuing a no further action letter [~~to any UST facility~~].

(3) Upon a determination by the cabinet that a threat to human health or the environment exists, related to a release or permanent closure for which a No Further Action letter was previously issued, the cabinet may revoke the No Further Action letter and require necessary action in accordance with 401 KAR Chapter 42.

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

(a) "Closure Outline", April 2011[~~(August 2006)~~];

(b) "Notice of Intent to Permanently Close Underground Storage Tank System", DEP 7114, April 2011[~~(January 2006)~~];

(c) "Closure Assessment Report ", DEP 8055, April 2011[~~(August 2006)~~];

(d) American Petroleum Institute Recommended Practice 1604, "Closure of Underground Petroleum Storage Tanks", (Reaffirmed 2001);

(e) "Certification of Properly Cleaned USTs", DEP 5039, April 2011 [~~American Petroleum Institute Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks", (June 2001)~~]; and

(f) "Test Methods for Evaluation Solid Wastes Physical/Chemical Methods", US EPA –SW-846, March 2009; and

(g) American Petroleum Institute Publication 2015, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks", [~~(~~]August 2001[~~)~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor [~~Underground Storage Tank Branch, 81 C. Michael Davenport Blvd.~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Division of Waste Management's Web site at http://waste.ky.gov/ust.

(3) The material found in subsection (1)(f) may be obtained at: http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm. [~~may also be obtained by calling the Division of Waste Management at (502) 564-5981 or on the division's Web page located at www.waste.ky.gov.~~]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for out-of-service UST systems, temporary and permanent closure of UST systems, and change in service of UST systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements that UST owners have to meet when performing temporary or permanent closure of a UST system or a change in service to a UST system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing requirements for closure of UST systems.

(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 statute by establishing requirements for closure of UST systems.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies the temporary closure requirements and the reporting and recordkeeping requirements for closure.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify temporary closure requirements, clarify closure record requirements, and allow for extensions to established deadlines.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by maintaining the requirements for closure.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute by clarifying the temporary closure requirements and the federal requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 3,700 UST facilities 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 the new forms when complying with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The changes to the Closure Outline and the CAR form should make the process easier, which should not cost the entities any additional funding.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): UST facilities that conduct closure in accordance with this amendment may receive No Further Action letters from the agency.

(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 associated with implementation of this amendment.

(b) On a continuing basis: There are no additional costs associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment will be implemented and funded through tank fees, PSTEAF, and grants from the US EPA.

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

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

(9) TIERING: Is tiering applied? Tiering is applied for temporary closure based on the amount of time the UST system is in temporary closure.

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)?

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 of Waste Management.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 40 C.F.R. 280 Subpart G; KRS 224.60-105

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

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

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

(c) How much will it cost to administer this program for the first year? There is no additional cost in implementing this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost in implementing this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 280 Subpart G

2. State compliance standards.KRS 224.60-105

3. Minimum or uniform standards contained in the federal mandate. Temporary closure, permanent closure and changes-in-service, assessing the site at closure or change-in-service, applicability to previously closed UST systems, and closure records.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment requires Kentucky specific forms to be used for closure records and tiers the requirements for temporary closure based on the length of time the UST system is temporarily closed.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:080. Classification of UST systems containing petroleum and listing of associated cleanup levels.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, [~~224.46,~~] 224.60, Chapter 332, Chapter 322A, 40 C.F.R. Part 280 Subparts F, G, [~~Part 281,~~] 42 U.S.C. 6991-6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137[~~, 40 C.F.R. Part 280 Subparts F, G, Part 281, 42 U.S.C. 6991c~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-105 requires the [~~Environmental and Public Protection~~] Cabinet to promulgate administrative regulations on underground storage tank (UST) systems to protect public health and the environment. The statute recognizes that the administrative regulations may distinguish between types, classes, and ages of UST systems. KRS 224.60-137 requires the cabinet to adopt standards for corrective action for a UST system release of petroleum into the environment. [~~401 KAR Chapter 42 identifies requirements for UST systems containing petroleum.~~] This administrative regulation establishes [~~site~~] classification and screening levels [~~corrective action standards~~] for UST systems containing petroleum.

Section 1. Scope and Applicability. (1)(a)1. An owner or operator of a UST system for which a Notice of Intent to Permanently Close Underground Storage Tank System containing petroleum was submitted or a confirmed UST system release of petroleum was reported to the cabinet on or after April 18, 1994, shall be required to classify the UST system in accordance with this administrative regulation.

2. The owner or operator shall, if the UST system is permanently closed or if otherwise directed by the cabinet in order to appropriately classify the UST system, submit a Classification Guide, DEP 8056, which shall be completed by a professional engineer or a professional geologist pursuant to KRS Chapters 322 and 322A.

3. The Classification Outline shall be used in completing the Classification Guide for determining the classification of a UST system.

4. The Classification Outline lists the applicable screening levels for petroleum constituents for each classification.

(b) An owner or operator of a UST system who either submitted a Notice of Intent to Permanently Close Underground Storage Tank System or reported a confirmed UST system release of petroleum to the cabinet, or took a UST system out of operation, prior to April 18, 1994, shall not be required to classify in accordance with this administrative regulation, unless:

1. After October 1, 2011, the owner or operator reports an additional confirmed UST system release of petroleum to the cabinet; and

2. The additional confirmed UST system release of petroleum is commingled with a UST system release of petroleum associated with the Notice of Intent to Permanently Close Underground Storage Tank System submitted prior to April 18, 1994, or the UST system release of petroleum reported to the cabinet prior to April 18, 1994.

(c) An owner or operator of a UST system that chooses, after October 1, 2011, to remove a UST system from the ground that was taken out of operation prior to April 18, 1994, shall not be re-

quired to classify in accordance with this administrative regulation.

(d) An owner or operator may submit, in accordance with 401 KAR 30:020, Section 2, a written request for a variance to the applicable screening levels established in accordance with this administrative regulation if:

1. Prior to October 1, 2011:

a. A Notice of Intent to Permanently Close Underground Storage Tank System containing petroleum was submitted to the cabinet; or

b. A confirmed UST system release of petroleum was reported to the cabinet; and

2. The allowable levels previously applicable to the UST facility are less stringent than the screening levels established by this administrative regulation.

(2) [~~An owner or operator who either submits a notice of intent to permanently close a UST system containing petroleum or reports a confirmed UST system release of petroleum to the cabinet after the effective date of this administrative regulation, shall, when the UST system is permanently closed or when otherwise directed by the cabinet in order to appropriately classify the UST system, submit a Classification Guide, DEP 8056, (January 2006). The Classification Outline, (August 2006) shall be used in completing the Classification Guide, DEP 8056, (January 2006), for determining the classification of a site. The Classification Outline, (August 2006), also sets forth the applicable cleanup levels for petroleum constituents for each classification that shall be complied with by the owner or operator in completing corrective action.~~

~~(2) The owners and operators of a UST system containing petroleum who have, prior to the effective date of this administrative regulation, either submitted a notice of intent to permanently close the UST system, or reported a confirmed UST system release of petroleum to the cabinet, shall comply with the classification requirements and cleanup levels for all constituents, with the exception of lead in soils, that were in existence when the notice of intent to permanently close UST system was received by the cabinet or the confirmed release was reported to the cabinet.~~

~~(3)~~] The screening [~~cleanup~~] level for lead in soils, established [~~contained~~] in the Classification Outline, shall apply to all releases from a UST system [~~releases~~] containing waste oil including those occurring prior to the effective date of this administrative regulation.

Section 3. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

Section 4. [~~Section 2. Affected Property Owner Consent. If an affected off-site property owner consents, the allowable residual soil levels applicable on-site may be utilized in addressing contamination within the property boundaries of that consenting off-site property owner. The consent shall be submitted to the cabinet on the "Affected Property Owner Consent Form", DEP 8057, (January 2006), and shall be accompanied by a site map identifying the location and address of the affected property in relation to the site.~~

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

(a) "Classification Outline", April 2011[~~(August 2006)~~]; and

(b) "Classification Guide", DEP 8056, April 2011[~~(January 2006)~~[~~;~~

~~(c) "Affected Property Owner Consent Form", DEP 8057, (January 2006); and~~

~~(d) "Kentucky Guidance for Ambient Background Assessment", (January 2004)~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, [~~Underground Storage Tank Branch, 81 C. Michael Davenport Blvd~~] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the [~~may also be obtained by calling the~~] Division of Waste Management's Web site at http://waste.ky.gov/ust[~~Management at (502) 564-5981 or on the division's Web page located at www.waste.ky.gov~~].

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes classification and screening levels for UST systems containing petroleum.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to classify UST systems containing petroleum. This classification is used to for ranking purposes in accordance with 401 KAR 42:290.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by incorporating the results of the UK study into a classification scheme for UST systems.

(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 statute by providing for screening levels based on the UK study.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the classification guide and the classification outline to simplify the process of UST system classification and to use the results of the UK study for screening levels for soil and groundwater.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to simplify the classification process.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by using the screening levels that resulted from the UK study.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute by using screening levels for UST system classification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 11,500 UST systems registered with the agency.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administra-

tive regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An owner or operator of a UST system for which a Notice of Intent to Permanently Close Underground Storage Tank System containing petroleum was submitted or a confirmed UST system release of petroleum was reported to the cabinet on or after April 18, 1994 will have to classify the UST system by completing a new Classification Guide.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Classification Guide is simplified and no cost should be incurred to amend classification in accordance with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of amended classification, screening levels will be adjusted and ranks will be adjusted for UST systems. This could lead to some UST facilities receiving No Further Action letters and could lead to others getting corrective action done more quickly.

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

(a) Initially: It will not cost the agency any additional funding to implement this amendment.

(b) On a continuing basis: It will not cost the agency any additional funding to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for implementation and enforcement of this amendment is the PSTEAF and tank fees.

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

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

(9) TIERING: Is tiering applied? Tiering is applied. UST systems are classified based on the proximity to domestic-use sources and screening levels based on the results from the UK study.

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)?

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 of Waste Management.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.60-105; 224.60-137

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

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

(c) How much will it cost to administer this program for the first year? It will not cost the agency additional funding to implement this amendment.

(d) How much will it cost to administer this program for subsequent years? It will not cost the agency additional funding to implement this amendment.

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

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

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of waste Management
(Amendment)

401 KAR 42:090. Financial responsibility.

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart H, [~~Part 281,~~] 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-120[~~, 40 C.F.R. Part 280 Subpart H, Part 281, 42 U.S.C. 6991c~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [~~Environmental and Protection~~] cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks [~~tank (UST) systems~~] by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other standards to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. [~~401 KAR Chapter 42 identifies requirements for UST systems.~~] This administrative regulation establishes requirements for demonstrating financial responsibility for corrective action and for compensation of third parties for bodily injury and property damage caused by sudden and nonsudden accidental UST system releases arising from the operation of UST systems containing petroleum.

Section 1. Applicability. Applicability shall be as established in 40 C.F.R. 280.90.

Section 2. Compliance dates. Compliance dates shall be as established in 40 C.F.R. 280.91.

Section 3. Amount and Scope of Required Financial Responsibility. Amount and scope of required financial responsibility shall be as established in 40 C.F.R. 280.93.

Section 4. Allowable Mechanisms and Combinations of Mechanisms. Allowable mechanisms and combinations of mechanisms shall be as established in 40 C.F.R. 280.94.

Section 5. Financial Test of Self-insurance. Requirements for a financial test of self-insurance shall be as established in 40 C.F.R. 280.95.

Section 6. Guarantee. Requirements for a guarantee shall be as established in 40 C.F.R. 280.96.

Section 7. Insurance and Risk Retention Group Coverage. Insurance and risk retention group coverage shall be as established in 40 C.F.R. 280.97.

Section 8. Surety Bond. Requirements for a surety bond shall be as established in 40 C.F.R. 280.98.

Section 9. Letter of Credit. Requirements for a letter of credit shall be as established in 40 C.F.R. 280.99.

Section 10. Use of State-required Mechanism. Use of a state-required mechanism shall be as established in 40 C.F.R. 280.100.

Section 11. State Fund or Other State Assurance. (1) Requirements for the state fund or other state assurance shall be as established in 40 C.F.R. 280.101.

(2) [~~Application of Federal Regulations. The requirements for demonstrating financial responsibility for corrective action and for compensation of third parties for bodily injury and property damage caused by sudden and nonsudden accidental UST system releases arising from the operation of UST systems containing petroleum are governed by 40 C.F.R. Part 280 Subpart H, KRS 224.60-105, 224.60-120, and this administrative regulation.~~

~~Section 2. State Fund Mechanism for Financial Responsibility. (1)~~] The Petroleum Storage Tank Environmental Assurance Fund (PSTEAF) may be utilized as a mechanism to demonstrate financial responsibility in accordance with subsection (1) of this section. The requirements for PSTEAF can be found in 401 KAR 42:250.

Section 12. Trust Fund. Requirements for a trust fund shall be as established in 40 C.F.R. 280.102.

Section 13. Standby Trust Fund. Requirements for a standby trust fund shall be as established in 40 C.F.R. 280.103.

Section 14. Local Government Bond Rating Test. Requirements for a local government bond rating test shall be as established in 40 C.F.R. 280.104.

Section 15. Local Government Financial Test. Requirements for a local government financial test shall be as established in 40 C.F.R. 280.105.

Section 16. Local Government Guarantee. Requirements for a local government guarantee shall be as established in 40 C.F.R. 280.106.

Section 17. Local Government Fund. Requirements for a local government fund shall be as established in 40 C.F.R. 280.107.

Section 18. Substitution of Financial Assurance Mechanisms by Owner or Operator. Substitution of financial assurance mechanisms by owner or operator shall be as established in 40 C.F.R. 280.108.

Section 19. Cancellation or Nonrenewal by a Provider of Financial Assurance. Cancellation or nonrenewal by a provider of financial assurance shall be as established in 40 C.F.R. 280.109.

Section 20. Reporting by Owner or Operator. Reporting by owner or operator shall be as established in 40 C.F.R. 280.110.

Section 21. Recordkeeping. Recordkeeping shall be as established in 40 C.F.R. 280.111.

Section 22. Drawing on Financial Assurance Mechanisms. Drawing on financial assurance mechanisms shall be as established in 40 C.F.R. 280.112.

Section 23. Release from the Requirements. Release from the requirements shall be as established in 40 C.F.R. 280.113.

Section 24. Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance. Bankruptcy or other incapacity of owner or operator or provider of financial assurance shall be as established in 40 C.F.R. 280.114.

Section 25. Replenishment of Guarantees, Letters of Credit, or Surety Bonds. Replenishment of guarantees, letters of credit, or surety bonds shall be as established in 40 C.F.R. 280.115.

Section 26. Suspension of Enforcement. Suspension of enforcement shall be as established in 40 C.F.R. 280.116.

Section 27.[~~40 C.F.R. 280.101 if the following requirements are satisfied:~~

~~(a) A person owns or operates a petroleum storage tank or tanks;~~

~~(b) The owner or operator certifies financial responsibility for the petroleum storage tank(s) in accordance with KRS 224.60-120; and~~

~~(c) The owner or operator registers the petroleum storage tank with the cabinet in accordance with 401 KAR 42:020.~~

~~(2) An owner or operator shall be deemed by the cabinet to have satisfied the requirements of subsection (1) to utilize the Petroleum Storage Tank Environmental Assurance Fund to meet the financial responsibility requirements of 40 C.F.R. 280.101 if:~~

~~(a) A Certificate of Registration and Reimbursement Eligibility has been issued to the owner or operator of a petroleum storage tank in accordance with 401 KAR 42:020; and~~

~~(b) The cabinet has determined that the owner or operator qualifies for participation in the Financial Responsibility Account, or the Petroleum Storage Tank Account through compliance with 401 KAR 42:030 and 42:040.~~

~~(3) Federal and state-owned facilities shall not be eligible to utilize the state fund mechanism.~~

~~Section 3.~~] Certification of Financial Responsibility. An owner or operator shall certify, through signature on the UST Facility Registration Form, DEP 7112, [~~(January 2006),~~] required in 401 KAR 42:020, that financial responsibility has been established and maintained in accordance with [~~Section 1 of~~] this administrative regulation.

Section 28. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

regulation establishes the requirements for demonstrating financial responsibility for petroleum UST systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish financial responsibility requirements for petroleum UST systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by referencing the federal regulations.

(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 referencing the federal regulations and specifying the state-mechanism 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: The amendment changes the existing administrative regulation by separating 40 C.F.R. Subpart H into sections.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to be consistent with the federal regulation and to be compliant with KRS Chapter 13A requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by referencing the federal regulations and by specifying that PSTEAF is the state-mechanism for financial responsibility.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute by making it clear that there are multiple types of financial responsibility.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 3,700 petroleum UST facilities 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: There are no additional actions to regulated entities from this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Not applicable.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not applicable.

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

(a) Initially: There is no additional cost with implementing this amendment.

(b) On a continuing basis: There is no additional cost with implementing this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding will come from tank fees, PSTEAF, and US EPA grants.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All petroleum UST owners and operators shall have some form of financial responsibility.

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)?

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 of Waste Management.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 40 C.F.R. 280 Subpart H, KRS 224.60-105.

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

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

(c) How much will it cost to administer this program for the first year? It will not cost the cabinet additional funds to implement this amendment.

(d) How much will it cost to administer this program for subsequent years? It will not cost the cabinet additional funds to implement this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 280 Subpart H

2. State compliance standards. KRS 224.60-105

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 280 Subpart H

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

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

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of waste Management
(Amendment)

401 KAR 42:200. Annual fee for underground storage tanks [~~Underground storage tank system owner registration fees~~].

RELATES TO: KRS 224.10-100, 224.60

STATUTORY AUTHORITY: KRS 224.10-100(28)[~~, (30)~~], 224.60-105, 224.60-150(1).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-150 states that the cabinet shall levy and collect an annual fee of thirty (30) dollars per underground storage tank [~~(UST) system~~] from owners or operators of underground storage tanks [~~UST systems~~] for the purpose of funding the administration of the underground storage tank program. KRS 224.10-100(28)[~~(30)~~] authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. This administrative regulation establishes provisions for the payment of an annual [~~registration~~] fee for an underground storage tank.

Section 1. Applicability. This administrative regulation shall apply to all owners and operators of underground storage tanks [~~UST systems~~].

Section 2. Annual [~~Registration~~] Fee. (1) The owner or operator of an underground storage tank shall pay a thirty (30)[~~,~~] dollar annual [~~registration~~] fee for each underground storage tank [~~UST system~~] that is in the ground, and not permanently closed in accordance with 401 KAR 42:070, on July 1 of a year (July 1 through June 30).

(2) Payment shall be submitted to the Underground Storage Tank Branch of the Division of Waste Management.

(3) Checks shall be made payable to the Kentucky State Treasurer and be submitted within thirty (30) days after receipt of an

invoice from the cabinet specifying the required payment.

(4) [~~Section 3. New Registrations. For a new registration, the fee of thirty (30) dollars per UST system, payable to the Kentucky State Treasurer, shall be submitted to the Underground Storage Tank Branch along with the initial "UST Facility Registration Form", DEP 7112, (January 2006), as required by and incorporated by reference in 401 KAR 42:020.~~

~~Section 4. Amended Registrations. (1) If the "UST Facility Registration Form", DEP 7112, (January 2006) is amended in accordance with 401 KAR 42:020, to include one (1) or more additional UST systems, the amended form shall be accompanied by payment of any annual registration fees that may be due, including any outstanding fees for preexisting UST systems.~~

~~(2) Fees due shall be calculated at a rate of thirty (30) dollars for each additional UST system for each year (July 1 through June 30) the UST system was in the ground.~~

~~(3)~~] The fee for any year (July 1 through June 30) shall be due if the underground storage tank [~~UST system~~] was in the ground on July 1 of that year.

(5)[~~(4)~~] Fees shall not be due for years prior to the one (1) beginning July 1, 1990.

(6) Annual fees shall not be required for an unregistered underground storage tank newly discovered during permanent closure activities conducted in accordance with 401 KAR 42:070.

Section 3. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment. [~~(5) If an unregistered UST system is discovered during permanent closure activities pursuant to 401 KAR 42:070, a one (1) time registration fee of thirty (30) dollars shall be submitted for each discovered UST system within thirty (30) days after discovery. Registration fees for previous years shall not be required.~~

~~Section 5. Changes of Ownership. If ownership of a UST system changes, any unpaid registration fees shall be the responsibility of the new owner.~~]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the annual fees for underground storage tank owners.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the annual $30 fee for each underground storage tank in the ground on July 1 of each year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing the requirements for annual underground storage tank fees.

(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 statute by establishing the annual underground storage tank fee.

(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 newly discovered tanks do not have to pay tank fees. It also removes the requirement for new owners to pay previous owners annual underground storage tank fees.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the requirements for payment of annual tank fees.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by establishing requirements for payment of annual underground storage tank fees.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute by establishing the requirements for payment of annual underground storage tank fees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All underground storage tank owners will be required to pay annual underground storage tank fees. There are currently XXXX underground storage tank owners registered with the Division of Waste Management.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no additional requirements from underground storage tank owners 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): There will be no additional cost to the entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no benefits to underground storage tank owners and operators to comply with this amendment.

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

(a) Initially: It will not cost the agency any additional money to implement this amendment.

(b) On a continuing basis: It will not cost the agency any additional money to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The underground storage tank fees collected pursuant to this administrative regulation will be used to fund implementation of this amendment.

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

(8) State whether or not this administrative regulation estab-

lished any fees or directly or indirectly increased any fees: This amendment does not establish an increase to a fee.

(9) TIERING: Is tiering applied? Tiering is not applied. The annual fee is the same for each underground storage tank in the ground on July 1 of each year.

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 of Waste Management.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.60-150

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment will not cost the agency any additional funds.

(d) How much will it cost to administer this program for subsequent years? The amendment will not cost the agency any additional funds.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:250. Petroleum Storage Tank Environmental Assurance Fund reimbursement procedures.

RELATES TO: KRS 224.01-400, 224.01-405, 224.60-120, 224.60-130, 224l60-135, 224.60-140, 224.60-150

STATUTORY AUTHORITY: KRS 224.60-120(6), 224.60-130 (1)(a)-(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(a) through (e) requires the establishment of the procedures to administer the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF). This administrative regulation establishes those procedures.

Section 1. Applicability. This administrative regulation establishes the eligibility requirements and procedures for a [~~an eligible~~] petroleum storage tank owner or operator to make application, become an eligible applicant, and receive reimbursement from the cabinet for the cost of corrective action due to a release from a petroleum storage tank. Federal and state-owned facilities shall not be eligible for reimbursement from the PSTEAF.

(2) Eligible reimbursement for actions directed by the Underground Storage Tank Branch prior to the effective date of this administrative regulation shall be made in accordance with the administrative regulations in effect at the time the directive was issued.

Section 2. Application for Assistance. (1) A petroleum storage tank owner or operator seeking reimbursement from either the Financial Responsibility Account or the Petroleum Storage Tank Account, shall:

(a) Have a Certificate of Registration and Reimbursement Eligibility, in accordance with 401 KAR 42:020, or a Certificate of Eligibility, issued prior to September 13, 2006, which indicates that the petroleum storage tank owner or operator is eligible to participate in the Petroleum Storage Tank Environmental Assurance for the associated UST Facility;

(b) Apply for assistance.

1. A petroleum storage tank owner or operator seeking reimbursement, who has not submitted an Application for Assistance, shall submit a completed Application for Assistance, DEP 6063, including all required attachments.

2. Certify in the Application for Assistance that:

a. A contract has been entered into and submitted in accordance with Section 3 of this administrative regulation; and

b. A release requiring corrective action from an eligible facility has occurred and has been reported to the cabinet; or

c. A written directive from the Underground Storage Tank Branch has been issued for the performance of a site check, in accordance with 401 KAR 42:050.

(c) Provide a written notice, in accordance with 401 KAR 42:070, to the applicable regional office at least fourteen (14) calendar days prior to commencement of the permanent closure of the petroleum storage tank to maintain eligibility for reimbursement.

(2) If an Application for Assistance is determined to be deficient by the Underground Storage Tank Branch, a written deficiency letter, outlining the deficiencies, shall be issued to the applicant.

(a) Failure by the applicant to provide the requested information and documentation within thirty (30) days of receipt of the request shall cause the application to be denied.

(b) If an extension beyond the thirty (30) days is necessary, the extension request shall be submitted in writing to the Underground Storage Tank Branch prior to the deadline.

(c) Denial of the Application for Assistance shall not prevent the petroleum storage tank owner or operator from reapplying if the requested documentation becomes available.

(3) If the applicant meets the requirements of subsection (1) of this section, the Underground Storage Tank Branch shall:

(a) Determine the eligibility of the applicant to receive reimbursement from either the Financial Responsibility Account or the Petroleum Storage Tank Account according to Section 4 of this administrative regulation; and

(b) Approve the Application for Assistance.

(4) Reimbursement pursuant to an approved Application for Assistance shall be restricted to:

(a) Actions directed in writing by the Underground Storage Tank Branch; and

(b) Initial abatement actions taken at a facility in accordance with Section 2 of the Release Response and Initial Abatement Requirements Outline, incorporated by reference in 401 KAR 42:060, subject to the reimbursement provisions of Section 2.14 of the Contractor Cost Outline, prior to a written directive from the Underground Storage Tank Branch, and not declared an environmental emergency by the cabinet; or

(5) If the petroleum storage tank owner or operator seeking reimbursement from the PSTEAF changes, and shall assume responsibility for the compliance with 401 KAR Chapter 42, the new petroleum storage tank owner or operator shall:

(a) Submit an amended UST Facility Registration Form, DEP7112, in accordance with 401 KAR 42:020, Section 4 indicating a change in petroleum storage tank owner or operator; and

(b) Submit an amended Application for Assistance, DEP6063, including all required attachments, within thirty (30) days of the transfer of the facility.

(6) To maintain eligibility for participation in and reimbursement from the PSTEAF, the petroleum storage tank owner or operator shall maintain compliance with the requirements of this administra-

tive regulation.

Section 3. Contracts. (1) A petroleum storage tank owner or operator shall obtain a contract from the eligible company or partnership to be eligible for reimbursement from the cabinet for the performance of corrective action or site check activities for a facility.

(2) The contract shall be executed prior to commencing corrective action or site check activities.

(3) If a contract is revised, a copy of the revised contract shall be submitted to the Underground Storage Tank Branch within thirty (30) days of the revised contract execution.

(4) If a contract is terminated, and a new contract is executed:

(a) A notarized Affidavit of Termination of Contract, DEP 0061 by the petroleum storage tank owner or operator approved for PSTEAF reimbursement shall be submitted to the Underground Storage Tank Branch; and

(b) A copy of the newly-executed contract shall be submitted to the Underground Storage Tank Branch prior to commencing corrective action or site check activities.

Section 4. Account Placement. (1) A petroleum storage tank owner or operator shall be eligible to receive reimbursement for corrective action costs, site checks activities directed in writing by the Underground Storage Tank Branch after September 13, 2006, that do not confirm contamination above allowable levels, and third-party claims in accordance with 401 KAR 42:300, incurred on or after April 9, 1990, from the Financial Responsibility Account if the Underground Storage Tank Branch determines the petroleum storage tank owner or operator has satisfied the following requirements:

(a) Registered the petroleum storage tanks with the Underground Storage Tank Branch in accordance with 401 KAR 42:020 prior to the release requiring corrective action or site check activities;

(b) Received a Certificate of Registration and Reimbursement Eligibility for the petroleum storage tanks, pursuant to 401 KAR 42:020, or a Certificate of Eligibility issued prior to September 13, 2006 prior to the release requiring corrective action or site check activities;

(c) Maintained UST system release detection as required by 401 KAR 42:040. A petroleum storage tank permanently or temporarily closed in accordance with 401 KAR 42:070, shall have maintained compliance with UST system release detection requirements prior to the permanent or temporary closure of the system;

(d) Maintained corrosion protection in accordance with 401 KAR 42:030 and 42:070;

(e) Maintained overfill and spill prevention in accordance with 401 KAR 42:030 for those tanks in operation after December, 22, 1998;

(f) Reported the release to the cabinet in accordance with KRS 224.01-400 and 401 KAR 42:050;

(g) Performed initial abatement procedures as required by the Release Response and Initial Abatement Requirements Outline, incorporated by reference in 401 KAR 42:060; and

(h) Filed a Notice of Intent to Permanently Close Underground Storage Tank System, DEP 7114, incorporated by reference in 401 KAR 42:070, if applicable, with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change in service in accordance with 401 KAR 42:070.

(2) A petroleum storage tank owner or operator who is not eligible for participation in the Financial Responsibility Account, shall be eligible for reimbursement from the Petroleum Storage Tank Account for corrective action costs, incurred on or after April 9, 1990, or site check activities directed in writing by the Underground Storage Tank Branch after September 13, 2006, that do not confirm contamination above allowable levels, if the Underground Storage Tank Branch determines the petroleum storage tank owner or operator has satisfied the following requirements:

(a) Registered the petroleum storage tanks with the Underground Storage Tank Branch in accordance with 401 KAR 42:020;

(b) Filed a Notice of Intent to Permanently Close Underground Storage Tank System, DEP7114, with the cabinet to permanently close the petroleum storage tanks a the facility, if applicable, or to make a change in service, if applicable, in accordance with 401 KAR 42:070; and

(c) Reported a release to the cabinet in accordance with KRS 224.01-400 and 401 KAR 42:050,

(3) Facilities placed in the Petroleum Storage Tank Account shall not be eligible for third-party coverage.

Section 5. Entry Level to the Financial Responsibility Account and Petroleum Storage Tank Account. (1) For facilities with releases confirmed after September 13, 2006, a petroleum storage tank owner's or operator's entry level, as established in KRS 224.60-120(1), shall be deducted from the eligible reimbursement except as provided in subsection (3) of this section.

(2) An entry level shall be assessed upon confirmation of a release, constituting an occurrence, that requires corrective action for which the applicant is seeking reimbursement through the Financial Responsibility Account or Petroleum Storage Tank Account in accordance with subsection (1) of this section regardless of a petroleum storage tank owner's participation in the Small Owner Tank Removal Account in accordance with 401 KAR 42:330; and

(3) The entry level shall not be deducted from the eligible reimbursement if the petroleum storage tank owner or operator is directed by the Underground Storage Tank Branch to perform a site check, in accordance with 401 KAR 42:060, that does not confirm contamination requiring further action in accordance with 401 KAR Chapter 42.

(4) Upon request by the petroleum storage tank owner or operator, the Underground Storage Tank Branch shall reimburse, upon final payment, twenty-five (25) percent of the entry level if the petroleum storage tank owner or operator has:

(a) Completed corrective action at the facility within:

1. 180 days from the discovery of the release, for soil contamination only; or

2. Twenty-four (24) months from the discovery of the release, for groundwater contamination only or both soil and groundwater contamination; and

(b) Received a no further action letter without additional measures being required for an occurrence associated with the submittal of an Application for Assistance.

(5) The applicable entry level shall be determined, in accordance with KRS 224.60-120(1), based on the number of tanks owned by the petroleum storage tank owner or operator at the time of the occurrence associated with the submittal of an Application for Assistance.

Section 6. Newly-Discovered Underground Storage Tank Systems. (1) A newly-discovered underground storage tank system encountered at a facility during the performance of corrective action due to a release from a registered petroleum storage tank shall not affect a petroleum storage tank owner's or operator's account placement eligibility.

(2) The number of newly-discovered tanks shall not increase the entry level of the petroleum storage tank owner or operator.

Section 7. Procedures for Establishing the Reimbursable Amount for a Written Directive issued by the Underground Storage Tank Branch. (1) The reimbursable amount established for the completion of a written directive issued by the Underground Storage Tank Branch shall be based on the following:

(a) The formulated task rates established in Section 2.0 of the Contractor Cost Outline;

(b) A cost estimate submitted by the owner or operator, in accordance with subsection (2) of this section, for a specific task, including applicable materials, that does not have a formulated task rate in the Contractor Cost Outline; or

(c) A combination of (a) and (b) of this subsection.

(2) When directed in writing by the Underground Storage Tank Branch, a cost estimate shall be submitted by the owner or operator, for a specific task that does not have a formulated task rate. The cost estimate shall:

(a) Include a cost itemization to complete the individual task for which a formulated task rate has not been established if the task is being completed by the eligible company or partnership or by a subcontractor which shall be calculated using those personnel and

equipment rates established in Section 3 of the Contractor Cost Outline applicable to individual components of the task;

(b) Include three (3) bids from suppliers or manufactures of corrective action equipment for individual equipment purchase or rental, exceeding $3,000, containing a description of the equipment to be purchased or rented and the anticipated salvage value provided by the supplier or manufacturer for new equipment purchased;

(c) Include an estimate for materials to be purchased;

(d) Be submitted on the Cost Estimate Form, DEP 6090; and

(e) Include the required supporting documentation identified within the Cost Estimate Form, DEP 6090.

(3) The Underground Storage Tank Branch shall, based on the applicable rates established in the Contractor Cost Outline and the completed Cost Estimate Form, DEP 6090, submitted, if applicable, establish the reimbursable amount in a written directive.

(4) The cabinet shall attach to the written directive the following:

(a) An itemization of the reimbursable amount; and

(b) The USTB Written Directive Claim Request Form, DEP 6091;

(5) The issuance of a written directive by the Underground Storage Tank Branch shall, subject to the provisions of Section 8 of this administrative regulation, constitute an obligation and guarantee of payment of the reimbursable amount identified within a written directive, in accordance with KRS 224.60-140(5).

(6) The reimbursable amount established by the Underground Storage Tank Branch in a written directive shall, as applicable, and in accordance with the Contractor Cost Outline, be adjusted as follows upon compliance by the eligible applicant with Section 8 of this administrative regulation:

(a) The reimbursable amount for over-excavation identified in the written directive issued by the Underground Storage Tank Branch is an estimate of the tonnage to be removed, and shall be based on the volume and density of material in the proposed excavation area. The Underground Storage Tank branch shall convert cubic yardage to tons using a density of one and one-half (1.5) tons per cubic yard. The reimbursable amount shall be adjusted based on:

1. The tonnage verified through the submittal of weigh tickets; or

2. If soil is disposed of at a permitted disposal facility incapable of providing weigh tickets, a calculation of the tonnage associated with the actual area and depth of over-excavation, not to exceed the tonnage estimate identified in the written directive from the Underground Storage Tank Branch; and

3. Reimbursement for the removal, transportation and disposal of water encountered within the over-excavation shall be contingent upon analytical confirmation that contaminant levels within the water exceed the applicable groundwater screening levels, and the reimbursable amount for water removed, transported and disposed shall be based on the quantity of water disposed, as documented by disposal manifests and limited to one (1) pit volume;

(b) The reimbursable amount for a Dual Phase Extraction Event identified in a written directive issued by the Underground Storage Tank Branch shall be adjusted to include the amount of water disposed as documented by disposal manifests, or the amount of water verified by the eligible company or partnership as being treated on site;

(c) The reimbursable amount for Operation and Maintenance of an approved remediation system shall be adjusted to include the actual cost of utilities as documented by invoices submitted;

(d) If the Underground Storage Tank Branch has not received and approved the Application for Assistance, DEP 6063, prior to the issuance of the written directive, the reimbursable amount identified in the written directive issued shall not include the applicable formulated task rates for mobilization, per diem and field equipment cost. The Underground Storage Tank Branch shall add the applicable formulated task rates for mobilization, per diem, and field equipment to the reimbursable amount, in accordance with the Contractor Cost Outline once an approved Application for Assistance is submitted; or

(e) If the Underground Storage Tank Branch has not received a signed contract between the eligible applicant and the eligible company or partnership prior to the issuance of the written directive, the reimbursable amount identified in the written directive issued shall not include the applicable formulated task rates for mobilization, per diem, and field equipment cost. The Underground Storage Tank Branch shall add the applicable formulated task rates for mobilization, per diem, and field equipment to the reimbursable amount, in accordance with the Contractor Cost Outline, once the requirements of Section 3 of this administrative regulation are met.

(f) If a written directive issued by the Underground Storage Tank Branch cannot be complied with to the extent necessary to achieve a technically complete determination by the Underground Storage Tank Branch, in accordance with the Corrective Action Outline, for reasons beyond the control of the applicant and eligible company or partnership, the previously approved reimbursement amount established in the written directive shall, unless otherwise addressed in the written directive, be adjusted by the Underground Storage Tank Branch, with reference to the Contractor Cost Outline and the cost estimate submitted on the Cost Estimate Form, DEP 6090, as applicable, to deduct the cost of actions not completed;

(g) If a written directive issued by the Underground Storage Tank Branch cannot be completed, based upon omissions, misrepresentations, or otherwise inaccurate information submitted by the eligible company or partnership in a previous report, the reimbursable amount identified in the written directive shall be adjusted to deduct those actions directed based upon omissions, misrepresentations, or otherwise inaccurate information submitted.

(h) If the Underground Storage Tank Branch rescinds a written directive issued, prior to the completion of the entire scope of work identified in the written directive, the previously approved reimbursement amount shall be adjusted to reflect the cost of actions completed, with reference to the Contractor Cost Outline and the cost estimate submitted, if applicable.

(7) Reimbursement for an individual corrective action equipment purchase or rental shall not include markup and shall be limited to:

(a) The original purchase price, less the anticipated salvage value provided by the supplier or manufacturer, including applicable sales tax, if purchased; or

(b) Rental costs not exceeding the purchase price, less the anticipated salvage value provided by the supplier or manufacturer, if rented.

(8) Costs incurred prior to issuance of a written directive by the Underground Storage Tank Branch in accordance with this section shall be ineligible for reimbursement.

Section 8. Reimbursement Procedures for a Written Directive issued by the Underground Storage Tank Branch. (1) Reimbursement for a written directive shall be made after the following actions are completed:

(a) The submittal and approval of an Application for Assistance, DEP 6063, in accordance with Section 2 of this administrative regulation;

(b) The USTB Written Directive Claim Request Form, DEP 6091, which was provided with the written directive has been completed, signed and submitted to the Underground Storage Tank Branch, and;

(c) The Payment Verification Affidavit Form, DEP 6075, as required by KRS 224.60-140(18);

(d) The Payment Waiver Form, DEP 6077, executed by each affected vendor or subcontractor, as applicable, in accordance with KRS 224.60-140(18);

(e) The submittal of weigh tickets and invoices documenting the actual cost of utilities or other required backup documentation as indicated in the written directive;

(f) The technical report submitted in response to the written directive is determined by the Underground Storage Tank Branch to be technically complete in relation to the written directive and 401 KAR Chapter 42; and

(g) Payment has been received for all applicable annual registration fees in accordance with KRS 224.60-150 and 401 KAR 42:200;

(2) Reimbursement shall be contingent upon the contracted

eligible company or partnership meeting and maintaining the requirements established in accordance with 401 KAR 42:316;

(3) Reimbursement shall be contingent upon a certified laboratory performing the required analysis in accordance with 401 KAR 42:340;

(4) If the contract with the eligible company or partnership designated on a written directive is terminated prior to the commencement of reimbursable activities in response to the written directive, the obligation and guarantee of payment of the reimbursable amount, made in accordance with KRS 224.60-140(5), shall be null and void;

(5) The information completed by the Underground Storage Tank Branch on the USTB Written Directive Claim Request Form, DEP 6091, attached to the written directive, shall not be modified by the applicant or the eligible company or partnership designated on the written directive;

(6) The Underground Storage Tank Branch shall issue a determination pursuant to KRS 224.60-140(7) as to whether the costs submitted in the claim are eligible for reimbursement.

(7) All claims shall be submitted within two (2) years after issuance of a no further action letter by the Underground Storage Tank Branch.

(8) If a request to re-evaluate the reimbursable amount, established in accordance with Section 7 of this administrative regulation, is submitted in accordance with Section 14, and a determination is made by the Underground Storage Tank Branch that the establishment of a not-to-exceed amount is warranted, final reimbursement shall be made on a time and material basis, which shall require the following supporting documentation:

(a) An itemization of the eligible company or partnership invoice with supporting documentation;

(b) Itemized subcontractor and vendor invoices with supporting documentation; and

(c) Time sheets to support all personnel time billed for the completion of the scope of work identified in the written directive.

Section 9. Reimbursement Procedures for Reimbursable Actions that are not Directed in Writing by the Underground Storage Tank Branch.(1) Reimbursement shall be made for the following actions, which do not require written directives from the Underground Storage Tank Branch or cost estimates from the applicant and eligible company or partnership, in accordance with the applicable formulated task rates established in the Contractor Cost Outline;

(a) Optional Soil Removal Outside the Excavation Zone at the time of permanent closure, in accordance with Section 6 of the Closure Outline incorporated by reference in 401 KAR 42:070;

(b) Transportation and disposal, treatment, or recycling of contaminated material or water at a permitted facility, from within the excavation zone, contaminated above allowable levels, at the time of permanent closure, in accordance with the Closure Outline incorporated by reference in 401 KAR 42:070;

(c) Initial response actions, identified in Section 2.14 of the Contractor Cost Outline, taken at a facility, in accordance with Section 2 of the Release Response and Initial Abatement Requirements Outline, incorporated by reference in 401 KAR 42:060, prior to a written directive from the Underground Storage Tank Branch or prior to the date of a declared environmental emergency by the cabinet;

(d) Transportation and disposal of drums containing purged water or soil cuttings associated with actions directed in accordance with 401 KAR 42:060;

(e) Encroachment permit renewals necessary to complete directed actions; and

(f) Unscheduled maintenance of a remediation system installed in accordance with an approved Corrective Action Plan, in accordance with Section 2.13 of the Contractor Cost Outline, and invoices supporting the cost of necessary materials or equipment not exceeding a total cost of $3,000, but shall not include unscheduled maintenance equipment costs covered by equipment warranty. Material or equipment costs associated with unscheduled maintenance of a remediation system exceeding $3,000 shall require preapproval before work is performed.

(2) Reimbursement shall be made after the following actions are completed:

(a) The submittal and approval of an Application for Assistance, DEP 6063, in accordance with Section 2 of this administrative regulation;

(b) The Claim Request Form For Actions Not Directed By The USTB, DEP 6064, has been completed, signed and submitted to the Underground Storage Tank Branch;

(c) The Payment Verification Affidavit Form, DEP 6075, as required by KRS 224.60-140(18);

(d) The Payment Waiver Form, DEP 6077, executed by each affected vendor or subcontractor, as applicable, in accordance with KRS 224.60-140(18); and

(e) The submittal of required backup documentation as identified on the instruction sheet associated with each worksheet;

(f) Payment has been received for all applicable annual registration fees in accordance with KRS 224.60-10 and 401 KAR 42:200;

(g) The Optional Soil Removal Worksheet, DEP 6094, has been completed and submitted to the Underground Storage Tank Branch for optional soil removal outside of the excavation zone at the time of permanent closure in accordance with 401 KAR 42:070 for actions listed in subsection (1)(a) of this section, if performed;

(h) The Miscellaneous Tasks Worksheet, DEP 6093, has been completed and submitted to the Underground Storage Tank branch for actions listed in subsection (1)(b), (c), (d), (e) or (f) of this section, if performed; and

(i) The technical report submitted for (a), (b) or (c) of subsection (1) of this section is determined by the Underground Storage Tank Branch to be technically complete, if applicable, in accordance with 401 KAR Chapter 42.

(3) Reimbursement shall be contingent upon the contracted eligible company or partnership meeting and maintaining the requirements established in accordance with 401 KAR 42:316;

(4) Reimbursement shall be contingent upon a certified laboratory performing the required analysis in accordance with 401 KAR 42:340;

(5) The Underground Storage Tank Branch may require additional information and documentation to determine that an eligible request for reimbursement is necessary and reasonable.

(6) If the applicant fails to correct a claim-related deficiency or to supply additional claim information within thirty (30) days of written notice from the Underground Storage Tank Branch, that portion of the claim shall be denied.

(7) The Underground Storage Tank Branch shall issue a determination pursuant to KRS 224.60-140(7) as to whether the costs submitted in the claim are eligible for reimbursement.

(8) All claims shall be submitted within two (2) years after issuance of a no further action letter by the Underground Storage Tank Branch.

Section 10. Reimbursement Procedures for Facility Restoration. (1) An itemized cost estimate shall be submitted to the Underground Storage Tank Branch on the Facility Restoration Worksheet, DEP 6095, for the completion of facility restoration actions;

(2) Written approval, by the Underground Storage Tank Branch, of the cost estimate shall constitute, subject to adjustment in accordance with subsection (4) of this section, an obligation and guarantee of payment, in accordance with KRS 224.60-140(5), for the cost of actions that are completed in full.

(3) Costs incurred prior to the written approval of the cost estimate by the Underground Storage Tank Branch shall be ineligible for reimbursement.

(4) Upon the completion of site restoration actions, final reimbursement shall be based on the costs identified through the submittal of the Facility Restoration Worksheet, DEP 6095, that identified the actual work completed.

(5) Reimbursement for facility restoration actions involving the replacement of surface material shall be limited to costs necessary for the replacement of surface material removed during corrective action activities.

(6) Reimbursement for site restoration activities shall be made after the following actions are completed:

(a) The submittal and approval of an Application for Assistance, DEP 6063, in accordance with Section 2 of this administra-

tive regulation;

(b) The Claim Request Form For Actions Not Directed by the USTB, DEP 6064, has been completed, signed and submitted to the Underground Storage Tank Branch;

(c) The Payment Verification Affidavit Form, DEP 6075, as required by KRS 224.60-140(18);

(d) The Payment Waiver Form, DEP 6077, executed by each affected vendor or subcontractor, as applicable, in accordance with KRS 224.60-140(18);

(e) The Facility Restoration Worksheet, DEP 6095, has been completed, and submitted, with the required documentation, to the Underground Storage Tank Branch; and

(f) Payment has been received for all applicable annual registration fees in accordance with KRS 224.60-150 and 401 KAR 42:200.

(7) Reimbursement shall be contingent upon the contracted eligible company or partnership meeting and maintaining the requirements of 401 KAR 42:316.

(8) The Underground Storage Tank Branch may require additional information and documentation to determine that an eligible request for reimbursement is necessary and reasonable.

(9) If the applicant fails to correct a claim-related deficiency or to supply additional claim information within thirty (30) days of written notice from the Underground Storage Tank Branch, that portion of the claim shall be denied.

(10) The Underground Storage Tank Branch shall issue a determination pursuant to KRS 224.60-140(7) as to whether the costs submitted in the claim are eligible for reimbursement.

(11) All claims shall be submitted within two (2) years after issuance of a no further action letter by the Underground Storage Tank Branch.

Section 11. Reimbursement for Actions Directed and Documented by the Environmental Response Branch during a Declared Environmental Emergency. Reimbursement for actions directed and documented by the Environmental Response Branch during a declared environmental emergency shall not be governed by this administrative regulation and shall be made in accordance with procedures established by the cabinet.

Section 12. Eligible and Ineligible Costs. (1) Eligible costs for regulated petroleum storage tanks containing motor fuel shall include:

(a) Tank and Line Tightness Testing as requested in writing by the Underground Storage Tank Branch in conjunction with Site Check, Site Investigation, or Corrective Action activities for a facility;

(b) Site checks at a facility, upon a written directive after September 13, 2006, by the Underground Storage Tank Branch;

(c) Performance of corrective action as defined in KRS 224.60-115(4), due to a release of motor fuel from a regulated petroleum storage tank system, upon written direction by the Underground Storage Tank Branch;

(d) Transportation, disposal, or treatment at a permitted facility, and replacement of backfill material, excluding the tank volume, contaminated above allowable levels within the excavation zone;

(e) Transportation and disposal, treatment, or recycling, at a permitted facility, of free product or water contaminated above screening levels encountered within the excavation zone, during permanent closure activities in accordance with 401 KAR 42:070, or as directed in writing by the Underground Storage Tank Branch for those facilities currently performing corrective action activities in accordance with 401 KAR 42:060;

(f) The cost of surface material replacement for excavated areas directly associated with corrective action activities;

(g) Initial response actions taken outside of the excavation zone, in accordance with Section 2 of the Release Response and Initial Abatement Requirements Outline, incorporated by reference in 401 KAR 42:060, prior to a written directive from the Underground Storage Tank Branch or prior to the date of a declared emergency by the cabinet; and

(h) Other costs, associated with corrective action activities, as identified in a written directive issued by the Underground Storage Tank branch for the facility.

(2) Ineligible costs for regulated petroleum storage tanks containing motor fuel shall include:

(a) Replacement, repair, maintenance, or retrofitting of tanks or piping;

(b) Out-of-state travel expense, including air fare;

(c) Loss of business, income or profits;

(d) An attorney fee related to:

1. Judicial or administrative litigation;

2. Consultation on administrative regulations;

3. Preparation or submittal of documentation related to reimbursement process; or

4. Other legal services determined by the Underground Storage Tank Branch not to be integral to the performance of corrective action.

(e) Decreased property values for the facility;

(f) Facility improvements, including costs to upgrade the facility;

(g) An aesthetic improvement to the facility;

(h) The cost of surface material replacement for areas not removed as part of corrective action;

(i) Payment of the owner or operator's personnel for overtime, or for staff time in planning or implementing corrective action as defined in KRS 224.60-115(4);

(j) Interest on an overdue account or loan;

(k) A cost covered by insurance payable to the owner or operator;

(l) A contractor surcharge implemented because the owner or operator failed to act in a timely fashion;

(m) Work performed that is not in compliance with safety codes;

(n) A cost associated with a release from a storage tank exempt from KRS 224.60;

(o) Contractor markup expense for a normally expected overhead item or in-stock material;

(p) Contractor markup expense for personnel cost;

(q) A laboratory "rush" fee, unless directed by the Underground Storage Tank Branch;

(r) A cost or cost recovery for governmental emergency services;

(s) Corrective action activities subsequent to the issuance of a no further action letter, unless otherwise directed in writing by the Underground Storage Tank Branch;

(t) Reimbursement shall not be made for work or a portion of work performed at a facility where the results of laboratory analysis do not confirm the need for corrective action or for actions to achieve more stringent allowable levels then those prescribed by the cabinet, except for investigatory or corrective actions otherwise directed from the Underground Storage Tank Branch in writing;

(u) A cost of a party employed to act as a surrogate or stand-in for the owner or operator of the facility;

(v) Preparation of documentation, cost estimates, written agreements, contracts or client invoices that will be submitted to the Underground Storage Tank Branch for reimbursement purposes;

(w) Except as provided in 401 KAR 42:330, cost related to the removal, or actions incidental to the removal of a tank system;

(x) Cost of resampling and laboratory tests performed as a result of an operational or methodology mistake by the analytical laboratory, or cost for an analytical laboratory to become certified or accredited under the requirements of KRS 224.60-130(1)(a) and 401 KAR 42:340;

(y) Costs relating to compliance with a local program having corrective action standards more stringent than those required by the cabinet;

(z) Costs to achieve corrective action standards more stringent than those required by the applicable administrative regulation, as determined in 401 KAR 42:070;

(aa) Actions resulting from contractor error or negligence;

(bb) Costs covered by the contractor's liability insurance;

(cc) Other services or costs determined by the Underground Storage Tank Branch to be an unreasonable or unnecessary cost of corrective action;

(dd) Overtime for individual personnel exceeding 40 hours during a standard workweek;

(ee) Free product recovery from monitoring wells or borings during corrective action activities, unless directed in writing by the Underground Storage Tank Branch;

(ff) Costs incurred for additional assessment or Corrective Action Plan modification determined to be necessary by the Underground Storage Tank Branch as a result of delayed implementation of the Corrective Action Plan, beyond the deadline established in writing by the Underground Storage Tank Branch;

(gg) Costs incurred for the purpose of compliance with permit conditions for permitted soil treatment facilities;

(hh) The portion of the lease or rental cost for capital equipment which would exceed the purchase price of the equipment, minus the salvage value;

(ii) Costs incurred for the removal, transportation and disposal, recycling, or treatment of free product from within the excavation zone of a UST system, that is not permanently closed, for which contamination above allowable levels outside the excavation zone has not been confirmed;

(jj) Costs incurred for the purpose of meeting the requirements of 401 KAR 42:020, 42:030, and 42:040;

(kk) Equipment replacements costs covered by equipment warranty;

(ll) Costs incurred to replace a monitoring well destroyed, damaged or that cannot be accessed or located due to actions within the control of the applicant; and

(mm) An eligible company or partnership that employs a subcontractor, a subsidiary company, or other vendor, that is affiliated with the eligible company or partnership or a principle of the eligible company or partnerships shall not receive the fifteen (15) percent mark up for the cost of corrective action.

Section 13. Reimbursement Rates. (1) Established rates for eligible reimbursement are identified in the Contractor Cost Outline.

(2) Costs not included in the Contractor Cost Outline shall be reasonable and necessary to the performance of corrective action in order to be eligible for reimbursement.

(3) Pass-through costs for utilities and employee expense accounts shall not receive a markup on the actual cost.

(4) A fifteen (15) percent total markup above the estimated cost of materials purchased associated with a task for which there is not a formulated unit rate shall be allowed.

Section 14. Request for Re-Evaluation of the Reimbursable Amount Identified in a Written Directive. (1) If the applicant determines that the scope of work identified in a written directive cannot be completed without exceeding the total reimbursable amount set forth in the written directive, a request for re-evaluation of the reimbursable amount may be submitted to the Underground Storage Tank Branch on the Reimbursable Amount Re-Evaluation Form, DEP 0062, and shall include:

(a) The submittal of three (3) current written estimates, for services or materials not provided by the contracting company or partnership, from subcontractors in the area in which the facility is located, if applicable;

(b) The submittal of an itemized cost breakdown of the contracting company or partnership's time and materials in completing the written directive; and

(c) The costs shall be calculated using the personnel and equipment rates established in Section 3 of the Contractor Cost Outline.

(2) The Underground Storage Tank Branch shall review the itemized cost breakdown and based upon a determination of reasonable and necessary costs, the Underground Storage Tank Branch shall either:

(a) Determine that the itemized cost breakdown exceeds the reimbursable amount, rescind the written directive, and issue a new written directive establishing a not-to-exceed amount; or

(b) Determine that the reasonable and necessary costs itemized are at or below the initial reimbursement amount, and deny the request for re-evaluation, leaving the reimbursable amount identified in the original directive letter in effect.

(3) Upon a determination by the Underground Storage Tank Branch that the establishment of a not-to-exceed amount is warranted in accordance with subsection (2)(a) of this section, final reimbursement shall be determined on an actual time and materials basis, and the appropriate supporting documentation shall be submitted to the Underground Storage Tank Branch, in accordance with Section 8(8) of this administrative regulation, as an attachment to the claim.

Section 15. Signatures. (1) Forms required by this administrative regulation for which a signature is required shall be signed by an eligible petroleum storage tank owner or operator as follows:

(a) For a corporation, by:

1. A president or secretary;

2. The duly authorized representative or agent of the president or secretary if the representative or agent is responsible for overall operation of the facility; or

3. A person designated by the board of directors by means of a corporate resolution.

(b) For a partnership, sole proprietorship or individual, by a general partner, the proprietor or individual respectively; or

(c) For a municipality, by:

1. A principal;

2. Executive officer; or

3. Ranking elected official.

(d) A person designated by a court to act on behalf of the eligible petroleum storage tank owner or operator.

(2) A claim form or Application for Assistance shall also be signed by:

(a) The professional engineer or professional geologist who is responsible for overseeing corrective action; and

(b) An authorized representative of the eligible company or partnership, unless corrective action commenced prior to July 1, 1999.

(3) The owner or operator shall submit documentary evidence to substantiate the legality of an authorized representative's power of agency or power of attorney.

Section 16. Loss of Future Reimbursement Eligibility. (1) A petroleum storage tank owner or operator shall be ineligible to receive future reimbursement from the Financial Responsibility Account or Petroleum Storage Tank Account if the petroleum storage tank owner or operator has:

(a) Knowingly or intentionally submitted false or inaccurate information to the cabinet; or

(b) Knowingly made a false statement, representation, or certification in an application, reimbursement request, or other document submitted to the cabinet.

(2) A cost incurred by, or paid from, the cabinet which is based on false or inaccurate information, or a false statement, representation, or certification shall be recovered by the cabinet from the person who asserted the false or inaccurate information, or false statement, representation, or certification.

(3) The cabinet shall have the right to recover the money paid to a petroleum storage tank owner or operator, or a contractor if:

(a) The amount was paid due to an error of the cabinet in processing a claim for reimbursement;

(b) The amount was paid due to a mistake, error, or inaccurate information in the claim submitted by the petroleum storage tank owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained reimbursement from the cabinet by fraud or intentional misrepresentation.

Section 17. Subrogation. Prior to making reimbursement of a claim, the cabinet shall require, by subrogation, the rights of the person seeking reimbursement or recover the amounts paid by the cabinet for the performance of corrective action from the person responsible or liable for the release.

Section 18. Facility Inspections. The cabinet may conduct inspections in accordance with KRS 224.60-130(1)(l) to determine the reasonableness and necessity of the costs of corrective action.

(1) The cabinet shall be authorized to enter and inspect a facility seeking reimbursement for the costs of corrective action.

(2) Refusal to allow a cabinet employee entry and inspection of a facility shall make the owner or operator ineligible for reimburse-

ment. Money previously paid to the petroleum storage tank owner or operator of the facility shall be repaid to, or recovered by, the cabinet.

(3)(a) The cabinet shall be present at the facility during all petroleum storage tank permanent closure activities, except as provided in paragraphs (d) and (e) of this subsection;

(b) A petroleum storage tank owner or operator shall contact the appropriate Field Operations Branch regional office, by certified mail, to schedule a date to have an inspector present at the facility during petroleum storage tank permanent closure activities. The certified mail notice shall be received a minimum of fourteen (14) calendar days prior to commencement of the permanent closure;

(c) If the inspector cannot be present at the facility on the day scheduled by the notice sent as required in paragraph (b) of this subsection, he may, by written notice, require the petroleum storage tank owner or operator to reschedule the permanent closure to a proposed date. This notice shall be mailed by the cabinet no later than ten (10) days prior to the date scheduled by the petroleum storage tank owner or operator.

(d) If the inspector fails to issue notice to reschedule the permanent closure, or is not present on the day set by the notice, the permanent closure may proceed without penalty; and

(e) This provision shall not apply to an emergency removal ordered by the cabinet.

(4)(a) A petroleum storage tank owner or operator shall:

1. Provide an inspector full access to an area or well for the collection of samples;

2. Split samples obtained at the facility with the cabinet, if required by the inspector;

3. Resample an area or well for which the result of analytical testing obtained by the cabinet differs significantly from the result obtained by the petroleum storage tank owner or operator; and

4. Have the burden of proving the validity of analytical results, if a discrepancy remains after resampling.

(b) The cabinet shall not reimburse the costs of resampling if the Underground Storage Tank Branch determines that proper sampling, sample handling or analytical protocols were not adhered to by the contractor or certified laboratory.

(c) Failure to allow sample collection, or to split samples with the cabinet, shall render the owner or operator ineligible for reimbursement.

Section 19. Account Balance. (1) The unobligated balance of the Financial Responsibility Account shall not be less than $1,000,000, so as to ensure a reserve balance adequate to meet federal financial responsibility requirements for participants in the account.

(2) If the unobligated balance of the Financial Responsibility Account is $1,000,000 or less, or the reimbursement of additional claims would cause the unobligated balance of the fund to be less than $1,000,000, the cabinet shall immediately suspend claim reimbursements and the approval of applications until the unobligated balance is greater than $1,000,000. When the suspension is lifted, the priority of reimbursement for claims submitted related to an approved application for assistance shall be determined by the date of the claim submittal.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Assistance", DEP 6063, April 2011;

(b) "Affidavit of Termination of Contract", DEP 0061, April 2011;

(c) "Reimbursable Amount Re-Evaluation", DEP 0062, April 2011;

(d) "Claim Request for Actions Not Directed by the USTB", DEP 6064, April 2011;

(e) "Miscellaneous Task Reimbursement Worksheet", DEP 6093, April 2011;

(f) "Facility Restoration Reimbursement Worksheet", DEP 6095, April 2011;

(g) "Optional Soil Removal Outside the Excavation Zone Reimbursement Worksheet", DEP 6094, April 2011;

(h) "Payment Verification Affidavit", DEP 6075, April 2011;

(i) "Payment Waiver", DEP 6077, April 2011;

(j) "Cost Estimate", DEP 6090, April 2011;

(k) "Underground Storage Tank Branch Written Directive Claim Request", DEP 6091, April 2011; and

(l) "Contractor Cost Outline", April 2011.

(2)(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(b) This material may also be obtained at the Division of Waste Management's Web site at http://waste.ky.gov/ust. [~~and receive reimbursement from the cabinet to pay the cost of corrective action due to a release from a petroleum storage tank. Federal and state-owned facilities shall not be eligible for reimbursement from the PSTEAF.~~

~~Section 2. Application for Assistance. (1) Within thirty (30) calendar days of a confirmed release, a petroleum storage tank owner or operator who has received a Certificate of Registration and Reimbursement Eligibility, pursuant to and incorporated by reference in 401 KAR 42:020, or a Certificate of Eligibility, issued prior to the effective date of this administrative regulation, which indicates that the owner or operator is eligible to participate in the Financial Responsibility Account or the Petroleum Storage Tank Account, shall complete and submit to the cabinet an "Application for Assistance", DEP 6063 (August 2006) as incorporated by reference in Section 26 of this administrative regulation.~~

~~(2) An owner or operator who has not submitted an Application for Assistance for a confirmed release prior to the effective date of this administrative regulation shall submit a completed Application for Assistance in order to be eligible for reimbursement.~~

~~(3) The eligible petroleum storage tank owner or operator shall certify in the Application for Assistance that:~~

~~(a) A release requiring corrective action from an eligible facility has occurred and has been reported to the cabinet; and~~

~~(b) A contract has been entered into and submitted in accordance with Section 3 of this administrative regulation.~~

~~(4) A written notice, in accordance with 401 KAR 42:070, shall be submitted to the applicable regional office at least fourteen (14) calendar days prior to commencement of the permanent closure of the petroleum storage tank to maintain eligibility for reimbursement.~~

~~(5) The cabinet shall identify in writing deficiencies in a submitted Application for Assistance. Failure by the applicant to provide the requested information and documentation within thirty (30) days of receipt of the request shall cause the application to be denied. A request for an extension of time in which to submit the requested information shall be submitted in writing to the cabinet prior to the deadline. Denial of the Application for Assistance shall not prevent the petroleum storage tank owner or operator from reapplying if the requested documentation becomes available.~~

~~(6) If the petroleum storage tank owner or operator meets the requirements of subsections (2) and (3) of this section, the cabinet shall:~~

~~(a) Approve the Application for Assistance;~~

~~(b) Reevaluate the eligibility of the owner or operator to receive reimbursement from either the Financial Responsibility Account or the Petroleum Storage Tank Account according to Section 4 of this administrative regulation; and~~

~~(c) If the evaluation results in changing the owner's or operator's account placement from the initial placement made prior to the submittal of the Application for Assistance, the cabinet shall issue an amended "Certificate of Registration and Reimbursement Eligibility", DEP 7113 (January 2006), incorporated by reference in 401 KAR 42:020.~~

~~Section 3. Contracts. (1) A petroleum storage tank owner or operator shall obtain a contract from a certified company, if work was initiated on or after July 1, 1999, to be eligible for reimbursement from the cabinet for:~~

~~(a) The performance of release investigation, site check or site investigation for a facility; and~~

~~(b) The development and implementation of a corrective action agreement in accordance with Section 17 of this administrative regulation.~~

(2) The contract shall be obtained and submitted to the cabinet prior to commencing activity, except for those actions directed and documented by the cabinet's Environmental Response Team upon the cabinet's declaration of an environmental emergency.

(3) If a contract is changed or revised, a copy of that contract shall be submitted to the cabinet within thirty (30) days of execution.

Section 4. Account Placement. (1) An owner or operator of a petroleum storage tank shall be eligible to receive reimbursement for corrective action costs and third-party claims, incurred on or after April 9, 1990, from the Financial Responsibility Account if the cabinet determines the petroleum storage tank owner or operator to have satisfied the following requirements:

(a) Registered the tanks with the cabinet in accordance with 401 KAR 42:020 prior to the release requiring corrective action;

(b) Maintained UST system release detection as required by 401 KAR 42:040. A petroleum storage tank permanently or temporarily closed, in compliance with 401 KAR 42:070, shall have maintained compliance with UST system release detection requirements prior to the permanent or temporary closure of the system;

(c) Maintained corrosion protection as required by 401 KAR 42:030;

(d) Maintained overfill and spill prevention as required by 401 KAR 42:030 for those tanks in operation after December 22, 1998;

(e) Received a "Certificate of Registration and Reimbursement Eligibility", DEP 7113 (January 2006) for the facility, pursuant to 401 KAR 42:020, or a Certificate of Eligibility issued prior to the effective date of this administrative regulation;

(f) Filed a notice of intent form, incorporated by reference in 401 KAR 42:070, if applicable, with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change-in-service to comply with the requirements of 401 KAR 42:070;

(g) Reported the release to the cabinet immediately after the discovery of the release as required by KRS 224.01-400 and 401 KAR 42:050;

(h) Performed initial abatement procedures as required by the "UST System Release Response and Initial Abatement Requirements Outline" (August 2006), incorporated by reference in 401 KAR 42:060; and

(i) With regard to reimbursement for third-party claims, has complied with the requirements of 401 KAR 42:300.

(2) An owner or operator of a petroleum storage tank who is not eligible for participation in the Financial Responsibility Account, shall be eligible for reimbursement by the Petroleum Storage Tank Account for the cost of corrective action incurred on or after April 9, 1990, if the cabinet determines the petroleum storage tank owner or operator has satisfied the following requirements:

(a) Registered the facility with the cabinet in accordance with 401 KAR 42:020;

(b) Filed a notice of intent form with the cabinet to permanently close the petroleum storage tanks at the facility (if applicable) or to make a change-in-service (if applicable) to comply with the requirement of 401 KAR 42:070; and

(c) Reported a release to the cabinet as required by KRS 224.01-400 and KRS 224.01-405.

(3) Facilities placed in the Petroleum Storage Tank Account shall not be eligible for third-party coverage.

Section 5. Entry Level to the Financial Responsibility Account and Petroleum Storage Tank Account. (1) For facilities with releases confirmed after the effective date of this administrative regulation, a petroleum storage tank owner's or operator's entry level shall be deducted from the overall reimbursement except as provided in subsections (2) and (3) of this section.

(2) An entry level shall not be deducted from the overall reimbursement if the owner or operator participated in the Small Owner Tank Removal Account in accordance with 401 KAR 42:330.

(3) The entry level shall not be deducted from the overall reimbursement if the owner or operator is directed by the cabinet to perform a site check, in accordance with 401 KAR 42:060, for the facility and the laboratory analyses indicate corrective action is not required at the facility.

(4) Upon request by the petroleum storage tank owner or operator, the cabinet shall reimburse, upon final payment, twenty-five (25) percent of the entry level if the petroleum storage tank owner or operator has:

(a) Completed corrective action at the facility within:

1. 180 days from the discovery of the release, for soil remediation alone; or

2. Twenty-four (24) months from the discovery of the release, for groundwater alone or for both soil and groundwater remediation; and

(b) Received a no further action letter without additional measures being required.

Section 6. Newly Discovered Underground Storage Tank System. (1) A newly-discovered underground storage tank system encountered at a facility during the performance of corrective action due to a release from a registered tank shall not affect an owner's or operator's account placement eligibility.

(2) The number of newly-discovered tanks shall not increase the entry level of the owner or operator.

Section 7. Preestablished Fixed Cost Reimbursement. (1) All reimbursements shall be made on the basis of preestablished fixed costs as established in the "Contractor Cost Outline" (August 2006), except as provided for in Section 8 through Section 19 of this administrative regulation and 401 KAR 42:330.

(2)(a) The preestablished fixed cost shall be identified within a written directive issued by the cabinet pursuant to 401 KAR 42:060 and shall be:

1. Itemized by the cabinet on the appropriate reimbursement cost worksheets attached to the written directive as identified below:

a. "Initial and Intermediate Site Investigation and Site Check for a Facility" worksheet, DEP 6066C, (August 2006) of this administrative regulation; and

b. "Final Site Investigation for a Facility" worksheet, DEP 6066D, (August 2006); and

2. Considered the final cost for the completion of the written directive and shall serve as an obligation and guarantee of payment in accordance with KRS 224.60-140(5).

(b) Fixed cost reimbursement shall be made after the following actions are completed:

1. The submittal and approval of an Application for Assistance in accordance with Section 2 of this administrative regulation;

2. A determination by the cabinet that the report submitted in response to each written directive is complete and meets the requirements of 401 KAR Chapter 42;

3. The submittal of necessary documentation pursuant to the "Contractor Cost Outline", (August 2006) of this administrative regulation; and

4. The submittal of signed worksheets provided with the written directive from the cabinet.

(3) The initial fixed cost for over-excavation shall be identified on the "Over-Excavation" worksheet, DEP 6066E, (August 2006). An estimate of the tonnage removed shall be based on the volume and density of material in the proposed excavation area. The cabinet shall convert cubic yards to tons using a density of 1.5 tons per cubic yard. Actual reimbursement shall be based on:

(a) A submittal of weigh tickets; or

(b) The actual area of over-excavation, not to exceed the initial estimate as identified on the "Over-Excavation" worksheet, DEP 6066E, (August 2006).

(4) Preestablished fixed costs identified by the cabinet for corrective action agreements shall be determined based on the negotiated agreement between the cabinet and petroleum storage tank owner or operator.

Section 8. General Requirements for the Submittal of Claims for which there is no Preestablished Fixed Cost. (1) Any eligible costs for which a directive was issued prior to the effective date of this administrative regulation shall be submitted on the forms in effect at the time the directive was issued.

(2) Cost estimates shall be submitted on the appropriate reimbursement cost worksheets, and approved by the cabinet, prior to

incurring costs for actions not covered in Section 7 or Section 10 of this administrative regulation. The cabinet shall establish a reimbursable amount based on a cost estimate submitted by the contractor, which shall serve as an obligation and guarantee of payment in accordance with KRS 224.60-140(5).

(3) The request for reimbursement associated with a written directive that does not include a preestablished fixed cost, issued by the cabinet after the effective date of this administrative regulation, shall be submitted on the appropriate reimbursement cost worksheet as an attachment to the required technical report.

(4) The cabinet may require additional information and documentation to determine that an eligible request for reimbursement is necessary and reasonable. Actions necessary as a result of mistakes, omissions, or inefficiencies of the certified contractor occurring during the performance of corrective action, shall not be reimbursed.

(5) The cabinet shall issue a determination pursuant to KRS 224.60-140(7) as to whether the costs submitted in the claim are eligible for reimbursement.

(6) If the applicant fails to correct the deficiency or to supply the additional information required by the cabinet, that portion of the claim shall be denied.

(7) All claims shall be submitted within two (2) years after issuance of a no further action letter by the cabinet.

Section 9. Claim Submittal for Declared Emergency Actions. (1) Reimbursement for costs incurred to abate an environmental emergency shall be limited to those reasonable and necessary actions as directed and documented by the Environmental Response Team (ERT) under the terms of a declared emergency.

(2) The claim request shall include the following documentation if the costs submitted were initiated after the effective date of this administrative regulation:

(a) "Claim Request Form", DEP 6064 (January 2006);

(b) "Invoice Listing Form", DEP 6065 (January 2006);

(c) "Environmental Response Team Declared Emergency" worksheet, DEP 6066A (August 2006);

(d) Original invoices as required in the "Contractor Cost Outline" (August 2006);

(e) Documentation outlining the specific cabinet directives and dates from ERT; and

(f) Documentation to establish that the petroleum storage tank owner or operator has complied with the administrative regulations or written directives from ERT.

(3) Claims submitted shall be reviewed within thirty (30) days of receipt.

(4) Future reimbursement for actions subsequent to the close of the declared emergency will be contingent upon written directives from the cabinet or entering into a corrective action agreement.

Section 10. Third-party Claims. Third-party claims shall be submitted in accordance with 401 KAR 42:300 and shall include the "Third-party claim Form", DEP 6078, (January 2006).

Section 11. Capital Equipment. (1) A petroleum storage tank owner or operator who has been directed by the cabinet to initiate corrective action that requires the purchase of equipment costing in excess of $1,000 shall obtain prior approval of the purchase by submitting a "Capital Equipment Preapproval Purchase/Rental Request", DEP 6071, (January 2006) form.

(2) Reimbursement using the "Capital Equipment Claim Form", DEP 6070, (January 2006) shall be limited to the purchase price, less determined salvage value, as approved by the cabinet.

(3) The cabinet shall approve either the purchase or rental of remediation equipment and shall establish the amount to be reimbursed, in accordance with the "Contractor Cost Outline", (August 2006).

Section 12. Claims for Initial Abatement-free Product Recovery. (1) Reimbursement requests for costs incurred during initial abatement or free product recovery actions, as directed by the cabinet, shall be submitted to the cabinet as a claim. The claim request shall include the following documentation if the written directive is issued by the cabinet after the effective date of this administrative regulation:

(a) "Claim Request Form", DEP 6064, (January 2006);

(b) "Invoice Listing Form", DEP 6065, (January 2006);

(c) "Initial Abatement and Free Product Recovery" worksheet, DEP 6066B, (August 2006); and

(d) Original invoices as required in the "Contractor Cost Outline", (August 2006).

(2) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete, in accordance with 401 KAR 42:060.

Section 13. Claims for Quarterly Monitoring Reports and System Maintenance. Reimbursement for costs incurred for quarterly monitoring, system maintenance, and reporting shall be limited to those actions specified in the approved and implemented corrective action plan.

(1) If the work was initiated after the effective date of this administrative regulation, claim requests shall include the following documents:

(a) "Claim Request Form", DEP 6064, (January 2006);

(b) "Invoice Listing Form", DEP 6065, (January 2006);

(c) "Quarterly Monitoring Reporting and System Maintenance" worksheet, DEP 6066G, (August 2006); and

(d) Original invoices as required in the "Contractor Cost Outline", (August 2006).

(2) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete.

Section 14. Claims for Optional Soil Removal Outside of the Excavation Zone at the Time of Permanent Closure in Accordance with 401 KAR 42:070. (1) Reimbursement requests for costs incurred for optional soil removal outside of the excavation zone shall be submitted on the "Over-Excavation" worksheet, DEP 6066E, (August 2006).

(2) The claim request shall include the following documentation if the costs submitted were incurred after the effective date of this administrative regulation:

(a) "Claim Request Form", DEP 6064, (January 2006);

(b) "Invoice Listing Form", DEP 6065, (January 2006);

(c) "Over-Excavation" worksheet, DEP 6066E, (August 2006);

(d) Original invoices as required in the "Contractor Cost Outline", (August 2006); and

(e) Backup documentation required to support each task as required on the worksheet.

(3) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete.

Section 15. Claims for Miscellaneous Tasks. (1) The "Miscellaneous Tasks" worksheet, DEP 6066H, (August 2006) shall be completed to initiate reimbursement for the following actions:

(a) Nonemergency initial abatement actions pursuant to 401 KAR 42:060 conducted prior to a directive being issued by the cabinet;

(b) Transportation and disposal of drums containing purged water or soil cuttings not reimbursed on a previous claim;

(c) Initial review of facility information by a newly contracted certified company and contractor having no previous knowledge of the facility;

(d) Decommissioning of cisterns or drinking water wells as required to address conditions at the regulated facility;

(e) Monitoring well pad replacement;

(f) Tank and line tightness testing, as requested in writing by the cabinet, for corrective action activities;

(g) Encroachment permit or off-site access agreements, if required by the cabinet;

(h) Dye trace tests;

(i) Backfill subsidence repair; or

(j) Corrective action activities proposed by the petroleum storage tank owner or operator, or directed by the cabinet that do not include a unit cost listed in this administrative regulation.

(2) The claim request shall include the following documentation

if the incurred costs submitted were initiated after the effective date of this administrative regulation:

(a) "Claim Request Form", DEP 6064, (January 2006);

(b) "Invoice Listing Form", DEP 6065, (January 2006);

(c) "Miscellaneous Tasks" worksheet, DEP 6066H, (August 2006);

(d) Original invoices as required in the "Contractor Cost Outline", (August 2006); and

(e) Backup documentation to support each task as required on the worksheet.

(3) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete, in accordance with 401 KAR 42:060.

Section 16. Claims for Facility Restoration. (1) A reimbursement request for costs related to facility restoration shall include the following information:

(a) "Claim Request Form", DEP 6064, (January 2006);

(b) "Invoice Listing Form", DEP 6065, (January 2006);

(c) "Facility Restoration" worksheet, DEP 6066I, (August 2006);

(d) Original invoices as required in the "Contractor Cost Outline", (August 2006);

(e) Backup documentation required to support each task as required on the worksheet; and

(f) A site map for a facility, to scale, depicting the area impacted by corrective action (for example, over-excavation), the area of facility restoration and photographs of the area before and after facility restoration.

(2) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete, in accordance with 401 KAR 42:060.

Section 17. Corrective Action Agreements. At the time the cabinet approves an owner or operator's interim or final corrective action plan pursuant to 401 KAR 42:060, the cabinet and the owner or operator shall for purposes of reimbursement enter into a Corrective Action Agreement which shall set forth:

(1) Method of reimbursement;

(2) Amount to be reimbursed; and

(3) Rate or schedule of payment.

Section 18. Criteria for Approval of a Claim. (1) A claim with an approved Application for Assistance for the Financial Responsibility Account or the Petroleum Storage Tank Account shall be reviewed to determine if:

(a) The corrective action complies with 401 KAR Chapter 42 and written directives from the cabinet;

(b) Each cost is necessary, reasonable and consistent with the requirements of 401 KAR Chapter 42 and written directives from the cabinet;

(c) The claim form is accurate and complete;

(d) All supplemental information has been supplied;

(e) The applicant has complied with Section 25 of this administrative regulation; and

(f) Annual tank fees have been paid as required by KRS 224.60-150.

(2) Reimbursement shall be made by a check remitted to the eligible petroleum storage tank owner or operator.

Section 19. Eligible Reimbursement Rates. Established unit costs and rates for eligible reimbursement are identified in the "Contractor Cost Outline", (August 2006) incorporated by reference in Section 26 of this administrative regulation.

Section 20. Signatures. (1) Forms required by this administrative regulation for which a signature is mandated shall be signed by an eligible petroleum storage tank owner or operator as follows:

(a) For a corporation, by:

1. A president or secretary;

2. The duly authorized representative or agent of the president or secretary if the representative or agent is responsible for overall operation of the facility; or

3. A person designated by the board of directors by means of a corporate resolution.

(b) For a partnership, sole proprietorship or individual, by a general partner, the proprietor or individual respectively; or

(c) For a municipality, by:

1. A principal;

2. Executive officer; or

3. Ranking elected official.

(2) A claim form or Application for Assistance shall also be signed by:

(a) The certified contractor who is responsible for overseeing corrective action, unless corrective action commenced prior to March 1, 1995; and

(b) An authorized representative of the certified company, unless corrective action commenced prior to July 1, 1999.

(3) The owner or operator shall submit documentary evidence to substantiate the legality of an authorized representative's power of agency or power of attorney.

Section 21. Loss of Future Reimbursement Eligibility. (1) A petroleum storage tank owner or operator shall be ineligible to receive future reimbursement from the Financial Responsibility Account or Petroleum Storage Tank Account if the petroleum storage tank owner or operator has:

(a) Knowingly or intentionally submitted false or inaccurate information to the cabinet; or

(b) Knowingly made a false statement, representation, or certification in an application, reimbursement request, or other document submitted to the cabinet.

(2) A cost incurred by, or paid from, the cabinet which is based on false or inaccurate information, or a false statement, representation, or certification shall be recovered by the cabinet from the person who asserted the false or inaccurate information, or false statement, representation, or certification.

(3) The cabinet shall have the right to recover the money paid to a petroleum storage tank owner or operator, or a contractor if:

(a) The amount was paid due to an error of the cabinet;

(b) The amount was paid due to a mistake, error, or inaccurate information in the claim submitted by the petroleum storage tank owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained reimbursement from the cabinet by fraud or intentional misrepresentation.

Section 22. Subrogation. Prior to making reimbursement of a claim, the cabinet shall acquire, by subrogation, the rights of the person receiving reimbursement to recover the amounts paid by the cabinet for the performance of corrective action from the person responsible or liable for the release.

Section 23. Facility Inspections. The cabinet may conduct inspections in accordance with KRS 224.60-130(1)(l) to determine the reasonableness and necessity of the costs of corrective action.

(1) The cabinet shall be authorized to enter and inspect a facility seeking reimbursement for the costs of corrective action.

(2) Refusal to allow a cabinet employee entry and inspection of a facility shall make the owner or operator ineligible for reimbursement. Money previously paid to the petroleum storage tank owner or operator of the facility shall be repaid to, or recovered by, the cabinet.

(3)(a) Cabinet personnel shall be present at the facility during all petroleum storage tank permanent closure activities, except as provided in paragraphs (d) and (e) of this subsection;

(b) A petroleum storage tank owner or operator shall contact the appropriate Field Operations Branch regional office, by certified mail, to schedule a date to have an inspector present at the facility during petroleum storage tank permanent closure activities. The certified mail notice shall be received a minimum of fourteen (14) calendar days prior to commencement of the permanent closure;

(c) If the inspector cannot be present at the facility on the day scheduled by the notice sent as required in paragraph (b) of this subsection, he may, by written notice, require the petroleum storage tank owner or operator to reschedule the permanent closure to a proposed date. This notice must be mailed by the cabinet no later than ten (10) days prior to the date scheduled by the petroleum storage tank owner;

(d) If the inspector fails to issue notice to reschedule the permanent closure, or is not present on the day set by the notice, the permanent closure may proceed without penalty; and

(e) This provision shall not apply to an emergency removal ordered by the cabinet.

(4)(a) A petroleum storage tank owner or operator shall:

1. Provide an inspector full access to an area or well for the collection of samples;

2. Split samples obtained at the facility with the cabinet, if required by the inspector;

3. Resample an area or well for which the result of analytical testing obtained by the cabinet differs significantly from the result obtained by the petroleum storage tank owner or operator; and

4. Have the burden of proving the validity of analytical results, if a discrepancy remains after resampling.

(b) The cabinet shall not reimburse the costs of resampling, if the cabinet determines that proper sampling, sample handling or analytical protocols were not adhered to by the contractor or certified laboratory.

(c) Failure to allow sample collection, or to split samples with the cabinet, shall render the owner or operator ineligible for reimbursement.

Section 24. Affidavits and Waivers. The following forms shall be submitted to the cabinet prior to reimbursement:

(1) "Payment Verification Affidavit Form", DEP 6075, (January 2006); and

(2) If required by KRS 224.60-140(18), a "Payment Waiver Form", DEP 6077, (January 2006) executed by each affected vendor and subcontractor.

Section 25. Account Balance. (1) The unobligated balance of the Financial Responsibility Account shall not be less than $1,500,000, so as to ensure a $1,000,000 reserve balance adequate to meet federal financial responsibility requirements for participants in the account and a $500,000 reserve balance for emergency abatement action by the cabinet pursuant to KRS 224.60-135. The $500,000 reserved for the cabinet's emergency abatement actions shall be renewed in that amount annually.

(2) If the unobligated balance of the Financial Responsibility Account is $1,500,000 or less, or the reimbursement of additional claims would cause the unobligated balance of the fund to be less than $1,500,000, the cabinet shall immediately suspend claim reimbursements and the approval of applications until the unobligated balance is greater than $1,500,000. When the suspension is lifted, the priority of reimbursement for claims submitted related to an approved application for assistance shall be determined by the date of the claim submittal.

Section 26. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Assistance", DEP 6063, (August 2006);

(b) "Claim Request Form", DEP 6064, (January 2006);

(c) "Invoice Listing Form", DEP 6065, (January 2006);

(d) "Capital Equipment Claim Form", DEP 6070, (January 2006);

(e) "Capital Equipment Preapproval Purchase/Rental Request", DEP 6071, (January 2006);

(f) "Payment Verification Affidavit", DEP 6075, (January 2006);

(g) "Payment Waiver Form", DEP 6077, (January 2006);

(h) "Environmental Response Team Declared Emergency" worksheet, DEP 6066A, (August 2006);

(i) "Initial Abatement & Free Product Recovery" worksheet, DEP 6066B, (August 2006);

(j) "Initial and Intermediate Site Investigation and Site Check for Facilities" worksheet, DEP 6066C, (August 2006);

(k) "Final Site Investigation for a Facility" worksheet, DEP 6066D, (August 2006);

(l) "Over-Excavation" worksheet, DEP 6066E, (August 2006);

(m) "Quarterly Monitoring Reports and System Maintenance" worksheet, DEP 6066G, (August 2006);

(n) "Miscellaneous Tasks" worksheet, DEP 6066H, (August 2006);

(o) "Facility Restoration" worksheet, DEP 6066I, (August 2006);

(p) "Third Party Claim Form", DEP 6078, (January 2006); and

(q) "Contractor Cost Outline", (August 2006).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays. This material is also available on the Division of Waste Management's Web page located at www.waste.ky.gov.]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for administration of the PSTEAF.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for the administration of the PSTEAF.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing procedures for administration of the PSTEAF and reimbursement from PSTEAF.

(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 the procedures for administration of the PSTEAF.

(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 increases the rates in the Contractor Cost Outline, incorporates new forms, and changes the language to be consistent with how the program runs.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to be consistent with the way the agency administers the PSTEAF.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by changing the procedures for the administration of the PSTEAF.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by allowing a more efficient way to administer the PTEAF.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administra-

tive regulation: There are approximately 3,700 UST facilities 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 take to comply with this administrative regulation or amendment: They will have to submit reimbursement claims on the forms incorporated in 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 forms are available on the Division of Waste Management's website and should not cost any extra to fill out.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying, eligible PSTEAF applicants may be reimbursed for the costs of corrective action.

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

(a) Initially: The rates in the Contractor Cost Outline have increased. This will have a cost associated with it, but an exact amount is unknown.

(b) On a continuing basis: The rates in the Contractor Cost Outline have increased. This will have a cost associated with it, but an exact amount is unknown.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment is funded by the PSTEAF.

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

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

(9) TIERING: Is tiering applied? Tiering is applied. The deductible for petroleum storage tank owners is based on the number of tanks owned.

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 of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.60-120; 2224.60-130

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

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

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

(c) How much will it cost to administer this program for the first year? The rates in the Contractor Cost Outline have increased. This will have a cost associated with it, but an exact amount is unknown.

(d) How much will it cost to administer this program for subsequent years? The rates in the Contractor Cost Outline have increased. This will have a cost associated with it, but an exact amount is unknown.

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

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

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:290. Ranking system.

RELATES TO: KRS [~~12.010-12.020,~~] 224.60-120, 224.60-130, 224.60-140

STATUTORY AUTHORITY: KRS 224.60-130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)[~~224.130(1)~~] requires the cabinet to establish by administrative regulation the procedures to administer the financial responsibility and petroleum storage tank accounts of the Petroleum Storage Tank Environmental Assurance Fund. This administrative regulation establishes the criteria for ranking facilities[~~sites~~] according to the extent of damage to the environment, the potential threat to human health, and the financial ability of the petroleum storage tank owner or operator to perform corrective action, in order to address the completion of corrective action and the subsequent reimbursement of eligible costs in accordance with 401 KAR 42:250 [~~payment of claims~~].

Section 1. Applicability. (1) In order to determine the sequence by which written directives shall be issued in order to address the completion of corrective action, and the subsequent reimbursement of those eligible costs in accordance with 401 KAR 42:250, a ranking system [~~A ranking system to address the completion of corrective action and the payment of claims~~] shall be established for the Financial Responsibility Account and the Petroleum Storage Tank Account, respectively, as set forth in Sections 2 and 3 of this administrative regulation.

(2)(a) Actions directed and documented by the Environmental Response Team, upon the cabinet's declaration of an environmental emergency, shall take priority over the ranking system in this administrative regulation. Once the Environmental Response Branch terminates the emergency phase, subsequent actions at the UST facility shall be prioritized in accordance with this administrative regulation;

(b) Actions contracted by the Division of Waste Management shall take priority over the ranking system in this administrative regulation. Once the Division of Waste Management completes or terminates contracted work, subsequent actions at the UST facility shall be prioritized in accordance with this administrative regulation.

(3) Facilities performing site checks or initial abatement at the written direction of the cabinet in accordance with the Site Check Outline or the Release Response and Initial Abatement Outline, incorporated by reference in 401 KAR 42:060, shall not be subject to the ranking system.

(4)(a) Those facilities for which the owner or operator has verified, through submittal of an Affidavit of Waiver for PSTEAF Reimbursement, DEP6092, that reimbursement from the PSTEAF will not be sought shall not be subject to the ranking system.

(b) The affidavit shall be notarized.

(5) A facility that has been ranked based upon accurate classification of the UST system, in accordance with 401 KAR 42:080 and this administrative regulation, shall not thereafter receive a lower priority ranking as a result of the performance of directed corrective actions.

(6) All UST facilities, required to classify in accordance with the Classification Outline incorporated by reference in 401 KAR 42:080, shall be ranked in accordance with this administrative regulation regardless of previous ranking determinations made under the administrative regulations effective September 13, 2006.

(7) Facilities conducting corrective action under the provisions of 401 KAR Chapter 42 in effect prior to April 18, 1994 shall not be required to classify in accordance with 401 KAR 42:080, but shall be ranked in accordance with this administrative regulation.

Section 2. Ranking System for the Financial Responsibility Account. Facilities eligible to participate in the Financial Responsibility Account shall be ranked as follows:

(1) For purposes of addressing the completion of corrective action [~~determining extent of damage to the environment~~]:

(a) Rank 1. Those facilities, with releases for which the division has not issued a No Further Action Letter, that are a[~~the~~] source of confirmed contamination within [~~to~~] domestic-use wells, domestic-use springs, or domestic-use cisterns exceeding the maximum contaminant levels specified in 401 KAR Chapter 8. This ranking shall also include facilities with releases, for which the division has not issued a No Further Action Letter, that are a source of confirmed vapor intrusion, as defined in 401 KAR 42:005, in occupied residential and commercial buildings [~~levels specified in Groundwater Table I of the Classification Outline, (August 2006), incorporated by reference in 401 KAR 42:080~~].

(b) Rank 2. Those facilities, with releases for which the division has not issued a No Further Action Letter, that are required to use the screening levels listed in [~~Class IV and~~] Groundwater Table 1[~~I~~] of the Classification Outline, [~~(August 2006),~~] incorporated by reference in 401 KAR 42:080, within the point of compliance, where groundwater contamination, exceeding the screening levels listed in Groundwater Table 1, has been confirmed within the point of compliance. [~~at levels exceeding those listed in Groundwater Table I but has not resulted in the contamination of domestic use wells, springs, or cisterns. Facilities conducting corrective action under the provisions of 401 KAR Chapter 42 in effect prior to April 18, 1994 shall be placed into this ranking if required to utilize the levels listed in Groundwater Table I and groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table I.~~]

(c) Rank 3. Those facilities, with releases for which the division has not issued a No Further Action Letter, that are required to use the screening levels listed in [~~Class III and~~] Groundwater Table 2[~~I~~] of the Classification Outline, [~~(August 2006),~~] incorporated by reference in 401 KAR 42:080, within the point of compliance, where groundwater contamination, exceeding the screening levels listed in Groundwater Table 2, has been confirmed within the point of compliance [~~at levels exceeding those listed in Groundwater Table I but has not resulted in the contamination of domestic use wells, springs, or cisterns~~].

(d) Rank 4. Those facilities, with releases for which the division has not issued a No Further Action Letter, that are required to use the screening levels listed in [~~Class IV and~~] Groundwater Table 3[~~II~~] of the Classification Outline, [~~(August 2006),~~] incorporated by reference in 401 KAR 42:080, within the point of compliance, where groundwater contamination, exceeding the screening levels listed in Groundwater Table 3, has been confirmed within the point of compliance [~~at levels exceeding those listed in Groundwater Table II but has not resulted in the contamination of domestic use wells, springs, or cisterns~~]. Facilities subject to the provisions of 401 KAR 42:070, Section 1(3), and subject to the requirements in place [~~conducting corrective action under the provisions of 401 KAR Chapter 42 in effect~~] prior to April 18, 1994 shall be placed into this ranking [~~if required to utilize the levels listed in Groundwater Table II and groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table II~~].

(e) Rank 5. Those facilities, with releases for which the division has not issued a No Further Action Letter, for which:

1. Soil contamination above applicable screening levels has been confirmed; and

2. Groundwater contamination above applicable screening levels has not been confirmed. [~~Those facilities required to use the levels listed in Class III and Groundwater Table II of the Classification Outline, (August 2006), incorporated by reference in 401 KAR 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table II but has not resulted in the contamination of domestic use wells, springs, or cisterns.~~

~~(f) Rank 6. All other facilities that are not included in Ranks 1, 2, 3, 4, or 5, as specified in this subsection.~~]

(2) Facilities shall be further categorized within their respective Rank as determined in subsection (1) of this section, based on the financial ability of the owner or operator as follows:

(a) Facilities shall be placed in Category 1 within their respective rank if:

1. The owner's or operator's average total income for the last five (5) years is less than or equal to $50,000; or

2. The owner or operator is registered and recognized by the federal government as a tax-exempt nonprofit organization.

(b) Facilities shall be placed in Category 2 within their respective rank if the owner's or operator's average total income for the last five (5) years is more than $50,000 but less than or equal to $100,000.

(c) Facilities shall be placed in Category 3 within their respective rank if the owner's or operator's average total income for the last five (5) years is more than $100,000.

(d) Facilities within each category shall be further prioritized based on the cabinet's evaluation of the threat posed to human health and the environment by the release from a petroleum storage tank.

(e) The cabinet shall utilize the information provided in an owner's or operator's Application for Assistance, incorporated by reference in 401 KAR 42:250, for purposes of determining financial ability to perform corrective action.

(3) Cabinet inspectors shall be provided access to a facility for the purpose of verifying [~~facility~~] classification. Refusal by an owner or operator to allow access requested by cabinet inspectors shall[~~will~~] render the facility ineligible for reimbursement from the cabinet.

(4) If the cabinet receives misrepresentations, or otherwise inaccurate information, or receives new information related to specific facilities, it may amend facility rankings and categories in accordance with subsections (1) and (2) of this section. [~~(5) A facility that has been ranked based upon accurate classification of the facility shall not thereafter receive a lower priority ranking as a result of the performance of directed corrective actions.~~]

Section 3. Facilities eligible to participate in the Petroleum Storage Tank Account shall be ranked as follows:

(1) For purposes of addressing the completing of corrective action [~~determining extent of damage to the environment~~]:

(a) Rank 1. Those facilities with releases that are a[~~the~~] source of confirmed contamination to domestic-use wells, domestic-use springs, or domestic-use cisterns exceeding the levels specified in Groundwater Table 1[~~I~~] of the Classification Outline, [~~(August 2006),~~] incorporated by reference in 401 KAR 42:080. This ranking shall also include facilities with releases that are a source of confirmed vapor intrusion, as defined in 401 KAR 42:005, in occupied residential and commercial buildings.

(b) Rank 2. Those facilities, with releases for which the division has not issued a No Further Action Letter, that are required to use the screening levels listed in [~~Class IV and~~] Groundwater Table 1[~~I~~] of the Classification Outline, [~~(January 2006),~~] incorporated by reference in 401 KAR 42:080, within the point of compliance, where groundwater contamination, exceeding the screening levels listed in Groundwater Table 1, has been confirmed within the point of compliance [~~at levels exceeding those listed in Groundwater Table I but has not resulted in the contamination of domestic use wells, springs, or cisterns. Facilities conducting corrective action under the provisions of 401 KAR Chapter 42 in effect prior to April 18, 1994 shall be placed into this ranking if required to utilize the levels listed in Groundwater Table I and groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table I~~].

(c) Rank 3. Those facilities, with releases for which the division has not issued a No Further Action Letter, that are required to use the screening levels listed in [~~Class III and~~] Groundwater Table 2[~~I~~] of the Classification Outline, [~~(August 2006),~~] incorporated by reference in 401 KAR 42:080, within the point of compliance, where groundwater contamination, exceeding the screening levels listed in Groundwater Table 2, has been confirmed within the point of compliance [~~at levels exceeding those listed in Groundwater Table I but has not resulted in the contamination of domestic use wells, springs, or cisterns~~].

(d) Rank 4. Those facilities, with releases for which the division has not issued a No Further Action Letter, that are required to use the screening levels listed in [~~Class IV and~~] Groundwater Table

3[II] of the Classification Outline, [(August 2006),] incorporated by reference in 401 KAR 42:080, within the point of compliance, where groundwater contamination, exceeding the screening levels listed in Groundwater Table 3, has been confirmed within the point of compliance [at levels exceeding those listed in Groundwater Table II but has not resulted in the contamination of domestic use wells, springs, or cisterns]. Facilities conducting corrective action under the provisions of 401 KAR Chapter 42 in effect prior to April 18, 1994 shall be placed into this ranking [if required to utilize the levels listed in Groundwater Table II and groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table II].

(e) Rank 5. Those facilities, with releases for which the division has not issued a No Further Action Letter, for which:

1. Soil contamination above applicable screening levels has been confirmed; and

2. Groundwater contamination above applicable screening levels has not been confirmed. [required to use the levels listed in Class III and Groundwater Table II of the Classification Outline, (August 2006), incorporated by reference in 401 KAR 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table II but has not resulted in the contamination of domestic use wells, springs, or cisterns.

(f) Rank 6. All other facilities that are not included in Ranks 1, 2, 3, 4 or 5, as specified in this subsection.]

(2) Facilities shall be further categorized within their respective Rank as determined in subsection (1) of this section, based on the financial ability of the owner or operator (applicant) as follows:

(a) Facilities shall be placed in Category 1 within their respective rank if:

1. The owner's or operator's average total income for the last five (5) years is less than or equal to $50,000; or

2. The owner or operator is registered and recognized by the federal government as a tax-exempt nonprofit organization.

(b) Facilities shall be placed in Category 2 within their respective rank if[:] the owner's or operator's average total income for the last five (5) years is more than $50,000 but less than or equal to $100,000.

(c) Facilities shall be placed in Category 3 within their respective rank if the owner's or operator's average total income for the last five (5) years is more than $100,000:

(d) Facilities within each category shall be further prioritized based on the cabinet's evaluation of the threat posed to human health and the environment by the release from a petroleum storage tank.

(e) The cabinet shall utilize the information provided in an owner's or operator's Application for Assistance for purposes of determining financial ability to perform corrective action.

(3) Cabinet inspectors shall be provided access to a facility for the purpose of verifying [facility] classification. Refusal by an owner or operator to allow access requested by cabinet inspectors shall[will] render the facility ineligible for reimbursement from the cabinet.

(4) If the cabinet receives misrepresentations, or otherwise inaccurate information, or receives new information related to specific facilities, it may amend facility rankings and categories in accordance with subsections (1) and (2) of this section. [(5) A facility that has been ranked based upon accurate classification of the facility shall not thereafter receive a lower priority ranking as a result of the performance of directed corrective actions.]

Section 4. Ranking Allocations. (1) Issuance of written directives shall be prioritized for facilities within the Financial Responsibility Account and the Petroleum Storage Tank Account, respectively, according to rank and category, in the following order:

(a) Rank 1, Category 1;
(b) Rank 1, Category 2;
(c) Rank 1, Category 3;
(d) Rank 2, Category 1;
(e) Rank 2, Category 2;
(f) Rank 2, Category 3;
(g) Rank 3, Category 1;
(h) Rank 3, Category 2;
(i) Rank 3, Category 3;
(j) Rank 4, Category 1;
(k) Rank 4, Category 2;
(l) Rank 4, Category 3;
(m) Rank 5, Category 1;
(n) Rank 5, Category 2;
(o) Rank 5, Category 3[; (p) Rank 6, Category 1;
(q) Rank 6, Category 2;
(r) Rank 6, Category 3].

(2) The cabinet shall consider the current legislatively-enacted budget, [associated appropriations,] and available funding in making the allocations described in subsection (1) of this section.

(3) The cabinet shall notify owners or operators of the decision to suspend written directives for specified rankings within either the Petroleum Storage Tank Account or the Financial Responsibility Account, respectively, upon a determination of insufficient funding being available to initiate corrective action in all rankings.

Section 5. Incorporation by reference. (1) "Affidavit of Waiver for PSTEAF Reimbursement", DEP 6092, April 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is available on the Division of Waste Management's Web site at http://waste.ky.gov/ust. [(4) Actions directed and documented by the Environmental Response Team, upon the cabinet's declaration of an environmental emergency, shall take priority over the ranking system in this administrative regulation. Once the Environmental Response Team terminates the emergency phase, subsequent actions at the facility shall be prioritized in accordance with this administrative regulation.

(5) Facilities performing site checks or initial abatement at the written direction of the cabinet shall be reimbursed in lieu of the ranking system.]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation outlines the establishes the criteria for ranking facilities according to the extent of damage to the environment, the potential threat to human health, and the financial ability of the petroleum storage tank owner or operator to perform corrective action, in order to address the completion of corrective action and the subsequent reimbursement of eligible costs in accordance with 401 KAR 42:250.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish ranking for UST facili-

ties.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing a ranking system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in directing which corrective actions are performed at contaminated UST facilities based on ranking.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes changes that are consistent with the changes to 401 KAR 42:080 for UST system classification.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to be consistent with the changes to 401 KAR 42:080 for UST system classification.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by maintaining a ranking system for the PSTA and FRA accounts.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute by establishing criteria for ranking so corrective actions can be directed and reimbursed from the PSTA and FRA accounts.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 3,700 UST facilities 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 take to comply with this administrative regulation or amendment: Petroleum UST owners who do not wish to seek reimbursement from the PSTEAF will have to complete and submit the Affidavit of Waiver form. Petroleum UST owners seeking reimbursement will have to abide by the rankings established in this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Petroleum UST owners who submit the Affidavit of Waiver form will incur the cost of corrective action at their own expense.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Corrective actions at UST facilities that rank low in accordance with this amendment may incur the cost of the corrective action, but will benefit in having the facility cleaned.

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

(a) Initially: There will be no additional cost to the agency to implement this amendment.

(b) On a continuing basis: There will be no additional cost to the agency to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to be used for implementation of this amendment is the PSTEAF.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or affect any fees.

(9) TIERING: Is tiering applied? Yes. This administrative regulation ranks UST systems based on classification, which takes into account contamination of soil and groundwater and the potential impact to human health and the environment.

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)?

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 of Waste Management.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.60-130(1)

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funds to implement.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the agency additional funds to implement.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:300. Third-party claims.

RELATES TO: KRS 224.60-120, 224.60-130(1)(c), (e), 224.60-140(2)(b), (17), 40 C.F.R. Part 280 Subpart H

STATUTORY AUTHORITY: KRS 224.60-120(6), 224.60-130(1)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(c) requires the establishment of a Financial Responsibility Account to reimburse eligible petroleum storage tank owners and operators for compensating third parties for bodily injury and property damage, and requires the cabinet to establish, by administrative regulation, eligibility requirements for the account. This administrative regulation establishes the procedure for eligible petroleum storage tank owners or operators to receive reimbursement or payment for third-party claims.

Section 1. Applicability. (1) An eligible third-party claim shall be limited to bodily injury and property damage, asserted against an owner or operator as a result of sudden or nonsudden accidental releases into the environment from a petroleum storage tank at a facility eligible for participation in the Financial Responsibility Account.

(2) A petroleum storage tank owner or operator shall be eligible to receive reimbursement or payment for a third-party claim if:

(a) The owner or operator has been issued a Certificate of Registration and Reimbursement Eligibility or a Certificate of Eligibility;

(b) The cabinet has approved an Application for Assistance; and

(c) The owner or operator has maintained compliance with the eligibility requirements for participation in the Financial Responsibility Account in effect at the time the Application for Assistance

was approved.[~~1. The owner or operator has been issued a "Certificate of Registration and Reimbursement Eligibility" DEP 7113 (January 2006), incorporated by reference in 401 KAR 42:020;~~

~~2. The cabinet has approved the "Application for Assistance" DEP 6063 (August 2006); and~~

~~3. The owner or operator has maintained compliance with the eligibility requirements of the Financial Responsibility Account pursuant to 401 KAR 42:250; or~~

~~(b)1. An owner or operator was issued a Certificate of Eligibility prior to the effective date of this administrative regulation;~~

~~2. The cabinet approved a previously utilized Application for Assistance; and~~

~~3. The owner or operator has maintained compliance with the eligibility requirements for participation in the Financial Responsibility Account in effect at the time of approval.~~]

(3) If a petroleum storage tank owner or operator receives a written notice from the cabinet indicating noncompliance with the eligibility of the Financial Responsibility Account pursuant to 401 KAR 42:250, the petroleum storage tank owner or operator shall only be eligible for reimbursement of the costs of third-party claims brought against the petroleum storage tank owner or operator within sixty (60) days from the date of the written notice.

Section 2. Notice to the Cabinet. (1) To assert a claim for payment or reimbursement of a third-party claim, an eligible owner or operator shall:

(a) Submit a new Application for Assistance, DEP 6063, in accordance with 401 KAR 42:250, Section 2; and

(b) Notify the cabinet of the assertion of the third-party claim within twenty-one (21) days of the filing of an action against the owner or operator by the third[-] party, or the receipt of an assertion of a claim in writing by a third[-] party.

(2) A third-party claim shall be paid on the basis of:

(a) A final and enforceable judgment; or

(b) A written agreement between a third party and the owner or operator, to be reviewed and approved by the cabinet.

(3) Settlement of claims.

(a) A settlement of a third-party claim shall not be made by an owner or operator without the prior approval of the cabinet.

(b) The cabinet shall not pay a third-party judgment or reimburse an owner or operator for payment of the judgment in an amount exceeding a settlement offer rejected by the owner or operator which was:

1. Not submitted to the cabinet for consideration; or
2. Previously approved by the cabinet.

Section 3. Payment of Claims. (1) Claim payment shall be limited to actual, documented, bodily injury and property damage caused by the release of petroleum.

(2) A claim for bodily injury and property damage shall be paid to the extent that the damages are not addressed by the performance of corrective action.

(3) The aggregate amount of payment of all third-party claims shall not exceed $1,000,000 per occurrence of a release.

(4) (a) Claim requests shall be submitted on Third-Party Claim Form, DEP 6078;

(b) The applicant shall retain a copy of the completed form for their records.

(5) The cabinet shall acquire by subrogation the right of the third[-] party to recover, from the person responsible or liable for the release, the amount of damages paid to the third[-] party.

(6)[~~(5)~~] Reimbursement for third-party claims shall be made in accordance with 401 KAR 42:290, Section 2.

(7)[~~(6)~~] Payment of the third-party claim shall be made [~~to the third party~~] after approval by the cabinet.

Section 4. Incorporation by Reference. (1) "Third-Party Claim Form", DEP 6078, April 2011, is incorporated by reference.

(2)(a) This material may be inspected, copied, or obtained, subject to copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Division of Waste Management's Web site at http://waste.ky.gov/ust.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for eligible petroleum storage tank owners or operators to receive reimbursement or payment for third-party claims.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for payment of third-party claims to eligible PSTEAF applicants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by limiting the third-party claim payments to the FRA account and limiting them to $1,000,000 per facility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by outlining procedures for payment of third-party claims.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing administrative regulation by requiring the Third-Party Claim form.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to standardize the way third-party claims are made to the agency and then paid.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by having a standardized third-party claim form.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute because it creates a standardized form for third-party claims.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 3,700 registered UST facilities 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: They will have to fill out the standardized form when seeking payment of third-party claims.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It should not cost additional money for applicants to fill out the third-party claim form.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They may get payment of third-party claims.

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

(a) Initially: It may cost the agency $1,000,000 to pay for third-party claims per UST facility.

(b) On a continuing basis: It may cost the agency $1,000,000 to pay for third-party claims per UST facility.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for implementation of this regulation is the PSTEAF

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or affect any fees.

(9) TIERING: Is tiering applied? No. All third-party claims will have the same requirements and be processed 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)?

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 of Waste Management.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.60-120, 224.60-130.

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

(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.

(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.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:316. Petroleum Storage Tank Environmental Assurance Fund eligibility criteria for [~~Certification of~~] contracting companies and partnerships.

RELATES TO: KRS 224.10-420, 224.10-440, 224.60-130, 224.60-140

STATUTORY AUTHORITY: KRS 224.60-130(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1) requires the cabinet to establish by administrative regulation the procedures to administer the financial responsibility and petroleum storage tank accounts of the Petroleum Storage Tank Environmental Assurance Fund, and authorizes establishment of eligibility criteria for [~~the certification of partnerships and~~] companies and partnerships that engage in corrective action. This administrative regulation establishes eligibility criteria for [~~certification of~~] companies or partnerships that contract with eligible owners and operators seeking reimbursement for the performance of [~~to perform~~] corrective action at petroleum storage tank facilities.

Section 1. Eligibility[~~Certification~~] Requirements. (1) [~~A company or partnership who contracts with an eligible owner or operator to perform corrective action shall be certified by the cabinet. The cost of corrective action performed by a company or partnership not certified shall not be reimbursable.~~

~~(2)~~] To be eligible to contract with a petroleum storage tank owner or operator seeking reimbursement from the cabinet, a[~~the~~] company or partnership shall:

(a) Employ or contract with a Professional Engineer (P.E.) licensed with the Kentucky Board of Licensure for Professional Engineers and Land Surveyors, in accordance with KRS 322, or a Professional Geologist (P.G.) registered with the Kentucky Board of Registration for Professional Geologists, in accordance with KRS Chapter 322A [~~one (1) or more individuals certified by the cabinet pursuant to 401 KAR 42:314~~];

(b) Hold, in good standing, all licenses, permits and training certifications required to perform corrective action services in Kentucky;

(c) Maintain, at a minimum, general and professional liability insurance and pollution/property coverage in the amount of $1,000,000[~~Provide to the cabinet applicable work experience to demonstrate the technical, administrative and financial capability to perform and manage corrective action at a facility~~]; and

(d) Be approved in writing by the cabinet as eligible to contract with a petroleum storage tank owner or operator seeking reimbursement from the cabinet[~~certified~~] to perform corrective action services [~~in Kentucky~~].

(2)(a) By January 1, 2012 any company or partnership holding an existing contract with a petroleum storage tank owner or operator seeking reimbursement shall comply with subsection (1) of this section and shall submit the PSTEAF Eligible Company or Partnership Application, DEP6073;

(b) The applicant shall retain a copy of the application for their records.

(3) [~~This requirement shall apply to corrective actions initiated on or after July 1, 1999.~~

~~(4)~~] An authorized representative of an eligible [~~a certified~~] company shall sign an application or claim payment request in addition to the eligible owner or operator. The eligible [~~certified~~] company shall certify that:

(a) The information or payment request has been reviewed and is true and correct; and

(b) Each claim payment cost is reasonable, necessary, and was performed in compliance with 401 KAR Chapter 42.

Section 2. Application Requirements. (1) An applicant for company or partnership eligibility [~~certification~~] shall submit:

(a) A completed PSTEAF Eligible Company or Partnership Application, DEP6073, [~~"Certified Company or Partnership Application", DEP 6073, (January 2006)~~];

(b) Verification of the employment or contracting of a Professional Engineer (P.E.) licensed with the Kentucky Board of Licensure for Professional Engineers and Land Surveyors, in accordance with KRS Chapter 322, or a Professional Geologist (P.G.) registered with the Kentucky Board of Registration for Professional Geologists, in accordance with KRS Chapter 322A [~~one (1) or more individuals certified pursuant to 401 KAR 42:314~~

~~(c) As references, the names and addresses of three (3) previous clients for whom environmental remediation has been performed by the company. If none, the applicant shall provide the~~

~~names and addresses of three (3) previous or current clients of the individual certified pursuant to 401 KAR 42:314~~]; and

(c)[~~(d)~~] A list of the names and address of officers and principals of the applicant[~~, and if applicable, a list of all stockholders~~].

(2) Cabinet staff may inspect the records and business premises [~~facilities~~] of the applicant if necessary to verify information in the application or to assist in the evaluation of the applicant's capabilities.

(3) The cabinet may require additional information and documentation if necessary to verify information in the application [~~the applicant's actual work experience~~].

(4) An application for eligible [~~certified~~] company or partnership status shall be denied if the applicant:

(a) Fails to provide the information required in the application or in this administrative regulation;

(b) Does not meet the requirements of subsection (1) of this section;

(c) [~~Does not hold, in good standing, all licenses, permits and training certifications required to perform corrective action services in Kentucky;~~

~~(d)~~] Fails to allow cabinet staff to access company records for audit purposes pursuant to 401 KAR 42:335;

(d)[~~(e)~~] Fails to provide additional information and documentation requested by the cabinet to verify that the requirements of this administrative regulation have been met;

(e)[~~(f) Fails to demonstrate the technical, administrative and financial capability to perform and manage corrective action at underground storage tank facilities;~~

~~(g)~~] Provides false or misleading information in the application; or

(f)[~~(h) Has an officer, director, principal, or stockholder who has had a certification, granted pursuant to 401 KAR 42:314, revoked or suspended;~~

~~(i) Has an officer, director, principal, or stockholder who was an officer, director, principal, or stockholder in a certified company, previously having had its certification revoked or suspended; or~~

~~(j)~~] Fails to maintain general and professional liability insurance and pollution/property coverage.

(5) An applicant whose application for company or partnership eligibility[~~certification~~] is denied may appeal the determination by requesting a reconsideration or hearing pursuant to KRS 224.10-420, 224.10-440, and 401 KAR 100:010.

(6) The cabinet shall issue a letter of eligibility[~~certificate~~] to a qualifying applicant[~~, indicating certification pursuant to this administrative regulation~~].

Section 3. Amended Applications. (1) An eligible company or partnership shall submit an amended application when any of the information in the PSTEAF Eligible Company or Partnership Application has changed.

(2) The cabinet may request an updated application upon the receipt of information indicating any change to application information.

Section 4. Eligibility[~~3.Certification~~] and Renewal Procedures. (1) The cabinet shall issue a letter of eligibility[~~certificate~~] to each company that successfully complies with this administrative regulation. [~~The certificate shall be renewed two (2) years from the date of certification. The certified company shall be responsible for renewing certification prior to expiration.~~]

(2) Eligibility shall be renewed two (2) years from the date of the letter of eligibility. The company or partnership shall be responsible for renewing eligibility prior to expiration.

(3)[~~(2)~~] An application for eligibility renewal shall be submitted to the cabinet on the PSTEAF Eligible Company or Partnership Application, DEP6073.

(4) Corrective action costs incurred, after the expiration date, shall be ineligible for reimbursement upon the failure of the company or partnership, under contract with an owner or operator, to renew eligibility.[~~"Certified Company or Partnership Application", DEP 6073, (January 2006).~~

~~(3) Actions performed by a certified company, under contract with an owner or operator, that fails to renew its certification, shall be ineligible for reimbursement of corrective action costs incurred after the expiration date.~~]

Section 5.[~~4.~~] Revocation[~~or Suspension~~] of Eligibility[~~Certification~~]. (1) A letter of eligibility[~~certification~~] issued pursuant to this administrative regulation shall be revoked[~~or suspended~~] if [~~the certified company~~]:

(a) The eligible company or partnership or[~~Or~~] its employee or agent knowingly submits materially false information or[~~,~~] documentation, or a false payment request to an owner, operator, or the cabinet;

(b) The eligible company or partnership or a current officer, director or principal of that company, has been convicted of an environmental crime; or

(c) The eligible company or partnership has[~~Has permitted an employee, agent or subcontractor to violate a provision of 401 KAR Chapter 42, or to perform corrective action in violation of the standards of the State Fire Marshal or the cabinet;~~

~~(c) Has~~] failed to comply with the terms set forth in 401 KAR 42:335;

(d) The eligible company or partnership[~~Has negligently, incompetently, recklessly or intentionally violated a provision of this chapter or a required federal, state or local regulation, code or standard relating to corrective action;~~

~~(e) Has~~] obtained eligibility[~~the certification~~] through fraud or misrepresentation.[~~; or~~

~~(f) Fails to perform a corrective action in a manner consistent with state or federal laws and regulations for safety or corrective actions, or fails to perform a corrective action consistent with generally acceptable professional standards.~~]

(2) The cabinet shall issue a letter by certified mail notifying a noncompliant[~~certified~~] company or partnership that its eligibility[~~certification~~] has been revoked[~~or suspended~~] by action of the cabinet.

(3) A person whose eligibility[~~certificate~~] is[~~suspended or~~] revoked may appeal the determination by requesting a hearing pursuant to KRS 224.10-420, 224.10-440, 401 KAR 42:320, and 401 KAR 100:010[~~100.010~~].

Section 6.[~~5.~~] Incorporation by Reference. (1) "PSTEAF Eligible Company or Partnership Application," DEP6073, April 2011[~~"Certified Company or Partnership Application", DEP 6073, (January 2006)~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor[~~Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available[~~, excluding state holidays, and may also be obtained~~] on the Division of Waste Management's Web site at http://waste.ky.gov/ust.[~~page located at www.waste.ky.gov.~~]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassan-

dra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT]

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does:
This administrative regulation establishes eligibility criteria for companies and partnerships that contract with eligible owners and operators seeking reimbursement from PSTEAF for the performance of corrective action at petroleum storage tank facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish application and eligibility requirements for companies and partnerships.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing eligibility requirements for companies and partnerships performing corrective action at petroleum storage tank facilities where the owner or operator is seeking reimbursement from the PSTEAF.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statute by establishing criteria for companies and partnerships.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the certification to eligibility and changes the application form. The amendment also clarifies revocation language and removes suspension language.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make it easier for contractors to be eligible to work on petroleum storage tank sites where corrective action is necessary.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms by to the content of the authorizing statute by enquiring an eligible company or partnership to perform corrective action at a UST facility where the owner or operator is seeking reimbursement from the PSTEAF.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute because there will only be company and partnership certification. There is no longer a requirement for individual contractor certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 62 certified companies.

(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:

Eligible companies and partnerships will have to employ or contract with a P.E. or a P.G.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Most eligible companies and partnerships already have a P.E. or P.G. on staff.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By being an eligible company or partnership, the owner or operator of the UST facility may be reimbursed for the performance of corrective action.

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

(a) Initially: There is no additional cost associated with this amendment.

(b) On a continuing basis: There is no additional cost associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for the implementation of this amendment is the PSTEAF.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All eligible companies and partnerships have to meet the same eligibility requirements and fill out the same application.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.60-130(1)

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

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

(c) How much will it cost to administer this program for the first year? It will not cost the agency additional funds to implement this amendment.

(d) How much will it cost to administer this program for subsequent years? It will not cost the agency additional funds to implement this amendment.

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

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

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:320. Hearings.

RELATES TO: KRS 224.10-410 -224.10-470, 224.60

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.60-130(1)(f)[~~224.10-100(30), 224.60-130(2)(f)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28)[~~224.10-100(30)~~] authorizes the cabinet[~~Environmental and Public Protection Cabinet~~] to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.60-130(1)(f) requires complaints brought regarding the payment of claims from the cabinet, in accordance with KRS 224.10-410 to 224.10-470 to be heard. This administrative regulation establishes hearing procedures to be followed in the hearing of those complaints.

Section 1. Postdetermination Actions. A person aggrieved by a final, adverse determination regarding reimbursement eligibility or a claim for payment may request:

(1) Reconsideration, under Section 2 of this administrative regulation; or

(2) A formal hearing, pursuant to KRS 224.10-420 and 224.10-440[~~224.10~~], under Section 3 of this administrative regulation.

Section 2. Reconsideration. (1) A request for reconsideration shall be:

(a)1. Documented on Reconsideration Request Form, DEP 0063; and

2. The applicant shall keep a copy of the form for their own records[~~In writing~~]; and

(b) Received by the cabinet within thirty (30) days from the date the person has notice, or could reasonably have had notice, of the adverse determination.

(2) The request shall include:

(a) A statement of the grounds for reconsideration;

(b) Supporting documents; and

(c) Other evidence not previously considered.

(3) The cabinet shall reevaluate the eligibility determination or payment claim previously denied, if the evidence accompanying the request warrants reconsideration by demonstrating clear error or clarifying information through submittal of additional documentation.

(4) The cabinet shall not reconsider a matter more than once.

Section 3. Formal Administrative Hearings. A person aggrieved by a final, adverse determination regarding reimbursement eligibility or a claim for payment may petition the cabinet for a formal administrative hearing in accordance with KRS 224.10-420 and 224.10-440. These administrative hearings shall be heard in accordance with 400 KAR Chapter 1 and 401 KAR 100:010.

Section 4. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

Section 5. Incorporation by Reference. (1) "Reconsideration Request Form", DEP 0063, [~~(~~]April 2011[~~)~~], is incorporated by reference.

(2)[~~(a)~~] This material may be inspected, copied, or obtained, subject to copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Division of Waste Management's Web site at http://waste.ky.gov/ust.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for hearings and reconsiderations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for hearings and reconsiderations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing the procedures for hearings and reconsiderations.

(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 procedures for hearings and reconsiderations.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing administrative regulation by incorporating a standard form to be used for reconsiderations and adding extension language.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because it adds extension language and it creates a standard form for reconsideration requests.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by clarifying that reconsideration requests should be done on a standardized form.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute because the standardized form will be used for reconsideration requests.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect PSTEAF applicants who request reconsiderations.

(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: PSTEAF applicants will have to fill out the standardized form for reconsideration requests.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By using the standardized form, PSTEAF applicants will have their reconsideration requests reconsidered.

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

(a) Initially: There will be no additional cost to the agency.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: PSTEAF

(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 fee is necessary to implement this amendment.

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

(9) TIERING: Is tiering applied? No. The requirements for hearings and reconsiderations are the same for all PSTEAF applicants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.60-130(1)(f)

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the program additional money to implement.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the program additional money to implement.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:330. Small Owners Tank Removal Account.

RELATES TO: KRS 224.60-105, 224.60-130(1)(a), (b), (j), 224.60-140, 224.60-150, 40 C.F.R. 280 Part H

STATUTORY AUTHORITY: KRS 224.60-130(1)(j)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(j) requires the establishment of an account to reimburse small owners for the reasonable cost of permanent closure, and authorizes the cabinet to promulgate administrative regulations to establish this account. This administrative regulation establishes the eligibility requirements and rates for reimbursement from the Small Owners Tank Removal Account (SOTRA).

Section 1.[~~Applicability. The provisions of this administrative regulation shall apply to petroleum storage tank owners meeting the requirements of Section 2 of this administrative regulation.~~

~~Section 2.~~] Eligibility. (1) To demonstrate eligibility, an owner shall submit a completed ["]SOTRA Application for Assistance["], DEP 6067[~~, (August 2006)~~]. An owner shall be eligible for reimbursement from this account if:

(a) The petroleum storage tank owner [~~demonstrates full or partial interest in ten (10) or fewer tanks and~~] meets the financial eligibility criteria of $100,000 total income averaged over the last five (5) years as documented by the applicant's signed federal income tax returns for the last five (5) years, with the exception of Non-Profit Public Service Corporations, eligible governmental bodies and all other Non-Profit entities, which shall provide tax exemption documentation and budgets for the last five (5) years[~~listed on the "SOTRA Application for Assistance", DEP 6067, (August 2006)~~];

(b) The tanks are located on a facility that is or was involved in the retail sale or wholesale distribution of motor fuel;

(c) The tanks are registered with the Division of Waste Management by the applicant seeking reimbursement from the Small Owners Tank Removal Account (SORTA), pursuant to KRS 224.60-105 and 401 KAR 42:020;

(d) The owner certifies that:

1. The retail sale or wholesale distribution of motor fuel at the facility from a UST system or systems permanently cease upon permanent closure of the tanks; and

2. All known tanks at the facility are being removed or closed in place; and

(e) The owner has owned the tanks for more than one (1) year prior to the date of the application for reimbursement from this account.

(2) A newly-discovered underground storage tank system shall not affect the eligibility of an owner otherwise eligible in accordance with subsection (1) of this section[~~owner~~].

(3) A tank shall not need to be in operation prior to its removal.

(4) A written notice shall be submitted to the applicable regional office at least fourteen (14) calendar days prior to commencement of the permanent closure of the petroleum storage tank to maintain eligibility for reimbursement.

(5) Federal and state-owned facilities shall not be eligible for reimbursement from the Small Owners Tank Removal Account.

Section 2.[~~3.~~] Account Use. (1) Funds in this account shall be used to reimburse eligible petroleum storage tank owners for those reasonable and necessary costs incurred through performance of actions required in 401 KAR 42:070.

(2) The use of this account shall be limited as specified in KRS 224.60-130(1)(j).

(3)(a) The owner of a facility shall be eligible for reimbursement of the cost of permanent closure, but shall not be eligible for payment of corrective action cost from this account.

(b) If corrective action is required, eligible reimbursement shall be governed by 401 KAR 42:250.

(4)(a) If expenditures from this account exceed $3,000,000 during any fiscal year, the cabinet may suspend further reimbursements from this account. The suspension shall be in effect until the cabinet determines that further reimbursements from this account will not threaten the solvency of the Petroleum Storage Tank Environmental Assurance Fund.

(b) This determination shall be based upon legislatively-enacted budgets and associated appropriations.

Section 3.[~~4.~~] Application Procedure. (1) The owner shall file a completed SOTRA ["]Application for Assistance["], DEP 6067[~~, (August 2006), incorporated by reference in this administrative regulation,~~] for participation in this account at least forty-five (45) days prior to the permanent closure of the petroleum storage tank[~~or tanks~~]. The owner shall also provide the following information:

(a) Verification of income through the submittal of[~~level by~~] copies of the applicant's signed federal income tax returns for the last five (5) years, with the exception of Non-Profit Public Service Corporations, eligible governmental bodies and all other Non-Profit entities, which shall provide tax exemption documentation and budgets for the last five (5) years;[~~previous five (5) years' income tax returns;~~]

(b) A copy of the contract between the owner and the primary contractor;

(c) A facility map identifying approximate property boundaries, placement of petroleum storage tank pits, location of other relevant facility features including buildings, canopies, driveways, piping, dispenser islands, paved areas, and the proposed extent of areas to be evacuated in the performance of permanent closure, including dimensions;[~~A site map delineating the facility boundaries and the location of all tank pits and areas to be impacted by the permanent closure; and~~]

(d) Color photographs of the facility and the areas to be im-

pacted by the permanent closure; and

(e) A copy of a deed or other documentation indicating ownership of the tanks, if the tanks have not been registered in the applicant's name, in accordance with 401 KAR 42:020, with the Division of Waste Management for twelve (12) months prior to the SOTRA application being submitted.

(2) The owner shall retain a copy of the SOTRA Application for their records.

(3)(a)[~~.~~

~~(2)(a)~~] In response to the application submitted, the cabinet shall issue a letter setting forth the owner's eligibility status and the availability of funding for the closure of the petroleum storage tank.

(b) Permanent closure of the tank system shall not begin until the cabinet has approved the application and established the reimbursable amount. Failure to comply with this requirement shall result in denial of the reimbursement.

Section 4[~~5~~]. Permanent Closure Costs. (1)(a) Reimbursement from this account shall be determined from the lesser of two (2) dollars and sixty (60) cents per gallon of tank capacity or the following matrix table:

Number of Tanks in Pit	Size of Largest Tank in Pit (gallons)			
	Less than 3,100	3,101 to 5,100	5,101 to 10,000	Greater than 10,000
1	$3,900	$4,420	$6,370	$7,020
2	$6,370	$7,150	$9,620	$11,180
3	$8,320	$9,750	$12,610	$15,340
4	$10,270	$11,700	$15,340	$18,200
5	$12,220	$13,650	$17,940	$21,970
Each Extra	$1,950	$1,950	$2,340	$2,860
~~[Number of Tanks in Pit~~	~~Size of Largest Tank in Pit (gallons)~~			
	~~Less than 3,100~~	~~3,101 to 5,100~~	~~5,101 to 10,000~~	~~Greater than 10,000~~
~~1~~	~~$3,000~~	~~$3,400~~	~~$4,900~~	~~$5,400~~
~~2~~	~~$4,900~~	~~$5,500~~	~~$7,400~~	~~$8,600~~
~~3~~	~~$6,400~~	~~$7,500~~	~~$9,700~~	~~$11,800~~
~~4~~	~~$7,900~~	~~$9,000~~	~~$11,800~~	~~$14,000~~
~~5~~	~~$9,400~~	~~$10,500~~	~~$13,800~~	~~$16,900~~
~~Each Extra Tank up to 10~~	~~$1,500~~	~~$1,500~~	~~$1,800~~	~~$2,200~~]

(b) In addition to the cost listed in subsection (1)(a) of this section, the cabinet shall reimburse a one (1) time amount of $2,095[~~$2,000~~], for the preparation and submission of a Closure Assessment Report, incorporated by reference in 401 KAR 42:070. This shall include the cost of preparing a classification guide. The cabinet shall also reimburse a one (1) time amount of $500[~~$350~~] for the mobilization and demobilization of equipment.

(c) If more than one (1) tank pit is located on a facility, the reimbursement shall be calculated by adding the matrix table cost[~~value given~~] for each pit, in addition to the costs allowed in[~~plus an amount allowed by~~] subsection (3) of this section.

(2) The following items[~~costs~~] shall be included in the cost listed in subsection (1)(a) of this section:

(a) Tank system removal, cleaning and disposal or closure-in-place requirements;

(b) Permanent closure of thirty-five (35)[~~twenty-five (25)~~] feet of associated piping outside of the tank pit;

(c) Removal of the pump island and canopy;

(d) Drumming [~~and disposal~~] of cleaning material;

(e) Backfilling to return the excavation to grade less the reimbursable volume of contaminated backfill disposed or treated at a permitted facility and replaced in accordance with subsection (3) of this section;[~~. Additional backfill material may be reimbursed in accordance with subsection (3) of this section;~~]

(f) Concrete or asphalt surface removal;

(g) Equipment and material necessary for the permanent closure;

(h) Preparation of a permit if required for permanent closure or testing of a tank system;

(i) Excavation and loading of material;

(j) Collection of samples, including domestic-use wells, domestic-use springs and domestic-use cisterns within a 100-meter radius of the UST system; and

(k) Labor charges relating to paragraphs (a) through (j) of this subsection.

(3) The costs of the following items[~~, if necessary,~~] shall be allowed, if necessary, in addition[~~added~~] to the cost established in subsection (1)(a) of this section upon the submittal of a claim in accordance with Section 6 of this administrative regulation[~~, subject to the ranges set forth in the "Contractor Cost Outline",(August 2006), incorporated by reference in 401 KAR 42:250~~]:

(a) Facility restoration. Facility restoration activities shall only be reimbursable under this account if a No Further Action Letter has been issued for the subject facility upon completion of permanent closure activities in accordance with 401 KAR 42:070, without corrective action activities being performed outside of the excavation zone. A cost estimate shall be submitted, through the completion of Section 12 of the SOTRA Reimbursement Worksheet, DEP0064, and shall be approved by the Underground Storage Tank Branch, in writing, prior to incurring costs. Additional costs related to the repair of subsidence resulting from improper placement of fill material shall not be reimbursable;[~~Surface replacement~~]

(b) Transportation, disposal or treatment, and replacement of[~~contaminated~~] backfill contaminated above the applicable screening levels established in 401 KAR 42:080;

(c) Disposal of asphalt surface material;

(d) Installation of up to four (4) soil borings in accordance with Section 4.4 of the Closure Outline;[~~three (3) monitoring wells, as required by 401 KAR 42:080. The cost of additional wells may be allowed if the additional wells are required in writing by the cabinet. An additional lump sum of $500 shall be allowed for planning and reporting of the well installation and sampling;~~]

(e) Transportation and disposal, treatment,[~~Disposal~~] or recycling of tank contents or waste;

(f) Removal, transportation and [~~off-site~~] disposal or treatment of water from within the excavation zone in accordance with Section 4.1 of the Closure Outline, contaminated above the applicable screening levels established in 401 KAR 42:080;[~~, if required;~~]

(g) Laboratory analysis, as required in accordance with the Closure Outline, with the exception of laboratory analysis of samples collected in accordance with Section 6 of the Closure Outline[~~, to the extent required~~]; and

(h) Grain size analysis for facilities accurately classified as Class B in accordance with the Classification Outline, incorporated by reference in 401 KAR 42:080.

(4) Optional soil removal outside of the excavation zone in accordance with Section 6 of the Closure Outline, incorporated by reference in 401 KAR 42:070 shall be reimbursed in accordance with 401 KAR 42:250.

(5) Facility restoration for corrective action activities performed outside of the excavation zone shall be reimbursed in accordance with 401 KAR 42:250.[~~(h) Optional soil removal outside of the excavation zone in accordance with Section 2.7 of the "Closure Outline", (August 2006), incorporated by reference in 401 KAR 42:070.~~]

Section 5.[~~6.~~] Claims. (1)(a) To receive reimbursement, an owner shall submit a completed [~~"~~]SOTRA Claim Request[~~"~~], DEP 6068; and

(b) The owner shall retain a copy of the form for their records.[~~, (January 2006).~~]

(2)(a) In addition to the completed claim form, the owner shall submit the required SOTRA Reimbursement Worksheet, DEP0064;

(b) Documentation of actual cost, including invoices and weigh tickets, shall be attached to the worksheet,[~~documentation in accordance with the "Contractor Cost Outline", (August 2006) as incorporated by reference in 401 KAR 42:250.~~]

(3) The cabinet shall review a claim request for the following:

(a) The number and size of tanks removed; and

(b) Verification of eligible costs.

(4) To receive reimbursement, an owner shall have paid all annual tank fees as required by KRS 224.60-150.

(5) The cabinet may request additional supporting documentation to verify the reasonableness or necessity of a cost.

(6) If a claim is determined to be deficient by the Underground Storage Tank Branch, a written deficiency letter, outlining the deficiencies, shall be issued to the applicant. Failure by the applicant to provide the requested information and documentation within thirty (30) days of receipt of the request shall cause the claim to be denied.

(7)[~~(6)~~] Reimbursement shall be contingent upon a determination by the cabinet that the report required is complete and meets the requirements of 401 KAR Chapter 42.

(8) An entry level shall not be assessed for eligible reimbursement in accordance with this administrative regulation, however an entry level shall be assessed upon confirmation of a release, constituting an occurrence, that requires corrective action for which the applicant is seeking reimbursement through the Financial Responsibility Account or Petroleum Storage Tank Account in accordance with 401 KAR 42:250.

(9) All claims shall be submitted within two (2) years after issuance of a No Further Action letter by the Underground Storage Tank Branch.

Section 6. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

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

(a) "SOTRA Application for Assistance", DEP 6067, April 2011[~~(August 2006)~~]; [~~and~~]

(b) "SOTRA Claim Request", DEP 6068, April 2011; and

(c) "SOTRA Reimbursement Worksheet", DEP 0064, April 2011[~~(January 2006)~~].

(2)(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor[~~Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available[~~, excluding state holidays, and may also be obtained~~] on the Division of Waste Management's Web site at http://waste.ky.gov/ust[~~page located at www.waste.ky.gov~~].

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility requirements and rates for reimbursement from the Small Owners Tank Removal Account (SOTRA).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish eligibility and rates for reimbursement from SOTRA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing requirements for SOTRA.

(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 statute by establishing eligibility requirements and rates for reimbursement from SOTRA.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds the SOTRA worksheet and increases the rates for reimbursement.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to delete the eligibility requirement limiting the number of tanks.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by deleting the limit on the number of tanks.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute by establishing eligibility requirements for SOTRA.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 3,700 UST facilities registered. However, these may not all meet the eligibility requirements for reimbursement from SOTRA.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will have to fill out a SOTRA Application for Assistance, SOTRA Claim Request, and SOTRA Reimbursement worksheet using the rates established in this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will not increase cost to the regulated entity to fill out these forms.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying, owners may be reimbursed from the SOTRA.

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

(a) Initially: There is no additional cost to the agency for implementation of this amendment.

(b) On a continuing basis: There is no additional cost to the agency for implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for implementation of this amendment is SOTRA.

(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 a need to increase funding to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or affect any fees.

(9) TIERING: Is tiering applied? Yes. Tiering is applied based on the number of tanks and the size of tanks.

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 of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.60-130(1)(j)

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not have increased cost to the agency for implementation. There may be an increase in the amount of money paid out of SOTRA as the rates have increased.

(d) How much will it cost to administer this program for subsequent years? This amendment will not have increased cost to the agency for implementation. There may be an increase in the amount of money paid out of SOTRA as the rates have increased.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:335. Financial audits.

RELATES TO: KRS 61.878(1)(c), 224.60-130(1)(d), (j), (k), 224.60-140(2)(a), (e)

STATUTORY AUTHORITY: KRS 224.60-130(1)(k)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(k) requires the establishment of the policy, guidelines, and procedures to perform a financial audit of an owner or operator receiving reimbursement for corrective action services from the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF)[~~cabinet~~], or of an entity who contracts or subcontracts for corrective action services at a facility whose owner or operator is eligible for reimbursement from the PSTEAF. This administrative regulation establishes procedures for audits and the penalties for noncompliance.

Section 1. Applicability. An entity shall be subject to financial audit if it is an entity described in KRS 224.60-130(1)(k).

Section 2. Financial Audit Policy and Procedure. (1) The cabinet shall audit an entity if:

(a) A document it is required to submit to the cabinet appears to be fraudulent; or

(b) There is evidence or other reason to believe that the entity has violated a federal or state law or regulation related to its actions.

(2) Upon written request by the cabinet, records, as described in KRS 224.60-130(l)(k), shall be provided to the cabinet during a financial audit[~~A record shall be subject to financial audit if it is described in KRS 224.60-130(1)(k)~~].

(3)(a) The cabinet shall notify the subject of the audit, in writing, of the date that the audit is scheduled to begin. The notice shall be sent at least ten (10) working days before the scheduled start of the audit.

(b) A decision to reschedule the audit shall rest solely with the cabinet, and it shall not be rescheduled more than thirty (30) days after the date of the original audit.

(4)(a) If the owner or operator fails to maintain records as required by KRS 224.60-130(1)(k), the cabinet shall recover money reimbursed to the owner or operator for the cost of corrective action at the facility to which the missing documents relate.

(b) If an eligible contractor or subcontractor fails to maintain records as required by KRS 224.60-130(1)(k), the cabinet shall recover any monies paid to the entity pursuant to a contract or agreement to perform a corrective action service at that facility.[~~If the entity is certified under 401 KAR 42:316, that certification shall be revoked or suspended in accordance with 401 KAR 42:316, Section 4.~~]

Section 3. Improper Use of Reimbursements. (1) If the audit by the cabinet finds an improper, irregular, or illegal use of money received directly or indirectly from the cabinet, or that the money was obtained by fraud or misrepresentation, the cabinet shall report the results of the audit to the proper authorities for civil and criminal investigation.[~~(2) If the subject of the audit is certified pursuant to 401 KAR 42:314 or 401 KAR 42:316, and the audit conducted by the cabinet finds improper, irregular, or illegal use of money received directly or indirectly from the cabinet, or that the money was obtained by fraud or misrepresentation, the cabinet shall immediately revoke the certification in accordance with 401 KAR 42:314, Section 8, or 401 KAR 42:316, Section 4.~~]

(3)(a) Failure by an owner or operator to cooperate with[allow] an audit shall render the petroleum storage tank owner or operator ineligible for reimbursement. Reimbursements to the owner or operator shall be subject to recovery by the cabinet.

(b) Failure by an entity, who contracts or subcontracts for corrective action services at a facility, to cooperate with an audit shall result in the revocation of eligibility. Reimbursements to that entity, pursuant to a contract for a corrective action service, shall be subject to recovery by the cabinet.

Section 4. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.[~~Failure by a person certified pursuant to 401 KAR 42:316, or a supplier, provider, contract employee, or subcontractor of that person, to allow an audit shall result in the revocation of that certification. Reimbursements to that person, pursuant to a contract for a corrective action service, shall be subject to recovery by the cabinet.~~]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2011, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing

may be 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for financial audits and the penalties for noncompliance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for financial audits and the penalties for noncompliance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing procedures for financial audits.

(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 statute by establishing procedures for financial audits.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing administrative regulation by removing the language regarding certified contractors and certified companies and including language for extensions.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to be consistent with the changes to the certified contractor and the certified company regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing procedures for financial audits.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute by establishing procedures for financial audits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The entities that will be effected by this administrative regulation are those that are identified in KRS 224.60-130(1)(k). This includes petroleum storage tank owners and operators, contractors and subcontractors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no additional requirements to comply with the amendment to this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no additional benefit for complying with this amendment.

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

(a) Initially: There is no cost to the agency to implement this amendment.

(b) On a continuing basis: There is no cost to the agency to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for this amendment is PSTEAF.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. The same procedures apply for all financial audits.

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 of Waste Management 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 224.60-130(1)(k)

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the program additional funds.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the program additional funds.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:340. Laboratory certification.

RELATES TO: KRS [~~224.10-420, 224.10-440,~~] 224.60-110,[~~KRS~~] 224.60-130,[~~KRS~~] 224.60-140

STATUTORY AUTHORITY: KRS 224.60-130(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(a) requires the establishment of criteria to certify laboratories that contract with owners or operators of petroleum storage tanks to perform analytical testing. The statute requires that owners and operators have all required analytical testing performed by a certified laboratory to be eligible for Petroleum Storage Tank Environmental Assurance Fune (PSTEAF) reimbursement. This administrative regulation establishes the requirements for certification and the parameters and methods on which certification shall be granted.

Section 1. Applicability. Owners and operators seeking reimbursement from the PSTEAF for analytical testing shall utilize[~~A sample required by 401 KAR Chapter 42 shall be submitted to~~] a laboratory certified pursuant to this administrative regulation. This administrative regulation shall apply to analytical testing performed on or after October 1, 1999. An owner or operator of a petroleum storage tank who fails to comply with this requirement shall not be reimbursed by the cabinet for costs related to analytical testing[~~and corrective action~~].

Section 2. Certification Requirements. (1) A laboratory shall demonstrate current accreditation by:

(a) The American Association for Laboratory Accreditation[~~for the "Kentucky Underground Storage Tank Laboratory Accreditation Program"~~]; or

(b) Any state approved to accredit environmental laboratories[~~to perform the following tests~~], in accordance with National Environmental Laboratory Accreditation Program requirements and standards[~~:~~

~~1. Benzene, toluene, ethylbenzene, xylene, and methyl tertiary butyl ether (BTEX, MTBE) in soil and water~~].[~~;~~

~~2. Polynuclear aromatic hydrocarbons in soil and water;~~

~~3. Total lead in soil and water;~~

~~4. Toxicity characteristic leaching procedures (TCLP) for:~~

~~a. Metals;~~

~~b. Volatiles;~~

~~c. Acid/base/neutrals; and~~

~~d. Pesticides and herbicides;~~

~~5. Ignitability;~~

~~6. Paint filter test; and~~

~~7. pH.~~]

(2) A laboratory seeking certification from the cabinet shall submit a completed [~~"~~]Application for Laboratory Certification[~~"~~], DEP 6074[~~, (January 2006)~~].

(a) The application shall include proof of accreditation as described in subsection (1) of this section; and

(b) The applicant shall retain a copy of the form for their own records.

(3) The cabinet shall reimburse a petroleum storage tank owner or operator for the cost of a laboratory analysis if the:

(a) Analysis is conducted in accordance with the established parameters and methods;

(b) Analysis is required by written directive by the cabinet and performed in accordance with 401 KAR Chapter 42; and

(c) Laboratory is certified by the cabinet to conduct that analysis.

Section 3. Maintaining Laboratory Certification. (1) A certified laboratory shall maintain accreditation by the American Association for Laboratory Accreditation or the National Environmental Laboratory Accreditation Program for the duration of certification.

(2) When a certified laboratory's accreditation, in accordance with Section 1 of this administrative regulation, is renewed, or otherwise changes in status, the certified laboratory shall submit updated documentation of the accreditation status to the cabinet within thirty (30) days.

(3) A laboratory holding valid certification from the USTB issued prior to October 1, 2011 shall not be required to submit a new Application for Laboratory Certification, DEP 6074. In order to maintain certification status, the certified laboratory shall comply with subsection (2) of this section.

(4) If a certified laboratory fails to maintain certification in accordance with this section, the laboratory shall be required to submit an Application for Laboratory Certification, DEP 6074, in accordance with Section 2 of this administrative regulation.[~~Renewal of Certification. A certification shall be valid for two (2) years from the date of issuance by the cabinet. To apply for renewal an applicant for renewal shall submit:~~

~~(1) An "Application for Laboratory Certification", DEP 6074, (January 2006)]; and~~

~~(2) Updated documentation demonstrating accreditation by the:~~

~~(a) American Association for Laboratory Accreditation; or~~

~~(b) National Environmental Laboratory Accreditation Program.~~]

Section 4. Loss of Certification. (1) The cabinet may revoke [~~or suspend~~] a certification if the applicant:

(a)[~~Negligently, incompetently, recklessly, or intentionally violates any provision of this administrative regulation, or any state, federal, or local statute, regulation, code or standard concerning the performance of analytical testing;~~

~~(b)~~] Obtains the certification through fraud or misrepresentation; or

(b)[~~(c)~~] Knowingly or intentionally submits materially false information to owners, operators, contractors, or the cabinet.

(2)[~~A certified laboratory shall maintain accreditation by the American Association for Laboratory Accreditation or the National Environmental Laboratory Accreditation Program for the duration of certification.~~

~~(3)~~] The cabinet shall, within ten (10) days of a revocation[~~this~~] determination, notify the[~~a~~] laboratory, in writing, of the [~~suspension or~~] revocation of certification.

(3)[~~(4)~~] A laboratory seeking to dispute revocation may[~~or suspension shall~~] appeal that decision pursuant to KRS 224.10-420, 224.10-440, 401 KAR 42:320, and [~~401 KAR~~]100:010.

Section 5. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

Section 6.[5.] Incorporation by Reference. (1) "Application for Laboratory Certification", DEP 6074, April 2011 is incorporated by reference.[~~The following material is incorporated by reference:~~

~~(a) "Application for Laboratory Certification", DEP 6074, (January 2006); and~~

~~(b) The American Association for Laboratory Accreditation, "Kentucky Underground Storage Tank Laboratory Accreditation Program Requirements", (September 2005).~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor[~~Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available[~~, excluding state holidays, and may also be obtained~~] on the Division of Waste Management's Web site[~~page located~~] at http://waste.ky.gov/ust.[~~www.waste.ky.gov.~~]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2011, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does:
This administrative regulation establishes the certification requirements for laboratories performing analytical testing for petroleum storage tank owners and operators who are seeking reimbursement from the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish certification requirements for laboratories.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the statute by establishing certification requirements for laboratories that perform analytical testing for petroleum storage tank owners and operators that seek reimbursement from the PSTEAF.

(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 statute by providing certification requirements for laboratories.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing administrative regulation by allowing for A2LA or NELAP accreditation. It also removes language for suspension of certification. The amendment also clarifies the requirements for maintaining accreditation and laboratory certification. The amendment clarifies the revocation language for certified laboratories.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to reduce the burden on certified laboratories. They will no longer have to apply for certification each time their accreditation changes or renews.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by establishing requirements for laboratory certification.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute by reducing the paperwork burden for both the certified laboratory and the Underground Storage Tank Branch.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The laboratories that will be affected by this amendment are those that perform analytical test for petroleum storage tank owners and operators who seek reimbursement from the PSTEAF. There are currently 43 certified laboratories.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no additional requirements for laboratories that are currently certified. Laboratories that do not hold current certification will be required to submit an Application for Laboratory Certification, including copies of their accreditation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will not cost certified laboratories any additional funding to comply with this amendment. They are already required to obtain and maintain accreditation status.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit of complying with this amendment is that laboratories will be used by petroleum storage tank owners and operators who seek reimbursement from the PSTEAF for analytical testing.

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

(a) Initially: The Underground Storage Tank Branch already implements the laboratory certification program. This amendment should not cost any additional funds to implement.

(b) On a continuing basis: The Underground Storage Tank Branch already implements the laboratory certification program. This amendment should not cost any additional funds to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for implementation and funding of this administrative regulation includes tank fees, PSTEAF, and federal grants from US EPA.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All laboratories that apply for certification have to meet the same 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 Division of Waste Management 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 224.60-130(1)(a)

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the Division of Waste Management any additional funding.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the Division of Waste Management any additional 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:

TRANSPORTATION CABINET
Department of Highways
Division of Maintenance
(Amendment)

603 KAR 4:035. Logo signs; placement along fully-controlled and partially-controlled access highways.

RELATES TO: KRS 177.0734-177.0738
STATUTORY AUTHORITY: KRS 177.0736, 177.0738, 177.0739
NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.0736 and 177.0738 require the Commissioner of the Department of Highways to promulgate administrative regulations for the

erection of specific service signs on fully-controlled access highways and at interchanges on partially-controlled access highways. This administrative regulation establishes[~~sets forth~~] the criteria to be followed in the erection and maintenance of specific service signs and attached logo signs[~~designed to inform motorists where travel related goods and services are available~~].

Section 1. Definitions. (1) "Clear zone" means the area beginning at the edge of the traveled way that is available for safe use by errant vehicles[~~between the edge of the driving lane of a fully controlled or partially controlled access highway and an imaginary line running parallel to the highway but thirty (30) feet (9.15 meters) away from the highway~~].

(2) "Contractor" means the entity selected by the Department of Highways pursuant to KRS Chapter 45A and 600 KAR 6:070 to administer the specific service signing program in Kentucky. The activities of a[~~the~~] contractor[~~shall~~] include:

(a) Marketing;

(b) Determining[~~determination of~~] business eligibility;

(c) Maintenance, erection, and removal of the specific service signs; and

(d) Installation and removal of logo signs.

(3) "Contract year" means a fiscal year that is July 1 through the following June 30.

(4) "Cover" means to place a protective shield over a logo sign to prohibit viewing of the sign.

(5)[~~"Double exit interchange" means a grade-separated crossing of roadways having two (2) mainline off-ramps in one (1) direction to provide access to the crossroad.~~

~~(6)~~] "Fully controlled access highway" is defined by[~~in~~] KRS 177.0734(1).

(6)[~~(7)~~] "Highway guide sign" means an official highway sign that[~~which~~] is erected by the Department of Highways to:

(a) Give directions;

(b) Furnish advance notice of the approach to an intersection or interchange;

(c) Direct drivers into appropriate lanes;

(d) Identify a routes[~~and directions on the routes~~];

(e) Indicate the distance to a destination; or

(f) Provide information or assistance to the traveling public including:[~~Show distances to destinations~~]

(f) Indicate access to general:

1. Motorist services;

2. Rest areas;

3. Scenic areas; or

4. Recreational area.

(7)[~~; and~~

~~(g) Provide other information of assistance to the traveling public.~~

~~(8)~~] "Interchange" means a system of interconnecting roadways providing for traffic movement between two (2) or more highways that do not intersect at grade.

(8)[~~junction of two (2) or more highways by a system of separate levels that permit traffic to pass from one (1) to another without the crossing of traffic streams.~~

~~(9)~~] "Logo signs" are defined by[~~in~~] KRS 177.0734(2).

(9)[~~(10)~~] "Motorist service" means a place of business providing one (1) or more MUTCD-eligible services such as gas, food, lodging, tourist attractions.

(10)[~~, or camping facilities or a combination thereof.~~

~~(11)~~] "MUTCD" means Manual on Uniform Traffic Control Devices incorporated by reference in 603 KAR 5:050.

(11)[~~(12)~~] "Partially-controlled access highway" is defined by[~~in~~] KRS 177.0734(4).

(12)[~~(13) "Ramp sign" means a sign that is placed along the ramp or at the ramp terminal for service facilities which have business logos displayed along the main roadway.~~

~~(14) "Shopping area" means a group of ten (10) or more retail and other commercial establishments located within close proximity of one another that employ a unifying theme carried out by individual shops in their architectural design or their merchandise.~~

~~(15) "Shopping mall" means a group of retail and other commercial establishments that is 400,000 square feet or more and is planned, developed, owned, and managed as a single property.~~

~~(16) "Single exit interchange" means a grade-separated crossing of roadways having one (1) mainline off-ramp per direction to provide access to the crossroad.~~

~~(17)~~] "Specific service signs" is[~~are~~] defined by [~~in~~] KRS 177.0734(3).

(13)[~~(18) "Tourist attractions" means activities or locations that are:~~

~~(a) Natural phenomena;~~

~~(b) Historic;~~

~~(c) Cultural;~~

~~(d) Scientific;~~

~~(e) Educational;~~

~~(f) Religious;~~

~~(g) Of natural beauty or naturally suited for outdoor recreation;~~

~~(h) Similar activities of interest to the traveling public; or~~

~~(i) Shopping malls or shopping areas.~~

~~(19)~~] "Trailblazing sign" means a sign that[~~which~~] provides directional guidance to a particular cultural or recreational site from other highways in the vicinity.

Section 2. General Provisions. (1) The Commissioner of the[~~,~~] Department of Highways[~~,~~] shall authorize the placement of specific service signs with logo signs within the right-of-way of fully controlled and partially-controlled access highways.

(2) The Department of Highways shall place, install, and maintain specific service and logo[~~control the erection and maintenance of~~] signs in accordance with the [~~"Manual on Uniform Traffic Control Devices" (~~]MUTCD[~~) as incorporated by reference in 603 KAR 5:050 and with the provisions of this administrative regulation~~].

Section 3. Application and Contracts for Specific Service Signs. A business shall apply with the cabinet's contractor for a log or specific service sign.[~~(1) Application for a business to place a logo relating to gas, food, lodging, camping, or tourist attractions on a specific service sign shall be on "Application for Highway Logo Signing" forms.

(2) The contract to be entered into between the participating business and the Department of Highways' contractor shall be the "Highway Logo Program Agreement" form. Addenda to this form may be included in the contract if appropriate.~~]

Section 4. Location and Erection of Specific Service Signs. (1)[~~A specific service sign bearing separately attached logo signs shall not be erected less than 800 feet (244 meters) in advance of the exit direction sign at the interchange where motorist services are available.

(2) Spacing between each specific service sign shall be at a minimum of 800 feet (244 meters) and shall be spaced at least 800 feet (244 meters) from any other highway guide signs in existence or proposed for that area.

~~(3)~~] A specific service sign shall not be erected:

(a) If there is insufficient space between the previous interchange and the interchange where the motorist services are available;[~~for the required highway guide signs and a specific service sign.~~]

(b) At an interchange that[~~which~~] intersects another limited access facility; or

(c)[~~.~~

~~(c) At an intersection which does not have a convenient reentry in the same direction of travel.~~

~~(4)(a) There shall not be more than one (1) specific service sign erected in each direction of an interchange or intersection for the following:~~

~~1. "GAS";~~

~~2. "FOOD";~~

~~3. "LODGING";~~

~~4. "CAMPING"; or~~

~~5. "TOURIST ATTRACTIONS ".~~

~~(b) There shall not be more than four (4) specific service signs erected in one (1) direction of travel for an interchange or intersection.~~

~~(c) In one (1) direction of travel, the successive signs shall be erected in the order of "TOURIST ATTRACTIONS" or "CAMPING", "LODGING", "FOOD", and "GAS" unless a combination specific~~

service sign is erected in accordance with Section 5(9) or (10) of this administrative regulation.

(d)] At an interchange with insufficient space available in a single direction for the maximum number of specific signs allowed by the MUTCD in Section 2J.02.

(2)[four (4) specific service signs, or] At an interchange with a request[requests] for more types of[all five (5) type] services than signs permitted by MUTCD, service signing priority[preference] shall be in the order "gas", "food", and "lodging" with the remaining services and attractions determined by distance from the interchange.

(3) If there is sufficient space available in a single direction for the maximum number of specific signs permitted by the MUTCD, the signs closet to the interchange will be for "gas", "food", and "lodging".

(4) A[, "camping", and "tourist attractions ", with "gas" having the highest priority

(5) The] specific service sign [signs] shall be located to avoid visual conflict with other signs within the highway right-of-way.

(5) Specific service signs that have[:

(a) Take advantage of natural terrain;

(b) Have the least impact on the scenic environment; and

(c) Avoid visual conflict with other signs within the highway right-of-way.

(6)] unprotected sign supports located within the clear zone shall be of a breakaway design.

(6)[Section 5. Interchange Specific Service Sign Composition. (1) A specific service sign shall have a blue background with a white reflectorized border.

(2) The directional arrows and all letters and numbers used in the name of the type of service and the directional legend shall be white and reflectorized.

(3) All letters used in the name of service and the directional legend shall be ten (10) inch (254 millimeter) capital letters.

(4) All numbers shall be ten (10) inches (254 millimeters) in height.

(5) The size of the specific service sign shall comply with the requirements of the MUTCD.

(6) An average measured retroreflectivity of fifty (50) percent or greater shall be maintained on each specific service sign.

(7)(a) For single exit interchanges, a standard full size specific service sign shall accommodate a maximum of six (6) logo signs.

(b) If the number of businesses does not warrant a full size sign, a half size or combination sign may be used.

(8)(a) At a double exit interchange, the specific service sign shall consist of two (2) sections, one (1) for each exit, mounted on the same base.

(b) The top section shall display logo signs for the first exit and the lower section shall display logo signs for the second exit.

(c) Each section shall accommodate a maximum of four (4) logo signs for each service per exit, with the total number of signs not to exceed six (6).

(d) If a type of motorist service is to be signed for only one (1) exit, one (1) section of the specific service sign may be omitted or a single exit interchange sign may be used.

(9) Logo signs for two (2) types of services may be displayed on the same combination specific service sign under the following conditions:

(a) For the two (2) types of services there is a total of not more than six (6) qualified businesses at the interchange;

(b) Up to four (4) logo signs may be displayed for a type of service in combination on a sign;

(c) If four (4) logo signs are displayed for one (1) type of service on a combination specific service sign, more than two (2) logo signs for the other type of service shall not be displayed on the combination specific information sign; and

(d) The name of each type of service shall be displayed above its respective logo signs.

(10) Logo signs shall not be combined on a sign as described in subsection (9) of this section if:

(a) It is anticipated that additional service businesses shall become available in the near future; or

(b) It becomes necessary to display more than a total of six (6) logo signs for the two (2) types of services displayed in combination.

(11)(a) Except at an unnumbered exit, the exit number shall be displayed above the name of the type of service; and

(b) At an unnumbered exit, the legend "NEXT RIGHT" or "NEXT LEFT" shall be displayed above the name of the type of service.

Section 6. Ramp Signs. (1) At a single exit interchange, an exit ramp sign shall be installed except that the logo for a facility visible from the ramp terminal may be omitted.

(2) The logo sign on a ramp sign shall be a duplicate of the corresponding logo installed along the main roadway, but reduced in size.

(3) A ramp sign for a service facility not visible from the ramp terminal may include the distance to the service facility. Direction to the service facility shall be indicated by an arrow.

(4) Ramp signing may be used on ramps at double exit interchanges.

Section 7. Logo Signs. (1) Each logo sign shall have a legend and border. Except, if the business identification symbol or trademark is used alone for a logo sign, the border may be omitted.

(2) Each logo sign on the specific service sign shall be contained within a forty-eight (48) inch (1219.2 millimeter) wide and thirty-six (36) inch (914.4 millimeter) high rectangular background area which includes the border, if required.

(3) The principal legend shall be legible from the main traveled way of the highway under normal driving conditions.

(4) A symbol or trademark shall be reproduced in the colors and general shape consistent with customary use and an integral legend shall be in proportionate size.

(5) A message, symbol, or trademark which resembles any official traffic control device shall be prohibited.

(6) The vertical and horizontal spacing between logo signs on specific service signs shall not exceed eight (8) inches (203.2 millimeters) and twelve (12) inches (304.8 millimeters), respectively.

(7) The reflectivity, material composition, and adhesiveness of a logo sign shall comply with the "Standard Specifications for Road and Bridge Construction" (2000 Edition and 2001 Supplement).

(8)] If a business ceases to exist or is not in operation for thirty (30) days, the logo sign shall be immediately covered or removed by the contractor.

(7) A[as circumstances of each closing or cessation of business dictate.

(9) Any] business that[which] operates on a seasonal basis shall remove or cover a permitted[make provisions for removing or covering] logo sign[signs] during the off season and[. A business of this type] shall notify the Department of Highways' contractor in writing thirty (30) days before the opening or closing occurs.

Section 5.[(10) In the absence of an official trademark or logo, the official name as indicated in partnership agreements, incorporation documents, or otherwise documented may be substituted on the logo sign.

(11)(a) With the exception of "Open 24 Hours" or "24 Hours", descriptive advertising words, phrases or slogans shall not be allowed on a logo sign; i.e., "Joe's 24-Hour Market", "Free Coffee", "Credit Cards Accepted", etc.

(b) Descriptive words which are part of the official name of the business shall be permitted on a logo sign; i.e., "hotel", "motel", "inn", "lodge", "restaurant", "cafe", "cafeteria", "diner", or others with a similar meaning.

(c) The word "Diesel" on a "GAS" logo sign shall be permitted.

(12) If there is more than one (1) eligible business at an interchange with the same business symbol, brand, trademark or logo, more than one (1) business symbol, brand, trademark or logo with the same design may be placed on a specific service sign or on a ramp sign to indicate the distances to the individual businesses.

(13)(a) The Transportation Cabinet shall review and approve the design of a "TOURIST ATTRACTIONS" logo sign prior to its placement on a panel.

(b) The Transportation Cabinet shall not approve the design of a logo sign which would be difficult to comprehend by the traveling public at highway speeds and under normal atmospheric condi-

~~tions.~~

~~Section 8.~~] Business Criteria, Eligibility, and Priority. (1) A motorist service business[~~located at, or conveniently accessible from, an interchange or intersection of a fully controlled and partially controlled access highway~~] shall be eligible for placement of a logo sign on a specific service sign as established in the MUCTD, Section 2J.[~~if it qualifies under the following conditions:~~

~~(a) Each business shall offer written assurance that it conforms with all applicable laws and administrative regulations concerning the provision of public accommodations with regard to race, religion, color, sex, age, disability, or national origin.~~

~~(b) To qualify for a "GAS" logo sign, a business shall:~~

~~1. Be in operation seven (7) days a week, and continuously open for sixteen (16) hours a day; and~~

~~2. Have motor vehicle fuel, oil, water, drinking water, restroom facilities, and a telephone available for use by the traveling public.~~

~~(c) To qualify for a "FOOD" logo sign, a business shall:~~

~~1. Be licensed in accordance with KRS Chapter 219;~~

~~2. Be in continuous operation to serve three (3) meals a day, six (6) days a week;~~

~~3. Have a seating capacity for a minimum of six (6) guests at sit-down, eat-in service; and~~

~~4. Have a telephone and restroom available for use by the traveling public.~~

~~(d) To qualify for a "LODGING" logo sign, a facility shall:~~

~~1. Be licensed in accordance with KRS Chapter 219;~~

~~2. Have a minimum of two (2) rooms available for sleeping accommodations; and~~

~~3. Have a telephone available for use by the persons staying at the facility.~~

~~(e) To qualify for a "CAMPING" logo sign, a facility shall:~~

~~1. Be licensed in accordance with KRS Chapter 219; and~~

~~2. Have a minimum of ten (10) parking accommodations which have modern sanitary facilities and drinking water.~~

~~(f) To qualify for a "TOURIST ATTRACTIONS" logo sign, a facility shall:~~

~~1. Be an activity or location that is one (1) or more of the following:~~

~~a. Natural phenomena;~~

~~b. Historic site;~~

~~c. Cultural site;~~

~~d. Scientific site;~~

~~e. Educational site;~~

~~f. Religious site;~~

~~g. Area of natural beauty;~~

~~h. Area naturally suited for outdoor recreation; or~~

~~i. Shopping malls or shopping areas.~~

~~2. Maintain regular hours for that type of establishment;~~

~~3. Be licensed in accordance with KRS Chapter 219, if applicable;~~

~~4. Have restroom facilities available for use by the traveling public;~~

~~5. Have drinking water available for the traveling public;~~

~~6. Have an on-premise or nearby public telephone available for use by the traveling public; and~~

~~7. Have adequate parking to accommodate its traffic with a minimum of ten (10) spaces.~~]

(2)(a) The business nearest to the interchange or intersection shall receive first priority in the logo selection process where space is available on the specific service sign for that service.

(b)[~~The eligible business making application for a logo of a specific service which is located nearest to the interchange or intersection shall receive first priority in the selection process.~~

~~(b) Subsequent proximities to the interchange or intersection shall establish subsequent priorities.~~

~~(c)~~] A business that is fifteen (15) miles (24.15 kilometers) or more[~~further than fifteen (15) miles (24.15 kilometers)~~] from the interchange shall not be eligible to qualify for placement of a logo sign. Except, any business at a distance greater than fifteen (15) miles (24.15 kilometers) from the interchange with a logo sign in place on January 1, 1994, may continue to display the logo sign until the business fails to meet MUTCD criteria.

(3)[~~another criterion of this administrative regulation or is bumped pursuant to Section 9 of this administrative regulation.~~

~~(3)(a) A qualifying food business which is open sixteen (16) hours a day beginning no later than 7 a.m. each day shall have priority over another qualifying food business which does not provide service for this entire time period.~~

~~(b) Distance from the interchange shall only be considered in determining priority after the business hours for a qualifying food business have been considered.~~

~~(4) A business with an outdoor advertising device determined by the Transportation Cabinet pursuant to 603 KAR 3:080 to be in violation of KRS 177.830 through 177.890 shall not be eligible to qualify for a logo sign until the violation has been removed.~~

~~(5) A business with an advertisement on an outdoor advertising device determined by the Transportation Cabinet pursuant to 603 KAR 3:080 to be in violation of KRS 177.830 through 177.890 shall not be eligible to qualify for a logo sign until the violation has been removed.~~

~~(6) An activity which is identified at an interchange by a highway guide sign pursuant to Chapter 2F of the "MUTCD" may also be identified with a logo, but shall have a lower priority for selection than any other eligible business with the same activity.~~

~~(7)~~] A business offering more than one (1) motorist service may display a logo on more than one (1) specific service sign if space is available.

Section 5. Duration. A motor service vendor that obtains a logo shall retain that logo until the motor service vendor no longer pays its annual fee or is no longer in business.

Section 6.[~~shall not be eligible to display more than one (1) logo sign with the same logo at an interchange or intersection unless no other eligible business has applied for use of the available space on the second specific service sign.~~

~~Section 9. Bumping. (1) An eligible business with a higher priority, pursuant to Section 8 of this administrative regulation, shall be permitted to display its sign at the beginning of the next contract year, in the place of a currently displayed, lower priority business if:~~

~~(a) The specific service sign is fully utilized; and~~

~~(b) It files an application by April 1;~~

~~(2) The business with the lowest priority shall have its logo sign removed at the end of the current contract year.~~

~~Section 10.~~] Fees. (1)(a) The qualifying business shall pay to the cabinet's[~~department's~~] contractor an annual fee of $600, in advance, for each logo sign placed on the fully controlled access highway for gas, food, and lodging and $300 for camping and tourist attractions.

(b) The annual fee for the first year shall accompany the initial application.

(c) If the first contract is for less than one (1) year, the first year's annual fee shall be prorated on a monthly basis with each portion of a month the logo sign is up requiring payment of one-twelfth (1/12) of the fee.

(d) The annual[~~yearly renewal~~] fee and application for renewal shall be due forty-five (45) days prior to the annual renewal date.

(e) The payment of this fee guarantees that the logo sign shall[~~will~~] be displayed for one (1) contract year or portion of the first contract year as long as the business is not in violation of[~~does not violate any part of~~] its agreement with the Department of Highways' contractor.

(2) If a sign for a business is removed or covered for any reason, a fee of $100 shall be charged for the reinstallation or uncovering of the sign for each business at each interchange.

(3) The qualifying business shall be responsible for damage to its logo sign caused by an act of vandalism or natural causes requiring repair or replacement of a logo sign.

(4) The contractor[~~A logo sign~~] shall provide a new or renovated logo sign if the displayed sign:

(a) Would misinform the traveling public; or

(b) Is [~~unsightly,~~] badly faded, or in a state of dilapidation.

Section 7.[~~11.~~] Trailblazing Signs For Campgrounds. (1) A campground[~~Only those campgrounds within~~] fifteen (15) miles

(24.15 kilometers) or less from[of] the centerline of a fully controlled access highway shall be eligible for a new trailblazing sign [signs].

(2)[Only] One (1) specific service trailblazing sign with a logo may[shall] be erected for each business, and the sign[with a logo. This sign] shall be placed a minimum of 300 feet (91.5 meters) in advance of the intersection from which the camping service is available.

(3) A trailblazing sign shall not be erected or displayed if the applicant business is visible within 300 feet (91.5 meters) of the intersection on the[from a point on] the fully controlled access highway.

Section 8.[within 300 feet (91.5 meters) prior to intersection.

Section 12.] Measurements.[(1)] Measurements shall be taken from the end of the exit ramp to the main entrance of the business in the selection of a qualified business [businesses] for a logo sign [signs].

Section 9.[shall be from the juncture of the center line, measured between the center edges of the main traveled way of the fully controlled or partially controlled access road and the center line of a nonlimited access crossroad.

(2) Selection of businesses for display of logo signs shall begin at the point of measurement described in subsection (1) of this section to the nearest point of vehicle travel to the exit from the crossroad or public thoroughfare to the particular motorist service.

Section 13.] Logo Sign Contract. (1)(a) [A Highway Logo Program Agreement between a participating business and the department's contractor shall be approved by the Transportation Cabinet prior to the erection of a logo sign.

(b)] A[Each] logo sign and contract shall be subject to review by the Transportation Cabinet.

(b) A contract shall be revoked for a[at any time.

(c)] failure to comply with[any of] the requirements established[set forth] in the MUTCD or in this administrative regulation including nonpayment by a[the] participating business.

(c)[shall be cause for the revocation of a logo sign contract.

(d)] If a[the] contract is revoked for cause, the prepaid fees for a contract year or a portion thereof[,] shall not be refunded.

(2)[If the Department of Highways or its contractor determines that a contract, business, or logo sign does not comply with the requirements of this administrative regulation,] The Department of Highways' contractor shall notify the business in writing of a[the] violation.

(3) The Department of Highways contractor shall take immediate action to cancel the contract and remove, replace, or cover logo signs if a business has been issued a second notice of noncompliance within[If the business fails to comply with the requirements of this administrative regulation within fifteen (15) days after receiving the notification, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the logo signs.

(4) If, in] a single contract year.

Section 10.[, a business has been issued a notice pursuant to subsection (2) of this section and is again in noncompliance with this administrative regulation, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the logo signs.

Section 14.] Appeal to the Commissioner of Highways for Exemption. (1) The Commissioner of Highways shall[may] grant an exemption to a business from the necessity of complying with a requirement set forth in this administrative regulation if:

(a)[It is determined by the commissioner that] The exemption is in the public interest; and

(b) The business conforms to the Federal Highway Administration standards for specific service signs.[; and]

(2) In qualifying for a logo sign, a business that[which] conforms to MUTCD[all the] requirements and the requirements established[set forth] in this administrative regulation shall be given a preference over a business not conforming to [all of] the requirements[in qualifying for placement of a logo sign on a specific service sign].

(3) An appeal by a business of the denial of a request for an exemption shall be filed as established in Section 12 of this administrative regulation.

Section 11. [by a business to the Commissioner of Highways shall be filed in the form of an appeal as prescribed for in Section 16 of this administrative regulation.

Section 15.] Encroachment Permits. The Department of Highways' contractor shall apply for an encroachment permit pursuant to 603 KAR 5:150 for a[each new] specific service sign proposed to be erected, modified, or removed from state-owned right-of-way.

Section 12.[16.] Appeal of Department of Highways Action. (1) A business or person aggrieved by the action taken by the Department of Highways or its contractor in administering this administrative regulation may request a formal hearing before the Commissioner of the Department of Highways.

(2) The request for a[the] formal hearing shall:

(a) Be filed in writing to[with] the Commissioner, Department of Highways, 200 Mero Street[501 High Street], Frankfort, Kentucky 40622; and

(b) State[Set forth] the nature of the complaint and the grounds for the appeal.

(3)(a) The Office of Legal Services for[Upon receipt of a request for a hearing, general counsel of] the Transportation Cabinet shall assign the matter to a hearing officer[examiner].

(b) The hearing officer shall issue a[his] recommended order to the Commissioner of the Department of Highways.

(c) The Commissioner of the Department of Highways shall issue a[the] final order[of the department] in the[this] matter.

(4) A party aggrieved by the final order of the Department of Highways may appeal pursuant to the provisions of KRS 13B.140.

[Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Highway Logo Signing" forms prepared by Kentucky Logos, Inc. in March 1997;

(b) "Highway Logo Program Agreement" form prepared by Kentucky Logos, Inc. in March 1997; and

(c) "Standard Specifications for Road and Bridge Construction," published by the Kentucky Transportation Cabinet (2000 Edition and 2001 Supplement)

(2)(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Transportation Cabinet, Department of Highways, Division of Traffic, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. The telephone number is (502) 564-4105.

(b) The material in subsection (1)(a) and (b) of this section also may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Logos, Inc., Suite 6, State National Bank Building, 305 Ann Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The telephone number is 1-800-469-5646 or (502) 227-0802. The fax number is (502) 227-7286.]

STEVE WADDLE, State Highway Engineer
MIKE HANCOCK, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 25, 2011 at 10 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to

the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for the erection and maintenance of specific motorist signing designed to inform motorists where travel related goods and services are available.

(b) The necessity of this administrative regulation: KRS 177.0736, 177.038 and 177.0739 require the cabinet to establish by administrative regulation reasonable standards for the erection of specific service signs within highway rights-of-way to provide directional information for businesses offering goods and services in the interest of the traveling public.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the specific criteria for erecting and maintaining specific service and logo signage designed to inform motorists where travel-related goods and services are available.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide necessary information regarding specific service signs and logo signs.

(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 will update and amend the language of the current regulation to reflect MUTCD requirements. These amendments remove language that copies the provisions of the MUTCD.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the language of the existing regulation so that the requirements for specific service signs and logo signs can be clearly understood by the public.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment upgrades language and form but follows the structure provided by KRS 177.0736, 177.0738 and 177.0739.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide updated information in the requirements for specific service and logo signs.

(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 business establishments offering goods and services in the interest of the traveling 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: These amendments will not any require any additional or different actions by the parties effected.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments do not change the current fee structure. A qualifying business pays the cabinet's contractor an annual fee of $600 for a logo sign for gas, food, and lodging. It pays $300 for camping and tourist attractions. It pays $100 for reinstalling or covering a sign.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The parties will benefit by having the most current requirements and procedures.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no costs associated with implementing these amendments.

(a) Initially:

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Road funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fee schedule will not be increased.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The original administrative regulation established fees. These amendments do not change the fee schedule.

(9) TIERING: Is tiering applied? No. Tiering is not applied because all businesses affected by this regulation are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 177.0736, 177.0738, 177.0739

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 effects are expected.

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

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

(c) How much will it cost to administer this program for the first year? No costs are required or expected based on these amendments.

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

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

Revenues (+-)

Expenditures (+-)

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Financial Standards and Examination Division
(Amendment)

806 KAR 3:170. Annual audited financial reports.

RELATES TO: KRS 304.1-050, 304.2-065, 304.2-210-304.2-290, 304.3-120, 304.3-125, 304.3-240, 304.3-241, 304.17A-820, 304.32-210, 304.35-040, 304.37-010, 304.37-020, 304.36-140, 304.42-150, 304.45-030, 304.45-040, 304.48-110, 304.49-070(2),

304.49-080, 304.49-090, 304.50-075, 18 U.S.C. 1961, 1968

STATUTORY AUTHORITY: KRS 304.2-110, 304.3-240, 304.49-140

NECESSITY, FUNCTION, AND CONFORMITY:[~~EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance headed by a Commissioner.~~] KRS 304.2-110 authorizes the Commissioner of the Department[~~Executive Director~~] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010..

Section 1. Definitions. (1) "Accountant":

(a) and "independent certified public accountant" mean an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice; and

(b) for Canadian and British insurers, mean a Canadian-chartered or British-chartered accountant.

(2) "Affiliate" or "affiliated" means a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) "Audit Committee" means a committee, or equivalent body, established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers and audits of financial statements of the insurer or group of insurers.

(4) "Audited financial report" means those items specified in Section 4 of this administrative regulation.

(5) "Commissioner" is defined in KRS 304.1-050(1)[~~means the Commissioner of the Department of Insurance~~].

(6) "Controlling person" is defined in KRS 304.37-010(8).

(7) "Department" is defined in KRS 304.1-050(2)[~~means Department of Insurance~~].

(8) "Group of Insurers" means those licensed insurers included in the reporting requirements of KRS 304.37-020, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

(9) "Insurer" means an insurer authorized to do business in Kentucky by the commissioner.

(10) "Internal control over financial reporting" means a process effected by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements and includes those policies and procedures that:

(a) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(b) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

(c) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements.

(11) "SEC" means the United States Securities and Exchange Commission.

(12) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated under Section 404.

(13) "Section 404 Report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant.

(14) "SOX Compliant Entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002:

(a) The preapproval requirements of Section 201;

(b) The audit committee independence requirements of Section 301; and

(c) The internal control over financial reporting requirements of Section 404.

(15) "Work papers" mean the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the independent certified public accountants audit of the financial statements of an insurer. Work papers may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of insurer documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the independent certified public accountants audit of the financial statements of an insurer and which support the independent certified public accountants opinion of the financial statements of an insurer.

Section 2. Purpose and Scope. (1) This administrative regulation shall be to improve the department's surveillance of the financial condition of insurers by requiring:

(a) An annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants[~~accounts~~];

(b) Communication of internal control related matters noted in an audit; and

(c) Management's report of internal control over financial reporting.

(2) Every insurer shall be subject to this administrative regulation. Insurers having direct premiums written in this state of less than one (1) million dollars in any calendar year and less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year shall be exempt from this administrative regulation

(a) Unless the commissioner makes a specific finding that compliance is necessary for the department to carry out its statutory responsibilities, insurers shall be exempt during years in which the following conditions exist. The insurer has, at the end of the calendar year:

1. Direct premiums written in this state of less than $1,000,000; and

2. Less than 1,000 policyholders or certificate holders of direct written policies nationwide.

(b) Insurers that have assumed premiums of $1,000,000 or more pursuant to contracts or treaties of reinsurance shall not be exempt from this administrative regulation.

(3) Foreign or alien insurers filing the audited financial report] in another state, pursuant to the other state's requirement for filing an audited financial report which has been found by the commissioner to be substantially similar to the requirements of this administrative regulation, are exempt from this administrative regulation if:

(a) The following documents, which are filed with the other state, are filed with the commissioner in accordance with Sections 4, 11, and 12 of this administrative regulation:

1. A copy of the audited financial report;

2. Communication of internal control related matters noted in an audit; and

3. The accountant's letter of qualifications; Canadian insurers may submit accountants' reports as filed with the Office of Superintendent of Financial Institutions, Canada; and

(b) A copy of any notification of adverse financial condition report filed with the other state is filed with the commissioner within the time specified in Section 9 of this administrative regulation.

(4) Foreign or alien insurers required to file management's report of internal control over financial reporting in another state shall be exempt from filing the report in this state if:

(a) The other state has substantially similar reporting requirements; and

(b) The report is filed with the commissioner of the other state within the time specified.

(5) This administrative regulation shall not prohibit, preclude, or in any way limit the commissioner from ordering, conducting, or performing examinations of insurers under KRS 304.2-210 through 304.2-290, 304.17A-820, 304.32-210, 304.35-040, 304.36-140, 304.42-150, 304.48-110, 304.49-080, or 304.50-075.

Section 3. General Requirements Related to Filing and Extensions for Filing of Annual Audited Financial Reports and Audit

Committee Appointment. (1) All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June 1 for the year ended December 31 immediately preceding. The commissioner may require an insurer to file an audited financial report earlier than June 1 with ninety (90) days advance notice to the insurer.

(2) Extensions of the June 1 filing date may be granted by the commissioner for thirty (30) day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting the extension and determination by the commissioner of good cause for an extension. The request for extension shall be submitted in writing not less than ten (10) days prior to the due date and contain sufficient detail to permit the commissioner to make an informed decision as to the requested extension.

(3) If an extension is granted in accordance with subsection (2) of this section, a similar extension of thirty (30) days shall be granted to the filing of management's report of internal control over financial reporting.

(4) Every insurer required to file an annual audited financial report pursuant to this administrative regulation shall designate a group of individuals as constituting its audit committee. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of this administrative regulation at the election of the controlling person.

Section 4. Contents of Annual Audited Financial Report. (1) The annual audited financial report shall report the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurance supervisory authority of the insurer's state of domicile.

(2) The annual audited financial report shall include the following:

(a) Report of independent certified public accountant;

(b) Balance sheet for reporting admitted assets, liabilities, capital, and surplus;

(c) Statement of operations;

(d) Statement of cash flows;

(e) Statement of changes in capital and surplus;

(f) Notes to financial statements as required by KRS 304.3-240 in accordance with KRS 304.3-241. These notes shall also include:

1. A reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to KRS 304.3-240 with a written description of the nature of these differences; and

2. A summary of ownership and relationships of the insurer and all affiliated companies; and

(g) The financial statements included in the audited financial report shall be:

1. Prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner; and

2. Comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted. The annual statement forms and instructions are those prescribed by the National Association of Insurance Commissioners as required by KRS 304.3-240.

Section 5. Designation of Independent Certified Public Accountant. (1) Each insurer required by this administrative regulation to file an annual audited financial report shall, within sixty (60) days after becoming subject to this requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this administrative regulation. Insurers not retaining an independent certified public accountant on the effective date of this administrative regulation shall register the name and address of their retained certified public accountant not less than six (6) months before the date when the first audited financial report is to be filed.

(2) The insurer shall obtain a letter from the accountant, and file a copy with the commissioner, stating that the accountant is aware of the provisions of the insurance laws of the insurer's state of domicile that relate to accounting and financial matters and affirming that the accountant will express the accountant's opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the insurance regulatory authority in that state, specifying any exceptions as the accountant may believe appropriate.

(3) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns the insurer shall:

(a) Within five (5) business days notify the commissioner of this event;

(b) Furnish the commissioner with a separate letter within ten (10) business days of the above notification stating whether in the twenty-four (24) months preceding the accountant's resignation there were any disagreements with the former accountant which, if not resolved to the satisfaction of the former accountant, would cause the accountant to make reference to the subject matter of the disagreement in connection with the opinion. These shall include disagreements:

1. Concerning accounting principles, financial statement disclosure, or auditing scope or procedure.

2. That has been resolved to the former accountant's satisfaction and those not so resolved.

3. That occur at the decision-making level, that is, between personnel of the insurer responsible for presentation of its financial statements and personnel for the accounting firm responsible for rendering its report.

(c) Request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter, and, if not, stating the reasons for which the accountant does not agree; and

(d) Furnish the responsive letter from the former accountant to the commissioner together with its own.

Section 6. Qualifications of Independent Certified Public Accountant. (1) The commissioner shall not recognize any person or firm as a qualified independent certified public accountant if the person or firm:

(a) Is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or, for a Canadian or British insurer, that is not a chartered accountant; or

(b) Has either directly or indirectly entered into an agreement of indemnity or release from liability with respect to the audit of the insurer.

(2) Except as otherwise provided in this administrative regulation, an independent certified public accountant shall be recognized as qualified if the independent certified public accountant conforms to the standards of the accounting profession, as contained in the statutes, administrative regulations, and codes of ethics and rules of professional conduct administered by the State Board of Accountancy of Kentucky in accordance with KRS Chapter 325 and 201 KAR Chapter 1.

(3) The lead or coordinating audit partner having primary responsibility for the audit shall not act in that capacity for more than five (5)[~~seven (7)~~] consecutive years. The person shall be disqualified from acting in that or a similar capacity for the same insurer or its insurance subsidiaries or affiliates for a period of five (5) years.

(a) An insurer may make application to the commissioner for relief from this rotation requirement on the basis of unusual circumstances. Application shall be made at least thirty (30) days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

1. Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;

2. Premium volume of the insurer; or

3. Number of jurisdictions in which the insurer transacts business.

(b) The insurer shall file with its annual statement filing the approval for relief from paragraph (a)1 of this subsection with the

states that it is licensed in or doing business in and with the National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners via the Web site, https://www2.naic.org/servlet/Index.

(c) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept any annual audited financial report, prepared in whole or in part by any natural person who:

1. Has been convicted of fraud, bribery, or a conviction of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, 1968;

2. Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this administrative regulation; or

3. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under this administrative regulation.

(4) If an insurer disagrees with a determination made by the commissioner pursuant to subsection (3) of this section, it may request a hearing in accordance with KRS 304.2-310.

(5)(a) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following nonaudit services:

1. Bookkeeping or other services related to the accounting records or financial statements of the insurer;

2. Financial information systems design and implementation;

3. Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

4. Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions, and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification on an insurer's reserves if the following conditions have been met:

a. Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;

b. The insurer has competent personnel or engages a third party actuary to estimate the reserves for which management takes responsibility; and

c. The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

5. Internal audit outsourcing services;

6. Management functions or human resources;

7. Broker or dealer, investment adviser, or investment banking services; or

8. Legal services or expert services unrelated to the audit

(b) A qualified independent public accountant shall not:

1. Function in the role of management;

2. Audit his or her own work; and

3. Serve in an advocacy role for the insurer.

(6)(a) Insurers having direct written and assumed premium of less than $100,000,000 in any calendar year may request an exemption from subsection (5)(a) of this section.

(b) To request an exemption, the insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions.

(c) If the commissioner finds, upon review of this statement, that compliance with this administrative regulation would constitute an organizational hardship upon the insurer, an exemption may be granted.

(7) A qualified independent certified public accountant who performs the audit may engage in other nonaudit services, including tax services, that are not described in subsection (5)(a) of this section or that do not conflict with subsection (5)(b) of this section, only if the activity is approved in advance by the audit committee in accordance with subsection (8) of this section.

(8)(a) All auditing services and nonaudit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee.

(b) The preapproval requirement shall be waived with respect to nonaudit services if:

1. The insurer is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity; or

2.a. The aggregate amount of all non-audit services provided to the insurer constitutes not more than five (5) percent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the nonaudit services are provided;

b. The services were not recognized by the insurer at the time of[~~shalof~~] the engagement to be nonaudit services; and

c. The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant approvals has been delegated by the audit committee.

(9) The audit committee may delegate to one (1) or more designated members of the audit committee the authority to grant the preapprovals required by subsection (8) of this section. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(10)(a)1. The commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if the following were employed by the independent certified public accountant and participated in the audit of that insurer during the one (1) year period preceding the date that the most current statutory opinion is due:

a. A member of the board;

b. President;

c. Chief executive officer;

d. Controller;

e. Chief financial officer;

f. Chief accounting officer; or

g. any person serving in an equivalent position for that insurer.

2. This subsection shall only apply to partners and senior managers involved in the audit.

3. An insurer may make application to the commissioner for relief from the above requirements on the basis of unusual circumstances.

(b) The insurer shall file, with its annual statement filing, the approval for relief from subsection (10)(a) of this section with the states that it is licensed in or doing business in and the National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners via the Web site, https://www2.naic.org/servlet/Index.

Section 7. Consolidated or Combined Audits. An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial reports if the insurer is part of a group of insurers which utilizes a pooling or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In these cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

(1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;

(2) Amounts for each insurer subject to this section shall be stated separately;

(3) Noninsurance operations may be shown on the worksheet or a combined or individual basis;

(4) Explanations of consolidating and eliminating entries shall be included; and

(5) A reconciliation shall be included of any differences be-

tween the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown in the annual statements of the insurers.

Section 8. Scope of Examination and Report of Independent Certified Public Accountant. (1) Financial statements furnished pursuant to Section 4 of this administrative regulation shall be examined by the independent certified public accountant.

(2) The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards.

(3) In accordance with SAS No. 109, "Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement" and SAS No. 110, "Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained", or their replacements, the independent certified public accountant shall obtain an understanding of internal control sufficient to plan the audit.

(4) To the extent required by SAS 109 and SAS 110, for those insurers required to file a management's report of internal control over financial reporting pursuant to Section 2 of this administrative regulation, the independent certified public accountant shall consider the most recently available report in planning and performing the audit of the statutory financial statements.

(5) Consideration shall also be given to other procedures illustrated in the Financial Condition Examiner's Handbook of the National Association of Insurance Commissioners which the independent certified public accountant deems necessary.

Section 9. Notification of Adverse Financial Condition. (1)(a) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five (5) business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirements of KRS 304.3-120 and 304.3-125 as of that date.

(b) An insurer which has received a report pursuant to this subsection shall forward a copy of the report to the commissioner within five (5) business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of this report being furnished to the commissioner.

(c) If the independent certified public accountant fails to receive this evidence within the required five (5) business day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five (5) business days.

(2) An independent certified public accountant shall not be liable in any manner to any person for any statement made in connection with subsection (1) of this section if the statement is made in good faith in compliance with subsection (1) of this section.

(3) If the accountant, subsequent to the date of the audited financial report filed pursuant to this administrative regulation, becomes aware of facts which might have affected his report, the commissioner notes the obligation of the accountant to take the action prescribed in volume 1, section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants.

Section 10. Communication of Internal Control Related Matters Noted in an Audit.

(1)(a) In addition to the annual audited financial statements, each insurer shall furnish the commissioner with a written communication as to any unremediated material weakness in its internal control over financial reporting noted during the audit.

(b) The communication shall be prepared by the accountant within sixty (60) days after the filing of the annual audited financial report, and shall contain a description of any unremediated material weaknesses as of December 31 immediately preceding in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements.

(c) If no unremediated material weaknesses were noted, the communication shall state that none were found.

(2) An insurer shall provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the action is not described in the accountant's communication.

Section 11. Accountant's Letter of Qualifications. The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

(1) That the accountant is independent with respect to the insurer and conforms to the standards of the accountant's profession as contained in statutes, administrative regulations, and rules of professional conduct of the State Board of Accountancy of Kentucky set forth in KRS Chapter 325 and 201 KAR Chapter 1;

(2) The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing in this administrative regulation prohibits the accountant from utilizing staff as the accountant deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards;

(3) That the accountant understands the annual audited financial report, that the accountant's opinion on it will be filed in compliance with this administrative regulation, and that the commissioner will be relying on this information in monitoring and administrative regulation of the financial position of insurers;

(4) That the accountant consents to the requirements of Section 12 of this administrative regulation and that the accountant consents and agrees to make available for review by the commissioner, his designee, or his appointed agent, the work papers;

(5) A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing of the American Institute of Certified Public Accountants;

(6) A representation that the accountant is in compliance with the requirements of Section 6 of this administrative regulation.

Section 12. Availability and Maintenance of Independent Certified Public Accountant Work Papers. (1) Every insurer required to file an audited financial report pursuant to this administrative regulation shall require the accountant to make available for review by department examiners all work papers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the department, or any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit work papers and communications until the department has filed a report on examination covering the period of the audit, but no longer than seven (7) years from the date of the audit report.

(2) In the conduct of the periodic review by department examiners described in subsection (1) of this section, it shall be agreed that photocopies of pertinent audit work papers may be made and retained by the department. Reviews by the department examiners shall be considered investigations and all working papers and communications obtained during the course of shall be afforded the same confidentiality as other examination work papers generated by the department.

Section 13. Requirements for Audit Committees. This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity.

(1) The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work pursuant to this administrative regulation. Each accountant shall report directly to the audit committee.

(2) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection (5) of this section and section 3(4) of this administrative regulation.

(3)(a) A member of the audit committee shall not, other than in his or her capacity as a member of the audit committee, the board

of directors or any other board committee, accept any consulting advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary.

(b) Notwithstanding paragraph (a) of this subsection, if the law requires board participation by otherwise nonindependent members, that law shall prevail and the members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(4) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of:

(a) The next annual meeting of the responsible entity; or

(b) One year from the occurrence of the event that caused the member to be no longer independent.

(5)(a) To exercise the election of the controlling person to designate the audit committee for purposes of this administrative regulation, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers.

(b) Notification shall be made timely prior to the issuance of the statutory audit report and shall include a description of the basis for the election.

(c) The election can be changed through notice to the commissioner by the insurer which shall include a description of the basis for the change.

(d) The election shall remain in effect for perpetuity, until rescinded.

(6)(a) The audit committee shall require the accountant that performs for an insurer any audit required by this administrative regulation to timely report to the audit committee in accordance with the requirements of SAS 114, "The Auditor's Communication With Those Charged With Governance", or its replacement, including:

1. All significant accounting policies and material permitted practices;

2. All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

3. Other material written communications between the accountant and the management of the insurer, including any management letter or schedule of unadjusted differences.

(b) If an insurer is a member of an insurance holding company system, the reports required by paragraph (a) of this subsection may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(7)(a) The proportion of independent audit committee members shall meet or exceed the following criteria:

1. For prior calendar year direct written and assumed premiums between $0 and $300,000,000, no minimum requirements;

2. For prior calendar year direct written and assumed premiums over $300,000,000 to $500,000,000, fifty (50) percent or more of members shall be independent; and

3. For prior calendar year direct written and assumed premiums over $500,000,000; seventy-five (75) percent of members shall be independent.

(b) Notwithstanding subsection (7)(a) of this section, the commissioner may require the audit committee's board to enact improvements to the independence of the audit committee membership if the insurer:

1. Is in a risk-based capital action level in accordance with 806 KAR 3:190; or

2. Meets one or more of the standards of an insurer deemed to be in hazardous financial condition or otherwise exhibits qualities of a troubled insurer as set forth in KRS 304.2-065.

(c) An insurer with less than $500,000,000 in prior year direct written and assumed premiums may structure its audit committee with at least a supermajority of independent audit committee members.

(d) For purposes of subsection (7)(a) of this section, prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

(8)(a) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than $500,000,000 may make application to the commissioner for a waiver from the requirements of this section based upon hardship.

(b) The insurer shall file, with its annual statement filing, the approval for relief from this section with the states that it is licensed in or doing business in and the National Association of Insurance Commissioners.

(c) If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners, via the Web site, https://www2.naic.org/servlet/Index.

Section 14. Conduct of Insurer in Connection with the Preparation of Required Reports and Documents. (1) A director or officer of an insurer shall not, directly or indirectly:

(a) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this administrative regulation; or

(b) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this administrative regulation.

(2) An officer or director of an insurer, or any other person acting under the direction of the officer or director, shall not, directly or indirectly, take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this administrative regulation if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(3) An officer or director of an insurer, or any other person acting under the direction of the officer or director, shall not, directly or indirectly, take any of the following actions to coerce, manipulate, mislead or fraudulently influence an accountant with respect to the professional engagement period:

(a) To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances due to material violations of statutory accounting principles as required by KRS 304.3-241, generally accepted auditing standards, or other professional or regulatory standards;

(b) Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

(c) Not to withdraw an issued report; or

(d) Not to communicate matters to an insurer's audit committee.

Section 15. Management's Report of Internal Control over Financial Reporting. (1)(a) Every insurer required to file an audited financial report pursuant to this administrative regulation that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of $500,000,000 or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting.

(b) The report shall be filed with the commissioner along with the communication of internal control related matters noted in an audit.

(c) Management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

(2) Notwithstanding the premium threshold in subsection (1)(a) of this section, the commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer:

(a) Is in any risk-based capital level event in accordance with 806 KAR 3:190; or

(b) Meets one or more of the standards of an insurer deemed to be in hazardous financial condition in accordance with KRS 304.2-065.

(3) An insurer or a group of insurers meeting the following requirements may file its or its parent's Section 404 Report and an addendum in satisfaction of the requirements of this section if those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurer's audited statutory financial statements were included in the scope of the Section 404 Report:

(a) Directly subject to Section 404;

(b) Part of a holding company system whose parent is directly subject to Section 404;

(c) Not directly subject to Section 404, but is a SOX compliant entity; and

(d) A member of a holding company system whose parent is not directly subject to Section 404 but is a SOX compliant entity.

(4) Management's report of internal control over financial reporting shall include:

(a) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

(b) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

(c) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of internal control over financial reporting;

(d) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

(e) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management shall not conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;

(f) A statement regarding the inherent limitations of internal control systems; and

(g) Signatures of the chief executive officer and the chief financial officer.

(5) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in subsection (4) of this section, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

(a) Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of the documentation, in order to make its assertion in a cost effective manner and may include assembly of or reference to existing documentation.

(b) Management's report on internal control over financial reporting, as required by this section, and any documentation provided in support of the report during the course of a financial examination, shall be kept confidential by the department.

Section 16. Exemptions and Effective Dates. (1) Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provision of this administrative regulation if the commissioner finds, upon review of the application, that compliance with this administrative regulation would constitute a financial or organizational hardship upon the insurer. An exemption may be granted any time and from time to time for a specified period or periods. Upon denial of an insurer's written request for an exemption from this administrative regulation, the insurer may request a hearing on its application for an exemption pursuant to KRS 304.2-310.

(2) Domestic insurers retaining a certified public accountant on the effective date of this administrative regulation who qualify as independent shall comply with this administrative regulation for the year ending December 31, 2010, and each year thereafter unless the commissioner permits otherwise.

(3) Domestic insurers not retaining a certified public accountant on the effective date of this administrative regulation who qualify as independent shall meet the following schedule for compliance unless the commissioner permits otherwise:

(a) As of December 31, 2010, file with the commissioner an audited financial report.

(b) For the year ending December 31, 2010, and each year thereafter, these insurers shall file with the commissioner all reports and communication required by this administrative regulation.

(4) Foreign insurers shall comply with this administrative regulation for the year beginning January 1, 2010, and each year thereafter.

(5)(a) The requirements of Section 13 of this administrative regulation shall be effective January 1, 2010.

(b) An insurer or group of insurers that, pursuant to Section 13 of this administrative regulation, is not required to have independent audit committee members or only a majority of independent audit committee members because the total written and assumed premiums is below the threshold and subsequently becomes subject to one (1) of the independence requirements due to changes in premium shall have one (1) year following the year the threshold is exceeded, but not earlier than January 1, 2010, to comply with the independence requirements in Section 6 of this administrative regulation.

(c) An insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one (1) calendar year following the date of acquisition or combination to comply with the independence requirements in Section 13 of this administrative regulation.

(6)(a) The requirements of Section 15 of this administrative regulation shall be effective beginning with the reporting period ending December 31, 2010 and each year thereafter.

(b) An insurer or group of insurers that is not required to file an annual audit report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two (2) years following the year the threshold is exceeded, but not earlier than December 31, 2010, to file an annual audit report.

(c) An insurer acquired in a business combination shall have two (2) calendar years following the date of acquisition or combination to comply with the reporting requirements in Section 4 of this administrative regulation.

Section 17. Canadian and British Companies. (1) In the case of Canadian and British insurers, the annual audited financial reports shall be defined as the annual statement of total business in the manner filed by these insurers with their supervisory authority duly audited by an independent chartered accountant.

(2) For Canadian and British insurers, the letter required by Section 5 of this administrative regulation shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the commissioner pursuant to Section 3 of this administrative regulation and shall affirm that the opinion expressed is in conformity with the requirements of Section 3 of this administrative regulation.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Financial Condition Examiner's Handbook", 2008, National Association of Insurance Commissioners;

(b) AU Section 561, "Subsequent Discovery of Facts Existing at the Date of the Auditor's Report", 1996 Professional Standards of the American Institute of Certified Public Accountants;

(c) SAS 114, "The Auditors Communication With Those Charged with Governance", 2007, American Institute of Certified Public Accountants;

(d) SAS 109, "Understanding the Entity and Its Environment and Assessing the Risks of material Misstatement", 2007 American Institute of Certified Public Accountants; and

(e) SAS 110, "Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence", 2007 Ameri-

can Institute of Certified Public Accountants.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site at http://doi.ppr.ky.gov/kentucky.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: April 11, 2011

FILED WITH LRC: April 14, 2011 at 4 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2011, at 9 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2011, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502)564-0888, fax (502)564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires annual filing of audited financial reports by insurers.

(b) The necessity of this administrative regulation: This administrative regulation will allow the Department of Insurance improved oversight of the financial condition of insurers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the commissioner may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.3-240 authorizes the executive director to require additional information to the annual statement filed by insurers. This administrative regulation requires the annual filing of audited financial reports by insurers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will improve the Department of Insurance's oversight of the financial condition of insurers by requiring an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the requirement for an insurer to rotate accountants from every seven (7) years to every five (5) years. Further, the amendment will expressly state that risk retention groups and captive insurers are subject to the requirements of this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to statutory changes to KRS 304.3-180 and to address concerns raised by the National Association of Insurance Commissioners (NAIC) during the interim annual review for Kentucky's financial accreditation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the commissioner may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.3-240 authorizes the commissioner to require additional information to the annual statement filed by insurers. KRS 304.49-140 allows the commission to establish and amend administrative regulations relating to captive insurance companies necessary to enable the commissioner to carry out the provisions of KRS 304.49-010 to 304.49-230. This amendment requires the rotation of accountants every five (5) years rather than every seven (7) years, as set forth in KRS 304.3-180. It also clarifies that risk retention groups are subject to the provisions of the regulation.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will improve the Department's financial oversight of insurers in that the provisions are intended to strengthen independent review of the financial statements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts approximately 2,200 licensed insurers and 4 risk retention groups.

(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: The change regarding rotation of accountants is a conforming change to a statutory requirement. Regulated entities are already complying with this requirement. The remaining changes are already being complied with on a voluntary basis. Therefore, the regulated entities will not have to change any business practices to be in compliance 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): As the regulated entities are already complying with the requirements of this amendment, there should not be any cost to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this administrative regulation, regulated entities will be operating in a manner that will strengthen the accountability of their independent auditors and will provide more financial security to the policyholders of Kentucky.

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

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

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation do not establish any new fees or increase any existing fees.

(9) TIERING: Is tiering applied? All insurers are subject to this administrative regulation. However, insurers having direct premiums written in this state of less than one million dollars in any calendar year and less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year may be exempt from the requirements for years in which those conditions exist.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 304.3-240, 304.49-140

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 be revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will be revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will be revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation will be revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation will be revenue neutral.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The amendment to this existing administrative regulation offers technical clarifications and will not have a revenue impact.

PUBLIC PROTECTION CABINET
Department of Insurance
Health and Life Division
(Amendment)

806 KAR 12:120. Suitability in annuity transactions.

RELATES TO: KRS 304.9-390, 304.12-010, 304.99-020, 26 U.S.C. 401, 403, 408, 414, 457, 29 U.S.C. 1001-1461

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner[~~Executive Director of the Office~~] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation establishes standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers during the transaction are appropriately addressed.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Annuity" is defined in KRS 304.5-030.

(3) "Commissioner is defined by KRS 304.1-050(1).

(4) "Consultant" is defined in KRS 304.9-040.

(5) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

(6)[~~(4) "Executive director" is defined in KRS 304.1-050(1).~~

~~(5)~~] "Insurance producer" is defined in KRS 304.9-020(7).

(7)[~~(6)~~] "Insurer" is defined in KRS 304.9-020(10)[~~304.1-040~~].

(8)[~~(7)~~] "Licensee" means agent, insurer if an agent is not involved, and consultant.

(9)[~~(8)~~] "Recommendation" means advice provided by a licensee to an individual consumer that results in a purchase,[~~or~~] exchange, or replacement of an annuity in accordance with that advice.

(10) "Replacement" is defined in KRS 304.12-030(1)(a).

(11) "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation in accordance Section 3(2).

Section 2. Exemptions. This administrative regulation shall not apply to recommendations involving:

(1) Direct response solicitations without a recommendation based on information collected from the consumer pursuant to this administrative regulation; or

(2) Contracts used to fund:

(a) An employee pension or welfare benefit plan covered by the Employee Retirement and Income Security Act (ERISA), codified as 29 U.S.C. 1001 to 1461;

(b) A plan described by 26 U.S.C. 401(a), (k), 403(b), 408(k),or (p), as amended, if established or maintained by an employer;

(c) A government or church plan defined in 26 U.S.C. 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under 26 U.S.C. 457;

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) Prepaid funeral contracts.

Section 3. Duties of Licensees. (1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the licensee shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to these investments and other insurance products and as to the consumer's financial situation and needs, including the consumer's suitability information, and that there shall be a reasonable basis to believe all of the following:

(a)The consumer has been informed of various features of the annuity, including:

1. The potential surrender period and surrender charge;

2. Potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity;

3. Mortality and expense fees;

4. Investment advisory fees;

5. Potential charges for and features of riders;

6. Limitations on interest returns, insurance, and investment components; and

7. Market risk;

(b) The consumer would benefit from certain features of the annuity, including:

1. Tax deferred growth;

2. Annuitization; or

3.Death or living benefit;

(c) For the particular consumer, based on his or her suitability information, the transaction as a whole is suitable, including:

1. The type of annuity:

2. The underlying subaccounts to which the funds are allocated are at purchase or exchange of the annuity;

3. The riders; and

4. The similar product enhancements; and

(d) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:

1. The consumer shall:

a. Incur a surrender charge;

b. Be subject to the commencement of a new surrender period;

c. Lose existing benefits including death, living or other contractual benefits; or

d. Be subject to increased fees, including:

i. Investment advisory fees; or

ii.. Charges for riders and similar product enhancements;

2. The consumer would benefit from product enhancements and improvements; and

3. The consumer has had another annuity exchange or replacement and in particular, exchange or replacement within the preceding thirty-six (36) months.

(2) Prior to the execution of a purchase, [~~or~~] exchange, or replacement of an annuity resulting from a recommendation, the

licensee shall make reasonable efforts to obtain the consumer's suitability information including the following:

(a) Age;

(b) Annual income;

(c) Financial situation and needs, including the financial resources used for the funding of the annuity;

(d) Financial experience;

(e) Financial objectives;

(f) Intended use of the annuity;

(g) Financial time horizon;

(h) Existing assets, including investment and life insurance holdings;

(i) Liquidity needs;

(j) Liquid net worth;

(k) Risk tolerance; and

(l) Tax status.[~~information concerning:~~

~~(a) The consumer's financial status;~~

~~(b) The consumer's tax status;~~

~~(c) The consumer's investment objectives; and~~

~~(d) Other information necessary for making recommendations to the consumer.~~]

(3) Except as permitted under subsection (4), an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(4)(a)[~~(3)(a)~~] Except as provided under paragraph (b) of this subsection, the licensee shall not have an obligation to a consumer under this subsection or subsection (1) of this section related to an annuity transaction[~~a recommendation~~] if:[~~a consumer:~~]

1. A consumer refuses to provide relevant suitability information requested by the licensee and the annuity transaction is not recommended;

2. A consumer decides to enter into an insurance transaction not based on a recommendation of the licensee; [~~or~~]

3. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer; or

4. No recommendation is made.[~~Fails to provide complete or accurate information~~].

(b) A licensee's recommendation subject to paragraph (a) of this subsection shall be reasonable under all the circumstances actually known to the licensee at the time the annuity is issued[~~of the recommendation~~].

(5) A licensee shall at the time of sale:

(a) Make a record of any recommendation subject to section 3(1) of this administrative regulation;

(b) Obtain a consumer signed statement documenting a consumer's refusal to provide suitability information, if any; and

(c) Obtain a consumer signed statement acknowledging that an annuity transaction is not recommended if a consumer decides to enter into an annuity transaction that is not based on the licensee's recommendation.

(6)(a)[~~(4)(a)~~] An insurer shall [~~either: 1. Assure that a~~]establish a system [~~to supervise recommendations~~] that is reasonably designed to achieve a licensee's compliance with this administrative regulation, including the following:

1. The insurer shall maintain reasonable procedures to inform its licensees of the requirements of this administrative regulation and shall incorporate the requirements of this administrative regulation into relevant insurance licensee training manuals.

2. The insurer shall establish standards for licensee product training and shall maintain reasonable procedures to require its licensees to comply with the requirements of Section 4 of this administrative regulation.

3. The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its licensees.

4. The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable.

a. These review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including physical review.

b. This electronic or other system for review procedures may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

5. The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. An insurer may comply with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and

6. The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(b)1. An insurer may contract for performance of a function, including maintenance of procedures, required under paragraph (a) of this subsection.

2. An insurer's supervision system under paragraph 1. shall include supervision of contractual performance under this subsection. This shall include the following:

i. Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed;

ii. Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager represents, that the function is properly performed; and

3. If an insurer contracts for performance of a function and supervises the performance of the contract in accordance with subsection (6)(b)2 of this section, the insurer shall remain responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to Section 5 of this administrative regulation.

(c) An insurer shall not be required to include in its system of supervision a licensee's recommendations to consumers of products other than the annuities offered by the insurer.

(7) A licensee shall not attempt to influence a consumer from:

(a) Truthfully responding to an insurer's request for confirmation of suitability information;

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.

(8)(a)1. Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this administrative regulation.

2. This subsection shall apply to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales.

3. This subsection shall not limit the commissioner's ability to enforce the provisions of this administrative regulation.

(b) For paragraph (a) to apply, an insurer shall:

1. Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

2. Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

(9) The requirements of this section are intended to supplement and not replace the disclosure requirements in 806 KAR 12:150.[~~and shall comply with paragraphs (c) through (e) of this subsection; or~~

~~2. a. Establish and maintain written procedures to demonstrate the insurer's compliance with this administrative regulation; and~~

~~b. Conduct periodic reviews of its records that shall be reasonably designed to assist in detecting and preventing violations of this administrative regulation.~~

~~(b) A supervising insurance producer shall adopt a system established by an insurer to supervise recommendations of its agents that is reasonably designed to achieve compliance with this administrative regulation, or shall establish and maintain a system, including:~~

~~1. Maintaining written procedures to demonstrate the insurer's compliance with this administrative regulation; and~~

~~2. Conducting periodic reviews of records that shall be reasonably designed to assist in detecting and preventing violations of~~

~~this administrative regulation.~~

~~(c) An insurer may contract with a third party, including an insurance producer, to establish and maintain a system of supervision as required by paragraph (a) of this subsection with respect to insurance agents under contract with or employed by the third party.~~

~~(d)1. An insurer shall make reasonable inquiry to assure that the third party contracting under paragraph (c) of this subsection is performing the functions required under paragraph (a) of this subsection and shall take reasonable action to enforce the contractual obligation to perform the functions.~~

~~2. An insurer shall comply with its obligation to make reasonable inquiry if the insurer:~~

~~a. Annually obtains a certification from a senior manager of the third party who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and~~

~~b. Based on reasonable selection criteria, periodically selects third parties contracting under paragraph (c) of this subsection for a review to determine if the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.~~

~~(e) An insurer that contracts with a third party pursuant to paragraph (c) of this subsection and that complies with the requirements to supervise in paragraph (d) of this subsection shall be in compliance with paragraph (a) of this subsection.~~

~~(f) An insurer or supervising insurance producer shall not be required by paragraph (a) or (b) of this subsection to:~~

~~1. Review, or provide for review of, all agent solicited transactions; or~~

~~2. Include in its system of supervision an agent's recommendations to consumers of products other than the annuities offered by the insurer or supervising insurance producer.~~

~~(g) A supervising insurance producer contracting with an insurer pursuant to paragraph (c) of this subsection shall promptly, if requested by the insurer pursuant to paragraph (d) of this subsection, give a certification as described in paragraph (d)1a of this subsection or give a clear statement that the supervising insurance producer is unable to meet the certification criteria.~~

~~(h) A person shall not provide a certification under paragraph (d)1.a. of this subsection unless:~~

~~1. The person is a senior manager with responsibility for the delegated functions; and~~

~~2. The person has a reasonable basis for making the certification.~~

Section 4. Licensee Training. (1) An agent shall not sell, solicit, or negotiate an annuity product unless the agent has completed training in accordance with 806 KAR 9:220, Section 5; and

(2) A consultant shall not advise an individual regarding an annuity unless the consultant has completed the training in accordance with 806 KAR 9:220, Section 5.

(3) A licensee shall maintain records documenting compliance with the training requirements in subsection (1) and (2) of this section, which shall be available:

(a) To the department, if requested; and

(b) For a period not less than five (5) years.

(4) An insurer shall verify that an agent has completed the annuity training course required under this subsection before allowing the agent to sell an annuity product for that insurer.

Section 5. Mitigation of Responsibility. (1) An insurer shall be responsible for compliance with this administrative regulation. If a violation occurs, due to the action or inaction of the insurer or its licensee, the commissioner may[~~executive director shall~~] require:

(a) An insurer to take appropriate corrective action for any consumer harmed by the insurer's, or by its agent's, violation of this administrative regulation;

(b) An agent to take appropriate corrective action for any consumer harmed by the insurance agent's violation of this administrative regulation; or

(c) A supervising insurance producer that employs or contracts with an insurance agent to sell, or solicit the sale, of annuities to consumers, to take appropriate corrective action for any consumer harmed by the agent's violation of this administrative regulation;

(2) The commissioner may require [~~or~~

~~(d)~~] consultant to take appropriate corrective action for any consumer harmed by the consultant's violation of this administrative regulation.

(3)[~~(2)~~] Any applicable penalty under KRS 304.99-020 for a violation of Section 3(1), (2), or (3) of this administrative regulation may be reduced or eliminated, if corrective action for the consumer is taken promptly after a violation is discovered.

Section 6. Recordkeeping. Licensees shall maintain records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions in accordance with KRS 304.9-390 and 806 KAR 2:070. An insurer may maintain documentation on behalf of a licensee.

Section 7. Effective Date. The requirements, implementation, and enforcement of this administrative regulation shall begin on July 1, 2011[~~January 1, 2008~~].

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: April 11, 2011
FILED WITH LRC: April 14, 2011 at 4 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2011, at 9 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2011, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502)564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a)What this administrative regulation does: This administrative regulation establishes standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers during the transaction are appropriately addressed.

(b) The necessity of this administrative regulation: This administrative regulation will provide guidance to insurers and agents selling an annuity product as to the suitability of the product.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This regulation will aid insurers and agents by providing guidance and requirements for purchase of annuities as to the suitability.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation currently provides guidance, procedures and information for insurers and agents with regard to the purchase of annuities as to the suitability of the product.

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

(a) How the amendment will change this existing administrative

regulation? The amendment will make technical corrections and will amend to add more comprehensive standards for suitability determinations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate appropriate changes due to a revised NAIC model law with more comprehensive standards for determining suitability in the sale of annuities.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This amendment will make technical changes to the regulation due to 2010 Ky. Acts ch. 24 which relates to the reorganization of the department of insurance.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will be a guide for DOI's consumer protection division to use when investigation a complaint relating to the sale of an annuity product and its suitability for the consumer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will affect approximately 470 insurers and 66,000 agents offering annuity products.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These entities will be required comply with the amended regulation by revising their suitability questionnaires to ensure that all required information is obtained prior to recommending an annuity product.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since these insurers and agents are already complying with the previous version of this regulation, the costs associated with providing the amended version should be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The insurers and agents will be in compliance with state law and will have resources to aid consumers in purchasing an annuity.

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

(a) Initially: Minimal, if any.

(b) On a continuing basis: Minimal, if any.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Department of Insurance.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied; the provisions of this administrative regulation will be implemented in the same manner for all insurers and agents who have annuity products.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statute 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance code.

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

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

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

(c) How much will it cost to administer this program for the first year? The cost of administering this program will not change.

(d) How much will it cost to administer this program for subsequent years? The cost of administering this program will not change.

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

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

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:030. License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses.

RELATES TO: KRS 318.010, 318.020, 318.040, 318.050, 318.054

STATUTORY AUTHORITY: KRS 318.040(1)(d), (2), (3), 318.050, 318.054(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.040(1)(d) requires an applicant for a master or journeyman plumber's license to possess the qualifications established in KRS 318.040 and other qualifications prescribed by the commissioner[~~executive director~~]. KRS 318.040(2) and (3) require an applicant to successfully complete an examination prescribed by the Department[~~office~~]. KRS 318.050 requires the department[~~office~~] to establish reasonable application fees for licensure as a master or journeyman plumber. KRS 318.054(3) requires the department[~~office~~] to establish reasonable renewal fees for master or journeyman plumbers. This administrative regulation establishes the application and examination requirements and the application and renewal fees.

Section 1. Applications for Examination for Master or Journeyman Plumber's Licenses. (1) An application for examination for a master or journeyman plumber's license shall be submitted to the department[~~office~~] of Housing, Buildings and Construction on:

(a) Form PLB-1, Application for License as a Master Plumber; or

(b) Form PLB-2, Application for License as a Journeyman Plumber.

(2) The application shall:

(a) Be properly signed and notarized;

(b) Be accompanied by an examination fee of:

1. $150 to take the master plumber's examination; or

2. Fifty (50) dollars to take the journeyman plumber's examination; and

(c) Include a photograph of the applicant not less than two (2) inches square nor larger than four (4) inches square taken within two (2) years of submittal.

(3) The application fee shall be submitted at least two (2) weeks prior to the date of examination and remitted by post office or express money order, bank draft or certified check payable to the Kentucky State Treasurer.

(4) After passing the examination, an applicant for a master plumber's license shall remit a license fee of $250.

(5) After passing the examination, an applicant for a journeyman's license shall remit a license fee of sixty (60) dollars.

Section 2. Examinations for Master or Journeyman Plumber's Licenses. (1) Examination of applicants. Regular examination of applicants for a master or journeyman plumber's license shall be conducted during the months of February, May, August and November of each year. A special examination may be conducted at other times as the Department[~~Office~~] of Housing, Buildings and Construction directs.

(2) Time and place of examination. Notice of the time and place of examination shall be given by United States mail at least one (1) week prior to the date of examination to each person who has an application on file.

(3) Materials required for journeyman plumbers' examinations. An applicant for a journeyman plumber's license shall furnish the materials required for the practical examination, which are specified in the List of Required Examination Materials that is included as part of the application.

(4) The testing requirements shall be designed by the State Plumbing Examining Committee and shall be more complex for the master's examination than the journeyman's examination.

Section 3. Renewals of Master and Journeyman Plumber's Licenses. (1) Renewal fees. The annual license renewal fee shall be:

(a) $250 for a master plumber; and

(b) Sixty (60) dollars for a journeyman plumber.

(2) Continuing education. The continuing education requirements established in 815 KAR 20:032 shall be met.

(3) Inactive master renewal.

(a) To place the master plumber's license in inactive status, a master plumber shall pay annually an inactive fee of $125.

(b) An inactive master plumber shall not secure a plumbing permit, advertise, or represent himself as a qualified master plumber.

(c) To reactivate a master plumber license, the inactive master plumber shall pay an additional $125 and comply with the continuing education requirements established in 815 KAR 20:032.

(4) Remittance of renewal fees. A renewal fee shall be remitted by post office or express money order, bank draft, or certified check payable to the Kentucky State Treasurer.

Section 4. Requirements for Master Plumber Applicants. Pursuant to KRS 318.040(1)(d), each person shall meet the following requirements to become licensed as a master plumber:

(1)(a) An applicant shall have:

1. A valid journeyman plumber's license for a minimum of two (2) years within the past five (5) years immediately preceding application; and

2. Been actively employed in plumbing under the supervision of a licensed master plumber for a minimum of two (2) years; or

(b) The applicant shall be a Kentucky registered engineer experienced in mechanical engineering.

(2) An applicant shall successfully complete the examination developed and administered by the State Plumbing Examining Committee. The examination shall be designed to demonstrate that the applicant:

(a) Understands KRS Chapter 318 and 815 KAR Chapter 20;

(b) Is capable of the design of a plumbing system; and

(c) Understands the technical and practical installation techniques and principles for a safe and sanitary plumbing system.

(3) The examination shall include:

(a) Answering written questions pertaining to basic principles of plumbing and KRS Chapter 318 and 815 KAR Chapter 20; and

(b) Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes and vents and the plumbing fixtures connected thereto. The proper sizing of main stacks shall be given more importance than other piping. Deductions shall be required for oversized piping and for undersized piping.

(4) The passing grade for the total examination for a master plumber shall be eighty (80) percent, with a minimum of seventy-five (75) percent obtained for each portion of the examination established in subsection (3)(a) and (b) of this section.

Section 5. Requirements for Journeyman Plumber Applicants. Pursuant to KRS 318.040(1)(d), an applicant shall meet the following requirements to become licensed as a journeyman plumber:

(1) An applicant shall have completed two (2) consecutive years experience as an apprentice plumber.

(a) Proof of this requirement shall be satisfied by submission of:

1. A W-2 form;

2. An affidavit of a Kentucky licensed master plumber; or

3. A plumbing license issued by another state.

(b) Completion of a two (2) year plumbing course or completion of a committee approved course consisting of one (1) calendar year but not less than forty-eight (48) quarter, credit hours shall be considered the equivalent of one (1) year of experience.

(2) An applicant shall successfully complete the practical and written examination developed and administered by the State Plumbing Examining Committee. The examination shall be designed to demonstrate the practical and technical understanding of plumbing principles and the ability to apply those principles for a safe and sanitary plumbing system. The examination shall include:

(a) Answering written questions pertaining to basic principles of plumbing and KRS Chapter 318 and 815 KAR Chapter 20;

(b) Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes and vents and the plumbing fixtures connected thereto. The proper sizing of main stacks shall be given more importance than other piping. Deductions shall be required for oversized piping and for undersized piping; and

(c) Completing a practical section in which the applicant shall demonstrate the ability to properly install plumbing by engaging in certain activities such as properly installing a no hub cast-iron project and soldering copper solder connections.

(3) The passing grade for the total examination for a journeyman plumber shall be seventy-five (75) percent, with a minimum of seventy (70) percent obtained for each portion of the examination established in subsection (2)(a), (b), and (c) of this section.

Section 6. A master plumber or journeyman plumber shall notify the department[~~office~~] of the name of the plumber's business and its address, employer and the employer's address each time a change of employment is made.

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

(a) Form PLB-1, "Application for License as a Master Plumber",
October, 2007; and

(b) Form PLB-2, "Application for License as a Journeyman Plumber", October 2007.

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

JERRY T. LUNSFORD, Commissioner
ROBERT D VANCE, Secretary

APPROVED BY AGENCY: April 12, 2011

FILED WITH LRC: April 14, 2011 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011, at 10 a.m., at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2011 (five (5) working days prior to the hearing) of their intent to attend. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed adminis-

trative 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 31, 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: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365 ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application and examination requirements and the application and renewal fees.

(b) The necessity of this administrative regulation: This amendment is necessary to update the educational options towards requirements for plumbing licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 authorizes the department to adopt reasonable rules or regulations, after review by the State Plumbing Code Committee, for the administration of the plumbing program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow applicants for licensure to be awarded one (1) year of experience for the completion of a committee approved course consisting of one (1) calendar year but not less than forty-eight (48) credit hours.

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

(a) How the amendment will change this existing administrative regulation: The amendment will allow applicants for licensure to be awarded one (1) year of experience for the completion of a committee approved course consisting of one (1) calendar year but not less than forty-eight (48) credit hours.

(b) The necessity of the amendment to this administrative regulation: This amendment provides licensees alternative mechanisms for meeting licensure requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.040 authorizes the Commissioner to proscribe additional qualifications for applicants seeking licensure. This regulatory amendment was approved by the Plumbing Code Committee during its November 2010 meeting.

(d) How the amendment will assist in the effective administration of the statutes: Providing alternative mechanisms for obtaining experience to obtain licensure affords licensees options that are best suited for learning.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of Plumbing, the State Plumbing Code Committee and applicants for plumbing 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: The Department will be charged with confirming that applications meet applicable licensure requirements including appropriate experience.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated additional cost associated with this administrative regulation; this amendment merely allows alternative experience opportunities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be given one (1) year of experienced credit towards licensure for the completion of committee approved courses.

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

(a) Initially: No additional costs anticipated to implement.

(b) On a continuing basis: No additional costs anticipated to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The trust and agency fund for the Division of Plumbing established in KRS 318.136.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable to 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? The Department of Housing, Buildings and Construction, Division of Plumbing, and the State Plumbing Code Committee 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. This administrative regulation is authorized by KRS 318.040, 318.050, and 318.054.

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 establishes no revenues nor creates 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. Not applicable.

(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. Depending upon the number of applicants who decide to seek the educational option created by this administrative amendment, revenues realized by schools may increase. An estimate of this impact, however, cannot be determined at this time.

(c) How much will it cost to administer this program for the first year? Not applicable.

(d) How much will it cost to administer this program for subsequent years? Not applicable.

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

Revenues (+/-): Undetermined (see explanation above)

Expenditures (+/-): Neutral

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:070. Plumbing fixtures.

RELATES TO: KRS 318.010, 318.015, 318.150, 318.200

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department[~~office~~], after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the kind, type and quality of plumbing fixtures to be used in the construction of plumbing systems. This administrative regulation establishes the requirements for plumbing fixtures allowed in Kentucky.

Section 1. Materials. Receptacles used as water closets, urinals, or for the disposal of human excreta, shall be of vitrified earthenware, hard natural stone, or cast-iron with a light color porcelain enameled on the inside, except as indicated in Section 4 of this administrative regulation.

Section 2. Installation. Plumbing fixtures shall be installed to allow access for cleaning. All pipes from fixtures shall be run to the wall. A trap or pipe shall not extend nearer to the floor than twelve (12) inches except laundry trays or similar fixtures.

Section 3. Water Closet Bowls. A water closet bowl shall be of one (1) piece construction and hold a sufficient quantity of water when filled to the trap overflow to prevent fouling of its interior surfaces, and it shall be provided with an integral flushing rim to flush the entire interior of the bowl.

Section 4. Plastic Water Closet Bowl and Tank. (1) A plastic water closet bowl and tank shall be constructed with a polypropylene lining inside the one (1) piece bowl and tank.

(2) The outer surface of the bowl shall be constructed of PVC material.

(3) The filler material between the lining and outer surface shall be made of polyurethane foam.

(4) The bowl shall have:

(a) A three (3) inch water seal; and

(b) A two and one-eighth (2 1/8) inch waste opening passage.

Section 5. Frost-proof Closet. (1) A frost-proof water closet may be installed only in a building that has at least a twelve (12) inch air break between it and any building used for habitation or occupancy.

(2) The room shall be tightly enclosed and accessible from the outside only.

(3) The soil pipe between the trap and hopper shall be of extra heavy cast-iron, four (4) inches in diameter and shall be light colored porcelain enamel on the inside.

(4) The building shall have a nonabsorbent floor.

(5) A frost-proof water closet shall have a four (4) inch vent.

Section 6. (1) Floor drains and Shower Drains. A floor drain or a shower drain shall be considered a plumbing fixture and shall be provided with a strainer.

(2) Shower drain pan construction.

(a) A shower pan shall be constructed without a seam and shall extend to a minimum height of six (6) inches on all vertical walls.

(b) A shower pan shall not be required on a concrete floor before the outside grade level.

(c) A shower drain pan shall be constructed as follows:

1. Of sheet lead weighing not less than four (4) pounds per square foot;

2. Of nonplasticized chlorinated polyethylene produced and labeled as ASTM D-412 and D-1204 and they shall be not less than 0.040 inches thick;

3. Of nonplasticized polyvinyl chloride (PVC) sheet material produced and labeled as ASTM D-1004, D-412, 06A, and D-1790 and they shall be not less than 0.040 inches thick; or

4. Of other approved material as provided in 815 KAR 20:020, Section 5. Copies of ASTM specifications identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(3) Fiberglass bathtubs, showers, tub enclosures and shower stalls.

(a)1. Fiberglass bathtubs and tub enclosures shall be produced and labeled as ANSI Z 124.1.

(b) Acrylic-faced bathtubs shall be produced and labeled as ASTM E8408A or E 162.

(c) Fiberglass shower stalls and shower receptors shall be produced and labeled as ANSI Z 124.2.

(4) Metamorphosed carbonate aggregate polyester resinous martrix-marbleoid bathtubs, lavatories and shower stalls.

(a)1. Metamorphosed carbonate aggregate polyester resinous martrix-marbleoid bathtubs shall be produced and labeled as ANSI Z 124-1.

2. Lavatories shall be produced and labeled as ANSI Z 124-3.

3. Shower stalls shall be produced and labeled as ANSI Z 124-2.

(b) Copies of ANSI specifications identified in this administrative regulation may be obtained by writing the American National Standards Institute, 1430 Broadway, New York, New York 10018.

Section 7. Fixture Strainers. A fixture, other than a water closet or a pedestal urinal, shall be provided with a strainer. The outlet area of the strainer shall not be less than the interior area of the trap.

Section 8. Fixture Overflow. The overflow from a fixture shall be optional, but if used, the overflow shall be connected to the inlet side of a trap and accessible for cleaning.

Section 9. Fixture Additions. A fixture added to a plumbing system shall be installed to comply with all applicable sections of the State Plumbing Code.

Section 10. Defective Fixtures. If a newly installed fixture is found to be defective or if an old fixture is found to be in an unusable condition, it shall be repaired, replaced, or removed within thirty (30) days upon written notice from the office.

Section 11. Water Heaters. (1) A water heater shall be properly connected to the hot and cold water supply.

(2) A water heater designed for use as an appliance for supplying potable hot water for domestic or commercial purposes may be used for space heating if the water temperature does not exceed 140 degrees Fahrenheit.

(3) Every water heater shall be accessible for inspection, repair and replacement.

(4) If a water heater is installed in a crawl space, it shall have adequate access with a travel path no less than five (5) feet of vertical distance and be installed on at least a two (2) inch thick noncorrosive material adequate to support the heater.

(5) If a water heater is located in an attic of a residence, a water tight pan of corrosion resistant material shall be installed beneath the water heater and shall be equipped with at least a three-quarter (3/4) inch drain to be piped similarly to a pressure and temperature relief valve discharge line.

(6) A fuel-fired water heater shall be connected to a flue or chimney of a size which is at least as large as the size required by the water heater manufacturer's instructions.

(7) Fuel-fired water heater vents shall not be connected to a flue serving a coal-burning apparatus.

(8) The flue or chimney shall extend two (2) feet above the roof and shall be properly flashed and shall not terminate within six (6) feet of a door or window.

(9) A fuel-fired water heater, with the exception of those having direct-vent or through the wall vent systems, shall not be placed in any bathroom, toilet room or a room used for sleeping.

(10) If a fuel-fired water heater is placed in a closed room or closet, the door shall be a louver door or shall be properly ventilated to provide combustion air and circulation in accordance with the Fuel Gas Code[~~National Fire Protection Association Pamphlet #54 (National Fuel Gas Code)~~] incorporated by reference in Chapter 35 of the Kentucky Building Code filed in 815 KAR 7:120.

(11) Direct venting system location.

(a) Residential gas-fired direct vent and through the wall type water heaters shall be vented in accordance with the manufactur-

er's recommendations and shall be installed in accordance with the Fuel Gas Code[~~National Fire Protection Association Pamphlet #54 (National Fuel Gas Code)~~] incorporated by reference in the Kentucky Building Code filed in 815 KAR 7:120.

(b) The vent terminal of a direct vent appliance with an input of 50,000 BTU per hour or less shall be located at least nine (9) inches from any opening through which flue gases could enter a building, and an appliance with an input over 50,000 BTU per hour shall require a twelve (12) inch vent termination clearance.

(c) The bottom of the vent terminal and the air intake shall be located at least twelve (12) inches above grade.

(12) Instantaneous water heaters not listed in 825 KAR 20:020 shall:

(a) 1. Be certified to ANSI Z21.10.1 for units including but not exceeding 75,000 BTUs; or

2. Be certified to ANSI Z21.10.3 for units exceeding 75,000 BTUs;

(b) Have a minimum of 3/4 inch inlet and outlet;

(c) Be installed with a properly sized temperature and pressure relief valve installed within the heater or within the first six (6) inches of the outlet immersed in the flow of the water; and

(d) If required by the manufacturer to be periodically flushed, be installed to flush without altering the installation.

(13) Temperature and pressure relief valves shall be installed in accordance to manufacturer's requirements.

Section 12. Conservation of Water. (1) Conservation of hot water.

(a) Showers. A shower used for other than safety reasons shall be equipped with an approved flow control device which shall limit the total flow to a maximum of two and one-half (2.5) gallons per minute per shower head.

(b) Lavatories.

1. Lavatories in restrooms of public facilities shall be equipped with an outlet device which shall limit the flow of domestic hot water to a maximum of 0.75 gallons per minute.

2. Lavatory faucets (other than those in restrooms of public facilities) shall be equipped with a flow control device which shall limit the flow of domestic hot water to a maximum of two (2.0) gallons per minute.

3. Sink faucets shall be equipped with a flow control device which shall limit the flow of domestic hot water to a maximum of two and one-half (2.5) gallons per minute.

(2) Conservation of cold water.

(a) Showers. A shower used for other than safety reasons shall be equipped with an approved control device to limit the total flow to a maximum of two and one-half (2.5) gallons per minute per shower head.

(b) Lavatory and sink faucets.

1. Lavatory faucets. Lavatory faucets shall be equipped with a flow control device which shall limit the flow of the domestic cold water to a maximum of two (2.0) gallons per minute.

2. Sink faucets. Sink faucets shall be equipped with a flow control device which shall limit the flow of domestic cold water to a maximum of two and one-half (2.5) gallons per minute.

(c) Water closets. A water closet shall not be installed in a facility or building unless it is of a type designed and manufactured to limit the gallons per flush as required by this subsection.

1. Residential (private use) installations. A water closet for private use in a single family dwelling, duplex, or townhouse, condominium or apartment unit shall not exceed one and six-tenths (1.6) gallons per flush.

2. Commercial (public use) installations. A water closet for public use, including a commercial building, shall not exceed three and one-half (3.5) gallons per flush.

(d) Urinals. A urinal shall not exceed one (1.0) gallon per flush.

(3)(a) The provisions of this section shall apply to new construction, renovation, or replacement in an existing structure.

(b) Upon compliance with the requirements of this section, the Division of Plumbing shall permit the installation of a tank type water closet equipped with devices found by the inspector to meet applicable specifications in water closets having a tank capacity in excess of three and one-half (3 1/2) gallons (thirteen and three-tenths (13.3) liters).

(c) The Division of Plumbing shall allow the use of a standard flush water closet and a urinal which does not meet the specific specifications if, in the opinion of the division, the configuration of the building drainage system requires a greater quantity of water to adequately flush the system, or if the owner requests the use of antique fixtures which may not be equipped for reduced flow.

JERRY T. LUNSFORD, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: April 12, 2011

FILED WITH LRC: April 14, 2011 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011, at 10 am, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2011 (five (5) working days prior to the hearing) of their intent to attend. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 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: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365 ext. 144, fax (502)573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for plumbing fixtures allowed in Kentucky.

(b) The necessity of this administrative regulation: This amendment is necessary to update the regulations to address new methods, equipment and technologies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate regulations, after review by the State Plumbing Code Committee, establishing the Kentucky State Plumbing Code.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation amendment establishes the standards for instantaneous water heaters and the installation standard for temperature and pressure relief valves.

(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 provides standards for instantaneous water heaters and temperature and pressure relief valves.

(b) The necessity of the amendment to this administrative regulation: The amendment updates the State Plumbing Code to address new methods, equipment and technology.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate regulations establishing the State Plumbing Code regulating plumbing for the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: Providing alternative methods, equipment and technologies affords options previously unavailable under the State Plumbing Code.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of Plumbing, the State Plumbing Code Committee, licensed plumbers and owners of buildings.

(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: Inspectors and plumbers must be certain that plumbing fixtures used and incorporated into plumbing systems comply with these standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs associated with this amendment will depend upon whether plumbers use the new technologies. For this reason, costs cannot be accurately determined or estimated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will have the option of installing new technologies included in the amendment.

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

(a) Initially: No additional costs anticipated to implement.

(b) On a continuing basis: No additional costs anticipated to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The trust and agency fund for the Division of Plumbing established in KRS 318.136.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable to 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? The Department of Housing, Buildings and Construction, Division of Plumbing, and the State Plumbing Code Committee 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. This administrative regulation is authorized by KRS 318.130.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation establishes no revenues nor creates 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. Not applicable to this regulatory amendment.

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

(c) How much will it cost to administer this program for the first year? Not applicable to this regulatory amendment.

(d) How much will it cost to administer this program for subsequent years? Not applicable to this regulatory amendment.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amendment)

900 KAR 6:030. Certificate of need expenditure minimums.

RELATES TO: KRS 216B.010-216B.130, 216B.455, 216B.990(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 216B.040(3)(a), 216B.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(3)(a) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations. KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B. This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

Section 1. (1) The U.S. Department of Commerce, Bureau of Economic Analysis Price Indexes for Private Fixed Investment by Type shall be used in making annual adjustments to the expenditure minimums required by KRS 216B.130.

(2) The change in the price index for twenty-four (24)[~~twelve (12)~~] month period ending December 31, 2010[~~2008~~], represents 3.58[~~0.90~~] percent decrease[~~increase~~].

Section 2. (1) The capital expenditure minimum established in KRS 216B.015(7) shall be $2,648,079[~~$2,746,400~~].

(2) The major medical equipment minimum established in KRS 216B.015(16) shall be $2,648,079[~~$2,746,400~~].

CARRIE BANAHAN, Executive Director
JANIE MILLER, Secretary

APPROVED BY AGENCY: April 10, 2011

FILED WITH LRC: April 12, 2011 at 4 p.m.

PUBLIC HEARING AND COMMENTS: A public hearing on this administrative regulation shall, if requested, be held on May 23, 2011, at 9 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 16, 2011, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business May 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TEIRING STATEMENT

Contact Person: Carrie Banahan or Chandra Venettozzi, (502) 564-9589

(1.) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

(b) The necessity of this administrative regulation: KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B. Because this administrative regulation was not amended annually as required, it is now being amended for the

most recent twenty-four (24) month period to provide for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation adjusts the capital expenditure minimums for capital expenditures and major medical equipment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment of the regulation is in compliance with KRS 216B.130.

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

(a) How the amendment will change this existing administrative regulation: The amendment will provide for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

(b) The necessity of the amendment to this administrative regulation: KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B. Because this administrative regulation was not amended annually as required, it is now being amended for the most recent twenty-four (24) month period to provide for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 216B.130 which requires that capital minimums be adjusted.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the most current capital and major medical equipment expenditure amounts use in processing Certificate of Need Applications.

(3.) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or develop community health care facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The modifications will any Certificate of Need Applicant with a capital expenditure of major medical expenditure that exceeds the minimum.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The facilities will have access to the most current information regarding capital expenditure and major medical expenditure minimums when completing their applications for Certificate of Need.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6.) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

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

(8.) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.

(9.) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed healthcare facilities or services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amendment)

900 KAR 7:030. Data reporting by health care providers.

RELATES TO: KRS Chapter 13B, 216.2920-216.2929

STATUTORY AUTHORITY: KRS 216.2923(3), 216.2925

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2925 requires that the Cabinet for Health and Family Services promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality, and outcomes of health care services provided in the Commonwealth. KRS 216.2923(3) authorizes the cabinet to promulgate administrative regulations to impose fines for failure to report required data. This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance.

Section 1. Definitions. (1) "Agent" means any entity with which the cabinet may contract to carry out its statutory mandates, and which it may designate to act on behalf of the cabinet to collect, edit, or analyze data from providers.

(2) "Ambulatory facility" is defined by KRS 216.2920(1).

(3) "Cabinet" is defined by KRS 216.2920(2).

(4) "Coding and transmission specifications" or "Kentucky Inpa-

tient and Outpatient Data Coordinator's Manual for Hospitals or Kentucky Data Coordinator's Manual for Ambulatory Facilities" means the document containing the technical directives the cabinet issues concerning technical matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the standard billing form and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(5) "Hospital" is defined by KRS 216.2920(6).

(6) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay, and discharge date, that is identified by a provider-assigned patient control number unique to that inpatient episode, except for inpatient services a hospital may provide in swing, nursing facility, skilled, intermediate or personal care beds, and hospice care.

(7) "National Provider Identifier" or "NPI" means the unique identifier assigned by the Centers for Medicare and Medicaid Services to an individual or entity that provides health care services and supplies.

(8) "Outpatient services" means services performed on an outpatient basis in a hospital in accordance with Section 3(2) of this administrative regulation or services performed on an outpatient basis by an ambulatory facility in accordance with Section 4 of this administrative regulation.

(9) "Provider" means a hospital, ambulatory facility, clinic, or other entity of any nature providing hospitalizations, mammograms, or outpatient services as defined in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(10) "Record" means the documentation of a hospitalization or outpatient service in the format prescribed by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities as approved by the Statewide Data Advisory Committee on a computer readable electronic medium.

(11) "Standard Billing Form" means the uniform health insurance claim form pursuant to KRS 304.14-135, the Professional 837 (ASC X12N 837) format, the Institutional 837 (ASC X12N 837) format, or its successor as adopted by the Centers for Medicare and Medicaid Services, or the HCFA 1500 for use by hospitals and other providers in billing for hospitalizations and outpatient services.

Section 2. Medicare Provider-Based Entity. A licensed outpatient facility that is a Medicare provider-based entity of a hospital and reports under the hospital's provider number shall be separately identifiable through a facility-specific NPI.

Section 3. Data Collection for Hospitals. (1) Inpatient Hospitalization records. Hospitals shall document every hospitalization they provide on a Standard Billing Form and shall, from every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation.

(2) Outpatient services records.

(a) Hospitals shall document on a Standard Billing Form the outpatient services, as defined in Section 1 of this administrative regulation, they provide and shall from every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation.

(b) Hospitals shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Data collection on patients. Hospitals shall submit required data on every patient as provided in Section 13 of this administrative regulation, regardless of the patient’s billing or payment status.

Section 4. Data Collection for Ambulatory Facilities. (1) Outpatient Services Records.

(a) Ambulatory facilities shall document on a Standard Billing Form the outpatient service, as defined in Section 1 of this administrative regulation, they provide and shall, for every record, copy and provide to the cabinet the data specified in Section 14 of the administrative regulation.

(b) Ambulatory facilities shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Data collection on patients. Ambulatory facilities shall submit required data on every patient as provided in Section 14 of this administrative regulation, regardless of the patient’s billing or payment status.

Section 5. Data Finalization and Submission by Providers. (1) Submission of final data.

(a) Data shall be final for purposes of submission to the cabinet as soon as a record is sufficiently final that the provider could submit it to a payor for billing purposes, regardless of whether the record has actually been submitted to a payor.

(b) Finalized data shall not be withheld from submission to the cabinet on grounds that it remains subject to adjudication by a payor.

(c) Data on hospitalizations shall not be submitted to the cabinet before a patient is discharged and before the record is sufficiently final that it could be used for billing.

(2) Data submission responsibility.

(a) If a patient is served by a mobile health service, specialized medical technology service, or another situation where one (1) provider provides services under contract or other arrangement with another provider, responsibility for providing the specified data to the cabinet shall reside with the provider that bills for the service or would do so if a service is unbilled.

(b) Charges for physician services provided within a hospital shall be reported to the cabinet.

1. Responsibility for reporting the physician charge data shall rest with the hospital if the physician is an employee of the hospital.

2. A physician charge contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the cabinet may ensure comparability when aggregating data with other hospital records that do not contain physician charges.

(3) Transmission of records.

(a) Records submitted to the cabinet by hospitals shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(b) Records submitted to the cabinet by ambulatory facilities shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(c) All providers shall submit records on computer-readable electronic media.

(d) Providers shall provide back-up security against accidental erasure or loss of the data until all incomplete or inaccurate records identified by the cabinet have been corrected and resubmitted.

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the cabinet.

(b) The cabinet shall, within twenty-four (24) hours of submission, verify by electronic message to each provider the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the cabinet of a discrepancy between the provider's date log and a verification notice.

Section 6. Data Submission Timetable for Providers. (1) Quarterly submissions. Providers shall submit data at least once for each calendar quarter. A quarterly submission shall:

(a) Contain data, which during that quarter became final as specified in Section 5(1) of this administrative regulation; and

(b) Be submitted to the cabinet not later than forty-five (45) days after the last day of the quarter.

1. If the 45th day falls on a weekend or holiday, the submission due date shall be the next working day.

2. Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(2) Submissions more frequent than quarterly. Providers may submit data after records become final as specified in Section 5(1) of this administrative regulation and at a reasonable frequency convenient to a provider for accumulating and submitting batch data.

Section 7. Data Corrections for Hospitals. (1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(2) Time permitted for corrections. The cabinet shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) Providers shall submit corrected data by electronic transmission or postmarked mailing within thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(d) The cabinet shall grant a provider an extension of time to submit corrections, if the provider has formally informed the cabinet of significant problems in performing the corrections and has formally requested, in writing, an extension of time beyond the thirty (30) day limit.

(3) Percentage error rate.

(a) When editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.

(b) When editing data that a provider has submitted, the cabinet shall check for an error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(d) For the first data submission, the cabinet shall not count as errors any data for patients admitted prior to thirty (30) days of the effective date of this administrative regulation.

Section 8. Data Corrections for Ambulatory Facilities. (1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Time permitted for corrections. The cabinet shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) Providers shall submit corrected data by electronic transmission or postmarked mailing within the thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(d) The cabinet shall grant a provider an extension of time to submit corrections, if the provider has formally informed the cabinet of significant problems in performing the corrections and has formally requested, in writing, an extension of time beyond the thirty (30) day limit.

(3) Percentage error rate.

(a) When editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.

(b) When editing data that a provider has submitted, the cabinet shall verify an error rate per quarter of no more than one (1) percent of records or not more than (10) records, whichever is greater.

(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is more.

Section 9. Fines for Noncompliance for Providers. (1) A provider failing to meet quarterly submission guidelines as established in Sections 6, 7, and 8 of this administrative regulation shall be assessed a fine of $500 per violation.

(2) The cabinet shall notify a noncompliant provider by certified mail, return receipt requested, of the documentation of the reporting deficiency and the assessment of the fine.

(3) A provider shall have thirty (30) days from the date of receipt of the notification letter to pay the fine which shall be made payable to the Kentucky State Treasurer and sent by certified mail to the Kentucky Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4 W-E, Frankfort, Kentucky 40621.

(4) Fines during a calendar year shall not exceed $1,500 per provider.

Section 10. Extension or Waiver of Data Submission Timelines. (1) Providers experiencing extenuating circumstances or hardships may request from the cabinet, in writing, a data submission extension or waiver.

(a) Providers shall request an extension or waiver from the Office of Health Policy on or before the last day of the data reporting period to receive an extension or waiver for that period.

(b) Extensions and waivers shall not exceed a continuous period of greater than six (6) months.

(2) The cabinet shall consider the following criteria in determining whether to grant an extension or waiver:

(a) Whether the request was made due to an event beyond the provider's control, such as a natural disaster, catastrophic event, or theft of necessary equipment or information;

(b) The severity of the event prompting the request; and

(c) Whether the provider continues to gather and submit the information necessary for billing.

(3) A provider shall not apply for more than three (3) extensions or waivers during a calendar year.

Section 11. Appeals for Providers. (1) A provider notified of its noncompliance and assessed a fine pursuant to Section 9(1) of this administrative regulation shall have the right to appeal within thirty (30) days of the date of the notification letter.

(a) If the provider believes the action by the cabinet is unfair, without reason, or unwarranted, and the provider wishes to appeal, it shall appeal in writing to the Secretary of the Cabinet for Health and Family Services, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) Appeals shall be filed in accordance with KRS Chapter 13B.

(2) Upon receipt of the appeal, the secretary or designee shall issue a notice of hearing no later than twenty (20) days before the date of the hearing. The notice of the hearing shall comply with KRS 13B.050. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall issue a recommendation in accordance with KRS 13B.110. Upon receipt of the recommended order, following consideration of any exceptions filed pursuant to KRS 13B.110(4), the secretary shall enter a final decision pursuant to KRS 13B.120.

Section 12. Working Contacts for Providers. (1) By January 1 of each calendar year, a provider shall report by letter to the cabinet the names and telephone numbers of a designated contact

person and one (1) back-up person to facilitate technical follow-up in data reporting and submission.

(a) A provider's designated contact and back-up shall not be the chief executive officer unless no other person employed by the provider has the requisite technical expertise.

(b) The designated contact shall be the person responsible for review of the provider's data for accuracy prior to the publication by the cabinet.

(2) If the chief executive officer, designated contact person, or back-up person changes during the year, the name of the replacing person shall be reported immediately to the cabinet.

Section 13. Required Data Elements for Hospitals. (1) Hospitals shall ensure that each record submitted to the cabinet contains at least the following data elements as provided on the Standard Billing Form.

(2) Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Additional data elements, as specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals, shall be required by the cabinet to facilitate proper collection and identification of data.

Required	DATA ELEMENT LABEL
Yes	*Provider Assigned Patient Control Number
Yes	*Provider Assigned Medical Record Number
Yes	*Type of Bill (inpatient, outpatient or other)
Yes	*Federal Tax Number or Employer Identification Number (EIN)
Yes	*Facility-specific NPI
Yes	*Statement Covers Period
Yes	*Patient City and Zip Code
Yes	*Patient Birth date
Yes	*Patient Sex
Yes	*Admission/Start of Care Date
Yes	Admission Hour
Yes	*Type of Admission
Yes	*Source of Admission
Yes	*Patient Status (at end of service or discharge)
No	Occurrence Codes & Dates
No	Value Codes and Amounts, including birth weight in grams
Yes	*Revenue Codes/Groups
Yes	*HCPCS/Rates/Hipps Rate Codes
No	Units of Service
Yes	*Total Charges by Revenue Code Category
Yes	*Payor Identification - Payor Name
Yes	*National Provider Identifier
Yes	*Diagnosis Version Qualifier - ICD version 9.0 or 10.0
Yes	*Principal Diagnosis Code
No	Principal Diagnosis Code present on admission identifier for non-Medicare claims
Yes	*Principal Diagnosis Code present on admission identifier for Medicare claims
Yes	*Secondary and Other Diagnosis Codes if present
No	Secondary and Other Diagnosis code present on admission identifier if present for non-Medicare claims
Yes	*Secondary and Other Diagnosis code present on admission identifier if present for Medicare claims
No	Inpatient Admitting Diagnosis or Outpatient reason for visit
Yes	*External Cause of Injury Code (E-code) if present
No	External Cause of Injury (E-code) present on admission identifier on non-Medicare claims if present
Yes	*External Cause of Injury (E-code) present on admission identifier on Medicare claims if present
Yes	*Principal Procedure Code & Date if present
Yes	*Secondary and Other Procedure Codes & Date if present
Yes	*Attending Physician NPI/QUAL/ID
No	Operating Clinician ID Number/NPI
No	Other Physician NPI/QUAL/ID
Yes	*Race
Yes	*Ethnicity
Yes	*Procedure Coding Method

Section 14. Required Data Elements for Ambulatory Facilities. (1) Ambulatory Facilities shall ensure that each record submitted to the cabinet contains at least the following data elements as provided on the Standard Billing Form.

(2) Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(3) Additional data elements, as specified in Kentucky Data Coordinator's Manual for Ambulatory Facilities, shall be required by the cabinet to facilitate proper collection and identification of data.

Required	DATA ELEMENT LABEL
Yes	*Patient Birth date
Yes	*Patient Sex
Yes	*Zip Code
Yes	*1st Individual Payer ID#
Yes	*Admission/Start of Care Date
Yes	*Type of Bill
Yes	*Principal Diagnosis Code
Yes	*Secondary and Other Diagnosis Codes if present
Yes	*Principal Procedure Code & Date
Yes	*Secondary and Other Procedure Codes & Date if present
Yes	*1st Units of Service
Yes	*1st Charge
No	Secondary and Other Units of Service and Charge
Yes	*Total Charges for the Case
Yes	*Attending Clinician NPI
Yes	*Provider Assigned Patient ID#
Yes	*1st Insurer Group #
No	2nd Insurer Group #
Yes	*Operating Clinician NPI
Yes	*Billing Facility-specific NPI
Yes	*Federal Tax Number or Employer Identification Number (EIN)
Yes	*Statement Covers Period
Yes	*Primary Payor Name
No	Secondary Payor Name
Yes	*Race
Yes	*Ethnicity
Yes	*HCPCS/Rates/Hipps Rate Codes

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", revised April 1, 2011[~~July 1, 2010~~]; and

(b) "Kentucky Data Coordinator's Manual for Ambulatory Facilities," revised April 1, 2011[~~July 1, 2010~~].

(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 4WE, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4)

CARRIE BANAHAN, Executive Director
JANIE MILLER, Secretary

APPROVED BY AGENCY: April 10, 2011
FILED WITH LRC: April 12, 2011 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on May 23, 2011, at 9 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 16, 2011, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business May 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan or Chandra Venettozzi, 564-9592

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides clarification and instruction to specified health care providers on the process necessary to submit copies of administrative claims data to the cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that health care providers have a uniform mechanism with timeframes and instructions with which to submit the required data. The administrative regulation contains the updated manuals for both hospitals and ambulatory facilities. Revisions to the manual were necessary due to the addition of newly created procedure codes which need to be included in the manual. Also, at the request of facilities, the acceptable error rate for the number of records indicating a race of "other" was increased from 1% to 3%.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary so that health care providers have a uniform mechanism with timeframes and instructions with which to submit the required data to enable the cabinet to publish the data as required by KRS 216.2925.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed instructions to specified health care providers relating to the data elements, forms and timetables necessary to comply with statute.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation incorporates by reference updated data reporting manuals. Updated manuals are necessary as newly created procedure codes needed to be incorporated into the manuals.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide new data submission manuals to facilities that submit data so that newly created procedure codes are included in the manual.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment continues to conform to the content of the authorizing statutes by providing a standardized method of reporting by facilities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes as it provides detailed instructions on how to submit required data elements.

(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 approximately 185 hospitals and ambulatory facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will collect and submit data as required. Entities are already required to submit data, this regulation incorporated by reference manuals that were revised to include newly created procedure codes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each entity will collect and submit data as required. Entities are already required to submit data, this regulation incorporated by reference manuals that were revised to include newly created procedure codes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Data integrity is improved as all applicable procedure codes are now included it the manuals

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation as the office of Health Policy currently collects data and has the necessary data collection system in place.

(b) On a continuing basis: No additional 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 source of funding to be used for the implementation and enforcement of this administrative regulation will be from Office of Health Policy's existing budget. No new funding will be needed to implement the provisions 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 will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation does not establish any fees directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of Health Policy within the Cabinet for Health and Family Services and the state operated hospital facilities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.2920-216.2929.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subse-

quent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Department of Revenue
Office of Income Taxation
(New Administrative Regulation)

103 KAR 15:195. Endow Kentucky Tax Credit.

RELATES TO: KRS 141.438, 147A.310

STATUTORY AUTHORITY: KRS 131.130(1), 141.438(8)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.438 establishes a nonrefundable tax credit for a taxpayer making an endowment gift to a permanent endowment fund of a qualified community foundation, or county-specific component fund, or affiliate community foundation, which has been certified under KRS 147A.325. KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation establishes the requirements for the department's allocation of the $500,000 tax credit that may be awarded each fiscal year under the provisions of KRS 141.438(6) and establishes the filing requirements for a taxpayer to obtain preliminary authorization and final approval of the tax credit from the department.

Section 1. Definitions. (1) "Affiliate community foundation" is defined by KRS 147A.310(1).

(2) "Applicant" means a taxpayer that files an application with the department to obtain preliminary authorization for the Endow Kentucky tax credit as required by KRS141.438(7).

(3) "Application" means Revenue Form 41A720-S85, Application for Preliminary Authorization of the Endow Kentucky Tax Credit.

(4) "County-specific component fund" is defined by KRS 147A.310(3).

(5) "Department" means the Kentucky Department of Revenue.

(6) "Endowment gift" is defined by KRS 147A.310(4).

(7) "Final approval" means the applicant has received written notice from the department that proof of the endowment gift has been verified, as required by KRS 141.438(8)(c).

(8) "Identification number" means:

(a) A Social Security number for individuals;

(b) A Federal Employer Identification number for general partnerships, estates, or trusts; or

(c) A Kentucky Corporation/LLET Account Number for corporations or limited liability pass-through entities.

(9) "Preliminary authorization" means the applicant has received written notice from the department that the application is in compliance with KRS 141.438.

(10) "Qualified community foundation" is defined by KRS 147A.310(6).

(11) "Received" means the application has been delivered in accordance with Section 2(2) of this administrative regulation and time stamped as received by the Office of Income Taxation, Division of Corporation Tax, Tax Credit Section.

(12) "Tax credit" means the credit established by KRS 141.438(3).

(13) "Tax credit cap" means the amount provided by KRS 141.438(6).

Section 2. Application for Preliminary Authorization of the Endow Kentucky Tax Credit.

(1) An applicant that seeks to obtain preliminary authorization of a tax credit shall file an application with the department.

(2) The application shall be delivered to the department by one of the following methods:

(a) By fax to (502) 564-0058;

(b) By electronic mail sent to the department's mailbox at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov; or

(c) Hand-delivered to the Department of Revenue, 1st floor security desk at 501 High Street, Frankfort, Kentucky 40601. Security personnel shall notify the Office of Income Taxation, Division of Corporation Tax, Tax Credit Section, who shall stamp the application at the security desk as received.

(3) The department shall review the applications received via the methods prescribed in subsection (2) of this section as prescribed by this subsection.

(a) 1. Applications for the fiscal year ending June 30, 2011 delivered to the department beginning at midnight Eastern Time on April 11, 2011 through 11:59 a.m. Eastern Time on April 15, 2011 shall be considered for approval and shall be treated as having been filed at the same time.

2. If the tax credit cap is exceeded for applications received within the time prescribed by clause 1. of this subparagraph, the tax credit amounts receiving preliminary authorization shall be prorated by the fraction prescribed by paragraph (b) of this subsection.

(b) Tax credit amounts receiving preliminary authorization that are required to be prorated under paragraph (a)2. of this subsection shall be multiplied by a fraction, the numerator of which shall be the tax credit cap and the denominator of which shall be the total tax credit amounts receiving preliminary authorization for applications received during the time frame prescribed in paragraph (a)1. of this subsection.

(c) A fiscal year 2011 application filed prior to April 11, 2011, shall be considered as received at midnight Eastern Time on April 11, 2011.

(d)1. If the remaining tax credit cap is not fully allocated for the fiscal year ending June 30, 2011 for applications received during the period described in paragraph (a)1. of this subsection, a second period for accepting applications shall commence on April 18, 2011 and end on April 22, 2011.

2. All applications received during the time frame prescribed by clause 1. of this subparagraph shall be treated as having been received at the same time.

3. If the tax credit cap is exceeded for applications received by the department within the time period prescribed by clause 1. of this subparagraph, the tax credit amounts receiving preliminary authorization shall be prorated by the fraction prescribed by clause 4. of this subparagraph.

4. Tax credit amounts receiving preliminary authorization that are required to be prorated under the provisions of clause 3. of this paragraph shall be multiplied by a fraction, the numerator of which shall be the portion of the tax credit cap not allocated under paragraph (a) of this subsection and the denominator of which shall be the total tax credit amounts receiving preliminary authorization for applications delivered during the time prescribed in clause 1. of this subparagraph.

5. Any tax credit cap for the fiscal year ending June 30, 2011 that is not fully allocated by the close of the period prescribed in clause 1. of this subparagraph shall be allocated on a first-come, first-serve basis beginning with applications received on or after April 25, 2011.

(4)(a) For fiscal years beginning on or after July 1, 2011, applications received by the department beginning at midnight Eastern Time on July 1 through eleven fifty-nine 11:59 p.m. Eastern Time on July 7 shall be treated as having been filed at the same time.

(b) If the tax credit cap is exceeded for applications received by the department within the time prescribed by paragraph (a) of this subsection, the tax credit amounts receiving preliminary authorization shall be prorated by the fraction prescribed by paragraph (c) of this subsection.

(c) Tax credit amounts receiving preliminary authorization that are required to be prorated under the provisions of paragraph (b) of this subsection shall be multiplied by a fraction, the numerator of which shall be the tax credit cap and the denominator of which shall be the total tax credit amounts receiving preliminary authorization for applications delivered during the time period prescribed in paragraph (a) of this subsection.

(d) If the tax credit cap is not fully allocated for a fiscal year that begins on or after July 1, 2011 for applications received during the period described in paragraph (a) of this subsection, a second period for accepting applications shall commence on July 8 of the fiscal year and end on July 14 of the fiscal year.

(e) All applications received during the time frame prescribed by paragraph (d) of this subsection shall be treated as having been

filed at the same time.

(f) If the remaining tax credit cap is exceeded for applications received by the department within the time prescribed by paragraph (d) of this subsection, the tax credit amounts receiving preliminary authorization shall be prorated by the fraction prescribed by paragraph (g) of this subsection.

(g) Tax credit amounts receiving preliminary authorization that are required to be prorated under the provisions of paragraph (f) of this subsection shall be multiplied by a fraction, the numerator of which shall be the portion of the tax credit cap not allocated during the first time period under paragraph (a) of this subsection and the denominator of which shall be the total tax credit amounts receiving preliminary authorization for applications delivered during the time prescribed in paragraph (d) of this subsection.

(h) For fiscal years beginning on or after July 1, 2011, any tax credit cap not allocated under paragraphs (a) to (g) of this subsection shall be allocated on a first-come, first-serve basis beginning with applications received on or after July 15 of the fiscal year. If the tax credit cap is met under the provisions of this paragraph, subsequent applications shall be denied.

(5) An application shall not be submitted prior to July 1st for each fiscal year beginning on or after July 1, 2011. If July 1st falls on a Saturday, Sunday or state holiday, the first day an application may be filed shall be the first business day after July 1st.

(6) The department shall notify the applicant within thirty (30) calendar days after receipt of the application whether preliminary authorization of the tax credit is denied or approved.

(a) If the department denies preliminary authorization of the tax credit, the applicant shall be notified in writing by the department of the reason for the denial.

(b) If the department approves the tax credit application, a copy of the application shall be returned to the applicant with written notice of the department's preliminary authorization.

(7) Any restored tax credit cap described in KRS 141.438(8)(d) shall be re-allocated to the pool of applications received during the same time period in which the application was received from the applicant that had the preliminary approval voided. Any restored tax credit cap shall be re-allocated based on the applicable requirements prescribed by subsections (3) or (4) of this section. The other applicants from the same pool shall receive amended preliminary approvals reflecting the re-allocation.

(8) The percentage of proration for the pool of applicants described in subsection (3)(d)1. of this section shall not exceed the percentage of proration for the pool of applicants described in subsection (3)(a)1. of this section. Further, the maximum tax credit amount for the pool of applicants described in subsection (3)(d)5. of this section shall not exceed the maximum tax credit amount received by the pool of applicants described in subsections (3)(a)1. and (3)(d)1. of this section.

(9) The percentage of proration for the pool of applicants described in subsection (4)(d) of this section shall not exceed the percentage of proration for the pool of applicants described in subsection (4)(a) of this section. Further, the maximum tax credit amount for the pool of applicants described in subsection (4)(h) of this section shall not exceed the maximum tax credit amount received by the pool of applicants described in subsections (4)(a) and (4)(d) of this section.

Section 3. Information Required on or Attached to the Application. The following information shall be required on or attached to the application:

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

(2) The entity type of the applicant for Kentucky income tax purposes;

(3) The submission date of the application;

(4) The amount of the endowment gift;

(5) The amount of tax credit;

(6) (a) The qualified community foundation's or affiliate community foundation's name, mailing address, identification number, telephone number, and fax number; or

(b) If a county–specific component fund, its name; and

(7) A statement that the application was executed by the applicant or authorized representative, declaring under the penalty of perjury that the application, including all accompanying documents and statements, is true, correct and complete.

Section 4. Proof of Endowment Gift. (1) Within thirty (30) calendar days after receiving the notice of preliminary authorization of the tax credit from the department, the taxpayer shall make the endowment gift to the permanent endowment fund held by the approved qualified community foundation, county-specific component fund, or affiliate community foundation.

(2) The applicant shall provide the department with proof of the endowment gift within ten (10) calendar days of making the gift by filing with the department Revenue Form 41A720-S86, Notice of Endow Kentucky Tax Credit and Certification (Schedule ENDOW).

(3) If the department has verified that the endowment gift specified on the application was made to the approved qualified community foundation, county-specific component fund, or affiliate community foundation, Schedule ENDOW shall be returned to the applicant with the department's final approval of the tax credit.

(4) If the applicant fails to make an endowment gift or provide proof of the endowment gift to the department within the time frames established in KRS 141.438(7), the department shall revoke the preliminary authorization of the tax credit by written notification to the applicant. The department shall restore the denied amount to the tax credit cap and re-allocate the restored amount under the requirements established in Section 2(7) of this administrative regulation.

Section 5. Preliminarily Authorized Amounts Not Affected by Proration. (1) If an applicant approved for preliminary authorization makes an endowment gift that is less than the amount indicated on the application and all the other applicable requirements of KRS 141.438 and this administrative regulation are met by the applicant, the department shall:

Issue final approval based on the amount proven; and

Restore to the tax credit cap the difference between the amount of tax credit that received preliminary authorization and the amount receiving final approval.

(2) The amount restored to the tax credit cap shall be re-allocated as provided in Section 2(7) of this administrative regulation.

Section 6. Preliminarily Authorized Amounts Affected by Proration. If an applicant receives preliminary authorization for a amount but due to the proration provisions in Section 2 of this administrative regulation will receive a tax credit for less than the amount for which the applicant is preliminarily approved, the applicant may donate the lesser prorated amount without penalty and receive the corresponding tax credit of the lesser prorated amount.

Section 7. Information Required on or Attached to the Schedule ENDOW. The following information shall be required on or attached to the Schedule ENDOW:

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

(2) The entity type of the applicant for Kentucky income tax purposes;

(3) The date the endowment gift was made to the approved qualified community foundation, county-specific component fund, or affiliate community foundation;

(4) The amount of the endowment gift;

(5) The date of the department's preliminary authorization of the tax credit;

(6)(a) The qualified community foundation's or affiliate community foundation's name, mailing address, identification number, telephone number, and fax number; or

(b) If a county-specific component fund, its name; and

(7) A statement that the Schedule ENDOW was executed by a foundation officer or designee, declaring under the penalty of perjury that the:

(a) Foundation is a qualified community foundation as provided by KRS 147A.310(6);

(b) Foundation is a qualified affiliate community foundation as provided by KRS 147A.310(1);

(c) County-Specific component fund as provided by KRS

147A.310(3).

(d) Endowment gift is held in a permanent endowment fund as provided by KRS 147A.310(4); and

(e) Schedule ENDOW, including all accompanying documents and statements, is true, correct and complete.

Section 8. Return Filing Requirement. (1) An applicant claiming the tax credit shall attach each tax year a copy of the approved Schedule ENDOW to the tax return on which the credit is claimed.

(2) An applicant claiming the tax credit shall not claim more than $10,000 in credit on a single return.

(3) A partner, member, or shareholder of an applicant claiming the tax credit shall attach each taxable year a copy of Schedule K-1, Form 720S (Revenue Form 41A720S(K-1)); Schedule K-1, Form 765 (Revenue Form 41A765(K-1)); or Schedule K-1, Form 765-GP (Revenue Form 42A765-GP(K-1)), incorporated by reference in 103 KAR 3:040, to the partner's, member's, or shareholder's tax return on which the credit is claimed.

(4) A beneficiary of an applicant that is an estate or trust shall attach each taxable year a copy of Schedule K-1, Form 741 (Revenue Form 42A741(K-1)), incorporated by reference in 103 KAR 3:040, to the beneficiary's tax return on which the credit is claimed.

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

(a) Revenue Form 41A720-S85, "Application for Preliminary Authorization of the Endow Kentucky Tax Credit", February 2011; and

(b) Revenue Form 41A720-S86, "Notice of Endow Kentucky Tax Credit and Certification (Schedule ENDOW)", February 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601 or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8:00 a.m. to 4:30 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: April 1, 2011

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011, from 10 a.m. to noon, in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: DeVon Hankins, (502) 564-6660

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for the department's allocation of the $500,000 tax credit that may be awarded each fiscal year under the provisions of KRS 141.438(6) and establishes the filing requirements of a taxpayer to obtain preliminary authorization and final approval of the tax credit from the department.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to provide taxpayers the guidelines and filing requirements with the department when seeking approval for the Endow Kentucky tax credit as provided by KRS 141.438.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) provides that the department shall promulgate administrative regulations necessary to implement and administer Kentucky's tax laws.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the department in the administration of the Endow Kentucky tax credit as authorized by KRS 141.438(2) by requiring a taxpayer to file specified forms with the department in order to obtain preliminary authorization and final approval of an Endow Kentucky tax credit.

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

(a) How the amendment will change this existing administrative regulation: N/A

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

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

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All taxpayers filing applications with the department seeking the department's approval of their Endow Kentucky tax credits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will follow the guidance provided in this administrative regulation when filing:

(i) an application (Kentucky Form 41A720-S85) for preliminary authorization of an Endow Kentucky tax credit; and

(ii) Schedule ENDOW (Kentucky Form 41A720-S86) to provide proof to the department that the qualified endowment gift was made to the approved foundation for purposes of receiving final approval of the Endow Kentucky tax credit.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities in question (3) will have specific guidance which will expedite the process of obtaining from the department approval of an Endow Kentucky tax credit as provided by KRS 141.438.

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

(a) Initially: There will be a minimal cost initially in the administrative regulation process for the department. Also, a small amount of costs associated with notifying taxpayers of this administrative regulation will be incurred.

(b) On a continuing basis: There will be no additional cost for the department on a continuing basis as a result of this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation as it applies to all taxpayers seeking the department's approval of their Endow Kentucky tax credit application.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1) authorizes the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not generate any revenue, but will increase the department's expenditures slightly in the administrative process, including the notification of taxpayers of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? The cost to administer the program is expected to be small; however, personnel will be diverted from current assignments which may increase administrative cost to the department.

(d) How much will it cost to administer this program for subsequent years? The department will incur additional minimal cost each year to administer the program.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(New Administrative Regulation)

301 KAR 1:152. Asian Carp Harvest Program.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. This administrative regulation establishes the requirements for the department's Asian carp harvest program.

Section 1. Definitions. (1) "Asian carp" means silver carp, bighead carp, black carp, or grass carp.

(2) "Program participant" means a commercial fisherman who is:

(a) Enrolled in the Asian Carp Harvest Program; and

(b) Fishing in restricted water.

(3) "Restricted water" means those areas where commercial fishing is otherwise prohibited, pursuant to 301 KAR 1:150 and 1:155.

(4) "Whip net set" means a gill or trammel net that is:

(a) Set to encircle and harvest Asian carp; and

(b) Always tended by a program participant while in the water.

Section 2. Qualifications. A commercial fisherman shall:

(1) Contact the department and request to be included in the program;

(2) Possess a valid Kentucky commercial fishing license;

(3) Have possessed a valid Kentucky commercial fishing license for the previous three (3) years; and

(4) Have reported a harvest of at least 10,000 pounds of fish per year for the previous three (3) years.

Section 3. Requirements. (1) A program participant shall:

(a) Only harvest Asian carp;

(b) Only fish on dates and locations approved by the department;

(c) Only fish when departmental observers are present;

(d) Only use a whip net set with a net size authorized by each department observer prior to each day of fishing;

(e) Sign daily harvest and release data cards provided by each department observer; and

(f) Be allowed to sell all harvested Asian carp.

(2) The department shall:

(a) Enroll qualified program participants on a first come, first serve basis;

(b) Establish the dates and locations that each program participant is allowed to fish;

(c) Equitably rotate available fishing dates among program participants based on enrollment order;

(d) Provide a department observer who shall:

1. Be available and present for a program participant during each approved fishing period;

2. Monitor harvest of Asian carp;

3. Monitor the catch and release of non-Asian carp species; and

4. Provide harvest and release data cards to program participants on a daily basis.

Section 4. Program Disqualification. A program participant whose commercial fishing license becomes revoked shall immediately be disqualified from participating in the Asian carp harvest program.

BENJY T. KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: December 3, 2010
FILED WITH LRC: April 15, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by May 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building,,#1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administra-

tive regulation establishes the requirements for the Asian carp harvest program, which allows commercial harvest of Asian carp in waters currently restricted to commercial fishing.

(b) The necessity of this administrative regulation: The regulation is necessary to provide an important mechanism for the removal of invasive and exotic Asian carp from waters critical to sport fishing and recreational boating. Left uncontrolled, Asian carp will dominate the aquatic ecosystem and potentially destroy a fishery that is critical to the economy of Kentucky. Asian carp are also problematic and dangerous for recreational boaters since they grow to large sizes and have a propensity to jump into moving boats.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the purpose of the statute by establishing a process for nuisance fish removal from waters of the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation and is not an amendment to an existing regulation.

(b) The necessity of the amendment to this administrative regulation: See 2(a).

(c) How the amendment conforms to the content of the authorizing statutes: See 2(a).

(d) How the amendment will assist in the effective administration of the statutes: See 2(a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will potentially affect at least 20 commercial fishermen that are initially anticipated to participate in Asian carp removal from restricted waters. Additionally, this regulation may affect all anglers and recreational boaters in the Mississippi and Ohio rivers, their tributaries, and in Kentucky and Barkley lakes.

(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 who want to participate in this program will be required to not only meet the minimum qualifications for participating in this program, but to also follow the necessary fishing and reporting requirements identified in this administrative regulation. Anglers and recreational boaters are not affected by this regulation beyond sharing the restricted waters when commercial fishermen are harvesting Asian carp.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to commercial fishermen to participate in this program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial fishermen will benefit from this program by being allowed to fish otherwise restricted water for Asian carp which are more plentiful in those waters; and therefore, more easily harvested in large numbers. Asian carp will initially provide commercial fishermen with $0.07 - $0.15 per pound of fish when sold to fish processors. Value of their harvest will fluctuate with market prices. Anglers and recreational boaters will benefit from this program because, without commercial fishing to control Asian carp population growth, important fisheries will be destroyed and Asian carp will be increasingly dangerous to recreational boaters.

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

(a) Initially: This program may initially cost the department approximately $30,000 to provide observers, coordination, and reports.

(b) On a continuing basis: There will be a continual cost to the Department of approximately $30,000 to provide observers, coordination, and reports.

(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: No increase in fees is anticipated to fund this program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established for this program.

(9) TIERING: Is tiering applied? Tiering was 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? The Kentucky Department of Fish and Wildlife Resources' Fisheries Division and Law Enforcement Division will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

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 directly generate revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not directly generate revenue for state or local government, but local fisheries and therefore local economies could be positively impacted in the future through removal of Asian carp species.

(c) How much will it cost to administer this program for the first year? It will cost the Department approximately $30,000 in the first year to provide observers, coordination, and reports.

(d) How much will it cost to administer this program for subsequent years? It will cost the Department approximately $30,000 annually in subsequent years to provide observers, coordination, and reports.

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

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

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)

401 KAR 42:045. Delivery Prohibition.

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Sub-

part C, 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 42 U.S.C. 6991k, 42 U.S.C. 6991e

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-105 requires the cabinet to establish a program for regulating underground storage tanks that implements the federal regulatory requirements for underground storage tanks. 42 U.S.C. 6991k establishes the parameters for delivery prohibition for underground storage tank systems. This administrative regulation establishes the procedures for invoking delivery prohibition for an underground storage tank system.

Section 1. Applicability. This administrative regulation shall not apply to a regulated underground storage tank used to fuel emergency backup generators.

Section 2. Delivery Prohibition for UST Systems. (1) The cabinet shall determine that a UST system is ineligible for delivery, deposit, or acceptance of regulated substances upon confirmation of one (1) or more of the following conditions:

(a) In accordance with 401 KAR 42:020, 42:030, and 42:040, required spill prevention equipment is not installed, operational, or maintained;

(b) In accordance with 401 KAR 42:020, 42:030, and 42:040, required overfill prevention equipment is not installed, operational, or maintained;

(c) In accordance with 401 KAR 42:020 and 42:030, required corrosion protection equipment is not installed, operational, or maintained;

(d) In accordance with 401 KAR 42:040, required release detection is not performed;

(e) In accordance with 401 KAR 42:020 and 42:040, required release detection equipment is not installed, operational, or maintained; or

(f) A defective UST system component, confirmed by UST system testing or visual observation by the cabinet, and for which the owner or operator has not documented a repair or replacement, has:

1. Caused a release of a regulated substance into the environment; or

2. Allowed a regulated substance to infiltrate into the interstitial space of the UST system.

(2) Upon a determination by the cabinet that a condition described in subsection (1) of this section exists, the cabinet shall issue a Notice of Violation to the UST system's owner or operator.

(3) The Notice of Violation shall serve as notice to the owner or operator of the cabinet's intent to invoke delivery prohibition for the UST system if the violation is not corrected within the time frame established in writing by the cabinet.

(4) Upon failure by the owner or operator to correct the violation of a condition in subsection (1) of this section, cited in the initial Notice of Violation, or to request an extension, in accordance with Section 3 of this administrative regulation, a second Notice of Violation shall be issued.

(5) Upon issuance by the cabinet of the second Notice of Violation, delivery prohibition shall be invoked and an authorized representative of the cabinet shall attach a delivery prohibition tag to the non-compliant UST system.

(6) An owner or operator shall ensure that a delivery prohibition tag is not removed, defaced, altered, or destroyed.

(7) An owner or operator shall not allow the delivery, deposit, or acceptance of regulated substances into a UST system for which the cabinet has invoked delivery prohibition, unless otherwise directed in writing by the cabinet for the purpose of UST system testing.

(8) An owner or operator shall notify the appropriate product deliverer when delivery prohibition has been invoked.

(9) Delivery prohibition shall remain in effect until the cabinet determines that the non-compliant UST system is returned to compliance for the violation that caused delivery prohibition to be invoked in accordance with subsection (1) of this section.

(10) The cabinet shall determine whether a UST system is authorized to accept deliveries within two (2) business days (Monday through Friday) of receipt of written notice from the owner or operator that the remedial measures established in the Notice of Violation related to subsection (1) of this section have been met.

(11) Upon a determination by the cabinet that the violation has been corrected, the cabinet shall terminate delivery prohibition and remove an affixed delivery prohibition tag within two (2) business days (Monday through Friday).

(12) If the Division director, or his designee, determines, in writing, that delivery prohibition at a UST facility would jeopardize the availability of, or access to, motor fuel in a rural and remote area, the cabinet may defer the application of delivery prohibition for a UST system, with reference to (a), (b), (c), (d), or (e) of subsection (1) of this section, for a period not to exceed forty-five (45) days.

Section 3. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2011, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564 6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for invoking delivery prohibition for an UST system.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for delivery prohibition for UST systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing delivery prohibition procedures for USTs in accordance with the Energy Policy Act of 2005.

(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 procedures for delivery prohibition.

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

(a) How the amendment will change this existing administrative regulation: Not applicable

(b) The necessity of the amendment to this administrative

regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 3,700 registered UST facilities 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: None. This is procedures for the cabinet to follow for invoking delivery prohibition.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the regulated entity other than compliance costs associate with other regulation within 401 KAR Chapter 42.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not applicable

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency 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: Tank fees and US EPA grants will be used to fund 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: A fee increase will not be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or affect fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Delivery prohibition procedures are the same for all UST systems.

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 of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 6991k, 42 U.S.C. 6991e; KRS 224.60-105

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.

(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.

(c) How much will it cost to administer this program for the first year? It will not cost the agency any additional money to implement the program.

(d) How much will it cost to administer this program for subsequent years? It will not cost the agency any additional money to implement the program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 6991k, 6991e

2. State compliance standards. KRS 224.60-105

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 6991k, 6991e

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of waste Management
(New Administrative Regulation)

401 KAR 42:095. Lender liability.

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart I, 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. This administrative regulation establishes requirements for lender liability.

Section 1. Definitions. Definitions shall be as established in 40 C.F.R. 280.200.

Section 2. Participation in Management. Requirements for participation in management shall be as established in 40 C.F.R. 280.210.

Section 3. Ownership of an UST or UST system or facility or property on which a UST or a UST system is located. Criteria to prevent a holder from acquiring ownership status shall be as established in 40 C.F.R. 280.220.

Section 4. Operating a UST or a UST system. Criteria to prevent a holder from acquiring operator status for a UST or a UST system shall be as established in 40 C.F.R. 280.230.

Section 5. Extensions. (1) The holder of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2011, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564 6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for lender liability.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide requirements for lender liability at UST facilities and to be consistent with the federal regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by referencing the federal regulations for lender liability.

(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 requirements for lender liability.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect lending institutions who take control of UST facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The lending institutions will not have to take any additional actions on top of those required by the federal regulations with which they already have to comply.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits of complying with this administrative regulation will be the ability to work with the agency as opposed to the federal government regarding lender liability.

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

(a) Initially: There is no additional cost to the agency for implementing this administrative regulation.

(b) On a continuing basis: There is no additional cost to the agency for implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will be implemented and enforced using funds from tank fees and grants from the US EPA.

(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 a need to increase fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or affect fees.

(9) TIERING: Is tiering applied? Tiering is not applied. The requirements for lender liability are the same for all lenders.

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 of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 40 C.F.R. 280 Subpart I, KRS 224.60-105

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.

(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.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not cost the agency additional money.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not cost the agency additional money.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 280 Subpart I

2. State compliance standards. KRS 224.60-105

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 280 Subpart I

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation imposes the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Repealer)

401 KAR 42:315. Repeal of 401 KAR 42:314.

RELATES TO: KRS 224.10, 224.60
STATUTORY AUTHORITY: KRS 224.60-130
NECESSITY, FUNCTION AND CONFORMITY: KRS 224.60-130(1)(a) requires the establishment of criteria to be met by persons who contract to perform corrective action. This administrative regulation repeals 401 KAR 42:314 Contractor Certification for Individuals. The Division of Waste Management no longer requires certification for individual contractors.

Section 1. 401 KAR 42:314, Contractor Certification for Individuals is hereby repealed.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: April 14, 2011
FILED WITH LRC: April 15, 2011 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10 a.m. at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2011, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564 6716, fax (502) 564-4049, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals 401 KAR 42:314.
(b) The necessity of this administrative regulation: This administrative regulation is necessary because the agency is no longer going to require individual certification of contractors for cleanup of underground storage tank sites.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires corrective action at petroleum underground storage tank facilities to be done by a certified company. The agency is going to look at eligible companies and partnerships instead of individuals.
(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 removing individual contractor certification 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: The amendment repeals the individual contractor certification requirements for corrective action at UST facilities.
(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the agency is no longer going to require individual contractor certification
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing individual contractor certification requirements. The agency will instead look at eligible company and partnerships.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute by repealing individual contractor certification requirements. The agency will instead look at eligible company and partnerships.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Environmental consultants will be affected. There will no longer be a requirement for individual contractor certification.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will only have to apply for company or partnership eligibility as opposed to individual certification.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will not cost additional money for the company to apply for eligibility, as opposed to individual contractor certification.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not applicable
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There will be no cost associated with repealing this administrative regulation.
(b) On a continuing basis: There will be no cost associated with repealing this administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This Repealer does not involve any fees.
(9) TIERING: Is tiering applied? No tiering is applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Waste Management
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.60-130(1)(a)
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repeal will not generate 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 repeal will not generate revenue.
(c) How much will it cost to administer this program for the first year? This repeal will not cost the agency additional funding.
(d) How much will it cost to administer this program for subsequent years? This repeal will not cost the agency additional 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:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)

401 KAR 47:205. Contents of the application for petroleum contaminated soil treatment facilities.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.99
STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305
NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt rules and administrative regulations for the management, processing, or disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, or disposal of waste obtain a permit. This administrative regulation establishes the application requirements for a petroleum contaminated soil treatment facility.

Section 1. Definitions. As used in this administrative regulation:
(1) "Certifying engineer" means the professional engineer that implements the petroleum contaminated soil treatment facility construction quality assurance plan;
(2) "Construction progress report" means the written notice from the applicant to the cabinet that the biopile liner system and the petroleum contaminated soil facility is completed.
(3) "Petroleum contaminated soil" means silt, sand, clay, gravel, or other earthen material; asphalt, concrete, or absorbent materials containing hydrocarbon concentrations above the levels established in 401 KAR 48:205, Section 6, Table 2, but does not exhibit a hazardous characteristic or is not a listed hazardous waste as defined in 401 KAR Chapter 31.
(4) "Petroleum contaminated soil treatment facility" means a solid waste site or facility where petroleum contaminated soil is treated to reduce contaminant concentrations to or below the levels established in 401 KAR 48:205, Section 6, Table 2.

Section 2. Objective and General Requirements. (1) This administrative regulation shall apply to petroleum contaminated soil treatment facilities.
(2) Designs, reports, and plans constituting the public practice of geology, as defined at KRS 322A.010, shall be developed by a person registered as established in KRS Chapter 322A, except as established in KRS 322A.080.

Section 3. Application Procedures for Petroleum Contaminated Soil Treatment Facility Permits. In order to apply for a petroleum contaminated soil treatment facility permit, the applicant shall first submit form DEP 7129, Notice of Intent to Apply for a Petroleum Contaminated Soil Treatment Facility Permit (NOI).
(1) The NOI shall contain the following information:
(a) Names, addresses, telephone numbers, and contact information for the applicant;
(b) If the operator is not the owner of the property where the treatment facility will be located, the operator and owner shall be co-applicants; and
(c) If the applicant is a government agency, corporation, company, or partnership, include the name, address, telephone number, and contact information for the process agent or contact individual.
(2) The NOI shall be signed in accordance with 401 KAR 47:160, Section 6.
(3)(a) Once the NOI is complete, the cabinet shall make a decision to approve or deny.
(b) If the cabinet approves the NOI, the applicant shall perform the geological site investigation in accordance with the approved plan contained in the permit application.
(4)(a) Once the geological site investigation is complete, the applicant shall submit the form DEP 7128, Application for a Petroleum Contaminated Soil Treatment Facility Permit which shall specify standards for the construction and operation of the petroleum contaminated soil treatment facility in accordance with the requirements established in 401 KAR 48:205.
(b) The application shall be typed or printed legibly in permanent ink.
(c)1. The application shall contain the names, addresses, telephone numbers, and contact information for the applicant; and
2. If the applicant is a government agency, corporation, company, or partnership, include the name, address, telephone number, and contact information for the process agent or contact individual;
(d) 1. The applicant shall submit and sign the application in accordance with 401 KAR 47:160, Section 6; and
2. If the operator is not the owner of the property where the treatment facility will be located, the operator and owner shall be co-applicants.
(e) The applicant shall deliver a copy of the application to the county or local governing body where the petroleum contaminated soil treatment facility will be located prior to submittal to the cabinet.
(f) The contents of the application shall be accurate and complete at the time the cabinet makes a determination to issue a solid waste permit.
(g) Issuance of construction and construction/operation permits:
1.a. The cabinet shall issue a construction permit for no more than five (5) years if, after completing the review of a complete petroleum contaminated soil treatment facility permit application, it finds that the applicant for the permit has met the requirements for application in accordance with KRS 224 Subchapter 40; 401 KAR 47:207, 48:205, 48:206, 48:207, 48:208 and this administrative regulation.
b. The applicant shall maintain a construction permit in full force and effect until the facility has been constructed and approved by the cabinet.
2. A construction/operation permit shall be issued by the cabinet when:
a. The applicant submits the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility:
i. Certifying that the petroleum contaminated soil treatment facility construction has been completed in accordance with the construction permit; and
ii. Including the findings of the certifying engineer regarding the quality assurance and quality control testing in the Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility.
b. A representative of the cabinet inspects the site and verifies in writing within thirty (30) days of the inspection that the site has been developed according to plans and that necessary equipment is available to operate the site;
c. The financial assurance for closure as established in Section 9 of this administrative regulation has been obtained by the applicant;
d. The applicant submits a certification by the certifying engineer that the facility is constructed in accordance with the approved plans and specifications.
(3) In order to continue operating after March 1, 2013, owners or operators of existing petroleum contaminated soil treatment facilities operating under a current permit shall obtain a petroleum contaminated soil treatment facility permit.
(4) For a major modification to an existing petroleum contaminated soil treatment facility permit as established in 401 KAR 47:130, Section 3 that:
(a) Does not increase the area monitored by the groundwater monitoring system as established in 401 KAR 48:300, Section 4 the owner or operator shall:
1. Submit to the cabinet a completed, DEP 7128, Application for a Petroleum Contaminated Soil Treatment Facility Permit; and
2. Comply with the permit application procedures as established in this section.
(b) Does increase the area monitored by the groundwater mon-

itoring system as established in 401 KAR 48:300, Section 4 the owner or operator shall submit to the cabinet a completed:

1. DEP 7128, Notice of Intent to Apply for a Petroleum Contaminated Soil Treatment Facility;

2. DEP 7129, Application for a Petroleum Contaminated Soil Treatment Facility Permit; and

(c) Comply with the permit application procedures as established in this section.

Section 4. Technical Contents of the Notice of Intent to Apply for a Petroleum Contaminated Soil Treatment Facility Permit. The form DEP 7128, Notice of Intent to Apply for a Petroleum Contaminated Soil Treatment Facility (NOI) shall contain the geological site investigation plan which shall be used in compiling the information for the application for a petroleum contaminated soil treatment facility permit, including:

(1) An original current USGS seven and one-half (7.5) minute topographic quadrangle map showing:

(a) Latitude and longitude measurements for the entrance to the site;

(b) The current and proposed waste treatment areas;

(c) The property boundaries; and

(d) The area within one (1) mile of the proposed waste boundary.

(2) A review of information pertaining to the area within one (1) mile of the proposed waste boundary, including:

(a) Geology including karst features, structural features, and lithologic description;

(b) Hydrogeology of the groundwater resources and aquifers that shall be monitored;

(c) Hydrology including streams, wetlands, and other surface water bodies; and

(d) Caves and excavations, including mined or quarried areas;

(3) A rock coring plan that includes the following:

(a) The data needed to evaluate the geologic features to the level of the first confining layer below the uppermost aquifer, and all geologic units hydraulically connected to the uppermost aquifer;

(b) The data to describe the site geology, the local aquifers that are hydrogeologically associated with the site, and the transmissivity of the aquifers; and

(c) Relevant field data and appropriate test methods for determining hydrogeologic parameters;

(4)(a) Directions to be used for closure of the rock core borings using grout.

(b) The closure of the rock corings shall be acknowledged in writing by a professional engineer or registered geologist;

(5) The following minimum surveying accuracy to be used to determine the location of the rock corings and the soil borings during the subsurface investigation:

(a) One tenth of one (0.1) foot vertical; and

(b) One (1) foot horizontal;

(6)(a) A procedure for written documentation when the locations of actual subsurface borings or corings are adjusted in the field; and

(b) The adjusted excavation locations shall achieve the criteria of this section of this administrative regulation.

(7)(a) The geotechnical investigation map shall show the location of a minimum of four (4) rock core borings;

(b) For sites with more than fifty (50) acres, an additional rock core boring shall be required for each additional twenty-five (25) acres or part thereof;

(c) The placement of the rock core borings shall be dependent on site geologic features of the proposed site; and

(d) Additional rock core borings shall be required when four (4) rock core borings fail to characterize the geology.

(8) Other informational sources researched for site specific attributes, including:

(a) Surface mining permits;

(b) Subsurface excavation and mining permits; and

(c) Records of the Kentucky Geological Survey and the Kentucky Department of Natural Resources.

Section 5. Technical Contents of the Permit Application for a Petroleum Contaminated Soil Treatment Facility. The following information shall be submitted on or with form DEP 7128, Application for a Petroleum Contaminated Soil Treatment Facility Permit:

(1) Facility information including location, total acreage, and maximum soil treatment volume in cubic yards;

(2) An original, current seven and one-half (7.5) minute United States Geological Survey quadrangle topographic map with the proposed facility boundary and the locations of all of the wells and springs listed in subsection (19) of this section clearly marked;

(3) A site map drawn to scale and prepared by a professional engineer or land surveyor, licensed pursuant to KRS Chapter 322, showing:

1. North arrow;
2. Buffer zones;
3. Buildings;
4. Treatment areas;
5. Storage areas;
6. Access roads;
7. Fences;
8. Gates;
9. Floodplains;
10. Floodway;
11. Wells and springs;
12. Surface water bodies including ponds;
13. Property lines;
14. Monitoring wells; and
15. Surface water monitoring points.

(4) A certified copy of the recorded deed and a copy of declaration of restrictions or easements affecting the proposed permit area.

(5) A scaled deed map showing the current boundaries of all property proposed for the facility development and buffer zones, the ownership of these properties, and the ownership of properties adjacent to the proposed facility property boundary;

(6)(a) The applicant shall provide a copy of the lease or proposed lease showing the operator's right of entry during construction, operation, and closure of the petroleum contaminated treatment facility.

(b) The proposed lease shall be executed prior to permit issuance.

(7) A narrative of the methods that the owner or operator shall use to comply with the following environmental performance standards:

(a) Floodplain restrictions established in 401 KAR 47:030, Section 2;

(b) Endangered and threatened species established in 401 KAR 47:030, Section 3;

(c) Surface Waters established in 401 KAR 47:030, Section 4;

(d) Polychlorinated biphenyls established in 401 KAR 47:030 Section 8;

(e) Air established in 401 KAR 47:030, Section 10;

(f) Safety established in 401 KAR 47:030, Section 11(1) and 11(3);

(g) Public Nuisance established in 401 KAR 47:030, Section 12; and

(h) Wetlands established in 401 KAR 47:030, Section 14.

(8) A narrative description of the liner design and quality assurance plan as established in 401 KAR 48:205, Section 3.

(9) A detailed contingency plan for emergencies including fires, equipment failure, and provisions for temporary storage of waste;

(10) A description of the type of hydrocarbons and contaminants in the petroleum contaminated soil as listed in 401 KAR 48:205, Section 5, Table 1;

(11) A description of the type of media that contains the hydrocarbons;

(12)(a) Characterization of the petroleum contaminated soil as required in 401 KAR 48:205, Section 5, to verify the information in subsection (11) of this section;

(b) Copies of the laboratory analysis reports prepared for waste characterization.

(13) A written description of the waste inspection program to ensure that only permitted petroleum contaminated soils are accepted for treatment as established in 401 KAR 48:205, Section 4;

(14) A description of the treatment process and equipment to be used to meet the requirements established in 401 KAR 48:205,

Section 6 including the following items:

(a) Equipment to be used including manufacturer performance data;

(b) Use of fertilizers, inoculants, or enzymes;

(c) Monitoring plan including sampling frequency and analysis to verify the reduction of contaminants to or below the levels in 401 KAR 48:205, Section 6, Table 2;

(d) Estimated times to complete treatment;

(e) Sampling plan to document that treatment has been completed in accordance with 48:205, Section 6, Table 2; and

(f) Storage of soil meeting the treatment standards of 48:205, Section 6, Table 2;

(15) Treated soil specifications for the constituents found during waste characterization that are not listed in 401 KAR 48:205, Section 6, Table 2;

(16) A marketing and distribution plan for the treated media;

(17) The design and specifications for the roofed structure containing a concrete pad or liner as established in 401 KAR 48:205, Section 3;

(18) The results from the geological site investigation required in the approved NOI shall include the following:

(a) A description of the regional bedrock geologic structure to include the regional stratigraphic strike and dip, the locations and attitudes of regional faults and folds; and regional jointing trends;

(b) A description of the site specific geologic structure to include:

1. Site specific stratigraphic strike and dip;

2. The locations and attitudes of faults or folds intersecting the site; and

3. The attitudes and spacing of joints;

(c) A brief description of the influence that fracture zones have on the movement of infiltrated water, and groundwater;

(d) A minimum of two (2) geologic cross sections, using published data, bedrock outcrops, and rock coring information depicted on scaled drawings with vertical exaggeration, and shall include the following:

1. The seasonal high groundwater table; and

2. Rock outcrop occurrences.

(e) A map depicting the property, the proposed limits of waste, and the area at least 1,500 feet from the limits of waste at a scale of one (1) inch equals 400 feet that shows the following:

1. Geologic units, and rock outcrops;

2. Surface depressions, sinkholes, and springs;

3. Faults, folds and structural contours;

4. Location of wells used for water withdrawal, and injection of fluids;

5. Location of rock core borings; and

6. Surface contours.

(19) The following hydrogeologic characterization:

(a)1. The hydrologic characteristics of the uppermost aquifer, and the geologic units hydraulically connected to it, including field test data for hydraulic conductivity, storage coefficient, and transmissivity; and groundwater hydraulic gradient and velocity.

2. The description of these characteristics shall be based on multiple well aquifer tests, piezometer nest evaluation, core evaluation, and other methods common to the practice of geology pursuant to KRS 322A.

3. In karst terrain, both diffuse and discrete flow conditions shall be characterized.

4. The groundwater quality characterization, as established in 401 KAR 48:300, Section 3 shall be included.

5. The application shall include data, procedures, and calculations used to determine these characteristics.

(b) Tracer studies. Where the petroleum contaminated soil treatment facility overlies fractured bedrock, weathered limestone, or dolomite bedrock; or where karst terrain cannot be avoided, the cabinet shall require tracer studies before finalizing the groundwater monitoring plan using springs as monitoring points as established in 401 KAR 48:300, Section 4; and

(c)1. A survey and listing of residential springs and water wells within one (1) mile of the proposed waste treatment areas.

2. The survey shall determine the location of springs and wells which shall be shown on a map with their approximate elevation, depth, name of owner, age, and usage of the spring or well, stratigraphic unit, well construction, static well levels, spring or well yield, and water quality.

(20)(a) Groundwater and surface water monitoring plans prepared in accordance with Section 7 of this administrative regulation.

(b) Groundwater and surface water monitoring plans shall include identification and labeling of monitoring wells and surface water monitoring points on the site map required by subsection (4) of this section;

(21) Certification that a copy of the application has been delivered to the governing body of the solid waste management area in which the petroleum contaminated soil treatment facility will be located; and

(22) A plan for the closure of the petroleum contaminated soil treatment facility describing how the property will be restored or improved in accordance with 401 KAR 48:205, Section 7.

Section 6. Public Information Process for Petroleum Contaminated Soil Treatment Facilities. The cabinet and applicant shall comply with the public information requirements for petroleum contaminated soil facilities established in 401 KAR 47:207.

Section 7. Surface Water and Groundwater Monitoring, Assessment Monitoring, and Corrective Action Plan. (1) The form DEP 7129, Application for a Petroleum Contaminated Soil Treatment Facility Permit, shall include a surface water and groundwater monitoring plan as established in 401 KAR 48:300, Sections 2 and 4.

(2) When required as established in 401 KAR 48:300, Section 8, an owner or operator of a petroleum contaminated soil treatment facility shall submit an assessment or corrective action plan.

Section 8. Alternative Specifications. Alternative specifications may be used only after approval by the cabinet upon a certification by a professional engineer, or, for geological studies, a professional engineer or a registered geologist that the alternative specifications will result in performance with regard to safety, stability, and environmental protection equal to or better than that resulting from designs complying with the specifications of this administrative regulation.

Section 9. Financial Assurance. (1) The owner or operator shall comply with the closure financial assurance requirements established in 401 KAR 48:310 and KRS 224.40-650.

(2) The amount of the closure financial assurance shall be equal to the closure cost estimate amount specified in the permit as established in 401 KAR 48:205, Section 7.

Section 10. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) "Notice of Intent to Apply for a Petroleum Contaminated Soil Treatment Facility Permit", DEP 7128, April 2011;

(b) "Application for a Petroleum Contaminated Soil Treatment Facility Permit", DEP 7129, April 2011; and

(c) "Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility", DEP 8064, April 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Division of Waste Management's Web site at http://waste.ky.gov.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2011 at 10 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kelli Reynolds, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Kelli.Reynolds@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelli Reynolds

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for an application for a petroleum contaminated soil treatment facility.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the content requirements for an application for a petroleum contaminated soil treatment facility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statues by establishing the content for a petroleum contaminated soil treatment facility permit, which are types of solid waste sites or facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statues by establishing the contents for a petroleum contaminated soil treatment facility which will protect the environment.

(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: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Businesses that treat petroleum contaminated soils will be affected by this administrative regulation. There are currently 3 permitted by the Solid Waste Branch.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will have to comply with the requirements of the petroleum contaminated soil treatment facility permit application. Including the Notice of Intent to for a Petroleum Contaminated Soil Treatment Facility Permit, Application for a Petroleum Contaminated Soil Treatment Facility Permit, and Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility.

(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): If the applicant complies with the requirements of this administrative regulation a petroleum contaminated soil treatment facility permit will be issued.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation will be implemented and enforced using the solid waste permit fees collected pursuant to 401 KAR 47:090 and general funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. The contents requirements established in this administrative regulation apply to all petroleum contaminated soil treatment facility permits sent in for approval. This applies to all petroleum contaminated soil treatment facility.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Division of Waste Management.

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 and 224.40-305

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? No additional cost to the Division of Waste Management.

(d) How much will it cost to administer this program for subsequent years? No additional cost to the Division of Waste Management

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)

401 KAR 47:207. Public information procedures for petroleum contaminated soil treatment facilities.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt rules and administrative regulations for the management, processing, or disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This administrative regulation sets forth permit issuance and public information procedures for petroleum contaminated soil treatment facilities.

Section 1. Definitions. As used in this administrative regulation: "Petroleum contaminated soil" means silt, sand, clay, gravel, or other earthen material; asphalt, concrete, or absorbent materials containing hydrocarbon concentrations above the levels established in 401 KAR 48:205, Section 6, Table 2, but does not exhibit a hazardous characteristic or is not a listed hazardous waste as defined in 401 KAR Chapter 31.

(2) "Petroleum contaminated soil treatment facility" means a solid waste site or facility where petroleum contaminated soil is treated to reduce contaminant concentrations to or below the levels established in 401 KAR 48:205, Section 6, Table 2.

Section 2. Applicability. The requirements in this administrative regulation apply to the following applications:

(1) A new petroleum contaminated soil treatment facility permit as established in 401 KAR 47:205; or

(2) A major modification to an existing petroleum contaminated soil treatment facility permit which is an increase in the amount of storage or treatment capacity, area, or volume.

Section 3. Permit Application and Public Notice Process. (1) Upon receipt of DEP 7128, Notice of Intent to Apply for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, or upon receipt of a request for a major modification to a petroleum contaminated soil treatment facility permit in DEP 7129, Application for a Petroleum Contaminated Soil Treatment Facility Permit, as incorporated by reference in 401 KAR 47:205, Section 10, the cabinet shall provide a public notice which includes the items established in subsection (1)(a) through (d) of Section 4 of this administrative regulation.

(2) Once the review in 401 KAR 47:205, Section 3(4)(g) is complete, the cabinet shall tentatively decide whether to issue the draft construction permit or to deny the application.

(a) If the cabinet makes a tentative determination to issue a construction permit, a draft permit is prepared which shall include the application by reference and contain the following information:

1. The proposed design and specifications; and

2. Proposed conditions to protect the human health and environment as established in 401 KAR 47:030.

(b) The draft permit shall be based on the administrative record as established in Section 7 of this administrative regulation.

(3) Upon completion of the draft permit, the cabinet shall comply with the public information procedures as established in Sections 4, 5, 6, and 8 of this administrative regulation.

(4) The cost of public information procedures established in subsection (3) of this section which are incurred by the cabinet shall be paid by the applicant.

(5) If the cabinet makes a determination to issue the final construction permit, a permit is issued which shall include the application by reference and contain the following information:

(a) The design and specifications; and

(b) Conditions to protect the human health and the environment as established in 401 KAR 47:030.

Section 4. Public Notice. (1) Public notices shall contain the following information:

(a) Name, address, and telephone number of the division processing the permit action for which notice is being given;

(b) Name, address, and telephone number of the applicant and, if different, of the facility or activity regulated by the permit;

(c) A brief description of the petroleum contaminated soil treatment facility activities described in the permit application;

(d) A brief description of the proposed location of the petroleum contaminated soil treatment facility including a description of the primary access routes;

(e) The location of a repository for documents in the county in which the petroleum contaminated soil treatment facility is proposed or exists, including copies of the draft permit or permit, fact sheet and application;

(f) The time and place of a hearing when already scheduled and procedures by which the public may participate in the final permit decision;

(g) The statement: "The cabinet has issued a draft construction permit for a petroleum contaminated soil treatment facility. A person may comment on the draft permit within thirty (30) days of the publication of this notice as established in 401 KAR 47:207, Section 3 or request a hearing pursuant to 401 KAR 47:207, Section 8. If the cabinet issues a final construction permit, any person who may be aggrieved by the permit issuance shall have thirty (30) days to file a petition as established in KRS 224.10-420(2)."; and

(h) Additional information as established in KRS 224.40-305.

(2) Public notices may describe more than one (1) permit or permit action.

(3) Public notices shall be of a size to include not less than two (2) column widths for advertising and shall be in a display format.

(4) Public notices issued by the cabinet shall be distributed by the following methods:

(a) By mailing a copy of a notice to the following persons:

1. The applicant;

2. Other agencies that the cabinet knows have issued or are required to issue an environmental permit for the same facility or activity;

3. a. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources;

b. The Kentucky Heritage Council; and

c. Other government authorities with jurisdiction over the petroleum contaminated soil treatment facility, including other affected states;

4.a. Persons on a cabinet mailing list which has been compiled by notifying the public of the opportunity to be put on the mailing list through periodic publication; and

b. Individuals shall request in writing to be on the list;

5. a. Adjacent property owners to the proposed or existing facility.

b. If, prior to issuance of the final construction permit, an adjacent property owner provides written evidence to the cabinet that the adjacent property owner did not receive public notice as required in subsection (4)(a)5.a of this section due to incorrect or incomplete information in the petroleum contaminated soil treatment facility permit application, the cabinet shall send a certified letter to the adjacent property owner and allow that property owner an additional thirty (30) days to provide public comment from the date of receipt of the certified letter.

(b) Publication of a notice in a daily or weekly major local newspaper of general circulation where the proposed or permitted site is located.

Section 5. Public Comment Period. The public comment period shall allow at least thirty (30) days for public comment during which an interested person may do the following:

(1) For the public notices established in Section 3(1) of this administrative regulation, an interested person may request a public hearing as established in Section 8 of this administrative regulation.

(2) For the public notices established in Section 3(3) of this administrative regulation:

(a) Submit written comments on the application or draft permit; or

(b) Request a public hearing as established in Section 8 of this administrative regulation.

(3) For issuance of the permit in Section 3(5) of this administrative regulation, file a petition for an adjudicative hearing within thirty (30) days of the date of issuance as established in KRS 224.10-420(2).

Section 6. Fact Sheet. (1)(a) A fact sheet shall be prepared by the cabinet for a draft permit for a new or major modification to a petroleum contaminated soil treatment facility as established in Section 2 of this administrative regulation.

(b) The cabinet shall send this fact sheet to the applicant and to a person when requested.

(2) The fact sheet shall include:

(a) A brief description of the petroleum contaminated soil treatment facility permit application which is the subject of the permit action;

(b) 1. The type and quantity of petroleum contaminated soil which is proposed to be and is being stored or treated; and

2. A summary of the facility design including the petroleum

contaminated soil treatment area, equipment, structures, liner, and leachate collection system specification.

(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions, and appropriate supporting references to the administrative record as established in Section 7 of this administrative regulation;

(d) Reasons why a requested variance as established in 401 KAR 30:020, Section 2 or other alternative to required standards is justified in the draft permit;

(e) The procedures for issuing a final decision on the draft permit including:

1. The beginning and ending dates of the comment period established in Section 8 of this administrative regulation, and the address where comments shall be received;

2. Procedures for requesting a hearing, and the nature of that hearing; and

3. Procedures including public participation in the final decision.

(f) Name and telephone number of a person to contact for additional information.

Section 7. Administrative Record for Permits. (1) The provisions of a draft permit prepared by the cabinet as established in subsection (1) of Section 3 shall be based on the administrative record.

(2) The administrative record shall consist of:

(a) The application and supporting data furnished by the applicant;

(b) The draft permit;

(c) The fact sheet as established in Section 6 of this administrative regulation;

(d) Documents cited in the fact sheet; and

(e) Documents contained in the supporting file for the draft permit.

(3)(a) Material readily available at the cabinet need not be physically included at the public repository if the fact sheet contains a specific reference to the material.

(b) Published material need not be physically included at the public repository if it is specifically referred to in the administrative record.

Section 8. Public Hearings. (1) The cabinet shall hold a public hearing when public interest exists concerning a notice of intent to apply for petroleum contaminated soil treatment facility permit or an application for petroleum contaminated soil treatment facility permit.

(2) Whenever a public hearing is held, the secretary of the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(3)The presiding officer shall allow:

(a) Persons to submit oral or written statements;

(b) A five-minute limit on the time allowed for oral statement by each individual;

(c)1. The public comment period established in Section 5 of this administrative regulation to automatically be extended to the close of the public meeting; and

2. The cabinet shall not extend the thirty (30) day period to file a petition for an adjudicative hearing regarding permit issuance as established in KRS 224.10-420(2).

(4) A written transcript of the hearing shall be made available to a person upon payment of the cost of copying.

Section 9. Adjudicative Hearing. The cabinet shall hold an adjudicative hearing as established in KRS 224.10-420(2) whenever a petition in opposition to a permit and a request for an adjudicative hearing is received within thirty (30) days of the issuance of a final construction permit as established in Section 3(5) of this section.

Section 10. Response to Comments. (1) At the time that the cabinet issues a final construction permit, the cabinet shall issue a response to comments which:

(a) Specifies which provisions of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(b) Describes and responds to comments on the proposed permit raised during the public comment period or during a public hearing.

(2) The cabinet shall send the responses to comments to commenters.

(3) The cabinet shall document that copies have been sent to each commenter and make copies available to the public upon written request.

Section 11. Issuance and Effective Date of Permit. (1)(a) After the close of a public comment period as established in Section 5(2) of this administrative regulation and a hearing on a draft permit held in accordance with Section 8 of this administrative regulation, the cabinet shall issue a final construction permit decision as established in Section 3(5) of this administrative regulation.

(b) For the purposes of this section, a final construction permit decision means a final decision to issue, deny, modify, or terminate a permit.

(2) A final construction permit decision shall become effective on the date issued by the cabinet.

(3) The cabinet shall provide notice of the final construction permit to persons on the mailing list as established in Section 4(4)(a) of this administrative regulation.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2011 at 10 a.m. at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kelli Reynolds, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Kelli.Reynolds@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelli Reynolds

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation sets forth permit issuance and public information procedures for petroleum contaminated soil treatment facilities.

(b) The necessity of this administrative regulation: This administrative regulation establishes requirements for permit issuance and public information procedures for petroleum contaminated soil treatment facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing requirements for permit issuance and public information procedures for petroleum contaminated soil treatment facilities, which are a type of solid waste site or facility.

(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 requirements for permit issuance and public information procedures for petroleum contaminated soil treatment facilities which will protect the environment.

(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: N/A

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

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

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Businesses that treat petroleum contaminated soils will be affected by this administrative regulation. There are currently 3 permitted by the Solid Waste Branch.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will have to comply with the requirements for the permit issuance and public information procedures for petroleum contaminated soil treatment facilities permit. This includes the information needed in the public notice and how the cabinet will address public comment and issuance and effective date of the permit.

(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 administrative regulation will be the cost to publish the add in the local newspaper.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this administrative regulation, entities will be able to get a permit for a petroleum contaminated soil treatment facility.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation will be implemented and enforced using the solid waste permit fees collected pursuant to 401 KAR 47:090 and general funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation will not establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied. The public information procedure requirements established in this administrative regulation apply to all petroleum contaminated soil treatment facilities.

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 Division of Waste Management.

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 and 224.40-305

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? No additional cost to the Division of Waste Management.

(d) How much will it cost to administer this program for subsequent years? No additional cost to the Division of Waste Management.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)

401 KAR 48:205. Technical requirements for petroleum contaminated soil treatment facilities.

RELATES TO: KRS 224.01-010, 224.10-100, 224.10-105, 224.20-150, 224.40-100, 224.40-305, 224.40-330, 224.40-605, 224.40-650, 224.70-100, 224.70-110, 224.99-010, 224.99-020

STATUTORY AUTHORITY: KRS 224.10-100(19)(c), (24), 224.40-100, 224.40-305

NECESSITY, FUNCTION AND CONFORMITY: KRS 224.10-100(19)(c), (24) and 224.40-305 authorize the cabinet to promulgate administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of solid waste obtain a permit. This administrative regulation establishes requirements for petroleum contaminated soil treatment facilities.

Section 1. Definitions. As used in this administrative regulation:

(1) "Asphalt Plant Aggregate Dryer" means a Low-Temperature Thermal Desorption unit identical in design to a countercurrent Rotary Dryer, but may not have a secondary treatment chamber, typically operates at a soil discharge temperature range from 300 degrees to 600 degrees Fahrenheit, and produces treated soil suitable for use as hot mix asphalt aggregate only. An Asphalt Plant Aggregate Dryer shall operate only in conjunction with a hot mix asphalt operation that uses the treated soil immediately upon being discharged from the treatment unit.

(2) "Biopile" means a contained vessel or a lined and covered pile used for the biological treatment of petroleum contaminated soil.

(3) "Conveyor Furnace" means a Low-Temperature Thermal Desorption unit consisting of a flexible metal belt which conveys petroleum contaminated soil though the heating chamber. Soil agitators lift and turn the soil to enhance heat transfer. Organic vapors exiting the chamber are destroyed in an afterburner.

(4) "Low-Temperature Thermal Desorption" means an ex-situ treatment technology that uses heat to physically separate petroleum hydrocarbons from excavated soils that have been screened to remove objects greater than two (2) inches in diameter. Low-temperature thermal desorption units heat soils to temperatures sufficient to volatilize petroleum hydrocarbons and may cause some hydrocarbons to completely or partially decompose. Vaporized hydrocarbons may be additionally treated in a secondary treatment chamber consisting of an afterburner, catalytic oxidation camber, condenser, or carbon absorption unit.

(5) "Petroleum contaminated soil" means silt, sand, clay, gravel, or other earthen material; asphalt, concrete, or absorbent materials containing hydrocarbon concentrations above the levels established in 401 KAR 48:205, Section 6, Table 2, but does not exhibit a hazardous characteristic or is not a listed hazardous waste as defined in 401 KAR Chapter 31.

(6) "Petroleum contaminated soil treatment facility" means a solid waste site or facility where petroleum contaminated soil is

treated to reduce contaminant concentrations to or below the levels established in 401 KAR 48:205, Section 6, Table 2.

(7) "Rotary Dryer" means a Low-Temperature Thermal Desorption unit that is a cylindrical metal reactor in which soil is brought into contact with heated purge gases, raising the temperature of the soil to physically separate petroleum hydrocarbons from the soil. Soil passing through the unit are lifted and turned to ensure all soil particles are sufficiently heated to adequately vaporize petroleum hydrocarbons out of the soil. Soil may pass through the unit concurrently or countercurrently to the direction of the purge gas flow.

(8) "Thermal Screw" means a Low-Temperature Thermal Desorption unit consisting of a series of augers that convey, mix, and heat soil to volatilize petroleum hydrocarbons into a purge gas stream, with the exiting organic vapors either collected or destroyed. Heat is provided indirectly by hot oil or steam circulated through hollow stem augers and the jacketed trough in which each auger rotates.

(9) "Wellhead protection area" means:

(a) The surface and subsurface area surrounding a water well, well field, or spring, supplying a public water system, through which pollutants are reasonably likely to move toward and reach the water well, well field, or spring; or

(b) An area defined as a wellhead protection area in a county water supply plan.

Section 2. Applicability. (1) This administrative regulation establishes minimum standards for the requirements which shall be met for site selection, design, operation, and closure of a petroleum contaminated soil treatment facility.

(2) This administrative regulation applies to persons conducting treatment of excavated petroleum contaminated soils.

Section 3. Siting and Design Requirements for Petroleum Contaminated Soil Treatment Facilities. (1) Treatment processes shall include:

(a) Low Temperature Thermal Desorption; and

(b) Biopiles.

(2)(a) Facility design and operation shall be as established in this administrative regulation and "How to Evaluate Alternative Cleanup Technologies for Underground Storage Tank Sites: A Guide for Corrective Action Plan Reviewers" (EPA 510-B-94-003; EPA 510-B-95-007; and EPA 510-R-04-002), Chapter IV, Biopiles, and Chapter VI, Low-Temperature Thermal Desorption.

(b) Designs and plans constituting the practice of engineering shall be prepared by a professional engineer licensed in the Commonwealth of Kentucky and shall bear the professional engineer's seal, original signature, and date as established in KRS Chapter 322.

(3) Siting Considerations.

(a) Petroleum contaminated soil treatment facilities shall maintain buffer zone distances as established in Table 1 of this subsection.

Table 1. Required buffer zones for a petroleum contaminated soil treatment facility, minimum distance in feet.

Structure or Feature	Petroleum Contaminated Soil, Closest Boundary (ft)
Residences & occupied buildings	500
Drinking water well	300
Surface water body or wetland	300
Perennial stream	300
Karst feature	300
Public road	50
Intermittent or ephemeral stream	50
Property line	50

(b) Petroleum contaminated soil treatment facilities shall not be located in a 100-year floodplain, wellhead protection area or wetlands.

(4)(a) Storage and preparation of soil to be treated shall be conducted in a roofed enclosure with a concrete floor or an enclosed container.

(b) Temporary storage of incoming materials, shall not exceed seven (7) days, and shall be:

1. In trucks, trailers, or storage containers with impermeable covers; or

2. On an impermeable pad or synthetic liner with a minimum thickness of thirty (30) mils, with an impermeable cover.

(c) Storage and preparation areas shall be designed to control run-on and run-off.

(5) Biopiles. A biopile treatment system shall include the following:

(a) A liner system with a minimum slope of two (2) percent, designed to contain and capture liquids, that has the following, from bottom to top;

1. A subgrade;

2.a. A twelve (12) inch thick compacted clay liner (CCL); or

b.(i) A twelve (12) inch thick geosynthetic clay liner (GCL) support layer with a maximum remolded coefficient of permeability of 1 x 10^{-7} centimeters per second in the laboratory; and

(ii) A GCL with a demonstrated hydraulic conductivity less than 5 x 10^{-9} centimeters per second;

3. A sixty (60) mil thick High-Density Polyethylene (HDPE);

4. a. A granular leachate collection layer and leachate collection system with an overlain geotextile; and

b. An equivalent Synthetic Drainage Layer (SDL) meeting the following requirements:

(i) The SDL shall not be adversely affected, chemically or physically, by waste placement or leachate; and

(ii) Documentation shall be submitted to ensure chemical compatibility of the SDL chosen.

5. A twelve (12) inch thick soil layer with a minimum permeability of 1.0 x 10^{-3} centimeters per second to protect the liner system; or

(b) A reinforced six (6) inch thick concrete pad with a minimum slope of two (2) percent designed to contain and capture liquids that have the following, from bottom to top;

1. The pad shall be overlain by a sixty (60) mil thick HDPE liner; and

2. a. A granular leachate collection layer, and leachate collection system with an overlain geotextile; or

b. An equivalent SDL; and

3. A twelve (12) inch thick soil layer with a minimum permeability of 1.0 x 10^{-3} centimeters per second to protect the liner system;

(c) An air inlet and air extraction system with off-gas collection and treatment;

(d) A nutrient and moisture injection system;

(e) A synthetic cover;

(f) A berm sufficient to control run-on and run-off from a twenty-four (24) hour, 100-year storm event; and

(g) The construction of the liners in paragraphs (a) and (b) of this subsection shall comply with the quality assurance and quality control requirements of 401 KAR 48:206, 48:207, and 48:208.

(6) Low-Temperature Thermal Desorption.

(a) A low-temperature thermal desorption facility shall obtain fiscal court approval and an air contaminant source permit from the Division of Air Quality in accordance with KRS 224.20-150.

(b) The treatment system shall be one of the following:

1. Rotary dryer;

2. Asphalt Plant Aggregate dryer;

3. Thermal screw; or

4. Conveyor furnace.

(c) The design shall include off-gas collection and treatment system and a particulate collector.

(d) Treated soil shall be stored as established in subsection (4) of this section until analytical results demonstrate that it meets the limits as established in Section 6(1), Table 2 of this administrative regulation.

Section 4. Procedures for Excluding the Receipt of Wastes Other than Petroleum Contaminated Soil. (1)(a) The permittee shall implement a program at the facility for detecting and preventing the receipt of nonpermitted wastes.

(b) These nonpermitted waste streams include:

1. Household wastes including garbage;

2. Conditionally exempt small quantity generator (CESQG) hazardous wastes;

3. Hazardous waste exempt spill residues;

4. Hazardous wastes as defined in 401 KAR Chapter 31;
5. Polychlorinated biphenyl (PCB) wastes; and
6. Other nonpermitted wastes.

(2) This program shall include:

(a) Visual inspection of all waste as it is delivered;

(b) Random inspections of incoming loads;

(c) Inspection of suspicious loads;

(d) Records of inspections;

(e) Training of facility personnel to recognize wastes that are not permitted wastes;

(f) Procedures for notifying the proper authorities if a hazardous or PCB waste is discovered at the facility;

(g) Procedures to remove and transport solid or special wastes other than permitted wastes to the proper solid or special waste disposal site or facility; and

(h) Employee safety, health, training and personal protective equipment to be used in inspection.

(3) The permittee shall implement the following to meet the requirements of subsection (1) of this section:

(a) The permittee shall have a program, as established in the approved permit, to inspect all waste entering the facility. The program to exclude nonpermitted waste shall include:

1. Random inspections in time, but uniformly distributed to all waste sources based on volume; and
2. An inspection record including the following:
a. Name of the driver;
b. Name of the hauling company;
c. Mailing address of the hauling company;
d. Source of the waste;
e. Volume of the waste; and
f. Waste characteristics.
3. The permittee shall maintain a record of the inspections.

(b) Upon discovery of hazardous or PCB waste, the permittee shall isolate the load and notify the cabinet within one (1) business day.

(c) Upon discovery of non-permitted solid or special wastes, the permittee shall implement the procedures to remove and transport non-permitted solid or special wastes to a permitted solid or special waste landfill.

Section 5. Petroleum Contaminated Soil Characterization. (1) Petroleum contaminated soil shall be characterized as established in 401 KAR Chapter 42; or

(2)(a) Wastes shall be characterized according to the maximum dry weight concentration of pollutants based on the average concentration in a minimum of two (2) representative samples.

(b) The permittee shall take representative samples as established in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, Update IV of the Third Edition.

(3)(a) Wastes shall be characterized by analyzing the following:

Table 1. Petroleum contaminated soil characterization parameters

Number	Parameter name
1	Benzene
2	Toluene
3	Ethylbenzene
4	Xylene
5	Chrysene
6	Benzo(a)anthracene
7	Benzo(a)pyrene
8	Benzo(b)fluoranthene
9	Benzo(k)fluoranthene
10	Dibenzo(a,h)anthracene
11	Indeno(1,2,3-cd)pyrene
12	Acenaphthene
13	Acenaphthylene
14	Anthracene
15	Benzo(ghi)perylene
16	Fluoranthene
17	Fluorene
18	Phenanthrene
19	Pyrene
20	Naphthalene
21	Oil and grease (total)
22	Biochemical oxygen demand, 5-day (BOD_5)
23	pH
24	Electrical conductivity
25	Polychlorinated biphenyls, Total (PCBs)
26	Arsenic (total)
27	Boron (total)
28	Cadmium (total)
29	Calcium (total)
30	Chloride (total)
31	Chromium (total)
32	Copper (total)
33	Lead (total)
34	Mercury (total)
35	Molybdenum (total)
36	Nickel (total)
37	Selenium (total)
38	Sodium (total)
39	Zinc (total)

(4)(a) The permittee shall characterize chemical and physical waste parameters that are potential surface water or groundwater pollutants not in Table 1 of this section.

(b) The characterization shall include, based on generator knowledge, ingredients, additives, by-products, contaminants, lubricants, cleaning agents, hazardous constituents and chemicals from the following sources:

1. 401 KAR 47:030, Section 4 and 5, Environmental Performance Standards:
2. 401 KAR 5:031, Surface Water Standards;
3. U.S. EPA Regional Screening Levels (RSLs); and
4. Material safety data sheets.

(5)(a) Waste analysis shall be reported as the average of at least two representative samples on a dry weight basis.

(b) Dry weight pollutant concentrations shall be calculated by determining the pollutant concentration of the sample, and converting to dry weight (mg/kg) content using the percent solids of the original sample.

(6) The applicant shall obtain a new waste characterization as established in subsections (1) or (2) of this section for each source of petroleum contaminated soil.

Section 6. Treatment Standards and Disposition of Treated Soil (1)(a) The applicant shall treat petroleum contaminated soil such that the following parameters are equal to or less than the concentrations as established in Table 2 below:

Table 2. Petroleum Contaminated Soil Treatment Standards	
Benzene	0.01 ppm
Toluene	0.7 ppm
Ethylbenzene	0.9 ppm
Xylene	5.0 ppm
Chrysene	15 ppm
Benzo(a)anthracene	0.15 ppm
Benzo(a)pyrene	0.015 ppm
Benzo(b)fluoranthene	0.15 ppm
Benzo(k)fluoranthene	0.3 ppm
Dibenzo(a,h)anthracene	0.015 ppm
Indeno(1,2,3-cd)pyrene	0.15 ppm
Acenaphthene	10 ppm
Acenaphthylene	10 ppm
Anthracene	10 ppm
Benzo(ghi)perylene	10 ppm
Fluoranthene	10 ppm
Fluorene	10 ppm
Phenanthrene	10 ppm
Pyrene	10 ppm
Naphthalene	3.6 ppm
Methyl-tert-butylether (MTBE)	0.2 ppm
Lead	400 ppm
Arsenic	9.4 ppm
Cadmium	0.78 ppm

Chromium	21.3 ppm
Copper	28.0 ppm
Mercury	0.07 ppm
Nickel	21.7 ppm
Selenium	0.99 ppm
Zinc	57 ppm

(b) For metals, the permittee:

1. May establish background concentrations at the property of origination for each parameter in Table 2 of this section and treat the petroleum contaminated soil to the background level; and

2. Shall not release treated soil for placement within:

a. Four (4) vertical feet of the seasonal high groundwater table.

b. 250 feet of an intermittent or perennial stream.

(2)(a) The applicant shall take representative samples as established in 401 KAR Chapter 42 or samples as established in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, Update IV of the Third Edition.

(b) The sample concentration shall meet subsection (1) of this section prior to release of treated soil from the facility.

(c) If the sample concentration does not meet subsection (1) of this section, the treated soil must be disposed in a permitted solid waste disposal facility.

(3) The permittee shall provide the following to individuals receiving treated soil:

(a) Copies of the treated soil analyses; and

(b) A brochure explaining the procedures to be utilized in the use of treated soil including setback requirements in paragraph (b)2 of subsection (1).

(4)The permittee shall not allow the volume of stored treated soil to exceed three (3) months' treatment capacity, as established in the permit under 401 KAR 47:205.

Section 7. Closure Plan and Cost Estimate. (1) A closure plan and cost estimate, as required in 401 KAR 47:205, Section 9, shall contain the following:

(a) The maximum storage capacity of untreated soil;

(b) The maximum amount of soil in the process of being treated;

(c) Transportation of petroleum contaminated soil;

(d) Disposal of untreated soil at a permitted disposal facility;

(e) Decommissioning of the liner and leachate collection system;

(f) Removal of processing equipment;

(g) Revegetation of disturbed areas; and

(h) Sampling of soils on-site to document that soil parameters comply with Section 6(1) of this administrative regulation.

(2) The cost estimate for closure under the requirements established in 401 KAR 48:310, Section 2, and KRS 224.40-650.

Section 8. Recordkeeping and Reporting. (1) The permittee of a petroleum contaminated soil treatment facility shall retain at the office of the facility for a period of five (5) years, the following information:

(a) The source, volume in cubic yards (CY), and date the contaminated soil was received for treatment;

(b) The monthly volume of treated soil in CY;

(c) The log of recipients who receive more than twenty (20) cubic yards of treated soil in any given month required to be included in the form DEP 5042, Annual Report for a Petroleum Contaminated Soil Treatment Facility;

(d) The biopile monitoring log required to be in the form DEP 5042, Annual Report for a Petroleum Contaminated Soil Treatment Facility; and

(e) The laboratory analysis reports.

(2)(a) The operator shall complete and submit to the cabinet by January 31 of each year, for the previous year, typed or printed legibly in permanent ink, the form DEP 5042, Annual Report for a Petroleum Contaminated Soil Treatment Facility.

(b) The annual report shall include:

1. Agency interest and permit number;

2. Name, address, and contact information for the applicant;

3. Name and certification number of the certified operator;

4. Petroleum contaminated soil information for each waste stream including:

a. Property of origination, name of property owner, and name of leaseholder;

b. Underground Storage Tank registration number, if applicable;

c. Hydrocarbon type;

d. Volume in cubic yards (CY);

e. Characterization as required by Section 5 of this administrative regulation.

5. The volume of treated soils:

a. Prepared for distribution;

b. Distributed from the facility;

c. Disposed at a permitted solid waste disposal facility; or

d. Reused on-site as a recovered material.

6. Treated soil analytical information for each biopile or sample unit;

7. Copies of laboratory analysis reports for the reporting year; and

8. The information in subsection (1) of this section for the previous twelve months.

Section 9. Incorporation by Reference. (1) The following documents are incorporated by reference:

(a) "How to Evaluate Alternative Cleanup Technologies for Underground Storage Tank Sites: A Guide for Corrective Action Plan Reviewers" (EPA 510-B-94-003; EPA 510-B-95-007; and EPA 510-R-04-002), Chapter IV, Biopiles, and Chapter VI, Low-Temperature Thermal Desorption;

(b) U.S. EPA "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", Update IV of the Third Edition;

(c) "Petroleum Contaminated Soil Treatment Facility Annual Report", DEP 5042, April 2011; and

(d) U.S. EPA "Regional Screening Levels", November 2010.

(2)(a) The material in subsection (1)(a) of this section may be obtained at:

1. National Technical Information Service (NTIS); U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; or

2. http://www.epa.gov/oust/pubs/tums.htm

(b) The material in subsection (1)(b) of this section may be obtained at:

1. National Technical Information Service (NTIS); U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; or

2. http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm;

(c) The material in subsection (1)(d) of this section may be obtained at http://www.epa.gov/region9/superfund/prg/.

(d) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(4) The material in subsection (1) of this section may also be obtained from the Division of Waste Management's Web site at http://waste.ky.gov.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2011 at 10 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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

May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kelli Reynolds, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Kelli.Reynolds@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelli Reynolds

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for petroleum contaminated soil treatment facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish technical requirements for petroleum contaminated soil treatment facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing technical requirements for petroleum contaminated soil treatment facilities, which are a type of solid waste site or facility.

(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 technical requirements for petroleum contaminated soil treatment facilities which will protect the environment.

(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: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Businesses that treat petroleum contaminated soils will be affected by this administrative regulation. There are currently 3 permitted by the Solid Waste Branch.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will have to comply with the technical requirements for siting, soil characterization, treatment standards, closure plans and cost estimates, and record keeping and reporting.

(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 implement this type of permit for an existing facility would be approximately $175,000 per acre for the plastic liner and the storage building will be dependent on the size of the building. Groundwater monitoring will not be an additional cost since the existing facilities have monitoring wells already installed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this administrative regulation, entities will be able to get a permit for a petroleum contaminated soil treatment facility.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation will be implemented and enforced using the solid waste permit fees collected pursuant to 401 KAR 47:090 and general funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. The technical requirements established in this administrative regulation apply to all petroleum contaminated soil treatment facilities.

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 Division of Waste Management.

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 and 224.40-305

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? No additional cost to the Division of Waste Management.

(d) How much will it cost to administer this program for subsequent years? No additional cost to the Division of Waste Management.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)

401 KAR 48:206. Petroleum contaminated soil treatment facility liner soil layer quality assurance and quality control.

RELATES TO: KRS Subchapters 224.01, 224.10, 224.40, 224.43, 224.99, 322.010(16)

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.40-100(19)(c), (24) and (28) requires the cabinet to adopt rules and administrative regulations for the permitting, management, processing or disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This administrative regulation establishes the liner quality assurance and quality control testing requirements for petroleum contaminated soil treatment facilities.

Section 1. Definitions. As used in this administrative regulation:

(1) "Certifying engineer" means the professional engineer that implements the petroleum contaminated soil treatment facility construction quality assurance plan;

(2) "Petroleum contaminated soil" means silt, sand, clay, gravel, or other earthen material; asphalt, concrete, or absorbent materials containing hydrocarbon concentrations above the levels

established in 401 KAR 48:205, Section 6, Table 2, but does not exhibit a hazardous characteristic or is not a listed hazardous waste as defined in 401 KAR Chapter 31.

(3) "Petroleum contaminated soil treatment facility" means a solid waste site or facility where petroleum contaminated soil is treated to reduce contaminant concentrations to or below the levels established in 401 KAR 48:205, Section 6, Table 2.

(4) "Quality assurance" means the procedures implemented by the professional engineer to ensure that the construction of the petroleum contaminated soil treatment facility meets design specifications and performance requirements; and

(5) "Quality control" means the system of control implemented by the manufacturer, fabricator, installer, construction contractor, operator or other person in order to meet construction specifications for the construction of the petroleum contaminated soil treatment facility.

Section 2. Applicability. (1) The quality assurance and quality control requirements of this administrative regulation apply to the construction of biopile liners at petroleum contaminated soil treatment facilities.

(2) The liner design requirements for biopiles at petroleum contaminated soil treatment facilities are established in 401 KAR 48:205, Section 3.

Section 3. Specific Subgrade Requirement for Bottom Liners. (1) The petroleum contaminated soil treatment facility liner subgrade is the uppermost in situ rock layer, in situ soil layer, or structural soil fill that shall be graded and prepared for liner construction.

(2) Materials required. The liner subgrade material shall be free of organic material and consist of bedrock, on-site soils, or structural soil fill with the ability to support the maximum load with a minimum factor of safety of two and zero-tenths (2.0).

(3) Construction requirements. (a) The subgrade shall be graded in accordance with the requirements of the approved engineering plans, report, and specifications in the petroleum contaminated soil treatment facility permit;

(b) The material shall be sufficiently dry and structurally sound to ensure that the first lift and all succeeding lifts of structural soil fill placed over the subgrade shall be adequately compacted to the design requirements.

(4) Certification requirements.

(a) The certifying engineer shall include in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, a discussion of the reviewed data resulting from the quality assurance and quality control testing required in this section of this administrative regulation.

(b) The results of all testing shall be included in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, including documentation of failed test results, descriptions of the procedures used to repair the failed material, and documentation of retesting performed.

(c) At a minimum, the subgrade shall be inspected in accordance with the following requirements:

1. Before placing material over the subgrade, the certifying engineer shall visually inspect the exposed surface to evaluate the suitability of the subgrade and ensure that the surface is properly compacted, smooth, uniform, and has positive surface drainage;

2. Liner soil subgrade shall be proof-rolled using a fully loaded articulated truck with a fifty-five (55) ton gross vehicle weight;

3. A structural soil fill subgrade shall be tested for density and moisture content at a minimum frequency of nine (9) tests per acre, and constructed in lifts;

4. The subgrade shall be compacted to a density of at least ninety-two (92) percent of the standard proctor;

5. The completed form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, shall show the finished elevation of the completed subgrade, referenced to existing site control, using a Three Dimensional Terrain Model on Computer Assisted Design Drawing (CADD) or cross-section;

6. The finished elevations shall serve as documentation and reference data for future volume calculations; and

7. Testing shall be performed in accordance with ASTM International standards, or similar method based on the applicable standards of practice for certification by a professional engineer as established in KRS 322.010(16).

Section 4. Specific Soil Support Component Requirements of Compacted Clay Liner (CCL) Systems for Bottom Liners. The Compacted Clay Liner (CCL) component of the bottom liner shall be a continuous layer of low permeability soil constructed to control fluid migration.

(1)(a) Low permeability soil components shall have a maximum remolded coefficient of permeability of 1×10^{-7} centimeters per second.

(b) The soil shall be placed without damaging the collection and removal system components.

(c) The soil material in the top maximum compacted six (6) inch lift shall be free of roots, wood or other decayable materials, and durable rock greater than one-half (1/2) inches in diameter.

(d) The soil material in the bottom lifts shall be free of roots, wood, or other decayable materials, and durable rock greater than two (2) inches in diameter.

(e) The CCL shall contain not more than thirty (30) percent by volume durable rock.

(f) The soils shall be compacted to a minimum of ninety-two (92) percent of the modified or standard proctor density.

(2) Construction requirements. The certifying engineer shall ensure that the soil component of the liner system installation conforms to the following minimum requirements:

(a) 1. Compaction shall be performed by properly controlling the moisture content, lift thickness, and other necessary details to obtain the density, moisture, and permeability characteristics established in this administrative regulation; and

2. The maximum final compacted thickness of each lift of soil material shall be six (6) inches or the thickness necessary to protect the integrity of underlying components and achieve the required liner performance standards.

(b) During construction, the moisture content of the CCL shall be maintained within the range identified in accordance with paragraph (c) of this section to ensure that each remolded lift attains the required minimum permeability.

(c) 1. The layers of the CCL shall be compacted using nonvibratory compactors with full depth penetrating feet with a minimum of six (6) passes per soil layer.

2. a. The compactor ballast shall be adjusted to prevent reaching the desired proctor density with fewer than six (6) passes; and

b. The sheepsfoot length shall be one (1) inch longer than the loose soil layer thickness.

(d) At the end of each work period, the surface shall be sealed from rain infiltration.

(3) Certification requirements. The certifying engineer shall include in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10,:

(a) A discussion of required quality assurance and quality control testing; and

(b) The results of testing shall be included in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, including documentation of failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of retesting performed in accordance with the following requirements:

1.a. The certifying engineer shall certify, after review of the quality control testing of the soil layer, that the material meets the requirements of the approved engineering plans, reports, and specifications in the petroleum contaminated soil treatment facility permit.

b. The certifying engineer shall approve and certify the quality assurance testing of all soil liner materials.

c. All quality assurance testing shall be done by the certifying engineer or under the direct supervision of the certifying engineer as established in KRS 322.180(16).

d. The intent of the quality assurance is to ensure the accuracy of the quality control and that the specified material meets the requirements of subsection (1) of this section; and

2. The following quality control tests shall be performed on a minimum of at least one (1) sample from each soil classification:

a. One (1) analysis of soil particle size for every 2,000 cubic yards of soil material;

b. Classification of soils for engineering purposes for each 10,000 cubic yards of soil material;

c. One (1) moisture content test for every 2,000 cubic yards of soil material;

d. One (1) Atterberg limits analysis of plastic and liquid limit and plasticity index in the permit for every 2,000 cubic yards of soil material; and

e. (i) A minimum of one (1) comparison of the moisture-density-permeability relation for every 20,000 cubic yards of soil material; and

(ii) Procedures that comply with the American Society of Civil Engineers paper, "Water Content-Density Criteria for Compacted Soil Liners" by Daniel and Benson, to develop the window of overall acceptable zone of permeability on a graph of dry unit weight versus molding water content.

(d) Quality assurance testing included in this paragraph shall be compared to and evaluated against the quality control testing of paragraph (c) of this subsection if applicable. Quality assurance testing shall include moisture-density testing performed using nuclear methods:

1. At least nine (9) density tests per acre per lift of soil material placed; and

2. A minimum of nine (9) moisture content tests per acre per lift of soil material placed,

(e) All testing shall be performed in accordance with a method based on the applicable standards of practice for certification by a professional engineer as established in KRS 322.010(16).

Section 5. Specific Requirements for the Geosynthetic Clay Liner (GCL) Support Layer for Bottom Liners. The GCL support layer of the bottom liner shall be a continuous layer of cohesive soil constructed to adequately support or protect the geosynthetic clay liner (GCL) and resist puncturing.

(1)(a) The GCL support layer of the bottom liner system shall have a maximum remolded coefficient of permeability of 1×10^{-7} centimeters per second in the laboratory.

(b) The soil shall be placed without damaging the collection and removal system components.

(c) The soil material in the top six (6) inch lift shall be free of roots, wood, or other decayable materials, and durable rock greater than one (1) inch in diameter.

(d) The soil material in the bottom lifts shall be free of roots, wood or other decayable materials, and durable rock greater than two (2) inches in diameter.

(e) The CCL shall contain not more than thirty (30) percent by volume durable rock.

(f) The soils shall be compacted to a minimum of ninety-five (95) percent of the standard proctor density.

(2) Construction requirements. The certifying engineer shall ensure that the support component of the bottom liner system installation conforms to the following minimum requirements:

(a) 1. Compaction shall be performed by controlling the moisture content and lift thickness to obtain the density and moisture window derived using procedures in "Water Content-Density Criteria for Compacted Soil Liners" by Daniel and Benson;

2. The maximum final compacted thickness of each lift of soil material shall be six (6) inches; and

3. The thickness of the initial lift shall be increased as necessary to protect the integrity of underlying components and achieve the required liner performance standards;

(b) To ensure that each lift attains the required density during construction of the support layer, the moisture content of the GCL support component of the bottom liner system shall be maintained within the range identified in accordance with the ASTM D698 - 07e1 "Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12 400 ft-lbf/ft3 (600 kN-m/m3)"; and

(c) At the end of each work period, the surface shall be sealed from rain infiltration.

(3) Certification requirements. The certifying engineer shall include in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10,:

(a) A discussion of required quality assurance and quality control testing; and

(b) The results of all testing shall be included in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, including documentation of failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of retesting performed in accordance with the following requirements:

1. a. The certifying engineer shall certify, after review of the quality control testing of the GCL support layer, if the material meets the requirements of the approved engineering plans, reports, and specifications in the petroleum contaminated soil treatment facility permit; and

b. The quality control testing shall ensure that the specified material meets the density requirements of subsection (1) of this section; and

2. Quality assurance testing shall be based on the applicable standards of practice for certification by a professional engineer as established in KRS 322.010(16), and shall be performed at the following minimum frequency for each soil classification:

a. One (1) analysis of soil particle size for every 4,000 cubic yards of soil material;

b. One (1) analysis of soil classification for engineering purposes for each 20,000 cubic yards of soil material;

c. One (1) moisture content test for every 4,000 cubic yards of soil material;

d. One (1) Atterberg limits analysis of plastic and liquid limit and plasticity index in the permit for every 4,000 cubic yards of soil material placed; and

e. One (1) moisture content test for every 4,000 cubic yards of soil material placed.

(d) Quality assurance testing included in this paragraph shall be compared to and evaluated against the quality control testing established in paragraph (a) of this subsection if applicable. Quality assurance testing shall include:

1. At least nine (9) density tests per acre per lift of soil material placed; and

2. A minimum of nine (9) moisture content tests per acre per lift of soil material placed.

Section 6. Specific Requirements for the Synthetic Liner Soil Support Layer for Bottom Liners. The synthetic liner soil support layer of the bottom liner system shall be a continuous layer of soil constructed to adequately support or protect the synthetic liner.

(1)(a) The synthetic liner support layer of the bottom liner system shall be placed without damaging the collection and removal system components.

(b) The soil material in the top six (6) inch lift shall be free of roots, wood or other decayable materials, and durable rock greater than one (1) inch in diameter.

(c) The soil material in the bottom lifts shall be free of roots, wood or other decayable materials, and durable rock greater than two (2) inches in diameter.

(d) The synthetic liner support layer shall not contain more than thirty (30) percent by volume durable rock.

(e) The soils shall be compacted to a minimum of ninety-two (92) percent of the standard proctor density.

(2) Construction requirements. The certifying engineer shall ensure that the synthetic liner support component of the bottom liner system installation conforms to the following minimum requirements:

(a) 1. Compaction shall be performed by properly controlling the moisture content and lift thickness to obtain the density and moisture characteristics established within the range identified in accordance with the ASTM D698 - 07e1 "Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/ft3 (600 kN-m/m3)";

2. The maximum final compacted thickness of each lift of soil material shall be six (6) inches. The thickness of the initial lift shall be increased as necessary to protect the integrity of underlying components and achieve the required liner performance standards;

(b) To ensure that each lift attains the required density during construction of the synthetic liner support layer, the moisture content of the synthetic liner support component of the bottom liner system shall be maintained within the range identified in accordance with the ASTM D698 - 07e1 "Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/ft3 (600 kN-m/m3)"; and

(c) At the end of each work period, the surface shall be sealed from rain infiltration.

(3) Certification requirements. The certifying engineer shall include in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10,:

(a) A discussion of required quality assurance and quality control testing; and

(b) The results of testing shall be included in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, including documentation of failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of retesting performed in accordance with the following requirements:

1. a. The certifying engineer shall certify, after review of the quality control testing of the synthetic liner support layer, if the material meets the requirements of the approved engineering plans, reports, and specifications in the permit; and

b. The quality control testing shall ensure that the specified material meets the density requirements of subsection (1) of this section; and

2. Quality assurance testing shall be based on the applicable standards of practice for certification by a professional engineer as established in KRS 322.010(16), and shall be performed at the following minimum frequency for each soil classification:

a. One (1) analysis of soil particle size for every 4,000 cubic yards of soil material;

b. One (1) analysis of soil classification for engineering purposes for each 20,000 cubic yards of soil material; and

c. One (1) moisture content test for every 4,000 cubic yards of soil material placed.

(d) Quality assurance testing included in this paragraph shall be compared to and evaluated against the quality control testing of paragraph (a) of this subsection if applicable. Quality assurance testing shall include:

1. At least nine (9) density tests per acre per lift of soil material; and

2. A minimum of nine (9) moisture content tests per acre per lift of soil material.

Section 7. Incorporation by Reference. (1)(a) The "Water Content-Density Criteria for Compacted Soil Liners" by David E. Daniel, Member, American Society of Civil Engineers (ASCE), and Craig H. Benson, Associate Member, ASCE, The Journal of Geotechnical Engineering, Vol. 116, No. 12, December 1990 is incorporated by reference; and

(b) ASTM D698 - 07e1 "Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/ft3 (600 kN-m/m3)".

(2) The documents listed in this administrative regulation are available from the American Society of Civil Engineers, ASCE World Headquarters, 1801 Alexander Bell Drive, Reston, Virginia 20191-4400 USA, or from their Web site at http://www.asce.org/asce.cfm.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2011 at 10 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kelli Reynolds, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Kelli.Reynolds@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelli Reynolds

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the liner quality assurance and quality control testing requirements for petroleum contaminated soil treatment facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the liner quality assurance and quality control testing requirements for petroleum contaminated soil treatment facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing requirements for liner quality assurance and quality control testing requirements for petroleum contaminated soil treatment facilities, which are a type of solid waste site or facility.

(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 administrative of statutes by establishing requirements for liner quality assurance and quality control testing requirements for a petroleum contaminated soil treatment facility, which will protect the environment.

(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: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Businesses that treat petroleum contaminated soils will be affected by this administrative regulation. There are currently 3 permitted by the Solid Waste Branch.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will have to comply with the quality assurance and quality control testing requirements for a petroleum contaminated soil treatment facility. Including specific liner design requirements for bottom liners.

(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 implement this type of permit for an existing facility would be approximately $175,000 per acre for the plastic liner and the storage building will be dependent on the size of the building. Groundwater monitoring will not be an additional cost since the existing facilities have monitoring wells already installed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this administrative regulation, entities will be able to get a permit for a petroleum contaminated soil treatment facility.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation will be implemented and enforced using the solid waste permit fees collected pursuant to 401 KAR 47:090 and general funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied. The quality assurance and quality control testing requirements established in this administrative regulation apply to all petroleum contaminated soil treatment facilities.

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?

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)

401 KAR 48:207. Petroleum contaminated soil treatment facility liner geosynthetic quality assurance and quality control.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.99, 322.010(16)

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.40-100(19)(c), (24) and (28) requires the cabinet to adopt rules and administrative regulations for the permitting, management, processing or disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This administrative regulation establishes the biopile liner geosynthetic quality assurance and quality control testing requirements for solid waste petroleum contaminated soil treatment facilities.

Section 1. Definitions. As used in this administrative regulation:

(1) "Certifying engineer" means the professional engineer that implements the petroleum contaminated soil treatment facility construction quality assurance plan;

(2) "Petroleum contaminated soil" means silt, sand, clay, gravel, or other earthen material; asphalt, concrete, or absorbent materials containing hydrocarbon concentrations above the levels established in 401 KAR 48:205, Section 6, Table 2, but does not exhibit a hazardous characteristic or is not a listed hazardous waste as defined in 401 KAR Chapter 31.

(3) "Petroleum contaminated soil treatment facility" means a solid waste site or facility where petroleum contaminated soil is treated to reduce contaminant concentrations to or below the levels established in 401 KAR 48:205, Section 6, Table 2.

(4) "Quality assurance" means the procedures that are initiated by the owner or operator and implemented by the professional engineer to ensure that the construction of the petroleum contaminated soil treatment facility meet design specifications and performance requirements; and

(5) "Quality control" means the system of control implemented by the manufacturer, fabricator, installer, construction contractor, operator or other person in order to meet construction specifications for the construction of the petroleum contaminated soil treatment facility.

Section 2. Applicability. (1) The quality assurance and quality control requirements of this administrative regulation apply to the construction of liner geosynthetics for biopiles at petroleum contaminated soil treatment facilities.

(2) The biopile liner design requirements are established in 401 KAR 48:205, Section 3, for petroleum contaminated soil treatment facilities.

Section 3. Specific Geosynthetic Clay Liner (GCL) Requirements for Bottom Liners. A Geosynthetic Clay Liner (GCL) is a low permeability man-made material having a maximum coefficient of permeability of 5×10^{-9} centimeters per second, and is used to control fluid migration.

(1) Materials required. (a) The GCL shall have a demonstrated hydraulic conductivity less than 5×10^{-9} centimeters per second.

(b) 1. Documentation shall be submitted to ensure chemical compatibility of the wastes with the GCL; or

2. In the absence of the appropriate documentation, chemical compatibility testing shall be performed using the current version of ASTM D6141 "Standard Guide for Screening Clay Portion of Geosynthetic Clay Liner (GCL) for Chemical Compatibility to Liquids"; or similar method based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

(2)(a) Construction requirements. A GCL shall be installed in accordance with the requirements of the approved engineering plans, reports, and specifications in the petroleum contaminated soil treatment facility permit and manufacturer's recommendations.

(b) The certifying engineer shall ensure that the GCL installation, at a minimum, shall conform to the following: The GCL shall meet the manufacturer's and professional engineer's specifications based on the Geosynthetic Research Institute (GRI) GRI-GCL3, "Test Methods, Required Properties, and Testing Frequencies of Geosynthetic Clay Liners (GCLs)";

2. The GCL shall be installed on a biopile liner subgrade to promote positive drainage;

3. GCL installed on slopes shall be designed to withstand the calculated tensile forces acting upon the synthetic material and shall ensure that overall slope stability is maintained;

4. a. The surface of the supporting soil above which the GCL liner shall be installed shall be free of stones, organic matter, irregularities, protrusions, loose soil, and abrupt changes in grade that may damage the GCL; and

b. The supporting soil shall conform to the requirements estab-

lished in 401 KAR 48:206, Section 5;

5. The anchor trench shall be excavated to the length and width prescribed on the approved design drawings in the permit;

6. a. Field seams shall be oriented parallel to the line of maximum slope, which is oriented along, not across the slope.

b. In corners and irregularly-shaped locations, the number of field seams shall be minimized;

7. The materials shall be overlapped using the appropriate method acceptable to the manufacturer;

8. The seam area shall be free of moisture, dust, dirt, debris, and foreign material before overlapping; and

9. Field seam overlapping shall be prohibited if the conditions including precipitation, and wind do not meet the professional engineer's recommendations based upon the manufacturer's specifications.

(3) Certification requirements.

(a) The certifying engineer shall include in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, a discussion of the approved data resulting from the quality assurance and quality control testing required in this subsection.

(b) The results of testing shall be included in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, including documentation of failed test results, descriptions of the procedures used to correct the failed material, and statements of retesting performed.

(c) The certifying engineer shall certify, after review of the quality control testing of the GCL, that the material meets the requirements of the approved engineering plans, reports, and specifications in the petroleum contaminated soil treatment facility permit. Before installing a GCL, the following information shall be available to the certifying engineer for approval:

1. Origin and identification of the raw materials used to manufacture the GCL;

2. Copies of quality control certificates issued by the producer of the raw materials used to manufacture the GCL; and

3. a. Reports of tests conducted by the manufacturer to verify the quality of the raw materials used to manufacture the GCL.

b. Tests shall be conducted for Bentonite Fluid Loss, Bentonite Mass per Area, Bentonite Swell Index, Grab Strength, Hydrated Internal Shear Strength, Hydraulic Conductivity, Index Flux and Peel Strength in accordance with GRI-GCL3 "Test Methods, Required Properties, and Testing Frequencies of Geosynthetic Clay Liners (GCLs)", or other suitable tests based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

(c) Quality assurance testing performed in the field under the supervision of the certifying engineer shall assure conformity of the GCL installation with the engineering plans, reports, and specifications submitted in accordance with the following requirements:

1. a. During the construction phase, the GCL shall be inspected for uniformity, damage, and imperfections.

b. The GCL shall be inspected for tears, punctures, or holes; and

c. All imperfections shall be repaired and reinspected.

2. a. Tests conducted by the independent laboratory to verify the quality of the GCL received at the facility.

b. Tests shall be conducted for Grab Tensile Strength, Swell Index, Peel Strength, Bentonite Mass per Area in accordance with GRI-GCL3 "Test Methods, Required Properties, and Testing Frequencies of Geosynthetic Clay Liners (GCLs)", or other appropriate test methods based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

Section 4. Specific Synthetic Liner Requirements for Bottom Liners. A biopile synthetic liner shall comply with the requirements of 401 KAR 48:205, Section 3 and meet the following requirements:

(1) Materials required. (a) The synthetic liner material shall have a chemical and physical resistance not adversely affected by waste placement or leachate generated.

(b) 1. Documentation shall be submitted to ensure chemical compatibility of the synthetic liner material chosen; or

2. In the absence of the appropriate documentation, chemical compatibility testing shall be performed using EPA SW-846 test method 9090A, "Compatibility Test for Wastes and Membrane Liners" incorporated by reference in 401 KAR 48:205, Section 9; and

(2) Construction requirements. (a) Biopile synthetic liners shall be installed in accordance with the requirements of the approved engineering plans, report, and specifications in the petroleum contaminated soil treatment facility permit and manufacturer's recommendations.

(b) The certifying engineer shall ensure that the biopile synthetic liner installation, at a minimum, shall conform to the following:

1. The biopile synthetic liner shall have a nominal thickness of sixty (60) mils for liners;

2. The biopile synthetic liner shall be installed on a liner subgrade that promotes positive drainage;

3. The biopile synthetic liner installed on slopes shall be designed to withstand the calculated tensile forces acting upon the synthetic material and shall ensure that overall slope stability is maintained;

4. The surface of the supporting soil above which the biopile synthetic liner shall be installed shall be free of stones, organic matter, irregularities, protrusions, loose soil, and abrupt changes in grade that may damage the biopile synthetic liner;

5. The anchor trench shall be excavated to the length and width prescribed on the approved design drawings in the petroleum contaminated soil treatment facility permit;

6. Field seams shall be oriented parallel to the line of maximum slope, which is, oriented along, not across the slope. In corners and irregularly-shaped locations, the number of field seams shall be minimized;

7. The materials shall be seamed using the appropriate method in the permit. Seam testing shall be performed in accordance with the requirements of Section 5 of this administrative regulation;

8. The seam area shall be free of moisture, dust, dirt, debris, and foreign material before seaming; and

9. Field seaming shall be prohibited if the conditions including ambient air, temperature, precipitation, and wind do not meet the professional engineer's recommendations based upon the manufacturer's specifications.

Section 5. Synthetic Liner Certification Requirements for Bottom Liners. (1) The certifying engineer shall include in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, a discussion of the reviewed data resulting from the quality assurance and quality control testing required in this section.

(2) The results of all testing shall be included in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, including documentation of failed test results, descriptions of the procedures used to repair the failed material, and documentation of retesting performed.

(3) The certifying engineer shall certify, after review of the quality control testing of the biopile synthetic liner, if the material meets the requirements of the approved engineering plans, reports, and specifications in the permit.

(4) Before installing a biopile synthetic liner, the following information shall be available to the certifying engineer for approval:

(a) Origin and identification of the raw materials used to manufacture the biopile synthetic liner;

(b) Copies of quality control certificates issued by the producer of the raw materials used to manufacture the biopile synthetic liner; and

(c) Reports of the following tests conducted to verify the quality of the raw materials used to manufacture the biopile synthetic liner: tests for specific gravity, melt flow index, and percent carbon black shall be performed using GRI Test Method GM13, "Test Methods, Test Properties and Testing Frequency for High Density Polyethylene (HDPE) Smooth and Textured Geomembranes".

(5) The certifying engineer shall verify through appropriate documentation that the quality control testing of the synthetic liner at the factory took place in accordance with the manufacturer's quality control plan, which is based on the appropriate GRI specifications based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

(6) Quality assurance testing performed in the field under the supervision of the certifying engineer shall assure conformity of the biopile synthetic liner installation with the engineering plans, reports, and specifications submitted in accordance with the following requirements:

(a) During the construction phase, the biopile synthetic liner shall be inspected for uniformity, damage, and imperfections using the following procedures:

1. The biopile synthetic liner shall be inspected for tears, punctures, or blisters; and

2. All imperfections shall be repaired and reinspected;

(b) All field seams shall be nondestructively tested over their entire length using the air pressure test for double fusion seams or the vacuum test for other seams using the following procedures:

1. The certifying engineer shall be responsible for overseeing the accomplishment of nondestructive testing;

2. The contractor or test personnel shall do the following:

a. Record the location, date, test unit number, name of tester, and results of testing;

b. Inform the installer of required repairs; and

c. (i) Overlay seams that cannot be nondestructively tested with the same biopile synthetic liner; and

(ii) The seaming and patching operation shall be inspected by the certifying engineer for uniformity and completeness;

(c)1. Destructive testing shall be performed on the synthetic liner seam sections using GRI Test Method GM19, "Seam Strength and Related Properties of Thermally Bonded Polyolefin Geomembranes".

2. Seam samples for testing shall be taken as follows:

a. A minimum of one (1) test per every 500 feet of seam length unless a more frequent testing protocol is agreed upon by the installer and professional engineer; and

b. Additional test locations may be determined during seaming based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

3. Test locations shall be documented in the following manner:

a. The certifying engineer shall approve the sample size to be taken;

b. The sample size shall be predetermined as being large enough to perform the required testing; and

c. An independent laboratory shall perform the required testing that shall include, as a minimum, testing for seam strength and peel adhesion using GRI Test Method GM19 "Seam Strength and Related Properties of Thermally Bonded Polyolefin Geomembranes".

4. If a sample fails destructive testing, the certifying engineer shall ensure that:

a. The seam shall be reconstructed between the location of the sample that failed and the location of the next acceptable sample; or

b. The welding path shall be retraced to an intermediate location at least ten (10) feet from the location of the sample that failed the test, and new samples shall be taken for additional field tests; and

c. (i) If both new samples pass testing, the seam shall then be reconstructed between the location of both new samples; and

(ii) If a new sample fails, the process in this subparagraph shall be repeated.

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

(a) "ASTM D6141 Standard Guide for Screening Clay Portion of Geosynthetic Clay Liner (GCL) for Chemical Compatibility to Liquids";

(b) GRI-GCL3 "Test Methods, Required Properties, and Testing Frequencies of Geosynthetic Clay Liners (GCLs)";

(c) GRI Test Method GM13 "Test Methods, Test Properties and Testing Frequency for High Density Polyethylene (HDPE) Smooth and Textured Geomembranes for HDPE"; and

(d) GRI Test Method GM19 "Seam Strength and Related Properties of Thermally Bonded Polyolefin Geomembranes";

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the following organizations:

(a) The material in subsection (1)(a) may be obtained at:

1. ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428-2959 USA; or

2. http://www.astm.org/index.shtml;

(b) The material in subsection (1)(c) through (f) may be obtained at:

1. Geosynthetic Research Institute, 475 Kedron Avenue, Folsom, PA 19033-1208 USA; or

2. http://www.geosynthetic-institute.org/

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2011 at 10 a.m. at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kelli Reynolds, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Kelli.Reynolds@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelli Reynolds

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the liner geosynthetic quality assurance and quality control testing requirements for solid waste petroleum contaminated soil treatment facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for the liner geosynthetic quality assurance and quality control testing requirements for solid waste petroleum contaminated soil treatment facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statues by establishing the liner geosynthetic quality assurance and quality control testing requirements for solid waste petroleum contaminated soil treatment facilities, which are types of solid waste sites or facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statues by establishing requirements for the liner geosynthetic quality assurance and quality control testing requirements for solid waste petroleum contaminated soil treatment facilities.

(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: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Businesses that treat petroleum contaminated soils will be affected by this administrative regulation. There are current-

ly 3 permitted by the Solid Waste Branch.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will have to comply with the requirements liner geosynthetic quality assurance and quality control testing requirements for solid waste petroleum contaminated soil treatment facilities. This regulation includes the specific liner design requirements and liner certification requirements for petroleum contaminated soil treatment facilities.

(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 implement this type of permit for an existing facility would be approximately $175,000 per acre for the plastic liner and the storage building will be dependent on the size of the building. Groundwater monitoring will not be an additional cost since the existing facilities have monitoring wells already installed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): With the regulated entities being compliant with this administration regulation they will be staying in compliance with their issued permit.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation will be implemented and enforced using the solid waste permit fees collected pursuant to 401 KAR 47:090 and general funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. The requirements for liner geosythetic quality assurance and quality control testing requirements for all solid waste petroleum contaminated soil treatment facilities.

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 Division of Waste Management.

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 and 224.40-305

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? No additional cost to the Division of Waste Management.

(d) How much will it cost to administer this program for subsequent years? No additional cost to the Division of Waste Management.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)

401 KAR 48:208. Petroleum contaminated soil treatment facility liner high-permeability layer quality assurance and quality control.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.99, 322.010(16)

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.40-100(19)(c), (24), and (28) requires the cabinet to adopt rules and administrative regulations for the permitting, management, processing or disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This administrative regulation establishes the liner quality assurance and quality control testing requirements for petroleum contaminated soil treatment facilities.

Section 1. Definitions. As used in this administrative regulation:

(1) "Certifying engineer" means the professional engineer that implements the petroleum contaminated soil treatment facility construction quality assurance plan;

(2) "Petroleum contaminated soil" means silt, sand, clay, gravel, or other earthen material; asphalt, concrete, or absorbent materials containing hydrocarbon concentrations above the levels established in 401 KAR 48:205, Section 6, Table 2, but does not exhibit a hazardous characteristic or is not a listed hazardous waste as defined in 401 KAR Chapter 31.

(3) "Petroleum contaminated soil treatment facility" means a solid waste site or facility where petroleum contaminated soil is treated to reduce contaminant concentrations to or below the levels established in 401 KAR 48:205, Section 6, Table 2.

(4) "Quality assurance" means the procedures that are initiated by the owner or operator and implemented by the professional engineer to ensure that the construction of the petroleum contaminated soil treatment facility meet design specifications and performance requirements; and

(5) "Quality control" means the system of control implemented by the manufacturer, fabricator, installer, construction contractor, operator or other person in order to meet construction specifications for the construction of the petroleum contaminated soil treatment facility.

Section 2. Applicability. (1) The quality assurance and quality control requirements of this administrative regulation apply to the construction of liners for biopiles at petroleum contaminated soil treatment facilities.

(2) The liner design requirements for biopiles are established in 401 KAR 48:205, Section 3 for petroleum contaminated soil treatment facilities.

Section 3. Specific Precipitation Drainage, Leachate Collection or Gas Collection High Permeability Soil Requirement. (1) The high permeability soil is the sand or gravel that shall be used for the leachate collection layer on the biopile liner at a petroleum contaminated soil treatment facility.

(a) High permeability soil components shall have a minimum coefficient of permeability of 1×10^{-3} centimeters per second.

(b) The soil shall be placed without damaging the collection and removal system or liner components.

(c) The soil material shall be processed and substantially free of tree roots, wood or other decayable materials and large rocks.

(d) High permeability soil components shall be resistive to leachate, so that clogging of the layer shall not cause the hydraulic

head on the liner to exceed twelve (12) inches in depth.

(2) Certification requirements. (a) The certifying engineer shall include in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, a discussion of quality assurance and quality control testing.

(b) The testing procedures and protocols shall be ASTM International, or other test method based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

(c) The results of testing shall be included in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, including documentation of failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of retesting performed in accordance with the following requirements:

1. The certifying engineer shall review the results of the quality control testing by the supplier of a high permeability soil component;

2. The quality control and quality assurance testing shall ensure that the specified material meets the permeability and clogging preventive requirement of subsection (1)(d) of this section;

3. The following quality control tests shall be performed on a minimum of at least one (1) sample from each soil classification:

a. Classification of soils for engineering purposes using the following:

(i) Soil particle size; and

(ii) Insoluble residue or calcium carbonate content.

b. Hydraulic conductivity.

(d) Quality assurance testing included in paragraph (b) of this subsection shall be compared to and evaluated against the quality control testing of paragraph (a) of this subsection based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

(e) Quality assurance testing shall be based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer and shall be performed at the following minimum frequency for each soil classification:

1. One (1) analysis of soil particle size for every 10,000 cubic yards of soil material;

2. One (1) analysis of soil classification for engineering purposes for each 20,000 cubic yards of soil material;

3. One (1) insoluble residue in carbonate aggregates test, for every 20,000 cubic yards of soil material using D3042-03, "Standard Test Method for Insoluble Residue in Carbonate Aggregates" modified for a pH of no greater than 4.0 or similar test based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer; and

4. One (1) hydraulic conductivity test for every 20,000 cubic yards of soil material.

(f)1. The completed form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, shall show the finished elevation of each high permeability soil component of the liner referenced to existing site control, using a Three Dimensional Terrain Model on Computer Assisted Design Drawing (CADD), cross-section, or another method of equivalent accuracy and quality; and

2. These finished elevations shall serve as documentation and reference data for future volume calculations.

Section 4. Specific Synthetic Drainage Layer (SDL) Requirements for Bottom Liners. A Synthetic Drainage Layer (SDL) shall have an allowable flow rate equivalent to the design requirements of the leachate collection layer as established in Section 2 of this administrative regulation.

(1) Materials required. (a) The SDL shall have an allowable flow rate that meets the requirements of this administrative regulation as determined by GRI standard GC-8 "Determination of the Allowable Flow Rate of a Drainage Geocomposite" or similar method based on the applicable standards of practice for certification by a professional engineer as established in KRS 322.010(16).

(b) The SDL shall not be adversely affected, chemically or physically, by waste placement or leachate.

(c)1. Documentation shall be submitted to ensure chemical compatibility of the SDL chosen; or

2. In the absence of the appropriate documentation, chemical compatibility testing shall be performed using Method 9090A, "Compatibility Test for Wastes and Membrane Liners", SW-846 Update IV of the Third Edition which is incorporated by reference in 401 KAR 48:205, Section 10; or ASTM D6388-99 (2005), "Standard Practice for Tests to Evaluate the Chemical Resistance of Geonets to Liquids", or other similar test method based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

(2) Construction requirements. (a) The SDL shall be installed in accordance with the requirements of the approved engineering plans, reports, and specifications in the permit and manufacturer's recommendations.

(b) The certifying engineer shall ensure that the SDL installation, at a minimum, shall conform to the following:

1. The SDL shall have a nominal thickness that is specified by the professional engineer to meet the design flow of the leachate collection as established in 401 KAR 48:205, Section 3;

2. The SDL shall have a transmissivity that is specified by the professional engineer to meet the design flow of the leachate collection layer as established in 401 KAR 48:205, Section 3;

3. The SDL shall be designed to withstand the calculated tensile forces acting upon the SDL to ensure that stability shall be maintained;

4. The anchor trench shall be designed to withstand the calculated tensile forces acting upon the SDL to ensure that stability shall be maintained;

5. Field seams shall be oriented parallel to the line of maximum slope, which is oriented along, not across the slope; and

6. In corners and irregularly-shaped locations, the number of field seams shall be minimized.

(3) Certification requirements.

(a) The certifying engineer shall include in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, a discussion of the reviewed data resulting from the quality assurance and quality control testing.

(b) The results of testing shall be included in the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, including documentation of failed test results, descriptions of the procedures used to repair the failed material, and documentation of retesting performed.

(c) The certifying engineer shall certify, after review of the quality control testing of the SDL, if the material meets the requirements of the approved engineering plans, reports, and specifications in the petroleum contaminated soil treatment facility permit.

(d) Before installing an SDL, the following information shall be available to the certifying engineer for approval:

1. Origin and identification of the raw materials used to manufacture the SDL;

2. Copies of quality control certificates issued by the producer of the raw materials used to manufacture the SDL; and

3. Reports of tests conducted to verify the quality of the raw materials used to manufacture the SDL.

(e) Tests shall be performed using appropriate ASTM International, GRI or other similar specifications based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

(f)1. The certifying engineer shall verify through appropriate documentation that the quality control testing of an SDL made at the factory took place in accordance with the manufacturer's quality control plan, which is based on the GRI standard GC-8 "Standard Guide for Determination of the Allowable Flow Rate of a Drainage Geocomposite" or appropriate specifications based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

2. Quality assurance testing performed under the supervision of the certifying engineer shall assure conformity of the SDL with the approved engineering plans in the permit and the GRI standard GC-8 "Standard Guide for Determination of the Allowable Flow

Rate of a Drainage Geocomposite" or appropriate specifications based on the applicable standards of practice as established in KRS 322.010(16) for certification by a professional engineer.

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

(a) ASTM D3042-03 "Standard Test Method for Insoluble Residue in Carbonate Aggregates" modified for a pH of no greater than 4.0;

(b) GRI standard GC-8 "Standard Guide for Determination of the Allowable Flow Rate of a Drainage Geocomposite"; and

(c) ASTM D6388-99(2005) "Standard Practice for Tests to Evaluate the Chemical Resistance of Geonets to Liquids".

(2) The documents listed in this administrative regulation are available from the following organizations:

(a) ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428-2959 USA, or from their Web site at http://www.astm.org/index.shtml;

(b) Geosynthetic Research Institute, 475 Kedron Avenue, Folsom, PA 19033-1208 USA, or from their Web site at http://www.geosynthetic-institute.org/; or

(c) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2011 at 10 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 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 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 May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kelli Reynolds, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Kelli.Reynolds@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelli Reynolds

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the liner quality assurance and quality control testing requirements for petroleum contaminated soil treatment facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish treatment facility liner high-permeability layer quality assurance and quality control for petroleum contaminated soil treatment facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establish treatment facility liner high-permeability layer quality assurance and quality control for petroleum contaminated soil treatment facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statues by establish treatment facility liner high-permeability layer quality assurance and quality control for petroleum contaminated soil treatment facilities which will protect the environment.

(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: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Businesses that treat petroleum contaminated soils will be affected by this administration regulation. There are currently 3 permitted by the Solid Waste Branch.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will have to comply with the requirements established for treatment facility liner high-permeability layer quality assurance and quality control for petroleum contaminated soil treatment facilities. This includes the specific high permeability soil requirements and specific drainage layer requirements for the bottom liner of these types of facilities.

(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 implement this type of permit for an existing facility would be approximately $175,000 per acre for the plastic liner and the storage building will be dependent on the size of the building. Groundwater monitoring will not be an additional cost since the existing facilities have monitoring wells already installed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation will implemented and enforced using the solid waste permit fees collected pursuant to 401 KAR 47:090 and general funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. The requirements established for treatment facility liner high-permeability layer quality assurance and quality control for petroleum contaminated soil treatment facilities. This applies to all petroleum contaminated soil treatment facilities.

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 Division of Waste Management.

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 and 224.40-305

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? No additional cost to the Division of Waste Management

(d) How much will it cost to administer this program for subsequent years? No additional cost to the Division of Waste Management.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of April 12, 2011

Call to Order and Roll Call

The April meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, April 12, 2011, at 1:00 p.m., in Room 149 of the Capitol Annex. Senator Joe Bowen, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the March 2011 meeting were approved.

Present were:

Members: Senators Joe Bowen, David Givens, and Joey Pendleton, and Alice Forgy Kerr, and Representative Johnny Bell, Robert Damron, Danny Ford, and Jimmie Lee.

LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, and Laura Napier.

Guests: Sherron Jackson, Rana Johnson, Dennis Taulbee, Council on Postsecondary Education; Sarah Johnson, Sandy Milburn, State Board of Elections; Emily Dennis, Registry of Election Finance; Beau Barnes, Kentucky Teachers' Retirement System; Tom Crawford, David Gordon, DeVon Hankins, Mark Johnson, Bruce Nix, Jamie Shackleford, Finance and Administration Cabinet; Charlotte Beason, Nathan Goldman, Board of Nursing; Ron Brooks, Margaret Everson, Karen Waldrop, Department of Fish and Wildlife; Sandra Gruzesky, Abby Powell, Anshu Singh, Division of Water; Kevin Brown, Kay Kennedy, Department of Education; DJ Wasson, Department of Insurance; Marc A. Guilfoil, Greg Lamb, Tim West, Kentucky Horse Racing Commission; Matt McKinley, Cabinet for Health and Family Services and David Cox, Board of Licensure for Engineers and Land Surveyors.

The Administrative Regulation Review Subcommittee met on Tuesday, April 12, 2011, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

COUNCIL ON POSTSECONDARY EDUCATION: Public Educational Institutions

13 KAR 2:060. Degree program approval; equal opportunity goals. Sherron Jackson, associate vice president; Rana Johnson, chief diversity officer; and Dennis L. Taulbee, general counsel, represented the council.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

KENTUCKY STATE BOARD OF ELECTIONS: Voting

31 KAR 5:010 & E. Use of the federal write-in absentee ballot in elections for federal office. Sarah Johnson, executive director, and Sandy Milburn, assistant director, represented the board.

In response to a question by Senator Pendleton, Ms. Johnson stated that in 2009 the federal government expanded procedures for overseas voting. This amendment updated voting procedures for compliance with federal standards to allow soldiers who didn't get a ballot to vote by "write in" for a primary election.

Senator Pendleton requested that voting requirements for military be simplified.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to place terms in alphabetical order; (2) to amend Section 4 to specify how an absent voter may designate a candidate in a primary election; (3) to amend Sections 4, 6, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; (4) to amend the RELATES TO paragraph to add a citation; (5) to amend Section 1 to change the term "absent overseas voter" to "absent voter"; (6) to amend Section 1 to add citations to the federal definitions for the terms "absent uniformed services voter" and "overseas voter"; (7) to amend Sections 2 through 6 to conform to the new terms; and (8) to amend Section 3 to add language prohibiting the county board of elections from counting a federal write-in absentee ballot from an "absent uniformed services voter" if it is submitted from within the voter's county of residence. Without objection, and with agreement of the agency, the amendments were approved.

DEPARTMENT OF STATE: Kentucky Registry of Election Finance: Practice and Procedure

32 KAR 2:130 & E. Monetary contributions made in a format other than cash, and refunds. Emily Dennis, general counsel, represented the registry.

FINANCE AND ADMINISTRATION CABINET: Kentucky Teachers' Retirement System: General Rules

102 KAR 1:178 & E. Investment policies for insurance trust fund. Beau Barnes, deputy executive secretary and general counsel, represented the system.

In response to questions by Senator Pendleton, Mr. Barnes stated that the system retained an outside investment consultant, nationally recognized money managers, and in-house financial analysts. The systems tried to avoid managed risk, which helped minimize losses during the recent recession.

In response to questions by Co-Chair Bell, Mr. Barnes stated that system trustees took oaths regarding fiduciary responsibility and signed statements pertaining to conflicts of interest. They also received annual ethics training. Violations of fiduciary responsibility were subject to the same civil and criminal penalties as in the private sector.

Department of Revenue: Forms

103 KAR 3:010. General Administrative Forms Manual. David Gordon, executive director, Office of Property Valuation; Bruce Nix, director, Division of Individual Income Tax; and Janine Shackelford, branch manager, Program Improvement/Data Quality Branch, represented the department.

In response to questions by Senator Pendleton, Mr. Gordon stated that 103 KAR 3:010, 3:030, and 3:040 and E updated tax forms and reports. The forms did not impact property valuation administrators, but were mostly for personal tax reporting. Burden to the taxed community would not increase.

In response to a question by Senator Givens, Mr. Gordon stated that 103 KAR 3:010, 3:030, and 3:040 and E streamlined form and report processing.

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.

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

A motion was made and seconded to amend Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 3:040 & E. Income Tax Forms Manual.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Nursing: Board

201 KAR 20:059 & E. Advanced practice registered nurse controlled substances prescriptions. Charlotte Beason, executive director, and Nathan Goldman, general counsel, represented the board.

In response to a question by Senator Kerr, Ms. Beason stated that the board voted unanimously to approve the extended time

frame for controlled substance prescriptions by advanced practice registered nurses.

Senator Pendleton thanked the board, and physician board members especially, for promulgating this change.

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

301 KAR 1:155. Commercial fishing requirements. Ron Brooks, director, fisheries division; Margaret Everson, assistant attorney general; and Karen Waldrop, wildlife director, represented the department.

In response to questions by Representative Damron, Mr. Brooks stated that comments were received during the public comment period. Commercial fishermen commented on the licensure fee deadline. They preferred that the deadline be extended. Mr. Brooks stated that the deadline was necessary to allow for timely permit processing. Commercial fishermen also wished to include brothers and sisters among immediate family members who could use the commercial fishing license. The department agreed to that change, which was made in the Amended After Comments version. Additionally, commercial fishermen wanted permission to use snagging. The department did not make that change because snagging posed risks to fish populations.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Game

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

301 KAR 2:178. Deer hunting on Wildlife Management Areas, state parks, and other public lands.

In response to questions by Senator Givens, Dr. Waldrop stated that the changes to this administrative regulation provided for potential additional deer tags, depending on the state park. There had always been some overlap in weaponry seasons, but there had not been confusion among hunters regarding which season it was.

In response to a question by Co-Chair Bowen, Dr. Waldrop stated that the changes would have a positive impact on state parks and state park revenue.

A motion was made and seconded to approve the following amendments: to amend Section 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Quality

401 KAR 5:006. Wastewater planning requirements for regional planning agencies. Sandra Gruzesky, director, division of water, and Anshu Singh, environmental control supervisor, represented the division.

In response to questions by Co-Chair Bell, Ms. Gruzesky stated that aspects of wastewater planning that required engineering expertise required the stamp of a licensed, professional engineer. Nonengineering aspects of planning, such as jurisdictional and legal aspects, did not constitute engineering and did not require the engineer's stamp. Ms. Singh stated that parts of the wastewater planning, such as soil testing, did not requiring engineering expertise.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: Pupil Transportation

702 KAR 7:125. Pupil attendance. Kevin Brown, general counsel, and Kay Kennedy, director, represented the department.

In response to questions by Representative Damron, Mr. Brown stated that the Local Superintendents Advisory Council was involved in the drafting process. Ms. Kennedy stated that the department also worked with the Division of Pupil Personnel in developing these policies. None of the administrative bodies expressed opposition to the changes.

In response to questions by Senator Givens, Ms. Kennedy stated that attendance recording requirements were amended for clarification regarding what constituted tardiness and what constituted a half day absence. It would not significantly skew attendance comparisons from years prior to and after this amendment.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 5, 7, 9, 14, 15, and 16 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Consumer Protection Division: Administration

806 KAR 2:150. Collection fee. D.J. Wasson, staff assistant, represented the division.

In response to questions by Representative Damron, Ms. Wasson stated that the division received comments from the Kentucky Association of Counties and the Kentucky League of Cities. Most comments were supportive of this administrative regulation. Two (2) commenters asked for clarification, which the division made in the Amended After Comments version. Another administrative regulation allowed a tax collection fee up to fifteen (15) percent of the total tax to be collected. The fifteen (15) percent threshold was a statutory provision.

In response to questions by Co-Chair Bell, Ms. Wasson stated that the statute allowed for premium increases that may increase consumer cost. This administrative regulation clarified how to charge the fee and how to refund it, but local jurisdictions determined the cost in accordance with the authorizing statute.

In response to a question by Senator Givens, Ms. Wasson stated that local jurisdictions were required to charge the same percentage among policyholders; however, local jurisdictions may establish exemptions, such as exemptions for churches.

Kentucky Horse Racing Commission: Harness Racing

811 KAR 1:280. Calculation of payouts and distribution of pools. Greg Lamb, supervisor, pari-mutuel wagering, and Timothy West, assistant general counsel, represented the commission.

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.

Quarter Horse, Appaloosa, and Arabian Racing

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 Inspector General: Division of Public Health Protection and Safety: Radiology

902 KAR 100:010. Definitions for 902 KAR Chapter 100. Matt McKinley, branch manager; Curt Pendergrass, Ph.D.; and Angela Shryock, radiation health specialist, represented the division.

In response to a question by Co-Chair Bell, Mr. McKinley stated that the division issued licenses and provided oversight in the form of inspections.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to amend the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT to correct a typographical error. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 100:021. Disposal of radioactive material.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to make a technical correction; (2) to amend Sections 2, 3, 4, 6, 7, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend Section 13 to revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to make a technical correction; and (3) to amend Sections 2 through 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 100:070. Transportation of radioactive material.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 4, 6 through 13, 15, 16, 18, 20, 23, 27, and 28 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 100:072. Use of radionuclides in the health arts.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to make a technical correction; and (3) to amend Sections 2 through 5, 8 through 11, 15, 16, 17, 24, 26, 27, 29, 32, 49, 50, 51, 52, 54, 57, 64 through 68, 70, 71, 73, 77, and 80 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 100:165. Notices, reports and instructions to employees.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the RELATES TO paragraph; and the NECESSITY, FUNCTION, AND CONFORMITY paragraph to make a technical corrections; (2) to amend Sections 1, 2, 3, 5, 6, 8, 9, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend Section 10 to revise the form incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

Other Business: A moment of silence was observed on behalf of Representative Dewayne Bunch, following injuries he sustained that morning.

Subcommittee staff explained that pursuant to KRS 13A.020, the members of this Subcommittee were appointed March 31 of each odd-numbered years and as vacancies occur in its membership. All current members were re-appointed; however, the Co-Chairs needed to be elected by the membership.

A motion was made by Senator Givens and seconded by Senator Pendleton to nominate Senator Joe Bowen for Senate Co-Chair of the Subcommittee. Senator Bowen accepted the nomination. A motion was made and seconded to cease nominations. Senate members voted unanimously to elect Senator Bowen for Co-Chair.

A motion was made by Representative Lee and seconded by Representative Damron to nominate Representative Johnny Bell for House Co-Chair of the Subcommittee. Representative Bell accepted the nomination. A motion was made and seconded to cease nominations. House members voted unanimously to elect Representative Bell for Co-Chair.

The following administrative regulations were deferred to the May 10, 2011, meeting of the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Forms

103 KAR 3:050. Miscellaneous taxes forms manual.

GENERAL GOVERNMENT CABINET: Board of Dentistry: Board

201 KAR 8:531. Licensure of dentist.

201 KAR 8:561. Licensure of dental hygienists.

Board of Hairdressers and Cosmetologists: Board

201 KAR 12:083. Educational requirements.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Thoroughbred Racing

810 KAR 1:001. Definitions.

810 KAR 1:011. Pari-mutuel wagering.

810 KAR 1:120. Exotic wagering.

Harness Racing

811 KAR 1:005. Definitions.

811 KAR 1:125. Pari-mutuel wagering.

811 KAR 1:250. Exotic wagering.

Quarter Horse, Appaloosa, and Arabian Racing

811 KAR 2:010. Definitions.

811 KAR 2:060. Pari-mutuel wagering.

811 KAR 2:160. Exotic wagering.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for 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 2:00 p.m. until May 10, 2011.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

NONE

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **K - 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 **K - 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 **K - 30**

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 **K - 31**

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.

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:
* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
**** Emergency expired after 180 days
(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.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

101 KAR 2:066E		
Resubmitted	1860	1-4-10
Withdrawn		7-19-10
201 KAR 16:030E		
Resubmitted	2280	5-13-10
401 KAR 8:010E		
Resubmitted	2281	4-20-10
Replaced		(See 37 Ky.R.)
503 KAR 1:140E	1871	1-5-10
Replaced	2178	6-4-10
505 KAR 1:160E		
Resubmitted	1180	11-13-09
703 KAR 5:180E		
Resubmitted	2020-*M*	1-15-10
810 KAR 1:025E		
Resubmitted	2158	3-26-10
Replaced		(See 37 Ky.R.)
810 KAR 1:037E	2165	3-17-10
Replaced		(See 37 Ky.R.)
810 KAR 1:100E		
Resubmitted	2168	3-17-10
Replaced		(See 37 Ky.R.)
811 KAR 1:037E	2169	3-17-10
Replaced		(See 37 Ky.R.)
811 KAR 1:070E		
Resubmitted	2023-*M*	1-15-10
811 KAR 1:230		
Resubmitted	2172	3-17-10
Replaced		(See 37 Ky.R.)
811 KAR 2:130		
Resubmitted	2174	3-17-10
815 KAR 20:050E		
Resubmitted	992	10-01-09
Replaced	2067-*M*	6-4-10
906 KAR 1:180E		
Resubmitted	1184	11-13-09
Replaced	2197	6-4-10
921 KAR 2:530E		
Resubmitted	2294	5-14-10
Expired		

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 5:145		
Amended	1508	
11 KAR 12:060		
Amended	2055-*A*	7-12-10
13 KAR 1:020		
Amended	2347	9-3-10
31 KAR 3:010		
Amended	1095	
As Amended	1434	
31 KAR 6:010		
Amended	2110-*M*	
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
200 KAR 5:314		
Amended	1300	
As Amended	2177	6-4-10
200 KAR 5:315		
Amended	616	
Withdrawn	**	Date
201 KAR 10:050		
Amended	1301	
As Amended	2047-*M*	
Withdrawn		7-8-10
201 KAR 16:030		
Amended	2353	
Withdrawn		11-5-10
201 KAR 20:240		
Amended	2071-*A*	6-16-10
201 KAR 20:450		
Amended	527	
201 KAR 20:490		
Amended	2073-*A*	
As Amended	2312	6-16-10
201 KAR 20:510	2402	(See 37 Ky.R.)
201 KAR 22:020		
Amended	2208	
Withdrawn		6-15-10
201 KAR 22:045		(See 37 Ky.R.)
Amended	2209	
201 KAR 22:135		(See 37 Ky.R.)
Amended	2211	
201 KAR 30:050		
Amended	152	
Amended	569	
301 KAR 1:140		(See 37 Ky.R.)
Amended	2212	
301 KAR 2:049		(See 37 Ky.R.)
Amended	2215	
301 KAR 2:132		(See 37 Ky.R.)
Amended	2075-*A*	
Amended	2335	
301 KAR 2:172		
Amended	2080-*A*	
As Amended	2314	6-3-10
301 KAR 2:178		
Amended	2082-*A*	
As Amended	2316	6-3-10
401 KAR 5:045		(See 37 Ky.R.)
Amended	2112-*M*	
401 KAR 5:070		
Amended	2114-*M*	8-5-10
401 KAR 5:075		(See 37 Ky.R.)
Amended	2119-*M*	

Regulation Number	36 Ky.R. Page No.	Effective Date
Amended	2339	
401 KAR 8:010		
Amended		
401 KAR 8:020		
Amended	2088-*A*	
As Amended	2321	6-3-10
401 KAR 8:070		
Amended	2092-*A*	
401 KAR 8:150		(See 37 Ky.R.)
Amended	2094-*A*	
401 KAR 8:200		
Amended	2097-*A*	
As Amended	2323	6-3-10
401 KAR 8:250		
Amended	2099-*A*	
As Amended	2324	
401 KAR 8:300		
Amended	2100-*A*	
As Amended	2324	6-3-10
401 KAR 8:510		
Amended	2101-*A*	
As Amended	2324	6-3-10
401 KAR 8:550		
Amended	2103-*A*	
As Amended	2325	6-3-10
401 KAR 11:010		
Amended	2094	
401 KAR 11:030		(See 37 Ky.R.)
Amended	2105-*A*	
401 KAR 47:090		(See 37 Ky.R.)
Amended	620	
401 KAR 59:015		
Amended	2355	(See 37 Ky.R.)
405 KAR 8:010		
Amended	2360	(See 37 Ky.R.)
503 KAR 1:140		
Amended	1989	
As Amended	2178	6-4-10
503 KAR 3:010		
Amended	2373	(See 37 Ky.R.)
503 KAR 3:040		
Amended	2379	(See 37 Ky.R.)
503 KAR 3:110		
Amended	2383	(See 37 Ky.R.)
601 KAR 1:200		(See 37 Ky.R.)
Amended	2220	
601 KAR 1:220	1571	
Amended	2058-*M*	
As Amended	2184	6-4-10
601 KAR 2:020		
Amended	2388	(See 37 Ky.R.)
601 KAR 12:060		
Amended	1116	
As Amended	2325	6-4-10
603 KAR 4:045		
Amended	2124-*M*	
As Amended	2184	
702 KAR 3:030		
Amended	2108-*A*	
As Amended	2326	
702 KAR 3:246		
Amended	2225	*(See 37 Ky.R.)*
703 KAR 5:060		
Amended	2109-*A*	(See 37 Ky.R.)
703 KAR 5:180	2144-*M*	
704 KAR 3:540	2260	(See 37 Ky.R.)
725 KAR 1:061		
Amended	2227	
Withdrawn		6-15-10
781 KAR 1:020		
Amended	2230	(See 37 Ky.R.)
781 KAR 1:030		
Amended	2232	(See 37 Ky.R.)
781 KAR 1:040		
Amended	2235	
Withdrawn		6-15-10
803 KAR 30:010		(See 37 Ky.R.)
Amended	2238	
804 KAR 11:030		
Amended	2112-*A*	
Amended	2344	
Withdrawn		7-7-10
810 KAR 1:025		
Amended	2244	(See 37 Ky.R.)
810 KAR 1:037	2261	(See 37 Ky.R.)
810 KAR 1:100	2264	(See 37 Ky.R.)
811 KAR 1:037	2265	(See 37 Ky.R.)
811 KAR 1:070		
Amended	2127-*M*	6-4-10
As Amended	2187	
811 KAR 1:230	2268	(See 37 Ky.R.)
811 KAR 2:130	2269	(See 37 Ky.R.)
815 KAR 7:070		(See 37 Ky.R.)
Amended	2251	
815 KAR 8:070	2004	
As Amended	2194	6-4-10
815 KAR 8:080	2006	
Amended	2048-*A*	
As Amended	2195	6-4-10
815 KAR 8:090	2008	
As Amended	2196	6-4-10
815 KAR 10:060		
Reprint	1857	
815 KAR 20:018	2271	(See 37 Ky.R.)
815 KAR 20:050		
Amended	1134	
As Amended	2067-*M*	6-4-10
815 KAR 20:191		
Amended	2135-*M*	
As Amended	2327	(See 37 Ky.R.)
815 KAR 25:080		
Amended	2114-*A*	
As Amended	2333	
900 KAR 5:020		
Amended	2255	(See 37 Ky.R.)
900 KAR 6:020		
Amended	2256	(See 37 Ky.R.)
900 KAR 6:060		
Amended	2258	(See 37 Ky.R.)
900 KAR 6:125	260	
Withdrawn		11-13-09
902 KAR 20:400	1572	
Amended	2049-*A*	(See 37 Ky.R.)
906 KAR 1:180	1403	
Amended	2103-*M*	
As Amended	2197	6-4-10
910 KAR 1:240		
Amended	2391	(See 37 Ky.R.)
910 KAR 1:260		
Amended	1997	
As Amended	2201	6-4-10
921 KAR 1:410		
Amended	2395	(See 37 Ky.R.)

Regulation Number	37 Ky.R. Page No.	Effective Date

VOLUME 37

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

31 KAR 4:130E	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	2-7-11
101 KAR 2:095E	2522	3-31-11
101 KAR 2:102E	2525	3-31-11
101 KAR 2:210E	916	9-15-10
Replaced	1000	1-3-11
101 KAR 3:015E	2530	3-31-11
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
102 KAR 1:178E	2132	1-24-11
103 KAR 3:040E	2134	1-27-11
103 KAR 15:195E	2535	4-1-11
105 KAR 1:190E	217	7-15-10
201 KAR 8:007E	224	7-15-10
201 KAR 8:390E	225	7-15-10
Expired	****	1-11-11
201 KAR 8:500E	228	7-15-10
Expired	****	1-11-11
201 KAR 8:510E	231	7-15-10
Replaced	1627	2-4-11
201 KAR 8:520E	233	7-15-10
Replaced	1628	2-4-11
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
Withdrawn		9-14-10
201 KAR 20:059E	1953	
201 KAR 39:050E	250	6-16-10
Replaced	444	11-5-10
301 KAR 2:221E	1158	10-15-10
Replaced	1338	2-4-11
301 KAR 2:222E	1160	10-15-10
Replaced	1341	2-4-11
301 KAR 2:225E	917	8-18-10
Replaced	1029	1-3-11
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
Replaced	969	10-6-10
803 KAR 25:091E	920	9-15-10
810 KAR 1:009E	13	6-15-10
Replaced	1646	2-4-11
815 KAR 1:025E		(See 36 Ky.R.)
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
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907 KAR 1:012E	295	7-1-10
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SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, not in effect within 1 year of publication

*** Withdrawn before being printed in Register

(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2010 bound Volumes. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the Administrative Register. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at http://www.lrc.ky.gov/home.htm.

The Board of Nursing has requested that technical amendments be made to reflect the statutory change of the term "Advance Registered Nurse Practitioner" or "ARNP" to "Advance Practice Registered Nurse" or "APRN". This change was applied to 201 KAR 20:059, 201 KAR 20:161, 201 KAR 20:163, 201 KAR 20:215, 201 KAR 20:220, 201 KAR 20:235, 201 KAR 20:400, 201 KAR 20:410, 201 KAR 20:450, and 201 KAR 20:490, as of July 15, 2010.

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